Amendments made in Income-Tax Act

Rates of income-tax for assessment year 2017-18

Rates of Income Tax

(A) I. In the case of every Individual (other than those covered in part (II) or (III) below) or Hindu undivided family or AOP/BOI (other than a co-operative society) whether incorporated or not, or every artificial judicial person

Upto ₹ 2,50,000	Nil
₹ 2,50,010 to ₹ 5,00,000	10%
₹ 5,00,010 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

II. In the case of every **individual,** being a **resident in India,** who is of the **age of 60 years or more but less than 80 years** at any time during the previous year.

Upto ₹ 3,00,000	Nil
₹ 3,00,010 to ₹ 5,00,000	10%
₹ 5,00,010 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

III. In the case of every **individual,** being a **resident in India,** who is of the **age of 80 years or more** at any time during the previous year.

Upto ₹ 5,00,000	Nil
₹ 5,00,010 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

1. **Special rates of income tax:** Besides the normal rates, special rates of tax are applicable in case of certain incomes in the hands of various persons. These rates are given in Chapter XII of the Income Tax Act which is covered under sections 111A to 115BBE.
2. **Rebate of income tax under section 87A:** This rebate is allowed to an **individual** who is **resident** in India and whose **total income** (including the income taxable at special rates) **does not exceed ₹ 5,00,000**. The rebate available shall be 100% of income tax payable (before cess) or ₹ 5,000 (₹ 2,000 upto A.Y. 2016-17), whichever is less.

Surcharge: The amount of income-tax computed in accordance with the above rates shall be increased by a surcharge **@ 15%** of such income-tax in case of a person referred to in clause (A) above having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess (SHEC)' @ 1% on income tax (inclusive of surcharge, if applicable) shall be chargeable.

Illustration
Marginal relief
The total income of Mr. Pankaj for the assessment year 2017-18 is ₹ 1,01,30,000. Compute the tax payable by Mr Pankaj for the assessment year 2017-18.

Tax on ₹ 1 Crore	₹	₹
On first ₹ 2,50,000	25,000	
Next ₹ 2,50,000 — 10%	1,00,000	
Next ₹ 5,00,000 — 20%	27,00,000	
Balance ₹ 90,00,000 — 30%		2,825,000
Tax on ₹ 1,30,000 which is above ₹1 crore (₹ 1,30,000@30%)		39,000
Total Tax (2,825,000 + 39,000)		2,864,000
Additional income above ₹ 1 crore	1,30,000	
Tax payable @30%	39,000	
Balance income		91,000
Surcharge @ 15% on 28,64,000 = ₹ 4,29,600 or ₹ 91,000 whichever is less	91,000	91,000
Total Tax Payable (₹28,61,000 + ₹91,000)		2,955,000
Add: SHEC @ 3%		88,650
Total Tax Payable		3,043,650

Illustration

What will be your answer if the total income is ₹ 10,800,000 instead of ₹ 10,130,000.

Tax on ₹ 1 Crore	₹	₹
On first ₹ 2,50,000	25,000	
Next ₹ 2,50,000 — 10%	1,00,000	
Next ₹ 5,00,000 — 20%	27,00,000	
Balance ₹ 90,00,000 — 30%		2,825,000
Tax on ₹ 8,00,000 which is above ₹1 crore (₹ 8,00,000@30%)		2,40,000
Total Tax (2,825,000 + 2,40,000)		3,065,000
Additional income above ₹ 1 crore	8,00,000	
Tax payable @30%	2,40,000	
Balance income		5,60,000
Surcharge @ 15% on ₹3,065,000 = ₹ 4,59,750 or ₹ 5,60,000 whichever is less	459,750	459,750
Total Tax Payable (₹29,60,000 + ₹3,15,000)		3,524,750
Add: SHEC @ 3%		1,05,743
Total Tax Payable (rounded off)		3,630,490

Illustration

What will be your answer if the total income is ₹ 10,900,000.

Tax on ₹ 1 Crore	₹	₹
On first ₹ 2,50,000	25,000	
Next ₹ 2,50,000 — 10%	1,00,000	
Next ₹ 5,00,000 — 20%	27,00,000	
Balance ₹ 90,00,000 — 30%		2,825,000
Tax on ₹ 900,000 which is above ₹1 crore (₹ 9,00,000@30%)		270,000
Total Tax (₹2,825,000 + ₹2,70,000)		30,95,000
Additional income above ₹ 1 crore	9,00,000	
Tax payable @30%	2,70,000	
Balance income		6,30,000
Surcharge @ 15% on 30,95,000 = ₹ 4,64,250 or ₹6,30,000 whichever is less	4,64,250	4,64,250
Total Tax Payable (₹30,65,000 + ₹4,64,250)		3,559,250
Add: SHEC @ 3%		1,06,778
Total Tax Payable (rounded off)		3,666,030

(B) In the case of every co-operative society

(1) where the total income does not exceed ₹ 10,000	10% of the total income;
(2) where the total income exceeds ₹ 10,000 but does not exceed ₹20,000	₹ 1,000 *plus* 20% of the amount by which the total income exceeds ₹ 10,000;
(3) where the total income exceeds ₹20,000	₹3,000 *plus* 30% of the amount by which the total income exceeds ₹ 20,000.

Surcharge: The amount of income-tax shall be increased by a surcharge @ 12% of such income-tax in case of a cooperative society having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Education Cess' @ 2% and SHEC @ 1% on income tax (inclusive of surcharge, if applicable) shall be chargeable.

(c) ***In case of any firm (including limited liability partnership)*** — 30%.

Surcharge: The amount of income-tax shall be increased by a surcharge @ 12% of such income-tax in case of a firm having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Education Cess' @ 2% and SHEC @ 1% on income tax (inclusive of surcharge, if applicable) shall be chargeable.

(D) In the case of a company

(1) For domestic company:

(i) Any domestic company other than referred to in the clauses (ii) and (iii) below: 30%,

(ii) A domestic company whose total turnover or gross receipt in the previous year 2014-15 does not exceed ₹ 5 crores — 29%

(iii) Special rate of income tax in case of newly setup domestic companies engaged solely in the business of manufacture or production of article or thing [Section 115BA] — 25%.

Surcharge: Surcharge @ 7% shall be levied if the total income of the domestic company exceeds ₹ 1 crore but does not exceed ₹10 crore.

Surcharge @ 12% shall be levied if the total income of the domestic company exceeds ₹10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹1 crore but not exceeding ₹ 10 crore, shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹10 crore, by more than the amount of income that exceeds ₹10 crore.

Cess: 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess' @ 1% on income tax (inclusive of surcharge, if applicable) shall be chargeable.

***(2) For foreign company:* 40%.**

Surcharge: In case of companies other than domestic companies, surcharge @ 2% shall be levied if the total income exceeds ₹ 1 crore but does not exceed ₹10 crore.

Surcharge @ 5% shall be levied if the total income of the company other than domestic company exceeds ₹10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹1 crore but not exceeding ₹10 crore, shall not exceed the total amount payable as income-tax on a total income of ₹1 crore, by more than the amount of income that exceeds ₹1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹10 crore, by more than the amount of income that exceeds ₹10 crore.

Cess: 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess' @ 1% on income tax (inclusive of surcharge, if applicable) shall be chargeable.

Amendments relating to Definitions

1. Definition of capital asset amended [Section 2(14)] [W.r.e.f. A.Y. 2016-17]

The Finance Act has amended section 2(14), so as to **exclude** Deposit Certificates issued under Gold Monetisation Scheme, 2015 notified by the Central Government, from the definition of capital asset and thereby has exempted it from capital gains tax.

2. Definition of term "hearing" [Section 2(23C) inserted] [W.e.f. 1-6-2016]

To provide adequate legal framework for paperless assessment in order to enhance efficiency and reduce the burden of compliance, the Act has inserted the following definition of the word "hearing".

"Hearing" includes communication of data and documents through electronic mode.

3. Exclusion of Central Government subsidy or grant or cash assistance, etc. towards corpus of fund established for specific purposes from the definition of Income [Section 2(24)(*xviii*)] [W.e.f. A.Y. 2017-18]

The Finance Act has amended section 2(24)(*xviii*) to provide that **the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or State Government, as the case may be, shall also not form part of income.**

4. Meaning of rate in force for the purpose of TDS under section 194LBB and 194LBC shall be same as given under section 2(37A) [Section 2(37A)(*iii*) amended] [W.e.f. 1-6-2016]

Sub-clause (*iii*) of section 2(37A) has been amended so as to provide that for the purposes of deduction of tax under section 194LBB, or section 194LBC the "rates in force" in relation to an assessment year or financial year shall mean the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year or rate or rates of income-tax specified in an agreement entered into by the Central Government under section 90 or notified by the Central Government under section 90A, whichever is applicable.

5. Unlisted shares of a company to be short-term capital asset if held for not more than 24 months [Third proviso inserted under section 2(42A)) [W.e.f. A.Y. 2017-18]

For details, see para 38 under amendments relating to income under the head capital gains.

Amendments relating to Determination of Residential Status

6. Applicability of POEM for determining the residential status of a company deferred by one year [Section 6(3)]

The Finance Act has deferred the applicability of POEM based residence test by one year and the determination of residence based on POEM shall be applicable from 01.04.2017 (i.e. assessment year 2017-18).

Amendments relating to income deemed to accrue or arise in India

7. Certain activities related to diamond trading in "Special Notified Zone" will not create a business connection in India [Clause (e) inserted in Explanation 1 to section 9(1)(i)] [W.r.e.f. A.Y. 2016-17]

In order to facilitate the FMCs to undertake activity of display of uncut diamond (without any sorting or sale) in the special notified zone, the Finance Act has inserted the following clause (e) in Explanation 1 to section 9(1)(i)—

> (e) in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamond in any Special Zone notified by the Central Government in the Official Gazette in this behalf.

8. Modification in the conditions to be fulfilled for being an eligible investment funds [Section 9A] [W.e.f. A.Y. 2017-18]

In order to rationalize the regime and to address the concerns of the Industry, the Finance Act has modified the conditions to provide that the eligible investment fund for purposes of section 9A, shall also mean a fund established or incorporated or registered outside India in a country or a specified territory notified by the Central Government in this behalf.

It has also provided that the condition of fund not controlling and managing any **business in India** or **from India** shall be restricted only in the context of activities **in India.**

Amendments relating to income exempt from tax

9. Amount payable at the time of closure or opting out of National Pension Scheme to be exempt to the extent of 40% of the total amount payable [Section 10(12A) inserted] [W.e.f. A.Y. 2017-18]

In order to bring greater parity in tax treatment of different types of pension plans, the Finance Act, 2016 has inserted a new clause (12A) in section 10 to provide that any payment from National Pension System Trust to an employee on account of closure or his opting out of the pension scheme referred to in Section 80CCD, to the extent it does not exceed forty percent of the total amount payable to him at the time of closure or his opting out of the scheme, shall be exempt from tax. However, the whole amount received by the nominee, on death of the assessee shall be exempt from tax.

10. Entire amount standing to the credit of approved superannuation fund to be exempt if it is transferred to National Pension Scheme [Sub-clause (v) inserted in section 10(13)] [W.e.f. A.Y. 2017-18]

The Finance Act, has inserted sub-clause (v) in section 10(13) so as to provide that any payment from an approved superannuation fund by way of transfer to the account of the employee under NPS referred to in section 80CCD and notified by the Central Government shall be exempt from tax.

11. Exemption in respect of interest on deposit certificates under Gold Monetization Scheme, 2015[Section10(15)(*vi*)] [W.r.e.f. A.Y. 2016-17]

The Finance Act has amended sub-clause (*vi*) of section 10(15) so as to provide that besides the interest on Gold Deposit Bonds issued under the Gold Deposits Scheme, 1999, the interest on Deposit Certificates issued under the Gold Monetization Scheme, 2015, shall also be exempt from income-tax.

12. Meaning of securitisation given in Explanation to section 10(23DA) enlarged [Explanation to section 10(23DA)[[W.e.f. A.Y. 2017-18]

The meaning of "securitisation" given under *Explanation* to section 10(23DA) changed

As per section 10(23DA), any income of a **securitisation trust** from the activity of **securitisation** is exempt.

The existing meaning of "securitisation" given in clause (a) of the *Explanation* to section 10(23DA) has been changed. The new meaning of securitisation shall be as under:

(A) "Securitisation" shall have the same meaning as assigned to it,—

(i) in clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange "Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act 1992 and the Securities Contracts (Regulation) Act, 1956; or

(ia) in clause (z) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002; or

(ii) under the guidelines on securitisation of standard assets issued by the Reserve Bank of India.

13. Exemption of dividend received by a business trust from specified domestic company referred to in section 115-0(7) [Section 10(23FC)] [W.e.f. A.Y. 2017-18]

As per the existing section 10(23FC), any income of a business trust by way of interest received or receivable from a special purpose vehicle shall be exempt.

The Finance Act has amended the above clause (23FC) to provide as under:

Any income of a business trust by way of—

a) interest received or receivable from a special purpose vehicle; or

b) dividend declared, distributed or paid by the specified domestic company referred to in section 115-0(7)

shall be exempt.

14. Distributed income which is of the same nature as dividend referred to in section 115-0(7) received from the business trust by the unit holder shall be exempt [Section 10(23FD)] [W.e.f. A.Y. 2017-18]

Besides, the distributed income, referred to in section 115UA received by a unit holder from the business trust which is exempt under section 10(23FD), any dividend referred to in section 115-0(7) received by the unit holder from the business trust shall also be exempt.

However, the proportion of the income which is of the same nature as the income referred to in section 10(23FC)(a) (i.e. interest received/receivable by a business trust from SPV) or section 10(23FCA) (i.e. renting or leasing or letting out any real estate asset owned directly by the business trust) shall not be exempt.

Consequential amendment has also been made in section 115UA by changing the section 10(23FC) to section 10(23FC(a) so that distributed income from a business trust received by a unit-holder which is of the same nature as referred to in section 115-0(7) shall also not be included in the total income of such unit-holder.

15. Dividend received not to be exempt in case it is chargeable to tax in accordance with the provisions of section 115BBDA [Proviso inserted under section 10(34)] [W.e.f. A.Y. 2017-18]

As per the existing section 10(34), any income by way of dividends referred to in section 115-0 is exempt in the hands of the recipient.

The Finance Act has inserted the following proviso under the aforesaid section 10(34):

"Provided that nothing in this clause shall apply to any income by way of dividend chargeable to tax in accordance with the provisions of section 115BBDA."

In other words, if the recipient is covered under section 115BBDA, dividends received shall be subject to income tax at the special rate prescribed in the said section.

16. Distributed income referred to in section 115TA received by the investor from securitisation trust not to be exempt [Proviso to section 10(35A)] [W.e.f. 1-6-2016]

The provision of section 115TA relating to tax payable by the securitisation trust on distributed income to investor shall not be applicable in respect of any income distributed by the securitisation trust to the investor on or after 1-6-2016. The tax on income from securitisation trust **will now be payable by the investor** as per section 115TCA.

Proviso inserted under section 10(35A)

The existing section 10(35A) provides that any income by way of distributed income referred to in section 115TA received from a securitisation trust **by any person being an investor** of the said trust shall be exempt.

Consequent to the amendment made in section 115TA(5), the Finance Act has inserted following proviso under section 10(35A):

"Provided that nothing contained in this clause shall apply to any income by way of distributed income referred to in the said section, received on or after the 01.06.2016."

In other words, tax on income distributed by the securitisation trust will now be taxable in the hands of the investor as per section 115TCA.

17. Tax Incentives to International Financial Services Centre [Section 10(38)] [W.e.f. A.Y. 2017-18]

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

With a view to incentivise the growth of International Financial Services Centres into a world class financial services hub, the Act has amended section 10(38) so as to provide for exemption from tax on capital gains to the income arising from transaction undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre even when securities transaction tax is not paid in respect of such transactions.

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18. Exemption of income of Foreign company from storage and sale of crude oil stored as part of strategic reserves [Section 10(48A)] [W.r.e.f. A.Y. 2016-17]

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

In order to achieve neutrality in terms of taxation to encourage the NOCs & MNCs to store their crude oil in India and to build up strategic oil reserves, the Act has inserted section 10(48A) which provides as under:

"Any income accruing or arising to a **foreign company** on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in its total income, provided that,—

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

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

19. Exemption in respect of income arising from providing specified services on which equalisation levy is chargeable [Section 10(50)] [W.e.f. 1-6-2016]

The Act has inserted section 10(50) to provide as under:

Any income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 come into force **and** chargeable to **equalisation levy** under that Chapter shall be exempt.

20. Phasing out of deduction available in respect of units established in SEZ [Section 10AA] [W.e.f. A.Y. 2017-18]

The deduction under section 10AA shall be available only to those units which are established in a Special Economic Zone (SEZ) and begin to manufacture or produce articles or things or provide any service before 1-4-2020. In other words, any unit established in a Special Economic Zone on or after 1-4-2020 shall not be eligible for deduction under section 10AA.

Amendments relating to income under the head "salaries"

21. Raising the exemption in respect of employer's contribution to approved superannuation fund [Section 17(2)(vii)] [W.e.f. A.Y. 2017-18]

Under section 17(2)(vii), perquisite includes the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds ₹ 1,00,000. The Act has raised the limit from ₹ 1,00,000 to ₹ 1,50,000. In other words, employer's contribution to the approved superannuation fund shall be a tax free perquisite upto ₹ 1,50,000.

Amendments relating to income under the head "house property"

22. Increase in time period for acquisition or construction of self-occupied house property for claiming deduction of interest [Second proviso to section 24(b)] [W.e.f. A.Y. 2017-18]

In view of the fact that housing projects often take longer time for completion, the Act has amended the second proviso of section 24(b) 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.

23. Simplification and rationalisation of provisions relating to taxation of unrealised rent and arrears of rent [Section 25A] [W.e.f. A.Y. 2017-18]

Existing provisions of sections 25 A, 25 AA 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.

The Act has simplified these provisions and merged them under a single new section 25A to bring uniformity in tax treatment of arrears of rent and unrealised rent.

The new section 25A provides as under:

Special provision for arrears of rent and unrealised rent received subsequently [Section 25A]

(1) Arrears of rent or unrealized rent received subsequently to be taxed under the head "Income from House Property [Section 25A(1)]: The amount of arrears of rent received from a tenant or the unrealised rent realised subsequently from a tenant, as the case may be, by an assessee shall be deemed to be the income from house property in respect of the financial year in which such rent is received or realised, and shall be included in the total income of the assessee under the head "Income from house property", whether the assessee is the owner of the property or not in that financial year.

(2) Standard deduction @ 30% to be allowed from such arrears of rent or unrealized rent [Section 25A(2)]: A sum equal to 30% of the arrears of rent or the unrealised rent referred to in section 25A(1) shall be allowed as deduction.

Amendments relating to income under the head "Profits and Gains of Business or Profession"

24. Taxation of Non-compete fees and exclusivity rights in case of Profession [Section 28(va)] [W.e.f. A.Y. 2017-18]

The Act has amended 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, the Act has also amended the proviso given under the above clause (va) 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.

25. Extending the benefit of additional depreciation for power sector [Section 32(1)(iia)] [W.e.f. A.Y. 2017-18]

In order to rationalise the incentive of power sector, the Act has amended this section so as to provide that an assessee engaged in the business of **generation or transmission or distribution of power** shall be allowed

additional depreciation at the rate of 20% of actual cost of new machinery or plant acquired and installed in a previous year.

26. Rationalisation of scope of investment allowance [Section 32AC] [W.r.e.f. A.Y. 2016-17]

The Act has amended section 32AC(1A) so as to provide that the acquisition of the plant & machinery of exceeding ₹ 25 crore 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%.

Further, a following new proviso first has been inserted after sub-section 32AC(1 A):

"Provided that where the installation of the new assets are **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 assets are installed."**

27. Capital expenditure on infrastructure facility to be allowed as deduction under section 35AD [W.e.f. A.Y. 2018-19]

Section 35AD provides for deduction in respect of capital expenditure on certain specified business. The Finance Act, 2016 has also inserted the following business under section 35 AD:

"Developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility."

28. Phase out plan of incentives (Accelerated Depreciation/Weighted Deduction) available under the Act

SL/ No.	Section	Incentive Currently available in the Act	Phase out measures/ Amendment
1.	32 read with rule 5 of Income-tax Rules, 1962- Accelerated Depreciation.	Accelerated depreciation is provided to certain Industrial sectors in order to give impetus for investment. The depreciation under the Income-tax Act is available up to 100% in respect of certain block of assets.	The new Appendix IA read with rule 5 of Income-tax Rules, 1962 will be amended to provide that highest rate of depreciation under the Income-tax Act shall be restricted to 40% w.e.f. 01.04.2017. (i.e. from previous year 2017-18 and subsequent years). The new rate will be made applicable to all the assets (whether old or new) falling in the relevant block of assets.
2	Section 35(1)(ii) Expenditure on scientific research.	Weighted deduction from the business income is allowed to the extent of 175% of any sum paid to an approved scientific research association which has the object of undertaking scientific research. Similar deduction is also available if a sum is paid to an approved university, college or other institution and if such sum is used for scientific research.	Weighted deduction shall be restricted to 150% from 1.4.2017 to 31.3.2020 (i.e. from previous year 2017-18 to previous year 2019-20) and deduction shall be restricted to 100% from 1.4.2020 (i.e. from previous year 2020-21 onwards).
3	35(1)(iia)- Expenditure on scientific research.	Weighted deduction from the business income to the extent of 125% of any sum paid is allowed as contribution to an approved scientific research company.	Deduction shall be restricted to 100% with effect from 1.4.2017 (i.e. from previous year 2017-18 and subsequent years).
4	35(1)(iii)- Expenditure on research in social science or	Weighted deduction from the business income to the extent of 125% of contribution to an approved research association or university or	Deduction shall be restricted to 100% with effect from 1.4.2017 (i.e. from previous year 2017-18 and subsequent

	statistical research.	college or other institution to be used for research in social science or statistical research.	years).
5	35(2AA)- Expenditure on scientific research.	Weighted deduction from the business income to the extent of 200% of any sum paid to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme is allowed.	Weighted deduction shall be restricted to 150% with effect from 1.4.2017 to 31.3.2020 (i.e. from previous year 2017-18 to previous year 2019-20). Deduction shall be restricted to 100% from 1.4.2020 (i.e. from previous year 2020-21 onwards).
6	35(2AB)- Expenditure on Scientific research.	Weighted deduction of 200% of the expenditure (not being expenditure in the nature of cost of any land or building) incurred by a company, engaged in the business of bio-technology or in the business of manufacture or production of any article or thing except some items appearing in the negative list specified in Schedule-XI, on scientific research on approved in-house research and development facility, is allowed.	Weighted deduction shall be restricted to 150% from 1.4.2017 to 31.3.2020 (i.e. from previous year 2017-18 to previous year 2019-20). Deduction shall be restricted to 100% from 1.4.2020 (i.e. from previous year 2020-21 onwards).
7	35AD-Deduction in respect of specified business.	In case of a cold chain facility, warehousing facility for storage of agricultural produce, an affordable housing project, production of fertiliser and hospital weighted deduction of 150% of capital expenditure (other than expenditure on land, goodwill and financial assets) is allowed.	In case of a cold chain facility, warehousing facility for storage of agricultural produce, hospital, an affordable housing project, production of fertilizer, deduction shall be restricted to 100% of capital expenditure w.e.f. 1.4.2017 (i.e. from previous year 2017-18 onwards).
8	35CCC- Expenditure on notified agricultural extension project.	Weighted deduction of 150% of expenditure incurred on notified agricultural extension project.	Deduction shall be restricted to 100% from 01.04.2020 (i.e. from previous year 2020-21 onwards).
9	35CCD- Expenditure on skill development project.	Weighted deduction of 150% on any expenditure incurred (not being expenditure in the nature of cost of any land or building) on any notified skill development project by a company.	Deduction shall be restricted to 100% from 01.04.2020 (i.e. from previous year 2020-21 onwards).

29. Phase out plan of incentives (Profit linked deductions) available under the Act

SL/ No.	Section	Incentive Currently available in the Act	Phase out measures/ Amendment
1	10AA-Special provision in respect of newly established units in Special economic zones (SEZ).	Profit linked deductions for units in SEZ for profit derived from export of articles or things or services.	No deduction shall be available to units commencing manufacture or production of article or thing or start providing services on or after 1st day April, 2020 (from previous year 2020-21 onwards).
2	35AC- Expendirure on eligible	Deduction for expenditure incurred by way of payment of any sum to a public sector company or a local	No deduction shall be available with effect from 1.4.2017 (i.e. from previous year 2017-18

	projects or schemes.	authority or to an approved association or institution, etc. on certain eligible social development project or a scheme.	and subsequent years).
3	Section 80IA; 80IAB, and 80IB - Deduction in respect of profits derive from (a) development, operation and maintenance of an infrastructure facility [80-IA] (b) development of special economic zone [80-IAB] (c) production of mineral oil and natural gas [80-IB(9)]	100% profit linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises referred in section 80IA; 80IAB, and 80IB.	No deduction shall be available if the specified activity commences on or after 1st day April, 2017. (i.e. from previous year 2017-18 and subsequent years).

30. Amortisation of spectrum fee for purchase of spectrum [Section 35ABA] [W.e.f. A.Y. 2017-18]

Under section 32 of the Act, depreciation is allowed in respect of assets including certain intangible assets. Under section 35ABB of the Act, amortisation of license fee in case of telecommunication service is provided.

The Government has newly introduced spectrum fee for auction of airwaves. There is uncertainty in tax treatment of payments in respect of Spectrum *i.e.* whether spectrum is an intangible asset and the spectrum fees paid is eligible for depreciation under section 32 of the Act or whether it is in the nature of a 'license to operate telecommunication business' and eligible for deduction under section 35 ABB of the Act.

In order to provide clarity and avoid any future litigation and controversy, the Finance Act has inserted **a** new section 35ABA in the Act to provide for tax treatment of spectrum fee. The section seeks to provide as under:—

(1) Amortisation of capital expenditure incurred for acquiring any right to use spectrum for telecommunication services [Section 35ABA(1)]

Where any capital expenditure is incurred by the assessee for acquiring any right to use spectrum for telecommunication services either before the commencement of the business or thereafter at any time during any previous year and for which payment has actually been made to obtain a right to use spectrum, there shall, subject to and in accordance with the provisions of this section, be allowed for each of the relevant previous years, a deduction equal to the appropriate fraction of the amount of such expenditure.

(2) Sub-sections (2) to (8) of section 35ABB also to apply to section 35ABA [Section 35ABA(2)]

The provisions contained in sub-sections (2) to (8) of section 35ABB shall apply as if for the word 'licence', the word 'spectrum' had been substituted.

(3) Consequences if, subsequently, there is failure to comply with any of the provisions of this section [Section 35ABA(3)]

Where, in a previous year, any deduction has been claimed and granted to the assessee under section 35ABA(1), and subsequently, there is failure to comply with any of the provisions of this section, then,—

(a) the deduction shall be deemed to have been wrongly allowed;
(b) the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the said previous year and make the necessary rectification;
(c) the provisions of section 154 shall, so far as may be, apply and the period of four years specified in section 154(7) of that section being reckoned from the end of the previous year in which the

failure to comply with the provisions of this section takes place.

For the purpose of above:

(i) "relevant previous years" means,—

(A) in a case where the spectrum fee is actually paid before the commencement of the business to operate telecommunication services, the previous years beginning with the previous year in which such business commenced;

(B) in any other case, the previous years beginning with the previous year in which the spectrum fee is actually paid,

- and the subsequent previous year or years during which the spectrum, for which the fee is paid, shall be in force;

(ii) "appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of the relevant previous years;

1. Where a deduction for any previous year has been claimed and allowed under this section, no depreciation shall be allowed under section 32(1) for the same or any subsequent year.
2. "Payment has actually been made" means the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in such manner as may be prescribed.

Illustration:

Pankaj Ltd. obtained a spectrum to operate telecommunication services from Department of Telecommunication on 1.7.2016 for a period of 11 years i.e. till 30.6.2027 for a sum of ₹ 13,20,000. Calculate the amount of deduction available to the company under section 35 ABB for the various previous years assuming:—

(a) The payment of the entire spectrum fee is made on the date of acquisition of the spectrum;

(b) ₹4,00,000 was paid on the date of acquisition, ₹2,60,000 was paid on 15.10.2016 and balance ₹6,60,000 will be paid in two equal installments of ₹3,30,000 each during previous year 2017-18 and 2018-19.

Solution

(a) Since the entire spectrum fee has been paid during the previous year 2016-17, the deduction under section 35ABB shall be allowed for 12 relevant previous year in equal amount of ₹ 1,10,000 each year starting from previous year 2016-17 to previous year 2027-28.

$$\frac{\text{Actual Fees paid during the year}}{\text{Unexpired period of licence}} \text{ i.e } \frac{₹1,320,000}{12} = ₹1,10,000$$

(b) Amount to be allowed as deduction in PY 2016-17 660000/12= ₹ 55,000

Amount allowed as deduction in PY 17-18 55,000 ($1/12^{th}$ the amount in 2016-17)

30,000 (330,000/11 i.e amount paid in 2017-18/unexpired period of spectrum)

Total **85,000**

Amount to be allowed as deduction in PY 18-19 85,000 ($1/12^{th}$ of the amount paid in 16-17) and $1/11^{th}$ of the amount paid in 17-18)

Plus: Amount paid in 17-18

Unexpired period of licence 33,000

Total 1,18,000

PY 19-20 to 27-28 1,18,000 each year for 9 PY i.e

(1/12th of the amount paid in 16-17)
(1/11th of amount paid in 2017-18)
(1/10th of amount paid in 2018-19)

Note—Although the spectrum is acquired for 11 years but deduction will be allowed in 12 previous years as the spectrum is acquired on 1.7.2016 and it will remains in force till 30.6.2027. Hence, the deduction will be allowed w.e.f. previous year 2016-17 to previous year 2027-28 (i.e. 12 previous years). The deduction is not allowed on *pro rata* basis (i.e. 9 months for previous year 2016-17 and 3 months for previous year 2027-28), it will be allowed in equal installments for the relevant previous year in which spectrum was allowed to be used.

Sale of spectrum

(a) ***Where the entire spectrum is transferred:***

(i) If the sale proceeds and the deductions already allowed, are less than the cost of acquisition, such deficiency shall be allowed as deduction in the year in which the spectrum is transferred.

(ii) If the sale proceeds and the deductions already allowed exceed the cost of acquisition of the spectrum, then the amount of such excess or the aggregate of the deductions already allowed in the past, whichever is less, shall be taxable as business income of the year in which the spectrum is transferred.

(*b*) ***Where a part of the spectrum is transferred:***

(i) Where a part of the spectrum is transferred for a sum less than the written down value of the total spectrum, the balance amount not yet written off shall be allowed as deduction in the balance number of equal installments.

(ii) If part of the spectrum is transferred for a sum exceeding the written down value of the spectrum, the sale proceeds minus the written down value of the full spectrum shall be the profit from such sale. Out of such profit, an amount equal to the amount already written off in the earlier years shall be deemed to be the business income.

It may be mentioned that the spectrum constitutes a capital asset and as such there will be capital gain/loss on sale of entire/part of the spectrum if the sale price of the spectrum is more than the cost of the spectrum. There shall be no capital gain if the sale price of the spectrum is less than the cost of the spectrum. Further, for computing long- term capital gain indexation of cost shall be allowed if such spectrum is sold after 36 months.

1. In case of amalgamation and demerger, the amalgamated company or the resulting company, as the case may be, shall be allowed to write off the balance amount of spectrum which was not written off by the amalgamating company or demerged company in the same manner as was allowed to the amalgamating company or demerged company as the case maybe.

2. Where a deduction for any previous year under section 35ABA(1) is claimed and allowed in respect of any expenditure referred to in that sub-section, no deduction shall be allowed on account of depreciation under section 32(1) for the same previous year or any subsequent previous year.

Illustration:

How would you treat the following:

Spectrum acquired for ₹24 lakhs on 1.4.2016 for 12 years
WDV as on 1.4.2018 ₹20 lakh.
Part of spectrum sold for ₹12 lakh.

Solution: Previous year 2018-19 (Assessment year 2019-20)

WDV as on 1.4.2018	20,00,000
Less: Sale price of part of license transferred	12,00,000

Balance	8,00,000

Unexpired period of spectrum 10 years.

Hence, w.e.f. A.Y. 2019-20 deduction allowed shall be ₹ 80,000 per year (₹8,00,000/10)

Illustration: A license for operating telecommunication service was acquired on 1.4.2016 by Pankaj Ltd. for 18,00,000. The license was to remain in force for 12 years and payment of entire 18,00,000 was made in the previous year 2016-17. The assessee sold the entire spectrum on 17.12.2018 for:

a. ₹12,00,000
b. ₹ 17,80,000
c. ₹20,00,000

How will the above transaction of sale be treated under Income Tax?

Solution

Step I: Compute the W.D.V. of license on the date of sale which will be as under:

Previous year 2016-17	**₹**
Cost of license .	18,00,000
Less: Amount allowed as deduction under section 35ABB — ₹ 18,00,000/12	1,50,000
WDV as 1.4.2017	16,50,000
Less: Deduction for previous-year 2017-18	1,50,000
Wdv as on 1.4.2018	15,00,000
Situation (a)	
Sale Price	12,00,000
Less: WDV as on 1.4.2018	15,00,000
Deficiency (It shall be allowed as deduction in the PY 18-19)	3,00,000
Situation (b)	
Sale Price	17,80,000
Less: WDV as on 1.4.2018	15,00,000
Business Income	2,80,000
Situation (c)	
Original Cost	18,00,000
Less: WDV as on 1.4.2018	15,00,000
Business Income	3,00,000
Sale Price	20,00,000
Less Original Cost	18,00,000
Short term capital Gain	2,00,000
Sale price does not exceed cost.	

The asset is held for less than 36 months, it will be short-term capital gain. If it is sold after 36 months of its acquisition we will calculate LTCG by indexing the cost of ₹ 18,00,000.

31. Deduction in respect of provision for bad and doubtful debt in the case of Non-Banking Financial companies [Section 36] [W.e.f. A.Y. 2017-18]

Under the existing provisions of sub-clause (c) of section 36(1)(viia) of the Act, in computing the profits of a public financial institutions, State financial corporations and State industrial investment corporations a deduction, limited to an amount not exceeding 5% of the gross total income, computed, before making any deduction under the aforesaid clause and Chapter VI-A, is allowed in respect of any provision for bad and doubtful debt.

Considering the fact that Non-Banking Financial Companies (NBFCs) are also engaged in financial lending to different sectors of society, the Act has inserted subclause (d) to section 36(1)(viia) which provides as under:

(d) "a non-banking financial company, an amount not exceeding 5% of the total income (computed before making any deduction under this clause and Chapter VI-A)"

In other words, Non Banking Finance Companies (NBFCs) shall also be allowed a deduction from total income (computed before making any deduction under this clause and Chapter-VIA) on account of provision for bad and doubtful debts to the extent of 5% of the total income.

Meaning of "non-banking financial company": "Non-banking financial company" shall have the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934.

According to section 45-I(f), "non-banking financial company" means-

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(ii) such-other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

32. Expenses incurred by the assessee towards specified services shall be disallowed if the equalization levy has not been deducted and paid [Section 40(a)(ib)] [W.e.f. 1-6-2016]

In order to ensure compliance with the provisions relating to equalisation levy, the expenses incurred by the assessee towards specified services chargeable under Chapter VIII of the Finance Act, 2016 relating to equalisation levy shall be allowed as deduction subject to sub-clause *(ib)* of section 40(a) inserted by the Finance Act, 2016 w.e.f. 1-6-2016. Section 40(a)(ib) provides as under:

"Any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible under the provisions of Chapter VIII of the Finance Act, 2016 shall not be allowed as deduction if such levy has not been deducted or after deduction, has not been paid on or before the due date specified in section 139(1).

However, where in respect of any such consideration, the equalisation levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid."

33. Extension of scope of section 43B to include certain payments made to Railways [Section 43B| [W.e.f. A.Y. 2017-18]

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 under section 139(1) irrespective of method of accounting followed by a person.

With a view to ensure the prompt payment of dues to Railways for use of the Railway assets, the Act has inserted clause *(g)* to section 43B so as to provide that any sum payable by the assessee to the Indian Railways for use of Railway assets shall also be subject to provisions of section 43B.

34. Maintenance of accounts by certain persons [Section 44AA(2)(iv)] [W.e.f. A.Y. 2017-18]

The existing clause (iv) to section 44AA(2) has been substituted by new clause (iv) to provide that the assessee shall have to maintain accounts where the provisions of section 44AD(4) are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

35. Audit of accounts of certain persons [Section 44AB] [W.e.f. A.Y. 2017-18]

(1)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 ₹ 25,00,000.

In order to reduce the compliance burden, the Act has increased the threshold limit of total gross receipts, specified under section 44AB for getting accounts audited, from ₹ 25,00,000 to ₹ 50,00,000 in the case of persons carrying on profession.

(2)The existing clause (d) of section 44AB has been substituted by new clause (d) for a person carrying on the profession which provides as under:

Every person carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(3)Further, new clause (e) has been inserted in section 44AB for a person carrying on business which provides as under:

Every person carrying on the business shall, if the provisions of section 44AD(4) are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

36. Amendments in section 44AD relating to presumptive taxation scheme for persons having income from business [Section 44AD] [W.e.f. A.Y. 2017-18]

The following amendments have been made by the Finance Act, 2016 in section 44AD:

(1) **Increase in the threshold limit of the eligible business [Sub-clause (ii) of clause (b) of Explanation to section 44AD]:** In order to reduce the compliance burden of the small tax payers and facilitate the ease of doing business, the Act has increased the threshold limit of ₹ 1 crore specified in the definition of "eligible business" to ₹ 2 crore.

(2) **Salary, remuneration, interest etc. paid to the partner as per clause (b) of section 40 not to be allowed as a deduction while computing presumptive income in case of a firm [Proviso to section 44AD(2) deleted]**: The Act has omitted the proviso to section 44AD(2) and as such 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 44 AD 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.

(3) Existing sub-section (4) and (5) have been substituted by the following:

(a) As per section 44AD(4), 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 section 44AD(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 section 44AD(1).

For example, an eligible assessee claims to be taxed on presumptive basis under section 44AD for Assessment Year 2017-18 and offers income of ₹ 8 lakh on the turnover of ₹1 crore. For Assessment Year 2018-19 and Assessment Year 2019-20 also he offers income in accordance with the provisions of section 44AD. However, for Assessment Year 2020-21, he offers income of ₹ 4 lakh on turnover of ₹ 1 crore. In this case since he has not offered income in accordance with the provisions of section 44AD for five consecutive assessment years, after Assessment Year 2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years i.e. from Assessment Year 2021-22 to 2025-26.

(b) As per section 44AD(5), notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of section 44AD(4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax , shall be required to keep and maintain such books of account and other documents as required under section 44AA(2) and get them audited and furnish a report of such audit as required under section 44AB.

(4) An assessee covered under section 44AD will now be required to pay advance tax in one installment: The existing section 44AD(4), which provided that the eligible assessee covered under section 44AD will not be required to pay advance tax for such income, has been deleted and new clause (b) in section 211(1) has been inserted which provides as under:

an eligible assessee in respect of an eligible business referred to in section 44AD shall be required to pay the advance tax, to the extent of the whole amount of such advance tax during each financial year on or before the 15th March:

Provided that any amount paid by way of advance tax on or before the 31st day of March shall also be treated as advance tax paid during the financial year ending on that day for all the purposes of this Act.

37. Introduction of Presumptive taxation scheme for persons having income from profession [Section 44ADA] [W.e.f. A.Y. 2017-18]

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

In this regard, new section 44ADA has been inserted in the Act which provides as under:

Special provision for computing profits and gains of profession on presumptive basis [Section 44ADA]

(1) Resident assessee engaged in the profession referred to in section 44AA(1) can opt for presumptive income in certain cases [Section 44ADA(1)]: Notwithstanding anything contained in sections 28 to 43C,in the case of an assessee, being a resident in India, who is engaged in a profession referred to in section44AA(1) and whose total gross receipts do not exceed ₹ 50,00,000 in a previous year, a sum equal to 50% of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum

higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head "Profits and gains of business or profession".

Profession referred to in Section 44AA(1): Legal, medical, engineering or architectural profession, or profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette.
Authorised representatives, film artist, company secretaries and profession of Information Technology have been notified for this purpose.

(2) Consequences if the assessee opts for presumptive income scheme:

(a) **Deduction under sections 30 to 38 shall be deemed to have been allowed [Section 44ADA(2)]:** Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of section 44ADA(1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

(b) **Written down value of any asset for the succeeding year shall be computed as if the assessee has claimed deduction [Section 44ADA(3)]:** The written down value of any asset used for the purposes of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(c) **Assessee to maintain accounts and get them audited if he claims profits to be less than 50% of the gross receipts [Section 44ADA(4)]:** Notwithstanding anything contained in the foregoing provisions of this section, an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in section 44ADA(1) and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under section 44AA(1) and get them audited and furnish a report of such audit as required under section 44AB.

Amendments relating to income under the head "Capital Gains"

38. Unlisted shares of a company to be short-term capital asset if held for not more than 24 months [Third proviso inserted under section 2(42A)] [W.e.f. A.Y. 2017-18]

The Act has inserted the following third proviso under section 2(42A):

'Provided also that in the case of a share of a company (not being a share listed in a recognised stock exchange in India), the provisions of this clause shall have effect as if for the words "thirty-six months, the words "twenty-four months" had been substituted.'

In other words, unlisted shares of a company shall be treated as short-term capital asset if these are held for not more than 24 months (instead of 36 months) immediately preceding the date of transfer.

Hence, if unlisted shares are transferred after 24 months from the date of its acquisition, the gain arising from the transfer of shares shall be treated as long-term capital gain.

39. Transactions not regarded as transfer [Section 47]

The following amendments have been made in section 47 relating to transactions not regarded as transfer and hence there will be no capital gain as such transactions will not be regarded as transfer for the purpose of computing capital gain:

(A) Transfer of Sovereign Gold Bond Scheme by way of redemption [Clause (viic) inserted in section 47] [W.e.f. A. Y. 2017-18]

The Government of India has introduced the Sovereign Gold Bond Scheme with the aim of reducing the demand for physical gold so as to reduce the outflow of foreign exchange on account of import of gold. The Gold Bond is a mode for substitution of physical gold and also provides security to the individual investor who invests in Gold for meeting their social obligation.

Accordingly, with a view to providing parity in tax treatment between physical gold and Sovereign Gold Bond, the Act has inserted clause (viic) in section 47, so as to provide that any **redemption** of Sovereign Gold Bond under the Scheme, **by an individual** shall not be treated as transfer and therefore shall be exempt from tax on capital gains.

(B) Rationalization of conversion of a company into limited liability partnership (LLP) [Clause (ea) inserted in the proviso to Section 47 (xiiib)] [W.e.f.A.Y.2017-18]

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 ₹ 60,00,000.

The Act has amended the said section so as to provide that, for availing tax-neutral conversion, in addition to the existing conditions, the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place should not exceed ₹ 5 crore.

(c) Consolidation of mutual fund 'plans' within a 'scheme' of mutual fund [Clause (xix) inserted in section 47] [W.e.f. A.Y.2017-18]

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

Securities Exchange Board of India (SEBI) has issued guidelines for consolidation of mutual fund plans within a scheme. In view of this, the Act has extended the tax exemption, available on merger or consolidation of mutual fund schemes, to the merger or consolidation of different plans in a mutual fund scheme. For this purpose, the Act has inserted clause (xix) to Section 47 so as to provide that any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund shall not be considered transfer for capital gain tax purposes and thereby shall not be chargeable to tax.

40. Indexation benefit to be allowed in case of long-term capital arising from the transfer of Sovereign Gold Bond [Third proviso to section 48 substituted] [W.e.f. A.Y. 2017-18]

Existing third proviso to section 48 provides that although indexation benefit is not allowed in case of long-term capital gain arising from the transfer of bonds or debenture but it is allowed in case of capital indexed bonds issued by the Government.

The above third proviso has been substituted by the following:

"Provided also that nothing contained in the second proviso (relating to indexation of cost) shall apply to the long-term capital gain arising from the transfer of a long-term capital asset, being a bond or debenture other than—

(a) capital indexed bonds issued by the Government; or
(b) Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015.

Thus, besides capital indexed bonds, indexation benefits to long terms capital gains arising on transfer of

Sovereign Gold Bond shall also be allowed to all cases of assessees.

41. No capital gain on currency fluctuation of Rupee Denominated Bond [Fourth proviso to section 48] [W.e.f. A.Y. 2017-18]

The Reserve Bank of India has recently permitted Indian corporates to issue rupee denominated bonds outside India as a measure to enable the Indian corporates to raise funds from outside India.

Accordingly, with a view to provide relief to non-resident investor who bears the risk of currency fluctuation, the Act has inserted a new fourth proviso to section 48 so as to provide that the capital gains, arising in case of appreciation of rupee between the date of issue and the date of redemption against the foreign currency in which the investment is made shall be exempt from tax on capital gains.

42. Cost of acquisition of an asset declared under the Income Declaration Scheme, 2016 [Sub-section (5) inserted in section 49] [W.e.f. A.Y. 2017-18]

Where the capital gain arises from the transfer of an asset declared under the Income Declaration Scheme, 2016, and the tax, surcharge and penalty have been paid in accordance with the provisions of the Scheme on the fair market value of the asset as on the date of commencement of the Scheme, the cost of acquisition of the asset shall be deemed to be the fair market value of the asset which has been taken into account for the purposes of the said Scheme.

43. Rationalization of section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property [Section 50C] [W.e.f. A.Y. 2017-18]

Under the existing provisions contained in section 50C, in case of transfer of a capital asset being land or building on 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. The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that 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.

The Act has inserted the following provisos to section 50C(1):

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority **on the date of agreement** may be taken for the purposes of computing full value of consideration for such transfer. [First proviso]

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, **on or before the date of the agreement for transfer.** [Second proviso]

44. Capital gain not to be charged on investment in units of a specified fund [Section 54EE]

As per section 54EE(1), any long-term capital gain, arising to any assessee, from the transfer of any capital asset on or after 1.4.2016 shall be exempt to the extent such capital gain is invested within a period of 6 months after the date of such transfer in the long-term specified asset provided such specified asset is not transferred within a period of 3 years from the date of its acquisition.

However, the investment made on or after 1.4.2016 in the long-term specified asset by an assessee during any financial year cannot exceed ₹ 50 lakh. In other words, long-term capital gain arising on the transfer of any capital asset is exempt under section 54EE in the following circumstances:

i. The assests transferred is a long term capital assets and hence, there is a long term capital gain.

ii. Such assets are transferred on or after 1.4.2016.
iii. The asset is transferred by an assessee.
iv. The assessee has within a period of 6 months after the date of such transfer invested the capital gain in the long term specified assets.

Provided that the investment made on or after 1.4.2007 in the long-term specified asset by an assessee during any financial year cannot exceed ₹50 lakh.

Further, provided that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of **one or more original asset,** during the financial year in which the **original asset or assets** are transferred and in the subsequent financial year does not exceed ₹50,00,000.

Quantum of deduction:

(i) If the amount of capital gain is equal to or less than the cost of the long-term specified assets acquired within 6 months of the date of transfer, the entire capital gain shall be exempt.
(ii) If the amount of capital gain is greater than the cost of the long-term specified assets, than the cost of the long-term specified assets shall be allowed as exemption.

In other words, capital gain shall be exempt to the extent it is invested in the long-term specified assets within a period of 6 months from the date of such transfer.

Consequences if the long-term specified asset is transferred within 3 years [Section 54EE(2)]: Where the long term specified asset is transferred by the assessee at any time within a period of three years from the date of its acquisition, the amount of capital gain exempt under section 54EE earlier, shall be deemed to be long-term capital gain of the previous year in which the long term specified asset is transferred.

1. If the assessee takes any loan or advance on the security of such long-term specified asset, he shall be deemed to have transferred such long-term specified asset on the date on which such loan or advance is taken. [Explanation 1 to section 54EE]
2. For the purposes of this section,—
   (a) "cost", in relation to any long-term specified asset, means the amount invested in such specified asset out of capital gains received or accruing as a result of the transfer of the original asset;
   (b) "long-term specified asset" means a unit or units, **issued before** 1.4.2019, **of such fund as may be notified** by the Central Government in this behalf. [Explanation 2]

45. Exemption of long-term capital gain tax on transfer residential property shall also be allowed if the net consideration is invested in eligible start up [Section 54GB] [W.e.f. A.Y. 2017-18]

With an objective to provide relief to an individual or HUF willing to setup a start-up company by selling a residential property to invest in the shares of such company, the Act has amended section 54GB so as to provide that long term capital gains arising on account of transfer of a residential property before 1-4-2019 shall also not be charged to tax proportionate to the net consideration so invested in subscription of shares of a company which qualifies to be an eligible start-up subject to the condition that the individual or HUF holds more than 50% shares of the company and such company utilises the amount invested in shares to purchase new asset before due date of filing of return by the investor.

The existing provision of section 54GB requires that the company should invest the proceeds in the purchase of new asset being new plant and machinery but does not include, inter alia, computers or computer software.

With a view to avoid the incidence of the aforesaid condition on start-ups where computers or computer software form the core asset base owing to nature of business activity, the Act has amended section

54GB so as to provide that the expression "new asset" includes computers or computer software **in case of technology driven start-ups so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the official Gazette.**

46. Cost of acquisition and cost of improvement of right to carry on a profession if transferred [Section 55] [W.e.f.A.Y. 2017-18]

1. Cost of acquisition: As per the existing section 55(2)(a), cost of acquisition of goodwill of a business or a trademark or brand name associated with business or right to manufacture, produce or process any article or things or **right to carry on any business,** tenancy rights, stage carriage permits or loom hours is as under:

(i) in case it is acquired in any mode given under clause (i) to (iv) to section 49(1) — it will be cost to the previous owner if the previous owner paid for it but where it was self generated by the previous owner, it will be taken as nil.

(ii) in case such asset is purchased by the assessee — it means the amount of purchase price.

(iii) in any other case — it shall be taken as nil as it will be self generated.

2. Cost of improvement: As per the existing section 55(1)(b), cost of improvement:

(i) In relation to a capital asset being goodwill of a business or a right to manufacture, produce or process any article or thing or right to carry on any business shall always be nil.

It makes no difference whether goodwill or such right was self generated or acquired for a price.

The Act has inserted the word "profession" along with the words "right to carry on a business" mentioned above both in case of cost of acquisition and cost of improvement so as to provide that the 'cost of acquisition' for working out "capital gains" on capital receipts arising out of transfer of right to carry on any profession shall also be taken in the same manner as given in Para 1 above. Further the cost of improvement of such goodwill of the profession shall always be nil whether it is purchased of self generated.

47. Benefit of section 111A allowed to International Financial Service Centre even if the transaction of sale is not subject to securities transaction tax (Second proviso inserted under section 111A(1)] [W.e.f. A.Y. 2017-18]

Clause *(b)* of section 111 A(1) provides that the benefit of special rate of tax of 15% in case of short-term capital gain arising from the transfer of a capital asset, being an equity share in a company, or unit of an equity oriented fund or unit of business trust shall be available if such transaction of sale is chargeable to securities transaction tax.

The Finance Act, 2016 has inserted the following second proviso under section 111A(1):

"Provided further that nothing contained in clause *(b)* shall apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency."

In other words, International Financial Service Centre shall be eligible for benefit of section 111A even if no STT is paid provided the consideration for such transaction is paid or payable in foreign currency.

48. Clarification regarding the definition of the term 'unlisted securities' [Section 112(1)(c)] [W.e.f. A.Y. 2017-18]

Existing provisions of section 112(1)(c) provide tax rate of 10% for long-term capital gain arising from transfer of securities, whether listed or unlisted in the case of non-resident (not being a company) or a foreign company. 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. A view has been taken by the courts that shares of a private company are not "securities".

With a view to clarify the position so far as taxability is concerned, the Act has amended the provisions of section 112(1)(c) 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 like securities, also be chargeable to tax @ 10%.

Amendments relating to income under the head "Income from Other Sources"

49. Rationalization of section 56 of the Income-tax Act [Section 56(2)(vii)] [W.e.f. A.Y. 2017-18]

With a view to bring uniformity in tax treatment, the Act has inserted clause (h) to second proviso occurring after subclause (g) of section 56 (2) (vii) so as 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 section 56(2)(vii).

Amendments relating to Set Off or Carry Forward and Set Off of losses

50. Carry forward and set off of loss under section 73A of the Income-tax Act to be allowed only if the return of such loss is filed as per section 139(3) before the due date specified under section 139(1) [Section 80] [W.r.e.f. A.Y. 2016-17]

The Act has amended 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 section 139(3).

The Act has also amended the section 139(3) so as to give reference of section 73A(2).

Amendments relating to deductions to be made in computing total income

51. Lump sum amount received by the nominee on account of closure or opting out of pension scheme on the death of the assessee to be exempt [Section 80CCD] [W.e.f. A.Y. 2017-18]

Under the existing provisions of section 80CCD(3), where any amount is received from the pension scheme by the assessee or his nominee in whole or in part, in any previous year,—

(a) on account of closure or his opting out of the pension scheme referred to in section 80CCD(1) or (1B); or

(b) as pension received from the annuity plan purchased or taken on such closure or opting out,

the whole of the amount referred to in clause (a) or clause (b) shall be deemed to be the income of the assessee or his nominee, as the case may be, in the previous year in which such amount is received, and shall accordingly be charged to tax as income of that previous year.

The Act has inserted the following proviso in section 80CCD, namely:—

Provided that the amount received by the nominee, on the death of the assessee, under the circumstances referred to in **clause (a) above,** shall not be deemed to be the income of the nominee.

However, pension received by the nominee from the annuity plan purchased or taken on such closure or opting out shall be taxable.

52. Deduction in respect of interest on loan taken for residential house property [Section 80EE] [W.e.f. A.Y. 2017-18]

An individual shall be allowed a deduction under section 80EE on account of interest payable on loan taken by him from any **financial institution** for the purpose of acquisition of a residential property subject to the following conditions being satisfied:

(i) the loan has been sanctioned by the financial institution during the period beginning on 1-4-2016 and ending on 31-3-2017;

(ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed ₹35,00,000;

(iii) the value of residential house property does not exceed ₹ 50,00,000;

(iv) the assessee does not own any residential house property on the date of sanction of loan.

(v) where a deduction under this section is allowed for any interest, deduction shall not be allowed in respect of such interest under any other provision of this Act for the same or any other assessment year.

Quantum of deduction: The deduction under section 80EE(1) shall not exceed ₹ 50,000 and shall be allowed in computing the total income of the individual for the assessment year beginning on 1-4-2017 and subsequent assessment years.

(1) For the purposes of this section,—

(a) "Financial institution" means a banking company to which the Banking Regulation Act, 1949 applies, or any **bank or banking institution** referred to in section 51 of that Act **or a housing finance company;**

(b) **"Housing finance company"** means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

(2) The deduction under this section is over and above the limit of ₹ 2,00,000 provided for a self-occupied property under section 24 of the Act.

53. Rationalization of limit of deduction allowable in respect of rents paid [Section 80GG] [W.e.f. A.Y. 2017-18]

The existing provisions of section 80GG provide for a deduction of any expenditure incurred by an individual towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence if certain conditions are satisfied. The deduction is allowed subject to the minimum of the following amounts:

(i) Excess of rent paid over 10% of "Adjusted Total Income",

(ii) 25% of "Adjusted Total Income",

(iii) 2,000 per month.

In order to provide relief to the individual tax payers, the Act has amended section 80GG so as to increase the maximum limit of deduction from existing ₹ 2,000 p.m. to ₹ 5,000 p.m.

54. Phasing out of section 80-IA, 80-IAB, 80-IB

Section	Incentive currently available in the Act	Phase out measures

Section 80IA; 80IAB, and 80IB - Deduction in respect of profits derive from (a) development, operation and maintenance of an infrastructure facility (80-IA) (b) development of special economic zone (80-IAB) (c) production of mineral oil and natural gas [80-IB(9)]	100% profit linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises referred in section 80IA, 80IAB, and 80IB.	No deduction shall be available if the specified activity commences on or after 1.4.2017. (i.e. from previous year 2017-18 and subsequent years).

55. Special provision in respect of eligible business of eligible start up [Section 80-IAC] [W.e.f. A.Y. 2017-18]

(1) 100% deduction of profit from eligible business [Section 80-IAC(1) and (2)]: Where the gross total income of an assessee, being an eligible start-up, includes any profits and gains derived from eligible business, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to 100% of the profits and gains derived from such business for any 3 consecutive assessment years out of 5 years beginning from the year in which the eligible start up is incorporated, provided the conditions mentioned in section 80-IAC(3) below are satisfied.

(2) Conditions to be satisfied to claim exemption under section 80-IAC(1) [Section 80-IAC(3)]: This section applies to a start-up which fulfils the following conditions, namely:—

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of a start-up which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

(3) Further conditions applicable for an assessee claiming deduction under section 80-IAC [Section 80-IAC(4)]:

The provisions contained in section 80-IA(5) and 80-IA(7) to (12) shall, so far as may be, apply to the eligible business under this section. These provisions relate to the following:—

(i) Computation of profits of eligible business [Section 80-IA(5)]

(ii) Audit of accounts [Section 80-IA(7)]

(iii) Inter-unit transfer of goods [Section 80-IA(8)]

(iv) Restriction on double deduction [Section 80-IA(9)]

(v) Restriction on excessive profits [Section 80-IA(10)]

(vi) Power of Central Government to notify undertakings to which section 80-IB will not apply [Section 80-IA(11)]

Explanation.—For the purposes of this section,—

(i) "eligible business" means a business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property;

(ii) "eligible start-up" means a company or a limited liability partnership engaged in eligible business which fulfils the following conditions, namely:—

(a) it is incorporated on or after 1-4-2016 but before 1-4-2019;

(b) the total turnover of its business does not exceed ₹ 25 crore in any of the previous years beginning on or after 1-4-2016 and ending on 31-3-2021; and

(c) it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

(iii) "limited liability partnership" means a partnership referred to in section 2(1)(n) of the Limited Liability Partnership Act, 2008.

56. Deduction in respect of profits and gains from housing projects [Section 80-IBA] [W.e.f. A.Y. 2017-18]

(1) 100% deduction of profit from housing projects [Section 80-IBA(1)]: Where the gross total income of an assessee includes any profits and gains derived from the business of developing and building housing projects, there shall, subject to the provisions of this section, be allowed, a deduction of an amount equal to 100% of the profits and gains derived from such business provided the project fulfils the conditions mentioned in section 80-IBA(2).

(2) Conditions to be fulfilled [Section 80-IBA(2)]: For the purposes of section 80-IBA(1), a housing project shall be a project which fulfils the following conditions, namely:—

(a) the project is approved by the competent authority after 1-6-2016, but on or before 31-3-2019;

(b) the project is completed within a period of 3 years from the date of approval by the competent authority:

(i) where the approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing project was first approved by the competent authority; and

(ii) the project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority.

(c) the built-up area of the shops and other commercial establishments included in the housing project does not exceed 3% of the aggregate built-up area;

(d) the project is on a plot of land measuring not less than—

(i) 1000 square meters where such project is located within the cities of **Chennai, Delhi, Kolkata or Mumbai** or within the distance measured aerially of 25 kilometers from the municipal limits of these cities, or

(ii) 2000 square meters where the project is located in any other place;

(da) the project is the only housing project on the plot of land as specified in clause (d) above;

(e) the built-up area of the residential unit comprised in the housing project does not exceed—

(i) 30 square meters where such project is located within the cities of **Chennai, Delhi, Kolkata or Mumbai** or within the distance measured aerially of 25 kilometers from the municipal limits of these cities, or

(ii) 60 square meters, where the project is located in any other place;

(f) where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual;

(g) the project utilises—

(i) not less than 90% of the floor area ratio permissible in respect of the plot of land under the rules to be made by the Central Government or the State Government or the local authority, as the case may be, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai or within the distance measured aerially of 25 kilometers from the municipal limits of these cities, or

(ii) not less than 80% of such floor area ratio where such project is located in any place other than the place referred to in sub-clause (i); and

(h) the assessee maintains separate books of account in respect of the housing project.

Nothing contained in this section shall apply to any assessee who executes the housing project as a works-contract awarded by any person (including the Central Government or the State Government). [Section 80-IBA(3)]

(3) **Consequences if the project is not completed within a period of 3 years from the date of approval [Section 80-IBA(4)]:** Where the housing project is not completed within the period specified under section 80-IBA(2)(b) (i.e. 3 years) and in respect of which a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be the income of the assessee chargeable under the head **"Profits and gains of business or profession"** of the previous year in which the period for completion so expires.

(4) **Deduction under any other provisions of the Act not allowed if the same is claimed under this section [Section 80-IBA(5)]:** Where any amount of profits and gains derived from the business of developing and building housing projects is claimed and allowed under this section for any assessment year, deduction to the extent of such profit and gains shall not be allowed under any other provisions of this Act.

For the purposes of this section,-

(a) "built-up area" means the inner measurements of the residential unit at the floor level, including projections and balconies, as increased by the thickness of the walls, but does not include the common areas shared with other residential units, including any open terrace so shared;

(b) "competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force;

(c) "floor area ratio" means the quotient obtained by dividing the total covered area of plinth area on all the floors by the area of the plot of land;

(d) "housing project" means a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may approve subject to the provisions of this section;

(e) "residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household. [Section 80-IBA(6)]

57. Deduction in respect of employment of new employees [Section 80JJAA] [W.e.f. A.Y. 2017-18]

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 300 days in a previous year. Further, benefits are allowed only if there is an increase of at least 10% in total number of workmen employed on the last day of the preceding year.

With a view to extend this employment generation incentive to all sectors, the Act has substituted the above section with the following section 80JJAA:

(1) **30% of additional employee cost to be allowed as deduction for 3 assessment years [Section 80JJAA(1)]:** Where the gross total income of an assessee **to whom section 44AB applies,** includes any profits and gains derived from business, there shall, subject to the conditions specified in section 80JJAA(2), be allowed a deduction of an amount equal to 30% of **additional employee cost** incurred in the course of such business in the previous year, for 3 assessment years including the assessment year relevant to the previous year in which such employment is provided.

(2) **Essential conditions [Section 80JJAA(2)]:** No deduction under section 80JJAA(1) shall be allowed,—

(a) if the business is formed by splitting up, or the reconstruction, of an existing business:

However, nothing contained in this clause shall apply in respect of a business which is formed as a result of re-establishment, reconstruction or revival by the assessee of the business in the circumstances and within the period specified in section 33B;

(b) if the business is acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation;

(c) unless the assessee furnishes alongwith the return of income the report of a chartered accountant giving such particulars in the report as may be prescribed.

Explanation.—For the purposes of this section,—

(i) **Additional employee cost:** "Additional employee cost" means total emoluments paid or payable to additional employees employed during the previous year:

Provided that in the case of an existing business, the additional employee cost shall be nil, if—

(a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

(b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account:

Provided further that in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

(ii) **Additional employee:** "Additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include—

(a) an employee whose total emoluments are more than ₹ 25,000 p.m.; or

(b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; or

(c) an employee employed for a period of less than 240 days during the previous year; or

(d) an employee who does not participate in the recognised provident fund;

(iii)**Emoluments:** "Emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—

(a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and

(b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

(3) Applicability of availing benefit under the old section 80JJAA: The provisions of this section, as they stood immediately prior to their amendment by the Finance Act, 2016, shall apply to an assessee eligible to claim any deduction for any assessment year commencing on or before 1-4-2016.

Amendments relating to rebate in income tax

58. Rationalization of limit of rebate [Section 87A] [W.e.f. A.Y. 2017-18]

The existing provisions of section 87A of Income-tax Act, provide for a rebate of an amount equal to 100% of such income-tax or an amount of ₹ 2,000, whichever is less, from the amount of income-tax to an **individual resident in India** whose total income does not exceed ₹ 5,00,000.

With the objective to provide relief to resident individuals in the lower income slab, the Act has amended section 87A so as to increase the maximum amount of rebate available under this provision from existing ₹2,000 to ₹ 5,000.

Amendments relating to Filing of return of income, assessment, reassessment and recomputation

59. Filing of return of Income [Section 139] [W.e.f. A.Y. 2017-18]

In order to rationalise the time allowed for filing of returns, completion of proceedings, and realization of revenue without undue compliance burden on the taxpayer, and to promote the culture of compliance, the Bill has made following amendments in the provisions of section 139.

(1) **Sixth proviso to section 139(1) amended [W.e.f. A.Y. 2017-18]:** The Bill has amended the sixth proviso to section 139(1) to include that if a person during the previous year earns income which is exempt under section 10(38) and income of such person without giving effect to the said clause of section 10 exceeds the maximum amount which is not chargeable to tax, he shall also be liable to file return of income for the previous year within the due date.

(2) **Section 139(3) relating to return of loss amended [W.e.f. A.Y. 2016-17]:** The Bill has inserted section 73A(2) in section 139(3) so as to provide that loss of the specified business referred to in section 35AD can be carried forward and set off in the subsequent assessment year only if the return of loss is filed on or before the due date specified under section 139(1).

(3) **Existing sub-section (4) of section 139 relating to filing of belated return substituted by the new sub-section (4) [W.e.f. A.Y. 2017-18]:** The Bill has substituted the existing sub-section (4) with the following:

"Any person who has not furnished a return within the time allowed to him under section 139(1), may furnish the return for any previous year at any time **before the end of the relevant assessment year** or **before the completion of the assessment, whichever is earlier."**

(4) Existing sub-section (5) of section 139 relating to filing of revised return substituted by the new sub-section (5) [W.e.f. A.Y. 2017-18]: The Act has substituted the existing sub-section (5) with the following:

"If any person, having furnished a return **under section 139(1) or section 139(4),** discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier."

(5) Clause (aa) of the Explanation to section 139(9) relating to defective return due to non payment of self assessment tax or interest omitted [W.e.f. A.Y. 2017-18]

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

60. Amendments in section 143(1) relating to processing of income tax return

(1) Scope of clause (a) of section 143(1) relating to making adjustments while processing the return of income enlarged [Section 143(1)(a)] [W.e.f. A.Y. 2017-18]

Under the existing section 143(1)(a), while processing the return of income, the total income or loss is computed after making the following adjustments, namely:—

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.

The Bill has inserted following four sub-clauses and two provisos to the above clause (a) of section 143(1) to allow for the following adjustments also while processing the return:

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under section 139(1);

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under section 139(1); or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within 30 days of the issue of such intimation, such adjustments shall be made.

(2) Existing sub-section (1D) of section 143 substituted by new sub-section (1D) [W.e.f. A.Y. 2017-18] The Finance Bill, 2016 has substituted the existing sub-section (1D) of section 143 by the following sub-section (1D):

Notwithstanding anything contained in section 143(1), the processing of a return shall not be necessary before the expiry of the period specified in the second proviso to section 143(1), where a notice has been issued to the assessee under section 143(2).

Provided that such return shall be processed before the issuance of an order under section 143(3).

According to second proviso to section 143(1), no intimation under section 143(1) shall be sent after the expiry of one year from the end of the financial year in which the return is made.

61. Existing sub-section (2) of section 143 relating to issue of notice for scrutiny assessment substituted by new sub section (2) [W.e.f. 1-6-2016]

The Bill has substituted the existing sub-section (2) of section 143 by the following:

"Where a return has been furnished under section 139, or in response to a notice under section 142(1), the **Assessing Officer** or **the prescribed income-tax authority,** as the case may be, if, considers it necessary or expedient to ensure that the assessee—

— has not understated the income or

- has not computed excessive loss or
- has not under-paid the tax in any manner,

shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the **Assessing Officer** or to produce, or cause to be produced before the **Assessing Officer** any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of **six months** from the end of the financial year in which the return is furnished."

The above sub-section has been substituted because the old sub-section (4) had two clauses and clause (i) was not effective w.e.f. 1-6-2003. Further, prescribed income tax authority will now also be authorised to issue notice under section 143(2).

62. Rationalisation of time limit for completion of assessment, reassessment and recomputation [Section 153] [W.e.f. 1-6-2016]

Time limit for completion of all assessments and reassessment [Section 153] [W.e.f. 1-6-2016]

The new section 153 prescribes time limit for completion of various assessments and reassessment which is as follows:

Sl. No.	Relevant sections	Time limit for completion
1.	Assessment u/s 143/144 [Section 153(1)]	21 months from the end of relevant assessment year in which the income was first assessable
2.	Assessment/Re-assessment u/s 147 [Section 153(2)]	9 months from the end of the Financial Year in which the notice u/s 148 was served on the assessee.
3.	Fresh assessment where original assessment of income has been set aside or cancelled by Appellate Authority u/s 254, or by CIT u/s 263 or 264 [Section 153(3)]	9 months from the end of the Financial Year in which: (i) such order of set aside or canceling the order passed by the appellate authority u/s 254 was **received** by the CIT, or (ii) order u/s 263 or 264 was **passed** by the CIT, as the case may be.
4.	Time limit for completion of assessment/reassessment/fresh assessment in case the reference is made to TPO under section 92CA(1) [Section 153(4)]	The period available for completion of assessment or reassessment, as the case may be, under sections 153(1), (2) and (3) mentioned in Sl. No. 1 to 3 above shall be extended by 12 months (i.e. it will be 33 months, 21 months and 21 months respectively)
5.	Time limit for giving effect, **otherwise than by making a fresh assessment or reassessment,** to the order of appeal under section 250 or section 254 or section 260 or section 262 or revision under section 263 or section 264 [Section 153(5)]	3 months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is **received** by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, or 3 months from the end of the month in which the order under section 263 or section 264 is **passed** by the Principal Commissioner or Commissioner: However, where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, may allow an additional period of 6 months to give effect to the order.

6.	Cases where time limit specified in section 153(1) and (2) is not applicable [Section 153(6)] Case (i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act. Case (ii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147,	Subject to the provisions of section 153(3) and (5), it will be completed— on or before the expiry of 12 months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or on or before the expiry of 12 months from the end of the month in which the assessment order in the case of the firm is passed.
7.	Time limit to give effect to any order/ finding/direction referred to in section 153(5) or 153(6) is received or passed by the Income Tax Authority **before 1-6-2016** [Section 153(7)]	The Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, **on or before 31-3-2017**.
8.	Where any proceeding initiated or the order of assessment or reassessment made under section 153A(1) relating to assessment of search cases has been annulled in appeal or other legal proceedings and the assessment or reassessment relating to assessment year which was abated has revived. [Section 153(4)]	1 year from the end of the month of such revival or within the period specified in section 153 or section 153B(1), whichever is later.
9.	Time limit for any order of assessment, reassessment or recomputation made before 1-6-2016 [Section 153(9)]	The provisions of this section as they stood immediately before the commencement of the Finance Act, 2016, shall apply.

63. Rationalisation of time limit for assessment in search cases [Sections 153A, Section 153C] [W.e.f. 1-6-2016]

1. Time limit for completion of assessment under section 153A [Section 153B(1)]

(1) Time limit for completion of six assessment years [Section 153B(1)(a)]: The Assessing Officer shall make an order of assessment or reassessment, in respect of each assessment year falling within six assessment years referred to in section 153A(1)(b), within a period of 21 months from the end of the financial year in which the last of the **authorisations** for search under section 132 or for requisition under section 132A was executed.

(2) Time limit for completion of assessment year relevant to the previous year in which search is conducted or requisition is made [Section 153B(1)(b)]: In respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, the Assessing Officer shall make an order of assessment within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed:

In case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed and during the course of the proceedings for the assessment or reassessment of total income, a reference under section 92CA (1) is made, the provisions of section 153B(1)(a) or section 153B(1)(b) shall have effect as if for the words "21 months", the words "33 months" had been substituted. [Second proviso to section 153B(1)]

(3) Time limit for completion of assessment of other persons referred to in section 153C [First and third proviso to section 153B(1)]

In case of such other person, the time limit for making assessment or reassessment of total income of the assessment years referred to in section 153B(1)(a) i.e. block period of six assessment years and section 153B(b) i.e. assessment year of search of the said sub-section, shall be the either:

(a) 21 months (33 months, in case a reference is made u/s 92CA(1) to TPO) from the end of the financial year in which the last of authorisations for search under section 132 or for requisition under section 132A was executed; or

(b) 9 months and year (21 months, in case a reference is made u/s 92CA(1) to TPO) from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person

whichever is later.

2. When will authorisation referred to in section 153B(1) be deemed to have been executed [Section 153B(2)]

The authorisation referred to in section 153B(1)(a) and (b) shall be deemed to have been executed,—

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the **Authorised Officer**.

3. Old provisions of section 153B shall be applicable in certain cases [Section 153B(3)]

The provisions of section 153B, as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment or reassessment made before 1-6-2016.

64. Assumption of jurisdiction of Assessing Officer [Insertion of clause (c) in section 124(3)] [W.e.f. 1-6-2016]

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

Instances have come to notice wherein the jurisdiction of an Assessing Officer in such cases have been called into question at the appellate stages, despite the fact that order passed under section 153A or 153C is read with section 143(3) of the Act.

In order to remove any ambiguity in such cases the Act has inserted clause (c) in section 124(3) to specifically provide that cases where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, no person shall be entitled to call into question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice under section 153A(1) or section 153C(2) or after the completion of the assessment, whichever is earlier.

Amendments relating to TDS and TCS

65. Rationalization of provisions relating to tax deduction at source (TDS) [W.e.f. 1-6-2016]

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 table A and table B respectively.

Table A

Increase/decrease in threshold limit of deduction of tax at source on various payments mentioned in the relevant sections of the Act

Present Section	Heads	Existing Threshold Limit (₹)	New Threshold Limit w.e.f. 1-6-2016 (₹)
192 A	Payment of accumulated balance due to an employee	30,000	50,000
194BB	Winnings from Horse Race	5,000	10,000
194C	Payments to Contractors	Aggregate annual limit of 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

Table B

Revision in rates of deduction of tax at source on various payments mentioned in the relevant sections of the Act

Present Section	Heads	Existing Rate of TDS	New Rate of TDS w.e.f. 1-6-2016
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 i.e. 10%	5%
194G	Commission on sale of lottery tickets	10%	5%
194H	Commission or brokerage	10%	5%

The following provisions which are not in operation are being omitted as detailed in Table C.

Table C

Certain non-operational provisions to be omitted

Present Section	Heads	Date of omission

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

66. Amendment in section 194LBB relating to deduction of tax at source on income in respect of units of investment fund [W.e.f. 1-6-2016]

Section 194LBB provides that where any income other than that proportion of income which is of the same nature as income referred to in section 10(23FBB), is payable to a unit holder in respect of units of an investment fund specified in clause *(a)* of the *Explanation* 1 to section 115UB, the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon @ 10%.

The Act has amended the said section so as to provide that the income-tax on such payment shall be deducted—

(i) @ 10% in a case where the payee is a resident;

(ii) at the rates in force in a case where the payee is a nonresident (not being a company) or a foreign company.

Provided that where the payee is a non-resident (not being a company) or a foreign company, no deduction shall be made in respect of any income that is not chargeable to tax under the provisions of the Act.

67. Section 194LBC inserted [W.e.f. 1-6-2016]

The Act has inserted the following section 194LBC, w.e.f. 1-6-2016:

TDS from income in respect of investment in securitisation trust [Section 194LBC]

(1) Where the investor is resident in India [Section 194LBC(1)]: Where any income is payable to an investor, being a resident, in respect of an investment in a securitisation trust specified in clause *(d)* of the *Explanation* occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rate of—

(i) 25%, if the payee is an individual or a Hindu undivided family;

(ii) 30%, if the payee is any other person.

(2) Where the investor is non-resident in India [Section 194LBC(2)]: Where any income is payable to an investor, being **a** non-resident (not being a company) or a foreign company, in respect of an investment in a securitisation trust specified in clause *(d)* of the *Explanation* occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rates in force.

(1) For the purposes of this section,—

(a) "investor" shall have the meaning assigned to it in clause (a) of the *Explanation* occurring after section 115TCA;

(b) where any income as aforesaid is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee, and the provisions of this section shall apply accordingly.

(2) *Meaning of "securitisation trust" and "investor" [Explanation to section 115TCA]:*

(a) "Securitisation trust" means a trust, being a—

(i) "Special purpose distinct entity" as defined in clause (u) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956, and regulated under the said regulations; or

(ii) "Special Purpose Vehicle" as defined in, and regulated by, the guidelines on securitisation of standard assets issued by the Reserve Bank of India, or

(iii) trust set-up by a securitisation company or a reconstruction company formed, for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or in pursuance of any guidelines or directions issued for the said purposes by the Reserve Bank of India,

which fulfils such conditions, as may be prescribed.

(b) "Investor" means a person who is holder of any securitised debt instrument or securities or security receipt issued by the securitisation trust.

68. Amendment of section 197 relating to obtaining of certificate for deduction of tax at lower rate of nil rate [Section 197] [W.e.f. 1-6-2016)

Like other sections specified under section 197, the assessee shall also be eligible to obtain certificate for deduction at lower rate or nil rate in case of section 194LBB and section 194LBC.

69. Enabling of Filing of Form 15G/15H for rental payments also [Section 197A] [1-6-2016]

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. In order to reduce compliance burden in case of rental payment, the Act has amended the provisions of section 197A for making the recipients of payments referred to in section 194-I (relating to rent) 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.

70.Exemption from requirement of furnishing PAN under section 206AA to certain non-resident [Section 206AA] [W.e.f. 1-6-2016]

In order to reduce compliance burden of furnishing PAN, the Act has inserted sub-section (7) in section 206AA to provide as under:

"The provisions of section 206AA shall not apply to a non-resident, not being a company, or to a foreign company, in respect of—

(i) payment of interest on long-term bonds as referred to in section 194LC; and

(ii) any other payment subject to such conditions as may be prescribed.

71. Tax Collection at Source (TCS) on sale of vehicles; goods or services [Section 206C]

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 ₹2,00,000.

In order to reduce the quantum of cash transaction in sale of any goods and services and for curbing the flow of unaccounted money in the trading system and to bring high value transactions within the tax net, the Act has made the following amendments in section 206C:

(1) Tax to be collected at source (TCS) in case of sale in cash of any goods (other than bullion and jewellery) or providing of service exceeding ₹ 2,00,000 [Section 206C(1D) amended and sub-section (1E) inserted] [W.e.f. 1-6-2016]

The Act has amended section 206C(1D) to provide that the seller who receives any amount in cash in consideration for sale of any other goods (other than bullion and jewellery) or any service shall at the time of receipt of such amount in cash, collect from the buyer a sum equal to 1% of sale consideration if such consideration for any goods (other than bullion and jewellery), or any service, exceeds ₹ 2,00,000.

Provided that no tax shall be collected at source under section 206C(1D) on any amount on which tax has been deducted by the payer under Chapter XVII-B.

Further, the following sub-section (1E) has been inserted in section 206C:

"Nothing contained in section 206C(1D) in relation to sale of any goods (other than bullion or jewellery) or providing any service shall apply to such class of buyers who fulfill such conditions, as may be prescribed."

Consequently, in the meaning of the term "seller" given under clause (c) of the Explanation, after the word "sold", the words "services referred to in sub-section (1D)" have been inserted.

(2) Tax to be collected at source (TCS) in case of motor vehicle, value exceeding ₹ 10,00,000 [Sub-Section (1F) inserted in section 206C] [W.e.f. 1-6-2016]

Every person, being a **seller,** who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10,00,000, shall, at the time of receipt of such amount, collect from the **buyer,** a sum equal to 1% of the sale consideration as income-tax.

Consequently, the reference of sub-section (1F) has been inserted in the meaning of "buyer" given in clause (aa) of the Explanation.

Amendment relating to Advance Tax

72. Rationalisation of advance tax payment [Section 211(1) substituted] [W.e.f. 1-6-2016]

The Act has substituted existing sub-section (1) of section 211 with the following new sub-section w.e.f. 1-6-2016.

Installment of advance tax and due dates [Section 211(1)]: Advance tax on the current income calculated in the manner laid down in section 209 shall be payable by—

(a) **all the assessees, other than** the assessee referred to in clause (b) below, who are liable to pay the same, in four installments during each financial year and the due date of each installment and the amount of such installments shall be as specified in the Table below:

TABLE

Due Date	**Amount Payable**
On or before the 15th June	Not less than 15% of such advance tax.
On or before the 15th September	Not less than 45% of such advance tax, as reduced by the amount, if any, paid in the earlier installments.
On or before the 15th December	Not less than 75% of such advance tax, as reduced by the amount or amounts, if any, paid in the earlier installments or installments.
On or before the 15th March	The whole amount of such advance tax, as reduced by the amount or amounts, if any, paid in the earlier installments or installments;

(b) an eligible assessee in respect of an eligible business referred to in section 44AD, to the extent of the whole amount of such advance tax during each financial year on or before the 15th March:

Provided that any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during the financial year ending on that day for all the purposes of this Act.

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

Amendment relating to payment of interest

73. Amendment made in section 234C relating to interest for deferment of advance tax

(1) Clause (a) of section 234C(1) substituted by the following clause (a) due to amendment in section 211 relating to payment of advance tax [Section 234C(1)(a)] [W.e.f. 1-6-2016]

Interest for deferment of advance tax shall be computed as under:

Circumstances in which interest is payable u/s 234C	Rate of interest	Period	Amount on which interest is to be paid
(1)	(2)	(3)	(4)
Where advance tax paid on or before June 15th is less than 12% of tax due on returned income	Simple interest @ 1% p.m.	Three months	15% of tax due on returned income minus advance tax paid upto 15th June
Where advance tax paid on or before 15th September is less than 36% of tax due on returned income	Simple Interest @ 1% p.m.	Three months	45% of tax due on returned income minus total advance tax paid upto 15th September
Where advance tax paid on or before 15th December is less than 75% of tax due on returned income	Simple Interest @ 1% p.m.	Three months	75% of tax due on returned income minus total advance tax paid upto 15th December
Where advance tax is paid on or before 15th March is less than 100% of tax due on returned income	Simple Interest @ 1% p.m.	One month	100% of tax due on returned income minus total advance tax paid upto 15th March

(2) Interest payable in case of non-payment of advance tax by 15th March by the eligible assessee of the eligible business referred to in section 44AD [Clause (b) to section 234C(1) amended] [W.e.f. 1-6-2016]

The amended clause (b) to section 234C (1) provides as under:

"An eligible assessee in respect of the eligible business referred to in section 44AD, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before the 15th March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest @ 1% on the amount of the shortfall from the tax due on the returned income".

(3) First proviso to section 234C(1) amended

As per the existing first proviso to section 234C(1), where the Total Income includes income from capital gains and/or casual income like income from lotteries, card games, etc. and there is a shortfall in the payment of advance tax due to under estimate or failure to estimate such income, then no interest u/s 234C will be charged if the assessee has paid the entire advance tax payable on such capital gain or winning etc. in the remaining installments due or where no such installment is due by 31st March.

The Act has extended the benefit of this proviso also to income under the head "profits and gains of business or profession" in cases where the income accrues or arises under the said head **for the first time.**

74. Payment of interest on refund [Section 244A]

The Act has made the following amendments in section 244A:

(A) Clause (a) of section 244A(1) substituted: In order to ensure filing of return within the due date the Act has substituted clause (a) of section 244A(1) by the following clauses:

(1) Where the refund is arising out of excess payment of advance tax, tax deducted or collected at source [Section 244A(1)(a)[[W.e.f. 1-6-2016]

Where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199 (relating to credit for tax deducted), during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of '/2 % for every month or part of a month comprised in the period;

(i) from the **1st April of the assessment** year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under section 139(1); or

(ii) from the **date of furnishing of return of income** to the date on which the refund is granted, in a case not covered under sub-clause (i) above.

(2) Where the refund is out of any tax paid under section 140A [Section 244A(1)(aa)] [W.e.f. 1-6-2016]

(aa) where the refund is out of any tax paid under section 140A (i.e. self-assessment tax), such interest shall be calculated at the rate of '/2 % for every month or part of a month comprised in the period, from the **date of furnishing of return of income or payment of tax, whichever is later,** to the date on which the refund is granted:

Provided that no interest under clause (a) or clause (aa) above shall be payable, if the amount of refund is less than 10% of the tax as determined under section 143(1) or on regular assessment.

(B) New clause (1A) inserted under section 244A to provide for additional 3% p.a. interest on refund [W.e.f.1-6-2016] : The Act has inserted clause (1A) to section 244A so as to be provide that rate of interest in case of refund shall be 9% p.a. instead of 6% in certain cases.

Clause (1 A) inserted under section 244A provides as under:

"Where the refund arises as a result of giving effect to order of appeal/revision [Section 244A(1A)] [W.e.f. 1-6-2016]: In a case where a refund arises as a result of giving effect to an order under section 250 (order of CIT (Appeal)) or section 254 (order of ITAT) or section 260 (order of High Court) or section 262 (Order of Supreme Court) or section 263 (Revision order by CIT) or section 264 (Revision order by CIT), wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under section 244A(1), an additional interest on such amount of refund calculated at the rate of 3% p.a. (total interest @ 9% p.a.); for the period beginning from the date following the date of expiry of the time allowed under section 153(5) to the date on which the refund is granted."

(C)Sub-section (2) of section 244A amended

The amended section shall provide as under:

If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable under subsection (1) or (1A), and where any question arises as to the period to be excluded, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision thereon shall be final.

Amendments in provisions relating to tax on accreted income of certain trust and institutions

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

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

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

Accordingly, the Act has amended the provisions of the Act and introduced a new Chapter XIIEB containing sections 115TD to 115TF to provide for levy of additional income-tax in case of conversion into, or merger with, any non-charitable form or on transfer of assets of a charitable organisation on its dissolution to a non-charitable institution.

Sections 115TD to 115TF provides as under:

(1) Tax on accreted income [Section 115TD]

(i) Accreted income of trust or institution to be taxed at the maximum marginal rate in certain cases [Section 115TD(1)]: Notwithstanding anything contained in this Act, where in any previous year, a trust or institution registered **under section 12AA** has—

(a) converted into any form which is not eligible for grant of registration under section 12AA;

(b) merged with any entity **other than** an entity which is a trust or institution having objects similar to it and registered under section 12AA; or

(c) failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(*iv*), *(v), (vi)* or *(via),* within a period of 12 months from the end of the month in which the dissolution takes place,

then, in addition to the income-tax chargeable in respect of the total income of such trust or institution, the **accreted income** of the trust or the institution as on the **specified date** shall be charged to tax and such trust or institution, as the case may be, shall be liable to pay additional income-tax (herein referred to as tax on accreted income) at the **maximum marginal rate** on the accreted income.

"Specified date" means,—

(a) the date of conversion in a case falling under clause (a) of section 115TD(1);
(b) the date of merger in a case falling under clause (b) of section 115TD(1); and
(c) the date of dissolution in a case falling under clause (c) of section 115TD(1).

(ii) Meaning of accreted income (Section 115TD(2)]: The accreted income for the purposes of section 115TD(1) means the amount by which the **aggregate fair market value** of the **total assets** of the trust or the institution, as on the **specified date**, **exceed the total liability** of such trust or institution computed in accordance with the **method of valuation as may be prescribed.**

Certain assets and liabilities to be ignored for the purpose of computing the accreted income

The following assets and liabilities shall be ignored for the purpose of computing the accreted income:

(1) So much of the accreted income as is attributable to the following asset and(liability, if any, related to such asset shall be ignored for the purposes of section 115TD(1), namely:—

(i) any asset which is established to have been directly acquired by the trust or: institution out of its income of the nature referred to in section 10(1) (i.e agricultural income);

(ii) any asset acquired by the trust or institution during the period beginning from the date of its creation or establishment and ending on the date from which the registration under section 12AA became effective, if the trust or institution has not been allowed any benefit of sections 11 and 12 during the said period.

However, where due to the first proviso to section 12A(2), the benefit of sections 11 and 12 have been allowed to the trust or the institution in respect of any previous year of years beginning prior to the date from which the registration under section 12AA is effective, then, for the purposes of clause *(ii)* given above, the registration shall be deemed to have become effective from the first day of the earliest previous year.

(2) While computing the accreted income in respect of a case referred to in **clause *(c)*** of section 115TD(1) above *(i.e.* transfer upon dissolution), assets and liabilities, if any. related to such asset, which have been transferred to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university of other educational institution or any hospital or other medical institution referred to in section *10(23C)(iv), (v), (vi)* or *(via),* within the period specified in the said clause, shall be ignored.

(iii) When the trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA [Section 115TD(3)]: For the purposes of section 115TD(1), a trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA in a previous year, if,—

(i) the registration granted to it under section 12AA has been cancelled; or

(ii) it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it,

(a) has not applied for fresh registration under section 12AA in the said previous year; or

(b) has filed application for fresh registration under section 12AA but the said application has been rejected.

1. "Date of conversion" means,—
   (a) the date of the order cancelling the registration under section 12AA, in a case referred to in clause (i) of section 115TD(3); or
   (b) the date of adoption or modification of any object, in a case referred to in clause *(ii)* of section 115TD(3).
2 Registration under section 12AA shall include any registration obtained under section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996

(iv) Tax on the accreted income to be payable even if no income-tax is payable on total income of the trust or institution [Section 115TD(4)]: Notwithstanding that no income-tax is payable by a trust or the institution on its total income computed in accordance with the provisions of this Act, the tax on the accreted income under section 115TD(1) shall be payable by such trust or the institution.

(v) Time limit for payment of tax on accreted income [Section 115TD(5)]: The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within 14 days from,—

(i) the date on which,—

(a) the period for filing appeal under section 253 against the order cancelling the registration expires and no appeal has been filed by the trust or the institution; or

(b) the order in any appeal, confirming the cancellation of the registration, is received by the trust or institution,

in a case referred to in **clause *(i)*** of section 115TD(3);

(ii) the end of the previous year in a case referred to in sub-clause (a) of clause *(ii)* of section 115TD(3) *(i.e.* the trust has not applied for fresh registration under section 12AA in the said previous year);

(iii) the date on which,—

(a) the period for filing appeal under section 253 against the order rejecting the application expires and no appeal has been filed by the trust or the institution; or

(b) the order in any appeal, confirming the cancellation of the application, is received by the trust or institution,

in a case referred to in **sub-clause *(b)* of clause *(ii)*** of section 115TD(3);

(iv) the date of merger in a case referred to in clause *(b)* of section 115TD(1);

(v) the date on which the period of 12 months referred to in clause (c) of section 115TD(1) expires.

(vi) Credit of tax paid on accreted income not available [Section 115TD(6)]: The tax on the accreted income by the trust or the institution shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the trust or the institution or by any other person in respect of the amount of tax so paid.

(vii) Deduction under any other provisions of the Act not allowed in respect of income charged or the tax paid as per section 115TD(1) [Section 115TD(7)]: No deduction under any other provision of this Act shall be allowed to the trust or the institution or any other person in respect of the income which has been charged to tax under section 115TD(1) or the tax thereon.

(2) Interest payable for non-payment of tax by trust or institution [Section 115TE].—Where the principal officer or the trustee of the trust or the institution and the trust or the institution fails to pay the whole or any part of the tax on the accreted income referred to in section 115TD(1), within the time allowed under section 115TD(5), he or it shall be liable to pay simple interest @ 1% for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

(3) When trust or institution is deemed to be assessee in default [Section 115TF]:

According to section 115TF(1), if any principal officer or the trustee of the trust or the institution and the trust or the institution does not pay tax on accreted income in accordance with the provisions of section 115TD, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Further, according to section 115TF(2), notwithstanding anything contained in section 115TF(1), in a case where the tax on accreted income is payable under the circumstances referred to in clause (c) of section 115TD(1), the person to whom any asset forming part of the computation of accreted income under section 115TD(2) thereof has been transferred, shall be deemed to be an assessee in default in respect of such tax and interest thereon and all the provisions of this Act for the collection and recovery of income-tax shall apply:

Provided that the liability of the person referred to in section 115TF(2) shall be limited to the extent to which the asset received by him is capable of meeting the liability.

Amendments relating to provisions of appeal

76. Second proviso inserted under clause *(b)* of section 249(2) for extending the period of filing appeal due to insertion of section 270AA [Second proviso to section 249(2)(b)] [W.e.f. A.Y. 2017-18|

Due to the insertion of new section 270AA relating to immunity from imposition of penalty, etc., the Act has inserted the following proviso after the first proviso under section 249(2)(b):

Provided further that where an application has been made under section 270AA(1), the period beginning from the date on which the application is made, to the date on which the order rejecting the application is served on the assessee, shall be excluded.

In other words, 30 days period of filing the appeal shall be extended by such period.

77. Rationalisation of the provisions relating to Appellate Tribunal

(1) Reference of Senior Vice-President in the Constitution of the Appellate Tribunal omitted [Section 252(3)(b), (4A) and (5)] [W.e.f. A.Y. 1-6-2016]

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

In view of the fact that there are no extra-judicial or administrative duties or difference in the pay scale attached with the post of Senior Vice-president in the Tribunal, the Act has omitted the reference of "Senior Vice-President" in the aforesaid sub-sections.

(2) Provisions relating to filing of appeal by the department against the assessment order passed by A.O. on the direction of DRP omitted. [Section 253(2A) and (3A)] [W.e.f. 1.6.2016]

Sub-section (2A) of section 253 provides that the Principal Commissioner or Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel under section 144C(5) in respect of any objection filed on or after 1.7.2012, by the assessee under section 144C(2) in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

Further, section 253(3A) of the said section provides that every appeal under section 253(2A) shall be filed within 60 days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel under section 144C(5).

The Act has omitted the said sub-sections (2A) and (3A) to do away with the filing of such appeal by the Assessing Officer.

Consequently, the Act has substituted the existing sub-section (4) by the new subsection (4) of section 253 so as to **exclude** therefrom the reference relating to—

- direction of the Dispute Resolution Panel,
- section 253(2A) and
- the order of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel).

Further, existing proviso under section 253(6) has been substituted by new proviso w.r.e.f. 1-7-2012 to provide that like—

- sub-section (2), where no fee is payable by the department for filing the appeal and
- sub-section (4) where no fee is payable for filing memorandum of cross objections,

if the Department is already in appeal against the directions of DRP under section 253(2A) (as it stood before the amendment of the Finance Act, 2016), no fee shall be payable.

(3) Existing sub-section (4) of section 253 substituted by the following sub-section (4) by the Finance Act, 2016 [W.e.f. 1-6-2016]

The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals), has been preferred under section 253(1) or (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in section 253(3).

(4) Period of rectification of mistake from the order of Appellate Tribunal reduced from 4 years to 6 months [Section 254(2) amended] [W.e.f. 1-6-2016]

The existing section 254(2) provides that the Appellate Tribunal may rectify any mistake apparent from the record in its order at any time **within four years from the date of the order.**

In order to bring certainty to the order of ITAT, the Act has amended section 254(2) to provide that the Appellate Tribunal may rectify any mistake apparent from the record in its order at any time **within 6 months from the end of the month in which the order was passed.**

(5) Enhancement of monetary limit of disposing of a case by a single member of ITAT from 15 lakh to 50 lakh [Section 255(3) amended) [W.e.f. 1-6-2016]

The existing provision of section 255(3), *inter alia,* provides that a single member bench may dispose of any case which pertains to an assessee whose total income as computed by the Assessing Officer does not exceed ₹ 15,00,000.

In view of the recent increase in monetary limit for filing appeal before ITAT and to expedite the process of dispute resolution at the level of ITAT, the Act has amended the said sub-section (3) so as to provide that a single member bench may dispose of a case where the total income as computed by the Assessing Officer does not exceed ₹50,00,000.

Amendments relating to provisions of penalties

78. Rationalisation of penalty provisions relating to undisclosed income

Under the existing provisions, penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income is leviable under section 271(1)(e) of the Income-tax Act. In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, the Act has made the following amendments:

(A) Section 271 shall not to apply in relation to any assessment for the assessment year commencing on or after 1-4-2017 [Section 271(7)] [W.e.f. A.Y. 2017-18]

The Act has inserted sub-section (7) in section 271 to provide as under:

The provision of this section shall not apply to and in relation to any assessment for the assessment year commencing on or after 1.4.2017.

Due to the insertion of above sub-section (7) in section 271, the penalty leviable under section 271(1)(b) in respect of failure to comply with the notice under section 142(1) or section 143(2) or failure to comply with direction issued under section 142(2A) has been merged under section 272A(1) by inserting clause *(d)* therein. (For details ***see*** para 82 below)

Further, penalty for concealment of the particulars of income or furnishing inaccurate particulars of income leviable under section 271(1)(c) will now be levied under the newly inserted section 270A w.e.f. 1-4-2017. The new section 270A provides for levy of penalty in cases of under-reporting and misreporting of income instead of concealment of the particulars of income or for furnishing inaccurate particulars of income.

(B) Penalty for under-reporting and misreporting of income [Section 270A] [W.e.f. A.Y. 2017-18]

(1) Penalty for under-reported income [Section 270A(1)]

The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceeding under this Act direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, **on the under-reported income.**

(2) Summarised chart indicating the reasons for under-reporting of income and amount of penalty leviable, if any

1.	Reasons for under reported income	Where under-reported income is	Though income is under reported	Where under reported income	Where under reported income is	Where under-reported income is	Where under reported income is	Where under reported income is for

	in consequence of misreporting of Income Note: For cases of misreporting of Income, see para (3) below	but in respect of that Income the assessee offers an Explanation and the **relevant income tax authority*** is satisfied that Explanation is bona fide and the assessee has disclosed all the material facts to substantiate the Explanation offered	determined is based on an estimate by the **relevant income tax authorities*** as although the accounts are correct and complete to the satisfaction of the relevant income tax authority but the method employed is such that income cannot properly be deducted therefrom	determined on the basis of an estimate, if the assessee has, on his own, estimated the lower amount of addition Or Disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition Or Disallowance	represented by any addition made in conformity with the arm length price determined by the Transfer Pricing Officer where the assessee had maintained information and documents as prescribed under Section 92D, declared the international transaction under Chapter X and, disclosed all the material facts relating to the transaction	due to amount of undisclosed income referred to in Section *271 AAB*	any other reason
2. Applicable section	S. 270A(1) read with 270A(9)	S. 270A(6)(a)	S. 270A(6)(b)	S. 270A(6)(c)	S. 270A(6)(d)	S. 270A(6)(e)	S. 270A(1)
3. Amount of penalty	200% of the **amount of tax payable on under-reported income [Section 270A (8)]** For calculation of amount of tax payable on	Nil, as it will not be treated as under reported income for the purpose of section 270A	Nil, as it will not be treated as under reported income for the purpose of section 270A	Nil, as it will not be treated as under reported income for the purpose of section 270A	Nil, as it will not be treated as under reported income for the purpose of section 270A	Nil, as it will not be treated as under reported income for the purpose of section 270A but it will be leviable u/s 271 AAB	50% of the **amount of tax payabe on under reporter income [Section 270A(7)** For calculation of amount

	under reported income (see section 270A(10), point (6) below]					9i.e in case of assessment u/s 153A for search cases)	of tax payable on under reported income (see section 270A(10) point (6) below]

* Relevant income-tax authority means the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be.

(3) Cases of misreporting of income [Section 270A(9)]

The cases of misreporting of income referred to in section 270A(8) shall be the following, namely:—

(a) misrepresentation or suppression of facts;
(b) failure to record investments in the books of account;
(c) claim of expenditure not substantiated by any evidence;
(d) recording of any false entry in the books of account;
(e) failure to record any receipt in books of account having a bearing on total income; and
(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

(4) Penalty leviable in certain cases where no penalty was levied on under-reported income in any preceding year [Section 270A(4)]

Subject to the provisions of section 270A(6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and no penalty was levied for such preceding year, then, **the under-reported income shall include such amount** as is sufficient to cover such receipt, deposit or investment.

Years for which penalty proceeding for amount referred to section 270A(4) be initiated [Section 270A(5)]

The amount referred to in section 270A(4) shall be deemed to be amount of income under-reported for the preceding year in the following order—

(a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
(b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

(5) Determination of under-reported income and its computation thereof [Section 270A(2) and (3)]

When a person shall be considered to have under-reported his income [Section 270A(2)]	*The amount of under-reported income [Section 270A(3)]*
(a) the income assessed is greater than the income determined in the return processed under section 143(1)(a)	The difference between the amount of income assessed and the amount of income determined under section 143(1)(a);
(b) where no return of income has been furnished and the income assessed is greater than the maximum amount not chargeable to tax;	(A) the amount of income assessed, in the case of a company, firm or local authority; and (B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case of an assessee other than a company, firm or local

	authority;
(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;	The difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order: ***Explanation:*** **"Preceding order" means an order immediately preceding the order during the course of which the penalty under section 270A(1) has been initiated.**
(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under section 143(1)(a); *(e)* where no return of income has been furnished and the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax; *(f)* the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;	Where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula— (A - B) + (C - D) where, A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions); B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income; C = the total income assessed as per the provisions contained in section 115JB or section 115JC; D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income: Provided further that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.
(g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.	The amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

(6) Tax payable in respect of the under-reported income (Section 270A(10)]

The tax payable in respect of the under-reported income shall be—

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

(b) where the total income determined under section 143(1)(a) or assessed, reassessed or recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income;

(c) in any other case, determined in accordance with the formula—

(X-Y)

where,

X - the amount of tax calculated on the under-reported income as increased by the total income determined under section 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and

Y - the amount of tax calculated on the total income determined under section 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order.

In other words, it will be tax on total income inclusive of under-reported income - Tax on total income determined under section 143(1)(a) or 143(3) or 147, as the case may be.

No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year. [Section 270A(11)]

(7) Order of penalty to be in writing [Section 270A(12)]

The penalty referred to in section 270A(1) shall be imposed, by an order in writing, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.

The provisions of section 270A are illustrated through examples as below:

Situation (a) — Where no return of income has been furnished

Example: Case is of an individual below 60 years of age and no return of income has been furnished:

Total Income assessed under section 144 = ₹ 10,00,000

Solution

Amount of under-reported income as per section 270A(3). *(See* para 5 above) ₹ 10,00,000 - 2,50,000 = ₹7,50,000

Tax payable in respect of under reported income shall be the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax i.e. = ₹7,50,000 + 2,50,000 = ₹ 10,00,000

Tax on ₹ 10,00,000 ₹ 1,25,000

Therefore tax payable in respect of under reported income shall be ₹1,25,000

Penalty leviable considering under-reported income is not on account of misreporting 50% of ₹ 1,25,000 = ₹62,500.

Penalty leviable considering under-reported income is on account of misreporting 200% of₹ 1,25,000 = ₹ 2,50,000.

Situation (b) — Where the total income determined under section 143(1)(a) or assessed, reassessed or recomputed in a preceding order is a loss

Example: Case is of a company liable to tax at the rate of 30%:

Particulars	**(Figures in ₹ Lakh)**
Returned total Income (loss)	(-)100
Total Income (loss) determined under section 143(1)(a)	(-)90
Total Income (loss) assessed under section 143(3)	(-)40
Total Income reassessed under section 147	20

Solution

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

The amount of tax calculated on the under-reported income as if it were the total income.

Assessment under section 143(3)

Under-reported Income = (-) 40 minus (-) 90 = 50 lakhs

Tax on ₹50 lakhs @ 30% = 15,00,000

Penalty leviable considering under-reported income is not on account of misreporting 50% of ₹ 15,00,000 = ₹ 7,50,000.

Penalty leviable considering under-reported income is on account of misreporting 200% of ₹ 15,00,000 = ₹ 30,00,000.

Re-assessment under section 147

Under reported income = 20 minus (-) 40 = 60 lakhs

Tax on ₹60 lakhs @ 30% = ₹ 18,00,000

Penalty leviable considering under-reported income is not on account of misreporting 50% of ₹18,00,000 = ₹9,00,000.

Penalty leviable considering under-reported income is on account of misreporting 200% of ₹ 18,00,000 = ₹36,00,000.

Situation (c) — Any other case

Example: Case is of a firm liable to tax at the rate of 30%:

Particulars	**₹**
Returned Total Income	1,00,00,000
Total Income determined under section 143(1)(a)	1,10,00,000
Total Income assessed under section 143(3)	1,50,00,000
Total Income reassessed under section 147	1,80,00,000

Solution:

Under-reported income in this case shall be ₹1,50,00,000 - ₹1,10,00,000 = ₹40,00,000

Considering that none of the additions or disallowances made in assessment or reassessment as above qualifies under sub-section (6) of section 270A, the penalty would be calculated in accordance with the formula—

(X-Y) where,

X - the amount of tax calculated on the under-reported income as increased by the total income determined under section 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and

Y - the amount of tax calculated on the total income determined under section 143(1*)(a)* or total income assessed, reassessed or recomputed in a preceding order.

In other words, it will be as under:

Tax on total income inclusive of under-reported income - Tax on total income determined under section 143(1)(a).

Penalty leviable on assessment under section 143(3)

Tax on ₹1,50,00,000 (inclusive of under-reported income) @ 30%	45,00,000
Less: Tax on ₹ 1,10,00,000 (total income determined u/s 143(1)(a) @ 30%	33,00,000
Tax payable in respect of under-reported income	12,00,000

Penalty leviable considering under-reported income is not on account of misreporting 50% of ₹ 12,00,000 = ₹6,00,000.

Penalty leviable considering under-reported income is on account of misreporting 200% of ₹ 12,00,000 = ₹24,00,000.

Penalty leviable on re-assessment under section 147

Under-reported income in this case shall be ₹1,80,00,000 - ₹1,50,00,000 = ₹30,00,000

Total income including under-reported income shall be ₹ 1,50,00,000 + 30,00,000

= ₹ 1,80,00,000

Tax on ₹ 1,80,00,000 (inclusive of under-reported income) @ 30%	₹ 54,00,000
Less: Tax on ₹ 1,50,00.000 (assessed income u/s 143(3)) @ 30%	45,00,000
Tax payable in respect of under-reported income	9,00,000

Penalty leviable considering under-reported income is not on account of misreporting 50% of ₹9,00,000 = 4,50,000.

Penalty leviable considering under-reported income is on account of misreporting 200% of ₹9,00,000 = ₹18,00,000.

79. Immunity from imposition of penalty, etc. [Section 270AA inserted] [W.e.f. A.Y. 2017-18]

(1)Conditions to be fulfilled for making an application for grant of immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C or 276CC [Section 270AA(1)]

An assessee may make an application to the **Assessing Officer** to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or 276CC, if he fulfils the following conditions, namely:—

(a) the tax and interest payable as per the order of assessment or reassessment under section 143(3) or section 147, as the case may be, **has been paid** within the period **specified in such notice of demand;** and

(b) no appeal against the order of assessment or reassessment under section 143(3) or section 147 has been filed.

(2)Time period for making an application [Section 270AA(2)]

An application referred to in section 270AA(1) shall be made within one month from the end of the month in which the order referred to in section 270AA(1)(a) has been received and shall be made in such form and verified in such manner as may be prescribed.

(3)The Assessing Officer shall grant immunity from imposition of penalty or initiation of proceedings u/s 276C or 276CC except in case of misreporting of income [Section 270AA(3)]

The Assessing Officer **shall**—

— subject to fulfilment of the conditions specified in section 270AA(1) and

— after the expiry of the period of filing the appeal as specified in section 249(2)(b),

grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or 276CC, where the proceedings for penalty under section 270A **has not been initiated under the circumstances referred to in section 270A(9) (relating to misreporting of income)**. *(See* para 78 above).

(4)Assessing Officer to pass an order within one month accepting or rejecting the application referred to in section 270AA(1) [Section 270AA(4)]

The Assessing Officer shall, within a period of one month from the end of the month in which the application under section 270AA(1) is received, pass an order accepting or rejecting such application:

However, no order rejecting the application shall be passed unless the assessee has been given an opportunity of being heard.

(5)Order passed under section 270AA(4) to be final (Section 270AA(5)]

The order made under section 270AA(4) shall be final.

(6)Assessment/reassessment order passed after accepting the application under section 270AA(4) is not appealable or subject to revision [Section 270AA(6)]

No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment, referred to in section 270AA(1)(a), in a case where an order under section 270AA(4) has been made accepting the application.

80. Failure to furnish the information and the document, as required under section 92D(4) by constituent entity of an international group referred to new section 286, will attract a penalty of ₹5,00,000 instead of 2% of the value of each international transaction [Sub-section (2) inserted in section 271AA] [W.e.f. A.Y. 2017-18]

For details see para 86.

81. Amendment of section 271AAB [W.e.f. A.Y. 2017-18]

Existing provision of clause (c) of sub-section (1) of section 271AAB provides that in a case not covered under the provisions of clauses *(a)* and *(b)* of the said sub-section of section 271 AAB, a penalty of a sum which shall not be less than 30% but which shall not exceed 90% of the undisclosed income of the specified previous year shall be levied in case where search has been initiated under section 132 on or after 1.7.2012.

In order to rationalise the rate of penalty and to reduce discretion, the Act has amended that clause (c) of sub-section (1) of section 271AAB to provide for levy of penalty on such undisclosed income at a flat rate of 60% of such income.

82. Amendment of Section 272A [W.e.f. A.Y. 2017-18]

Existing provision of section 272A(1) provides for levy of penalty of ₹ 10,000 for each failure or default to answer the questions raised by an income-tax authority under the Income-tax Act, refusal to sign any statement legally required during the proceedings under the Income-tax Act or failure to attend to give evidence or produce books or documents as required under section 131(1) of the Income-tax Act.

Since, section 271 will not be applicable w.e.f. A.Y. 2017-18, the Act has inserted clause *(d)* in section 272A(1) to further include levy of penalty of ₹ 10,000 for each default or failure to comply with a notice issued under section 142(1) or section 143(2) or failure to comply with a direction issued under section 142(2A).

The Act has also amended section 272A(3) to provide that penalty in case of failure referred above shall be levied by the income tax authority issuing such notice or direction.

Further, consequential amendment in section 288(4)(b) (relating to disqualification of an authorised representative) has also been made by inserting section 272A(1)(d) therein.

83.Penalty for failure to furnish report or for furnishing inaccurate report under section 286 (Section 271GB inserted] [W.e.f. A.Y. 2017-18]

For details *see* para 88.

97.Providing Time limit for disposing applications made by assessee under section 220(2A), 273A or 273AA (W.e.f. 1-6-2016]

(1) Time limit provided for disposing application made under section 220(2A) to reduce or waive the amount of interest paid or payable under section 220(2) (First, second and third provisos inserted under section 220(2A)([W.e.f. 1-6-2016]

Section 220(2) provides for levy of interest @ 1% for every month or part of month for the period during which the default continues. Section 220(2A) *inter alia,* empowers the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner to reduce or waive the amount of interest paid or payable under section 220(2).

The Act has inserted the following three provisos to section 220(2A) w.e.f. 1-6-2016: "Provided that the order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of 12 months from the end of the month in which the application is received:

Provided further that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard:

Provided also that where any application is pending as on 1.6.2016, the order shall be passed on or before 31.3.2017.

(2) Time limit provided for disposing application made under section 273A(4) to reduce or waive the amount of any penalty payable by the assessee or to stay or compound any proceeding for recovery of the penalty [Section 273A(4A) inserted] [W.e.f. 1-6-2016]

Section 273A(4), *inter alia,* provides that the Principal Commissioner or the Commissioner may, on an application made by an assessee, reduce or waive the amount of any penalty payable by the assessee or stay or compound any proceeding for recovery of the penalty amount in certain circumstances.

The Act has inserted the following sub-section (4A) and provisos under section 273A:

The order under section 273A(4), either accepting or rejecting the application in full or in part, shall be passed within a period of 12 months from the end of the month in which the application under the said sub-section is received by the Principal Commissioner or the Commissioner:

Provided that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard:

Provided further that where any application is pending as on 1.6.2016, the order shall be passed on or before 31.5.2017.

(3) Time limit provided for disposing application made under section 273AA(3) to grant immunity from penalty in certain cases [Section 273AA(3A) inserted] [W.e.f. 1-6-2016]

Section 273AA(3) *inter alia,* provides that the Principal Commissioner or the Commissioner may grant immunity from penalty, if penalty proceedings have been initiated in case of a person who has made application for settlement before the settlement commission and the proceedings for settlement had abated under the circumstances contained in section 245HA of the Act.

The Act has inserted the following sub-section (3A) and provisos under section 273AA:

The order under section 273AA(3), either accepting or rejecting the application in full or in part, shall be passed within a period of 12 months from the end of the month in which the application under the said sub-section is received by the Principal Commissioner or the Commissioner:

Provided that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard:

Provided further that where any application is pending as on 1.6.2016, the order shall be passed on or before 31.5.2017.

(4) Section 276C relating to prosecution for wilful attempt to evade tax, etc. amended

Due to introduction of section 270A relating to under reporting of the income, section 276C has also been amended to include the reference of under reporting of income as one of the causes of willful attempt to evade tax and thus punishable under the said section.

Provisions relating to standardised approach to transfer pricing documentation and country-by-country reporting of income, etc.

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

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

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

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

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

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

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

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

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

In order to implement the international consensus, the Act has provided a specific reporting regime in respect of CbC reporting and also the master file. The Act has included **essential elements in the Act while remaining aspects can be detailed in rules.** The elements relating to CbC reporting requirement and matters related to it have been included through the following amendments made in the Act:—

85. Section 92D amended

(a) Maintenance, keeping of information and document of an international group by a constituent entity [Proviso to section 92D(1) inserted] [W.e.f. A.Y. 2017-18]

The existing section 92D(1) provides for keeping and maintaining certain information and documents by a person entering into an international transaction.

The Finance Act, 2016 has inserted the following proviso to section 92D(1) which provides as under:

'Provided that the person, being a **constituent entity** of **an international group,** shall also keep and maintain such information and document in respect of an international group as may be prescribed.

Explanation.—For the purposes of this section,—

(A) "constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of

section 286 (see point 3 below);

(B) "international group" shall have the meaning assigned to it in clause (q) of sub-section (9) of section 286 (see point 3 below).

(b) Furnishing of information and documents of an international group [Sub-section (4) to section 92D inserted] [W.e.f. A.Y. 2017-18]

Without prejudice to the provisions of section 92D(3), the person referred to in the proviso to section 92D(1) *i.e. the constituent entity* shall furnish the information and document referred to in the said proviso to the authority prescribed under section 286(1), in such manner, on or before the date, as may be prescribed.

86. Failure to furnish the information and the document as required under section 92D(4) by constituent entity of an international group referred to new section 286 will attract penalty of ₹5,00,000 instead of 2% of the value of each international transaction [Sub-section (2) inserted in section 271AA] [W.e.f. A.Y. 2017-18]

The Act has inserted a proviso to section 92D(1) and sub-section (4) to section 92D *(see* above) which provide that the constituent entity of an international group shall also keep and maintain such information and document in respect of an international group as may be prescribed and furnish the same to the prescribed income tax authority whenever required.

In this regard, the Act has also inserted sub-section (2) in section 271AA to provide as under:

"If any person fails to furnish the information and the document as required under section 92D(4), the prescribed income-tax authority referred to in the said subsection may direct that such person shall pay, by way of penalty, a sum of ₹5,00,000."

87. Furnishing of report in respect of international group [Section 286]

(1) Resident constituent entity to notify whether it is alternate reporting entity or to notify the details of the parent entity or the alternative reporting entity of the international group, if the parent entity is not resident in India [Section 286(1)]

Every **constituent entity resident in India,** shall, **if it is constituent of an international group, the parent entity of which is not resident in India,** notify the prescribed income-tax authority (herein referred to as prescribed authority) in the form and manner, on or before such date, as may be prescribed,—

(a) whether it is the **alternate reporting entity** of the international group; or
(b) the details of the **parent entity** or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

(1) Meaning of "Constituent entity": "Constituent entity" means,—

(i) any separate entity of an **international group*** that is included in **the consolidated financial statement**** of the said group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange;

(ii) any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or

(iii) any **permanent establishment***** of any separate business entity of the international group included in clause *(i)* or clause *(ii),* if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;

*** Meaning of "International group":** "International group" means any **group** that includes,—

(i) two or more enterprises which are resident of different countries or territories; or

(ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories;

Meaning of "group": "group" includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes,—

(i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or

(ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident;

** **Meaning of "consolidated financial statement":** "Consolidated financial statement" means the financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity;

*** **Meaning of "permanent establishment":** "Permanent establishment" shall have the meaning assigned to it in clause *(iiia)* of section 92F;

(2) Meaning of "Alternate reporting entity": "Alternate reporting entity" means any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in section 286(2) in the country or territory in which the said constituent entity is resident on behalf of such group;

(3)Meaning of "Parent entity": "Parent entity" means a constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group, such that,—

(i) it is required to prepare a consolidated financial statement under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident;

(ii) it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange,

and, there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a consolidated financial statement, under the circumstances referred to in clause *(i)* or clause *(ii),* that includes the separate financial statement of the first mentioned constituent entity

(2) Resident parent entity or the resident alternate reporting entity to furnish a report in respect of international group of which it is a constituent [Section 286(2)]

Every parent entity or the alternate reporting entity, **resident in India,** shall, **for every reporting accounting year, in respect of the international group of which it is a constituent,** furnish a report, to the prescribed authority on or before the due date specified under section 139(1), for furnishing the return of income for the relevant accounting year, in the form and manner as may be prescribed.

(1) Meaning of "reporting accounting year": "Reporting accounting year" means the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-section (2);

(2) *Meaning of "accounting year":* *"Accounting year" means,—*

(i) a previous year, in a case where the parent entity or alternate reporting entity is resident in India; or

(ii) an annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident, in any other case;

(3) For meaning of "parent entity or the alternate reporting entity": *See* box under section 286(1).

(3) Details to be contained in the report to be furnished under section 286(2) [Section 286(3)]

For the purposes of section 286(2), the report in respect of an **international group** shall include,—

(a) the aggregate information in respect of the amount of revenue, profit or loss before income-tax, amount of income-tax paid, amount of income-tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates;

(b) the details of **each constituent entity** of the group including the country or territory in which

such constituent entity is incorporated or organised or established and the country or territory where it is resident;

(c) the nature and details of the main business activity or activities of each constituent entity; and

(d) any other information as may be prescribed.

For meaning of "international group" and **"constituent entity":** *See* box under section 286(1)

(4) Resident constituent entity belonging to international group not headed by Indian resident entity also to furnish report in certain cases [Section 286(4)]

A constituent entity of an **international group**, resident in India, other than the entity referred to in section 286(2) *(i.e.* entity belonging to international group not headed by Indian resident entity), shall furnish the report referred to in the said sub-section, in respect of the international group for a reporting accounting year, if the parent entity is resident of a country or territory,—

(a) with which India does not have an **agreement** providing for exchange of the report of the nature referred to in section 286(2); or

(b) there has been a **systemic** failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity: Provided that where there are more than one such constituent entities of the group, resident in India, the report shall be furnished by any one constituent entity, if,—

(a) the international group has designated such entity to furnish the report in accordance with the provisions of section 286(2) on, behalf of all the constituent entities resident in India; and

(b) the information has been conveyed in writing on behalf of the group to the prescribed authority.

(1) Meaning of "Agreement": "Agreement" means an agreement referred to in section 90(1) or section 90A(1) or any agreement as may be notified by the Central Government in this behalf.

(2) Meaning of "systemic failure": "Systemic failure" with respect to a country or territory means that the country or territory has an agreement with India providing for exchange of report of the nature referred to in sub-section (2), but—

(i) in violation of the said agreement, it has suspended automatic exchange; or

(ii) has persistently failed to automatically "provide to India the report in its possession in respect of any international group having a constituent entity resident in India.

(3) For meaning of **constituent entity** of **an international group:** See box under section 286(1).

(5) Report required under section 286(4) not to be furnished if certain conditions are satisfied [Section 286(5)]

Nothing contained in section 286(4) shall apply, if, an **alternate reporting entity of** the **international group** has furnished a report of the nature referred to in section 286(2), with the tax authority of the country or territory in which such entity is resident, on or before the date specified in the said sub-section and the following conditions are satisfied, namely:—

(a) the report is required to be furnished under the law for the time being in force in the said country or territory;

(b) the said country or territory has entered into an agreement with India providing for exchange of the said report;

(c) the prescribed authority has not conveyed any systemic failure in respect of the said country or territory to any constituent entity of the group that is resident in India;

(d) the said country or territory has been informed in writing by the constituent entity that it is the alternate reporting entity on behalf of the international group; and

(e) the prescribed authority has been informed by the entities referred to in section 286(4) in accordance with section 286(1).

For meaning of **alternate reporting entity** of **an international group:** See box under section 286(1).

(6) The prescribed authority may issue notice requiring any reporting entity to produce within 30 days such information and document as specified in the notice [Section 286(6)]

The prescribed authority may, for the purposes of determining, the accuracy of the report furnished by any reporting entity, by issue of a notice in writing, require the entity to produce such information and document as may be specified in the notice within 30 days of the date of receipt of the notice:

Provided that the prescribed authority may, on an application made by such entity, extend the period of thirty days by a further period not exceeding 30 days.

Meaning of "reporting entity": "reporting entity" means the constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report of the nature referred to in sub-section (2).

(7) Provision of the section not to apply if the consolidated group revenue of an international group of an accounting year preceding such accounting year does not exceed the amount, as may be prescribed [Section 286(7)]

The provisions of this section shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year **preceding such accounting year** does not exceed the amount, as may be prescribed.

(8) Provision of this section to apply in accordance with the guidelines and conditions prescribed [Section 286(8)]

The provisions of this section shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed.

88. Penalty for failure to furnish report or for furnishing inaccurate report under section 286 [Section 271GB] (W.e.f. A.Y. 2017-18]

(1) Penalty for failure to furnish report referred to in section 286(2) [Section 271GB(1)]

If any reporting entity referred to in section 286, which is required to furnish the report u/s 286(2) in respect of a reporting accounting year, fails to do so, the authority prescribed under that section (herein referred to as prescribed authority) may direct that such entity shall pay, by way of penalty, a sum of,—

(a) ₹ 5,000 for every day for which the failure continues, if the period of failure does not exceed one month; or

(b) ₹15,000 for every day for which the failure continues beyond the period of one month.

(2) Failure to produce the information and documents within the period allowed u/s 286(6) [Section 271GB(2)]

Where any reporting entity referred to in section 286 fails to produce the information and documents within the period allowed under section 286(6), the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of ₹5,000 for every day during which the failure continues, beginning from the day immediately following the day on which the period for furnishing the information and document expires.

(3) Penalty for continuing default [Section 271GB(3)]

If the failure referred to in section 271GB(1) or section 271GB(2) continues after an order has been served on the entity, directing it to pay the penalty under section 271GB(1) or, as the case may be, under

section 271GB(2), then, notwithstanding anything contained in section 271CB(1) or section 271GB(2), the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of ₹ 50,000 for every day for which such failure continues beginning from the date of service of such order.

(4) Penalty for providing inaccurate information in the report furnished in accordance with section 286(2) [Section 271GB(4)]

Where a reporting entity referred to in section 286 provides inaccurate information in the report furnished in accordance with section 286(2) section and where—

(a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority; or

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

(c) the entity furnishes inaccurate information or document in response to the notice issued under section 286(6),

then, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of ₹ 5,00,000.

89. Amendment in section 273B relating to penalty not to be imposed in certain cases [W.e.f. A.Y. 2017-18]

Section 273B provides that the penalties referred to in different sections enumerated in the said section 273B shall not be imposable on the person or the assessee for any failure referred to in the said sections, if he proves that there was reasonable cause for the said failure.

The Act has amended the said section so as to include the reference of the newly inserted section 271GB.

Other Amendments

90. *(a)* Maintenance, keeping of information and document of an international group by a constituent entity [Proviso to section 92D(1) inserted] [W.e.f. A.Y. 2017-18]

For details *see* para 85.

***(b)* Furnishing of information and documents of an international group [Subsection (4) to section 92D inserted] |W.e.f. A.Y. 2017-18]**

For details *see* para 85

91. Tax on income of certain domestic companies [Section 115BA] [W.e.f. A.Y. 2017-18]

(1) Certain domestic companies given option to be taxed at the special rate of 25% [Section 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 1 -4-2017, shall, at the option of such person, be computed @ 25%, if the conditions specified in section 115BA(2) are satisfied.

(2) Specified conditions for opting provisions of section 115BA(1) [Section 115BA(2)]

(a) the company has been set-up and registered on or after 1 -3-2016;

(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 (relating to special economic zone), or

- benefit of accelerated depreciation/additional depreciation under section 32(1)(iia), or
- benefit of investment allowance under section 32AC or under section 32AD, or
- deduction under section 33AB (tea/coffee/rubber development account), or
- section 33ABA (site restoration fund), or
- section *35(1)(ii), (iia), (iii)* section 35(2AA), section 35(2AB) (relating to scientific research/social research), or
- section 35AC (expenditure on eligible projects and scheme), or
- section 3 5 AD (deduction on account of capital expenditure on specified business), or
- section 35CCC (agricultural extension project), or
- section 35CCD (skill development project), or
- any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(iii) 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) of clause-(c); and

(iv) depreciation under section 32, other than additional depreciation under section 32(1 *)(iia),* is determined in the manner as may be prescribed.

The loss referred to in section 115BA(2)(c)*(ii)* 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. **[Section 115BA(3)]**.

(3) Section not to apply unless the option is exercised in the prescribed manner on or before due date specified under section 139(1) [Section 115BA(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 section 139(1) 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.

92. Tax on certain dividends received from domestic companies [Section 115BBDA] [W.e.f. A.Y. 2017-18]

Under the existing provisions of section 10(34) of the Act, dividend which suffer dividend distribution tax (DDT) under section 115-0 is exempt in the hands of the shareholder. Under section 115-0 dividends are taxed only @ 15% at the time of distribution in the hands of company declaring dividends. This creates vertical inequity amongst the tax payers as those who have high dividend income are subjected to tax only @ 15% whereas such income in their hands would have been chargeable to tax @ 30%.

With a view to rationalise the tax treatment provided to income by way of dividend, the Act has inserted the following proviso under section 10(34):

"Provided that nothing in this clause shall apply to any income by way of dividend chargeable to tax in accordance with the provisions of section 115BBDA."

Section 115BBDA provides as under:

(1) Dividend in aggregate exceeding ₹ 10,00,000 received by certain persons to be taxed at the special rate of 10% [Section 115BBDA(1)]: Notwithstanding anything contained in this Act, where the total income of an assessee, **being an individual, Hindu undivided family or a firm, resident in India,** includes any income in aggregate exceeding ₹ 10,00,000, by way of dividends declared, distributed or paid by a domestic company, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of such dividends in aggregate exceeding ₹ 10,00,000, @ 10%; and

(b) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income by way of dividends.

(2) No deduction to be allowed from dividend taxable at special rate under section 115BBDA(1)] [Section 115BBDA(2)]: No deduction in respect of any expenditure or allowance or set off of loss shall

be allowed to the assessee under any provision of this Act in computing the income by way of dividends referred to in section 115BBDA(1)(a).

It may be noted that a shareholder who is an individual or HUF or a firm, resident in India shall be liable to pay tax at the special rate of 10% on the amount of dividend if his total income includes dividend received from domestic companies after claiming exemption of ₹ 10,00,000 u/s 10(34). However, in case of any other assessee, the entire amount of dividend received shall be exempt u/s 10(34).

93. Clarification regarding set off losses against deemed undisclosed income [Section 115BBE(2) amended| [W.e.f. A.Y. 2017-18]

Section 115BBE 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 30% 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.

Currently, there is uncertainty on the issue of set-off of losses against income referred in section 115BBE of the Act. The matter has been carried to judicial forums and courts in some cases has taken a view that losses shall not be allowed to be set-off against income referred to in section 115BBE. However, the current language of section 1 15BBE of the Act does not convey the desired intention and as a result the matter is litigated.

In order to avoid unnecessary litigation, the Act has amended the provisions of section 115BBE(2) 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.

94. Tax on Income from 'Patents' [Section 115BBF] [W.e.f. A.Y. 2017-18]

(1) Income by way of royalty in respect of the patent to be tax at the special rate of 10% [Section 115BBF(1)]: Where the total income of an **eligible** assessee includes any income by way of royalty in respect of a **patent developed** and **registered in India,** the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of royalty in respect of the patent @ 10%; and

(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the income referred to in clause *(a).*

(2) **No deduction to be allowed from such royalty [Section 115BBF(2)]:** Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the eligible assessee under any provision of this Act in computing his income referred to in section 115BBF(1)(a).

(3) Option to be taxed in accordance with the provisions of this section to be exercised before the due date specified in section 139(1) [Section 115BBF(3)]: The eligible assessee may exercise the option for taxation of income by way of royalty in respect of a patent developed and registered in India in accordance with the provisions of this section, in the prescribed manner, on or before the due date specified under section 139(1) for furnishing the return of income for the relevant previous year.

(4) Assessee not eligible to claim benefit under this section for next 5 assessment years if he does not avail the benefit of this section for subsequent 5 assessment years after opting for taxation under this section [Section 115BBF(4)]: Where an eligible assessee opts for taxation of income by way of royalty in respect of a patent developed and registered in India for any previous year in accordance with the provisions of this section and the assessee offers the income for taxation for any of the five assessment years relevant to the previous year succeeding the previous year not in accordance with the provisions of section 115BBF(1), then, the assessee 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 such income has not been offered to tax in accordance with the provisions of section 115BBF(1).

Explanation.—For the purposes of this section,—

(a) "developed" means at least 75% of the expenditure incurred in India by the eligible assessee for any **invention** in respect of which patent is granted under the Patents Act, 1970 (herein referred to as the Patents Act);

(b) "eligible assessee" means a person **resident in India** and who is **a patentee;**

(c) "invention" shall have the meaning assigned to it in section 2(1) (j) of the Patents Act;

(d) "lump sum" includes an advance payment on account of such royalties which is not returnable;

(e) "patent" shall have the meaning assigned to it in section 2(1 *)(m)* of the Patents Act;

(f) "patentee" means the person, being the true and first inventor of the invention, whose name is entered on the patent register as the patentee, in accordance with the Patents Act, and includes every such person, being the true and first inventor of the invention, where more than one person is registered as patentee under that Act in respect of that patent;

(g) "patented article" and "patented process" shall have the meanings respectively assigned to them in section 2(1)(o) of the Patents Act;

(h) "royalty", in respect of a patent, means consideration (including any **lump sum** consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains" or consideration for sale of product manufactured with the use of **patented process** or the **patented article** for commercial use) for the—

(i) transfer of all or any rights (including the granting of a licence) in respect of a patent; or

(ii) imparting of any information concerning the working of, or the use of, a patent; or

(iii) use of any patent; or

(iv) rendering of any services in connection with the activities referred to in sub-clauses (i) to (iii);

(i) "true and first inventor" shall have the meaning assigned to it in section 2(1)(y) of the Patents Act.'.

95. Non-applicability of Minimum Alternate Tax (MAT) on foreign companies for the period prior to 1.4.2015 in certain cases [New *Explanation* 4 inserted under section 115JB(2)] [W.r.e.f. A.Y. 2001-02]

In view of the recommendations of the committee headed by Justice A.P. Shah and with a view to provide certainty in taxation of foreign companies, the Act has amended the Income-tax Act so as to provide that with retrospective effect from 1.4.2001, the provisions of section 115JB shall not be applicable to a foreign company if—

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

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

96. No MAT on income by way of royalty in respect of patent chargeable to tax under section 115BBF *[Explanation* 1 to section 115JB(2) amended) [W.e.f. A.Y. 2017-18]

The Finance Act has provided that no MAT shall be payable on the income by way of royalty in respect of patent chargeable to tax under section 115BBF. For this purpose, the Act has inserted clause *(fd)* in *Explanation* 1 to section 115JB(2) to provide that the amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF shall be increased while computing the book profit.

It has further inserted clause *(iig)* in the *Explanation* 1 to section 115JB(2) to provide that the amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF shall be reduced while computing the book profit for the purpose of section 115JB.

97. Rate of MAT in case of International Financial Services Centre shall be 9% instead of 18.5% [Section 115JB] [W.e.f. A.Y. 2017-18]

Under the existing provisions 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 18.5% of its book profit, such book profit shall be deemed to be the total income of the assessee and the Minimum Alternate Tax (MAT) payable by the assessee for the relevant previous year shall be 18.5% of such book profit.

With a view to provide a competitive tax regime to International Financial Services Centre, the Act has inserted sub-section (7) to section 115JB so as to provide that notwithstanding anything contained in section 115JB(1), where the assessee referred to therein, is a **unit** located in an **International Financial Services Center** and derives its income solely in **convertible foreign exchange,** the provisions of section 115JB(1) shall have the effect as if for the words "eighteen and one-half per cent" wherever occurring in that sub-section, the words "nine per cent" had been substituted.

Explanation.—For the purposes of this sub-section,—

(a) "International Financial Services Centre" shall have the same meaning as assigned to it in section *2(q)* of the Special Economic Zones Act, 2005;

According to section *2(q)* of SEZ Act, 2005, "International Financial Services Centre" means an International Financial Services Centre which has been approved by the Central Government under section 18(1);

As per section 18(1), the Central Government may approve the setting up of an International Financial Services Centre in a Special Economic Zone and may prescribe the requirements for setting up and operation of such Center:

Provided that the Central Government shall approve only one International Financial Services Centre in a Special Economic Zone.

(b) "unit" means a unit established in an International Financial Services Centre;

(c) "convertible foreign exchange" means a foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 and the rules made there under.

98. Special Provisions Relating to Foreign Company said to be resident in India [Section 115JH inserted] (W.e.f. A.Y. 2017-18]

(1) Certain provisions of the Act to be applied with specified exceptions, modifications and adaptations in case of foreign company said to be resident in India in any previous year [Section 115JH(1)]: Where a foreign company is **said to be resident in India in any previous year** and such foreign company has **not been resident in India in any of the previous** years **preceding the said previous year,** then, notwithstanding anything contained in this Act and subject to the conditions as may be notified by the Central Government in this behalf, the provisions of this Act relating to—

- the computation of total income,
- treatment of unabsorbed depreciation,
- set off or carry forward and set off of losses,
- collection and recovery, and
- special provisions relating to avoidance of tax

shall apply with such exceptions, modifications and adaptations as may be specified in that notification for the **said previous** year:

However, where the determination regarding foreign company **to be resident in India** has been made in the **assessment** proceedings relevant to any previous year, then, the provisions of this sub-section shall also apply in respect of any **other previous year, succeeding such previous year,** if the foreign company is resident in India in that previous year and the previous year ends on or before the date on which such assessment proceeding is completed.

Every notification issued under this section shall be laid before each House of Parliament. **[Section 115JH(3)]**

2) Consequences if there is a failure to comply with the conditions specified in the notification issued by the Central Government for the purpose of section 115JH(1) [Section 115JH(2)]: Where, in a previous year, any benefit, exemption or relief has been claimed and granted to the foreign company in accordance with the provisions of section 115JH(1), and, subsequently, there is failure to comply with any of the conditions specified in the notification issued under section 115JH(1), then,—

(*i*) such benefit, exemption or relief shall be deemed to have been wrongly allowed;

(ii) the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the said previous year and make the necessary amendment as if the exceptions, modifications and adaptations referred to in section 115JH(1) did not apply; and

(iii) the provisions of section 154 shall, so far as may be, apply thereto and the period of four years specified in section 154(7) of that section being reckoned from the end of the previous year in which the failure to comply with the condition referred to in section 115JH(1) takes place.

99. Exemption from Dividend Distribution Tax (DDT) on distribution made by a SPV to Business Trust [Section 115-0(7) inserted] [W.e.f. 1-6-2016]

In order to rationalize the taxation regime for business trusts (REITs and Invits) and their investors, the Act has provided a special dispensation and exemption from levy of dividend distribution tax.

The Act has inserted sub-section (7) to section 115-0 to provide as under:

No tax on distributed profits shall be chargeable under this section in respect of any amount declared, distributed or paid **by the** specified domestic company by way of dividends (whether interim or otherwise) to a business trust out of its **current income** on or after the specified date:

Provided that nothing contained in section 115-0(7) shall apply in respect of any amount declared, distributed or paid, at any time, by the specified domestic company by way of dividends (whether interim or otherwise) **out of** its **accumulated profits** and **current profits** up to the **specified date.**

In other words, the exemption from the levy of DDT would only be in respect of dividends paid out of current income after the date when the business trust acquires the shareholding in the specified domestic company. The dividends paid out of accumulated and current profits upto this date shall be liable for levy of DDT as and when any dividend out of these profits is distributed by the company either to the business trust or any other shareholder.

Explanation.—For the purposes of this sub-section,—

(a) "specified domestic company" means a domestic company in which a business trust has become the holder of whole of the nominal value of equity share capital of the company (excluding the equity share capital required to be held mandatorily by any other person in accordance with any law for the time being in force or any directions of Government or any regulatory authority, or equity share capital held by any Government or Government body);

(b) "specified date" means the date of acquisition by the business trust of such holding as is referred to in clause (a).

Consequential amendments due to insertion of section 115-0(7)

(1) Dividend referred to in section 115-0(7) received by the business trust shall be exempt under section 10(23FC)(b).

(2) Dividend referred to in section 115-0(7) received by a unitholder from the business trust shall also

be exempt under section 10(23FD).

100. No dividend distribution tax in case of a company being a unit of an International Financial Services Centre deriving income solely in **convertible -foreign exchange [Section 115-0(8) inserted]**

The Act has inserted sub-section (8) to section 115-0 so as to provide as under:

Notwithstanding, anything contained in this section, no tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after 1.4.2017, out of its **current income,** either **in the hands of the company or the person receiving such dividend.**

Explanation.—For the purposes of this sub-section,—

(a) "International Financial Services Centre" shall have the same meaning as assigned to it in section 2(g) of the Special Economic Zones Act, 2005.

(b) "unit" means a unit established in an International Financial Services Centre, on or after 1-4-2016;

(c) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 and the rules made thereunder.

101. Tax on distributed income to shareholder [Section 115QA] [W.e.f. 1-6-2016]

The existing provisions of section 115QA of the Act provide for the leyy of additional Income-tax @ 20% of the distributed income on account of buy back of unlisted shares by a company. The distributed income has been defined in the section to mean the consideration paid by the company on buy back of shares as reduced by the amount which was received by the company for issue of such shares. Buyback has been defined to mean the purchase of a company of its own shares in accordance with the provisions of section 77 A of the Companies Act, 1956.

Recently, doubts have been raised regarding the effect of buybacks undertaken by the company under different provisions of the Companies Act, 1956 or the Companies Act, 2013 and applicability of provisions of section 115QA to such transactions. An issue has also been raised regarding lack of clarity in determination of consideration received by the company at the time of issue of shares being bought back by the company. There are situations where shares may have been issued by the company in tranches, for different considerations, at different point of time or may have been issued in lieu of existing shares of another company under amalgamation, merger or demerger.

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

In order to provide clarity and remove any ambiguity on the above issues, the Act has amended section 115QA to provide that the provisions of this section shall apply to any buy back of unlisted share undertaken by the company **in accordance with the provisions of the** law **relating to the Companies and not necessarily restricted to section 77A of the** Companies **Act, 1956.**

It is further provided that for the purpose of computing distributed income, the amount received by the Company in respect of the shares being bought back shall be determined **in the prescribed manner**. The rules would thereafter be framed to provide for manner of determination of the amount in various circumstances including shares being issued under tax neutral reorganizations and in different tranches.

102.New Taxation Regime for securitisation trust and its investors [Section 10(23DA), 115TA, 115TC and 115TCA] [W.e.f. 1-6-2016]

In order to rationalise the tax regime for securitisation trust and its investors, and to provide tax pass through treatment, the Act has amended various provisions of the Act to substitute the existing special regime for securitisation trusts by a new regiime.

(1) The meaning of "securitisation" given under *Explanation* to section 10(23DA) changed

As per section 10(23DA), any income of a **securitisation trust** from the activity of **securitisation** is exempt.

The existing meaning of "securitisation" given in clause *(a)* of **the** *Explanation* to section 10(23DA) has been changed. The new meaning of securitisation shall be as under:

(A) "Securitisation" shall have the same meaning as assigned to it,—

(i) in clause *(r)* of sub-regulation (1) of regulation 2 of the Securities and Exchange "Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act 1992 and the Securities Contracts (Regulation) Act, 1956; or

(ii) in clause (z) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002; or

(iii) under the guidelines on securitisation of standard assets issued by the Reserve Bank of India.

Further, the meaning of "securitisation trust" given under *Explanation* to section 115TCA has also been changed.

(2) Meaning of "Securitisation trust" changed [Clause *(d)* of *Explanation* to section 115TCA]

As per clause *(d)* of *Explanation* to section 115TCA, the new meaning of "securitisation trust" shall be as under: "securitisation trust" means a trust, being a—

(i) "Special purpose distinct entity" as defined in clause *(u)* of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956, and regulated under the said regulations; or

(ii) "Special Purpose Vehicle" as defined in, and regulated by, the guidelines on securitisation of standard assets issued by the Reserve Bank of India, or

(iii) trust set-up by a securitisation company or a reconstruction company formed, for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or in pursuance of any guidelines or directions issued for the said purposes by the Reserve Bank of India,

which fulfils such conditions, as may be prescribed.

(3) Securitisation trust not liable to pay tax on distributed income to investors [Section 115TA(5)]

The provision of section 115TA relating to tax payable by the securitisation trust on distributed income to investor shall not be applicable in respect of any income distributed by the securitisation trust to the investor on or after 1-6-2016. The tax on income from securitisation trust **will now be payable by the investor** as per section 115TCA.

Proviso inserted under section 10(35A)

The existing section 10(35A) provides that any income by way of distributed income referred to in section 115TA received from a securitisation trust **by any person being an investor** of the said trust shall be exempt.

Consequent to the amendment made in section 115TA(5), the Finance Act **has** inserted following proviso under section 10(35A):

"Provided that nothing contained in this clause shall apply to any income by way of distributed income referred to in the said section, received on or after the 01.06.2016."

In other words, tax on income distributed by the securitisation trust will now be taxable in the hands of the investor as per section 115TCA.

(4) Tax on income from securitisation trusts [Section 115TCA] [W.e.f. A.Y. 2017-18]

(i) Investor of a securitisation trust made liable to pay tax [Section 115TCA(1)]: Notwithstanding anything contained in this Act, any income accruing or arising to, or received by, a person, being an investor of a securitisation trust, out of investments made in the securitisation trust, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person, had the investments by the securitisation trust been made directly by him.

(ii) Nature and the amount of income taxable in the hands of the investor [Section *115TCA(2)j:* The income paid or credited by the securitisation trust shall be deemed to be of the same nature and in the same proportion in the hands of the person referred to in section 115TCA(1), as if it had been received by, or had accrued or arisen to, the securitisation trust during the previous year.

(iii) Income from "securitisation trust" to be tax on due basis [Section 115TCA(3)]: The income accruing or arising to, or received by, the securitisation trust, during a previous year, if not paid or credited to the person referred to in section 115TCA(1), shall be deemed to have been credited to the account of the said person on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.

(iv) Securitisation trust to furnish details of such income to the investor as well as prescribed income-tax authority [Section 115TCA(4)]: The person responsible for crediting or making payment of the income on behalf of securitisation trust and the securitisation trust shall furnish, within such period, as may be prescribed, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority, a statement in such form and verified in such manner, giving details of the nature of the income paid or credited during the previous year and such other relevant details, as may be prescribed.

(v) Income taxed on due basis, not to be taxed when it is actually received [Section 115TCA(5)]: Any income which has been included in the total income of the person referred to in section 115TCA(1), in a previous year, on account of it having accrued or arisen in the said previous year, shall not be included in die total income of such person in the previous year in which such income is actually paid to him by the securitization trust.

Meaning of investor given in *Explanation under* section 115TCA changed [W.e.f. 1-6-2016]

"Investor" means a person who is holder of any securitised debt instrument or securities or *security receipt* issued by the securitisation trust.

"Security receipt" shall have the same meaning as assigned to it in clause *(zg)* of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

103. Proviso inserted under section 92CA(3A) [W.e.f. 1-6-2016]

As per section 92CA(3A), where a reference under section 92CA(1) is made to Transfer Pricing Officer (TPO), the TPO may pass the order at any time before 60 days prior to limitation period referred to in section 153 or 153B.

The Act has inserted the following proviso under section 92CA(3A):

"Provided that in the circumstances referred to in

clause *(ii),* or

clause *(x)*

of *Explanation (1)* to section 153, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly."

Circumstances referred to clause *(ii)* and clause *(x)* of *Explanation* (1) to section 153

1. Clause *(ii)* — the period during which the assessment proceeding is stayed by an order or injunction of any Court.

2. Clause (*x*) — The period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less.

104. Section 119 relating to instructions to subordinate authorities amended [Section 119(2)(a) [W.e.f. A.Y. 2017-18]

Section 119(2)(a) empowers the Board to issue directions or instructions for the purpose of proper and efficient management of the work of assessment and collection of revenue provided such directions are not prejudicial to the assessee.

The Act has made a reference to section 270A in the said section 119(2)(a), so as to enable the Board to issue directions and instructions in respect of section 270A of the Income-tax Act, as well.

The above amendment is consequential to the insertion of a new section 270A in the Income-tax Act which provides for levy of penalty for under-reporting and misreporting of income.

105. Amendment in section 133C and *Explanation* 2 to section 147 [W.e.f. 1-6-2016]

(1)Amendment in section 133C: The existing provisions of section 133C empower the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.

In order to expedite verification and analysis of the information and documents so received, the Act has inserted sub-section (2) in section 133C to provide as under:

"Where any information or document has been received in response to a notice issued under section 133C(1), the prescribed income-tax authority may process such information or document and make available the outcome of such processing to the Assessing Officer."

(2)Amendment in *Explanation 2* to section 147

Due to insertion of sub-section (2) in section 133C mentioned above, the Act has also inserted a new clause *(ca)* in *Explanation 2* to section 147 to provide that the following shall also be treated as a deemed case of escaping the assessment/reassessment: "Where a return of income has not been furnished by the assessee or **a** return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under section 133C(2) *(see* above), it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return."

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

To provide adequate legal framework for paperless assessment in order to enhance efficiency and reduce the burden of compliance. A series of changes have been made to achieve this end.

(1) Section 282A relating to authentication notices and other documents amended [W.e.f. 1-6-2016]

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

The Act has amended section 282A(1) so as to provide that notices and documents required to be issued by income-tax authority under the Act shall be issued by such authority either in paper form or in electronic form in accordance with such procedure as may be prescribed.

(2)Section 143(2) amended to include other prescribed income tax authority [W.e.f. 1-6-2016]

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

In order to ensure timely service of notice issued under section 143(2), the Act has amended section 143(2) to provide that notice under the said sub-section may be served on the assessee **by the Assessing**

Officer or the prescribed income-tax authority, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.

(3) Meaning of "hearing"

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

107. Provision for bank guarantee under section 281B [(W.e.f. 1-6-2016]

Under the existing provisions of section 28IB, the Assessing Officer may provisionally attach any property of the assessee during the pendency of assessment or reassessment proceedings, for a period of six months with the prior approval of the income- tax authorities specified therein, if he is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue. Such attachment of property is extendable to a maximum period of two years or sixty days after the date of assessment order, whichever is later.

The Income Tax Simplification Committee (Easwar Committee) has recommended that provisional attachment of property could" be substituted by a bank guarantee subject to fulfilment of certain conditions. Having considered this recommendation, the Act has inserted the following sub-sections (3) to (9) under section 281B:

(1)Assessing Officer to revoke attachment of property if a guarantee from a scheduled bank is furnished (Section 281B(3)]

Where the assessee furnishes a guarantee from a scheduled bank for an amount **not less than the fair market value of the property** provisionally attached under section 281B(1), the Assessing Officer shall, by an order in writing, revoke such attachment:

Provided that where the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.

(2)The Valuation Officer to estimate the fair market value of the property provisionally attached and submit report of the estimate within 30 days if reference is made by A.O. [Section 281B(4)]

The Assessing Officer may, for the purposes of determining the value of the property provisionally attached under section 281B(1), make a reference to the Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of 30 days from the date of receipt of such reference.

(3)Time period for revoking the provisional attachment, if guarantee is provided under section 281B(3) [Section 281B(5)]

An order revoking the provisional attachment under section 281B(3) shall be made—

(i) within 45 days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made under section 281 B(4); or

(ii) within 15 days from the date of receipt of guarantee in any other case.

(4)Invocation of guarantee [Section 281B(6)]

Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may invoke the guarantee furnished under section 281B(3), wholly or in part, to recover the amount.

(5)Invocation of guarantee on failure to renew or furnish the new guarantee [Section 281B(7)]

The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee referred to in section 281(3), or fails to furnish a new guarantee from a scheduled bank for an equal amount, 15 days before the expiry of the guarantee referred to in section 281B(3).

(6)Adjustment of the demand from the amount realized by invoking guarantee [Section 281B(8)]

The amount realised by invoking the guarantee referred to in section 281B(3) shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of section 45(1) of the Reserve Bank of India Act, 1934 at the place where the office of the Principal Commissioner or Commissioner is situate.

(7)Release of the guarantee [Section 281B(9)]

Where the Assessing Officer is satisfied that the guarantee referred to in section 281B(3) is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

108.Change in rate of Securities Transaction tax in case where option is not exercised [W.e.f. 1-6-2016)

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. It is proposed to increase the rate from 0.017% to 0.05%.

109.Rule 8 of Part A of the Fourth Schedule of the Income Tax Act relating to exclusion from total income of accumulated balance of the Recognised Provident Fund amended

The Finance Act, 2016 has inserted the following clause (iv) in rule 8 of Part A of the fourth schedule of the Income Tax Act.

If the entire balance standing to the credit of the employee in the Recognised Provident Fund is transferred to his account under a pension scheme referred to in section 80CCD and notified by the Central Government, the same shall also be excluded from the computation of his total income.