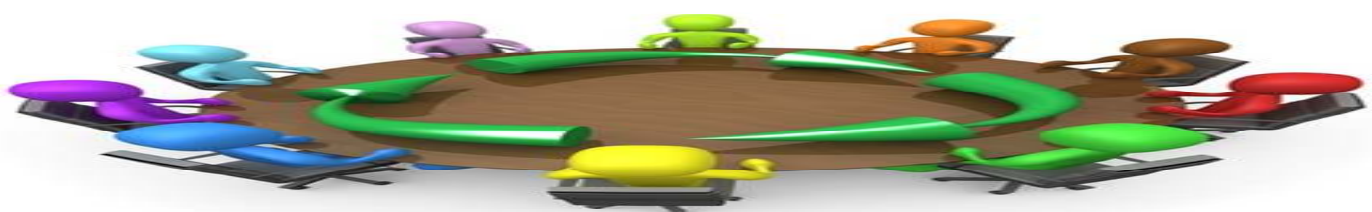




**UNION**



**DIRECT TAX**  
PRESENTED ON 1<sup>st</sup> FEB'2017



**ASHU DALMIA & ASSOCIATES**  
**CHARTERED ACCOUNTANTS**

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**HIGHLIGHTS**

1

<b>A</b>	<b>Rates of Income-tax</b>	<p>Rates of income-tax in respect of income liable to tax for the assessment year 2017-18.</p> <p>Rates for deduction of income-tax at source during the financial year 2017-18 from certain incomes other than "Salaries".</p> <p>Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2017-18.</p>
<b>B</b>	<b>Additional Resource Mobilisation</b>	<p>Rationalization of taxation of income by way of dividend</p> <p>Deduction of tax at source in the case of certain Individuals and Hindu undivided family</p>
<b>C</b>	<b>Measures for Promoting Affordable Housing and Real Estate Sector</b>	<p>Incentives for Promoting Investment in immovable property</p> <p>Rationalisation of Provisions of Section 80-IBA to promote Affordable Housing</p> <p>Tax incentive for the development of capital of Andhra Pradesh</p> <p>Special provisions for computation of capital gains in case of joint development agreement</p> <p>Shifting base year from 1981 to 2001 for computation of capital gains</p> <p>Expanding the scope of long term bonds under 54EC</p> <p>No notional income for house property held as stock-in-trade</p>
<b>D</b>	<b>Measures for Stimulating Growth</b>	<p>Extension of eligible period of concessional tax rate on interest in case of External Commercial Borrowing and Extension of benefit to Rupee Denominated Bonds</p> <p>Extension of eligible period of concessional tax rate under section 194LD</p> <p>Carry forward and set off of loss in case of certain companies. Extending the period for claiming deduction by start-ups</p> <p>Rationalisation of Provisions relating to tax credit for Minimum Alternate Tax and Alternate Minimum Tax</p> <p>Extension of scope of section 43D to Co-operative Banks</p>

		Increase in deduction limit in respect of provision for bad and doubtful debts
<b>E</b>	<b>Promoting Digital Economy</b>	<p>Restricting cash donations</p> <p>Disallowance of depreciation under section 32 and capital expenditure under section 35AD on cash payment</p> <p>Measures to discourage cash transactions</p> <p>Measures for promoting digital payments in case of small unorganized businesses</p> <p>Restriction on cash transactions</p>
<b>F</b>	<b>Transparency in Electoral Funding</b>	
<b>G</b>	<b>Ease of doing Business</b>	<p>Clarity relating to Indirect transfer provisions</p> <p>Modification in conditions of special taxation regime for off shore funds under section 9A</p> <p>Exemption of income of Foreign Company from sale of leftover stock of crude oil from strategic reserves at the expiry of agreement or arrangement</p> <p>Enabling of Filing of Form 15G/15H for commission payments specified under section 194D</p> <p>Increasing the threshold limit for maintenance of books of accounts in case of Individuals and Hindu undivided family</p> <p>Exclusion of certain specified person from requirement of audit of accounts under section 44AB</p> <p>Non-deduction of tax in case of exempt compensation under RFCTLAAR Act, 2013</p> <p>Exemption from tax collection at source under sub-section (1F) of section 206C in case of certain specified buyers.</p> <p>Simplification of the provisions of tax deduction at source in case Fees for professional or technical services under section 194J</p> <p>Scope of section 92BA of the Income-tax Act relating to Specified Domestic Transactions</p> <p>Tax neutral conversion of preference shares to equity shares</p> <p>Cost of acquisition in Tax neutral demerger of a foreign company</p> <p>Processing of return within the prescribed time and enable</p>

		<p>withholding of refund in certain cases Rationalisation of section 211 and section 234C relating to advance tax</p> <p style="text-align: right;">3</p> <p>Interest on refund due to deductor</p> <p>Extension of capital gain exemption to Rupee Denominated Bonds</p> <p>Enabling claim of credit for foreign tax paid in cases of dispute</p> <p>Amendments to the structure of Authority for Advance Rulings</p> <p>Amendment of Section 253</p> <p>Empowering Board to issue directions in respect of penalty for failure to deduct or collect tax at source</p> <p>Rationalisation of time limits for completion of assessment, reassessment and re-computation and reducing the time for filing revised return</p> <p>Rationalisation of the provisions in respect of time limits for completion of search assessment</p>
<b>H</b>	Anti-abuse Measures	<p>Exemption of long term capital gains tax u/s 10(38)</p> <p>Fair Market Value to be full value of consideration in certain cases</p> <p>Widening scope of Income from other sources</p> <p>Disallowance for non-deduction of tax from payment to resident</p> <p>Limitation of Interest deduction in certain cases.</p> <p>Secondary adjustments in certain cases.</p> <p>Restriction on exemption in case of corpus donation by exempt entities to other exempt entities</p> <p>Mandatory furnishing of return by certain exempt entities</p> <p>Fee for delayed filing of return</p> <p>Penalty on professionals for furnishing incorrect information in statutory report or certificate</p>
<b>I</b>	Rationalisation Measures	<p>Rationalisation of provisions of section 115JB in line with Indian Accounting Standard (Ind-AS)</p> <p>Clarification regarding the applicability of section 112</p>

		<p>Rationalization of rebate allowable under Section 87A</p> <p>Rationalisation of provisions of Section 10AA</p> <p>Consolidation of plans within a scheme of mutual fund</p> <p>Definition of 'person responsible for paying' in case of payments covered under sub-section (6) of section 195</p> <p>Clarification with regard to interpretation of 'terms' used in an agreement entered into under section 90 and 90A.</p> <p>Actual cost of asset in case of withdrawal of deduction in terms of Sub-section (7B) of section 35AD</p> <p>Clarity of procedure in respect of change or modifications of object and filing of return of income in case of entities exempt under sections 11 and 12</p> <p>Cost of Acquisition of capital assets of entities in case of levy of tax on accreted income under section 115TD</p> <p>Strengthening of PAN quoting mechanism in the TCS regime</p> <p>Rationalization of deduction under section 80CCG.</p> <p>Restriction on set-off of loss from House property</p> <p>Reason to believe to conduct a search, etc. not to be disclosed</p> <p>Power of provisional attachment and to make reference to Valuation Officer to authorised officer</p> <p>Rationalisation of the provisions in respect of power to call for information</p> <p>Extension of the power to survey</p> <p>Legislative framework to enable centralised issuance of notice and processing of information under section 133C</p> <p>Rationalisation of provisions of the Income Declaration Scheme, 2016 and consequential amendment to section 153A and 153C</p> <p>Exemption of income of Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund</p> <p>Correct reference to FEMA instead of FERA</p>	4
<b>J</b>	<b>Benefit for NPS subscribers</b>	Tax-exemption to partial withdrawal from National Pension System (NPS)	

**A. Rates of Income-tax**

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<b>Individual, HUF, AOP, BOI and AJP</b>	<b>Slabs</b>	<b>Proposed Income Tax Rates</b>	<b>Existing Income Tax Rates</b>
(i) The rates of income-tax in the case of every <b>individual</b> (other than those mentioned in (ii) and (iii) below) or <b>Hindu undivided family</b> or <b>every association of persons</b> or <b>body of individuals</b> , whether incorporated or not, or every <b>artificial juridical person</b> referred to in sub-clause (vii) of clause (31) of section 2 of the Act;	<b>Upto Rs. 2,50,000</b>	<b>Nil</b>	<b>Nil</b>
	<b>Rs.2,50,001 to Rs. 5,00,000</b>	<b>5%</b>	<b>10%</b>
	<b>Rs. 5,00,001 to Rs. 10,00,000</b>	<b>20%</b>	<b>20%</b>
	<b>Above Rs. 10,00,000</b>	<b>30%</b>	<b>30%</b>
(ii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—	<b>Upto Rs. 3,00,000</b>	<b>Nil</b>	<b>Nil</b>
	<b>Rs.3,00,001 to Rs. 5,00,000</b>	<b>5%</b>	<b>10%</b>
	<b>Rs. 5,00,001 to Rs. 10,00,000</b>	<b>20%</b>	<b>20%</b>
	<b>Above Rs. 10,00,000</b>	<b>30%</b>	<b>30%</b>
(iii) In the case of every individual, being a resident in India, who is of the age of eighty years or more at anytime during the previous year,—	<b>Upto Rs. 5,00,000</b>	<b>Nil</b>	<b>Nil</b>
	<b>Rs. 5,00,001 to Rs. 10,00,000</b>	<b>20%</b>	<b>20%</b>
	<b>Above Rs. 10,00,000</b>	<b>30%</b>	<b>30%</b>
The amount of income-tax computed in accordance with the preceding provisions of this Paragraph shall be increased by a <b>surcharge</b> at the rate of,—	<b>In case of a total income exceeding fifty lakh rupees but not exceeding one crore rupees</b>	<b>10%</b>	<b>Nil</b>
	<b>In case of a person having a total income exceeding one crore rupees</b>	<b>15%</b>	<b>15%</b>
<b>Education Cess &amp; Secondary &amp; Higher Education Cess is proposed to be continued @2% and 1% respectively.</b>			

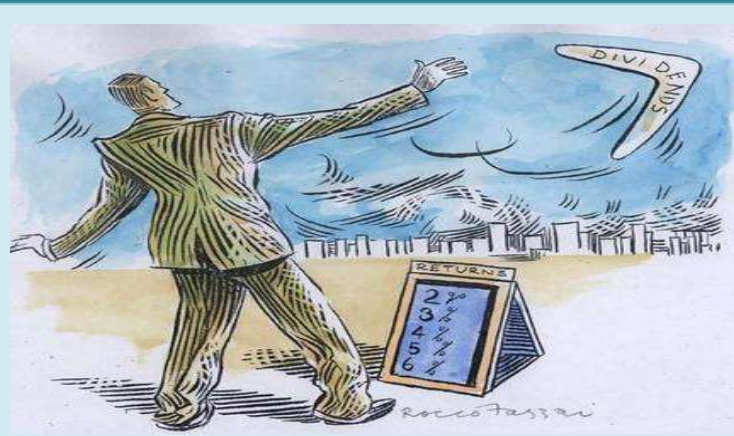


<b>Co-operative Societies/Firms/Local Authorities</b>	<b>It is proposed that there will be no change in the rate of tax for Cooperative Societies, Firms and Local Authorities in the FY 2017-18.</b>
<b>Companies</b>	<p>In case of domestic company, the rate of income-tax shall be <b>twenty five per cent</b> of the total income if the total turnover or gross receipts of the previous year 2015-16 <b>does not exceed fifty crore rupees.</b></p> <p>In all other cases of domestic company, the rate of Income-tax shall be thirty per cent of the total income.</p> <p>In the case of company <b>other than domestic company</b>, the rates of tax are the same as those specified for the financial year 2016-17.</p> <p><b>There is no change in rate of surcharge</b> as those specified for the financial year 2016-17.</p> <p><b>Education Cess &amp; Secondary &amp; Higher Education Cess</b> is proposed to be continued @2% and 1% respectively.</p>

## **B.ADDITIONAL RESOURCE MOBILISATION**

### **RATIONALIZATION OF TAXATION OF INCOME BY WAY OF DIVIDEND**

It is proposed to amend **section 115BBDA** so as to provide that the provisions of said section shall be applicable to all resident assessee except domestic company and certain funds, trusts, institutions, etc.



EFFECTIVE

This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19 and subsequent years.

*The existing provisions of section 115BBDA, income by way of dividend in excess of Rs. 10 lakh is chargeable to tax at the rate of 10% on gross basis in case of a resident individual, Hindu undivided family or firm.*

## DEDUCTION OF TAX AT SOURCE IN THE CASE OF CERTAIN INDIVIDUALS AND HINDU UNDIVIDED FAMILY

It is proposed to insert a **new section 194-IB** in the Act to provide that Individuals or a HUF (other than those covered under 44AB of the Act), responsible for paying to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of month during the previous year, shall deduct an amount equal to five per cent. of such income as income-tax thereon.

Proposal also covers the following points:

1. TDS deducted on such income at the time of credit of rent for the last month of the previous year or the last month of tenancy if the property is vacated during the year, as the case may be, 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.
2. The deductor shall not be required to obtain tax deduction account number (TAN) as per section 203A of the Act.
3. The deductor shall be liable to deduct tax only once in a previous year.
4. The tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.





This amendment will take effect from 1st June, 2017.

*The existing provisions of the section 194I, an Individual and HUF, being a payer (other than those liable for tax audit) are out of the scope of section 194-I of the Act.*

### C. MEASURES FOR PROMOTING AFFORDABLE HOUSING AND REAL ESTATE SECTOR

#### CHANGE OF PERIOD OF HOLDING IN CASE OF IMMOVABLE PROPERTY AS PER SECTION 2(42A)

It is proposed to amend **section 2 (42A)** of the Act so as to reduce the period of holding from the existing 36 months to 24 months **in case of immovable property, being land or building or both**, to qualify as long term capital asset.



This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19

*The existing provision of the Act provide for concessional rate of tax and also indexation benefit for taxation of capital gains arising from transfer of long-term capital asset. To qualify for long-term asset, an assessee is required to hold the asset for more than 36 months subject to certain exceptions, for example, the holding period of 24 months has been specified for unlisted shares.*

## **RATIONALISATION OF PROVISIONS OF SECTION 80-IBA TO PROMOTE AFFORDABLE HOUSING**

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In order to promote the development of affordable housing sector, it is proposed to amend **section 80-IBA** so as to provide the following relaxations:-

- (i) The size of residential unit shall be measured by taking into account the "carpet area" as defined in Real Estate (Regulation and Development) Act, 2016 and not the "built-up area".
- (ii) The restriction of 30 square meters on the size of residential units shall not apply to the place located within a distance of 25 kms from the municipal limits of the Chennai, Delhi, Kolkata or Mumbai.
- (iii) The condition of period of completion of project for claiming deduction under this section shall be increased from existing three years to five years.



**This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19 and subsequent years.**

*The existing provisions of section 80-IBA provides for 100% deduction in respect of the profits and gains derived from developing and building certain housing projects subject to specified conditions. The conditions specified, inter alia, include the limit of 30 square meters for the built-up area of residential unit in respect of project located in the Chennai, Delhi, Kolkata and Mumbai or within 25 kms from the municipal limits of these four cities. Further, it is also provided that in order to be eligible to claim deductions, the project shall be completed within a period of three years.*

## **SPECIAL PROVISIONS FOR COMPUTATION OF CAPITAL GAINS IN CASE OF JOINT DEVELOPMENT AGREEMENT**

It is proposed to insert a **new sub-section (5A) in section 45** so as to provide that in case of an assessee being individual or Hindu undivided family, who enters into a specified agreement for development of a project, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.

- **Full value of the consideration received or accruing as a result of the transfer of the capital asset** shall be the Stamp duty value of his share, being land or building or both, in the project ~~on the~~ date of issuing of said certificate of completion as increased by any monetary consideration received, if any.
- This section shall not apply to an assessee who transfers his share in the project to any other person on or before the date of issue of said certificate of completion. In such a situation, the capital gains as determined under general provisions of the Act shall be deemed to be the income of the previous year in which such transfer took place and shall be computed as per provisions of the Act without taking into account this proposed provisions.
- It is also proposed to define the following expressions "competent authority", "specified agreement" and "stamp duty value" for this purpose.
- It is also proposed to make consequential amendment in **section 49** so as to provide that the **cost of acquisition** of the share in the project being land or building or both, in the hands of the land owner shall be the amount which is deemed as full value of consideration under the said proposed provision.
- It is also proposed to insert a new **section 194-IC** in the Act so as to provide that in case any monetary consideration is payable under the specified agreement, **tax at the rate of ten per cent** shall be deductible from such payment.



EFFECTIVE

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years. However the new section 194-IC will take effect from 1st April, 2017.

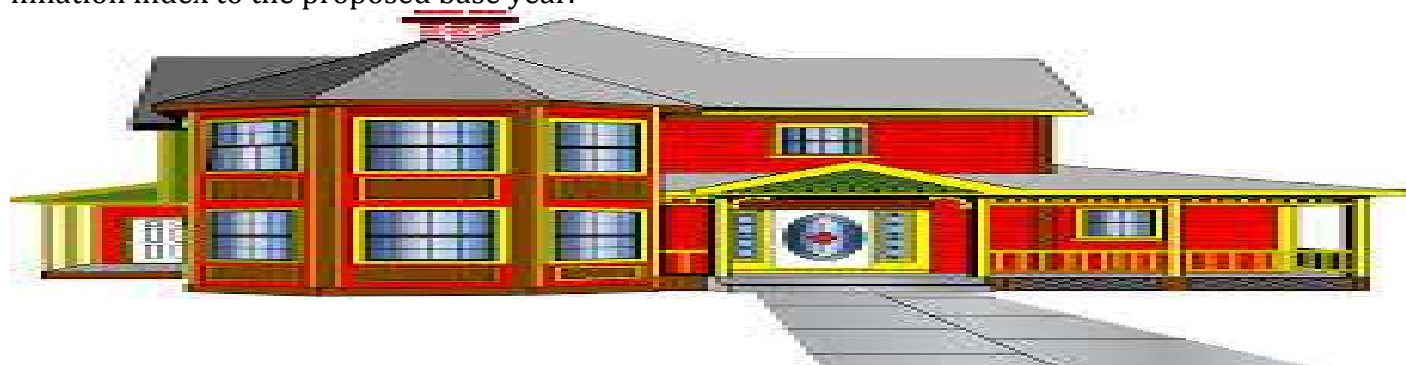
*Under the existing provisions of section 45, capital gain is chargeable to tax in the year in which transfer takes place except in certain cases. The definition of 'transfer', inter alia, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred. In such a scenario, execution of Joint Development Agreement between the owner of immovable property and the developer triggers the capital gains tax liability in the hands of the owner in the year in which the possession of immovable property is handed over to the developer for development of a project.*

## **SHIFTING BASE YEAR FROM 1981 TO 2001 FOR COMPUTATION OF CAPITAL GAINS**

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It is proposed to amend **section 55** of the Act so as to provide that the cost of acquisition of an asset acquired before 01.04.2001 shall be allowed to be taken as fair market value as on 1st April, 2001 and the cost of improvement shall include only those capital expenses which are incurred after 01.04.2001.

Consequential amendment is also proposed in **section 48** so as to align the provisions relating to cost inflation index to the proposed base year.



**EFFECTIVE**

This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19 and subsequent years.

*The existing provisions of section 55 provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 01.04.1981, the assessee has been allowed an option of either to take the fair market value of the asset as on 01.04.1981 or the actual cost of the asset as cost of acquisition. The assessee is also allowed to claim deduction for cost of improvement incurred after 01.04.1981, if any.*

## **EXPANDING THE SCOPE OF LONG TERM BONDS UNDER SECTION 54EC**

It is proposed to amend **section 54EC** so as to provide that investment in any bond redeemable after three years which has been notified by the Central Government in this behalf shall also be eligible for exemption.



EFFECTIVE

This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19 and subsequent years.

*The existing provision of section 54EC provides that capital gain to the extent of Rs. 50 lakhs arising from the transfer of a long-term capital asset shall be exempt if the assessee invests the whole or any part of capital gains in certain specified bonds, within the specified time. Currently, investment in bond issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited is eligible for exemption under this section.*

### **NO NOTIONAL INCOME FOR HOUSE PROPERTY HELD AS STOCK-IN-TRADE**

It is proposed to amend **section 23** of the Act so as to provide that where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the **annual value** of such property or part of the property, for the period upto one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be **nil**.



EFFECTIVE

This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19 and subsequent years.

*Section 23 of the Act provides for the manner of determination of annual value of house property.*

## D.MEASURES FOR STIMULATING GROWTH

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### **EXTENSION OF ELIGIBLE PERIOD OF CONCESSIONAL TAX RATE ON INTEREST IN CASE OF EXTERNAL COMMERCIAL BORROWING AND EXTENSION OF BENEFIT TO RUPEE DENOMINATED BONDS**

- It is proposed to amend **section 194LC** to provide that the concessional rate of five per cent TDS on interest payment under this section will now be available in respect of borrowings made before the **1st July, 2020**.

(This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.)

- It is further proposed to extend the benefit of section 194LC to **rupee denominated bond** issued outside India before the **1st July, 2020**.

(This amendment will take effect retrospectively from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent years.)



This amendment will take effect retrospectively from 1st April, 2018 or 1<sup>st</sup> April, 2016 respectively and will, accordingly, apply in relation to the assessment year 2018-19/2016-17

*The existing provisions of section 194LC of the Act provide that the interest payable to a non-resident by a specified company on borrowings made by it in foreign currency from sources outside India under a loan agreement or by way of issue of any long-term bond including long-term infrastructure bond shall be eligible for concessional TDS of five per cent.*

*It further provides that the borrowings shall be made, under a loan agreement at any time on or after the 1st July, 2012, but before the 1st July, 2017; or by way of any long-term bond including*

*long-term infrastructure bond on or after the 1st October, 2014 but before the 1st July, 2017, respectively.*

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## **EXTENSION OF ELIGIBLE PERIOD OF CONCESSIONAL TAX RATE UNDER SECTION 194LD**

It is proposed to amend **section 194LD** to provide that the concessional rate of five per cent TDS on interest will now be available on interest payable before the **1st July, 2020**.



EFFECTIVE

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

*The existing provisions of section 194LD of the Act, provides for lower TDS at the rate of five per cent in the case of interest payable at any time on or after 1st June, 2013 due before the 1st July, 2017 to FIIs and QFIs on their investments in Government securities and rupee denominated corporate bonds provided that the rate of interest does not exceed the rate notified by the Central Government in this behalf.*

## **CARRY FORWARD AND SET OFF OF LOSS IN CASE OF CERTAIN COMPANIES**

It is proposed to amend **section 79** of the Act to provide that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested and being an eligible start-up as referred to in section 80-IAC of this Act, loss shall be carried forward and set off against the income of the previous year, if all the shareholders of

such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred, being the loss incurred during the period of seven years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year.



EFFECTIVE

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19

*The existing provisions of section 79 of the Act, inter-alia provides that where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by person who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred.*

### **EXTENDING THE PERIOD FOR CLAIMING DEDUCTION BY START-UPS**

It is proposed to provide that deduction under **section 80-IAC** can be claimed by an eligible start-up for **any three consecutive assessment years out of seven years** beginning from the year in which such eligible start-up is incorporated.



EFFECTIVE

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.



*The existing provisions of section 80-IAC, inter alia, provide that an eligible start-up shall be allowed a deduction of an amount equal to 100% of the profits and gains derived from eligible business for three consecutive assessment years out of five years beginning from the year in which such eligible start-up is incorporated.*

### **RATIONALISATION OF PROVISIONS RELATING TO TAX CREDIT FOR MINIMUM ALTERNATE TAX AND ALTERNATE MINIMUM TAX**

It is proposed to amend **section 115JAA (for MAT)** and **section 115JD (for AMT)** to provide that the tax credit determined under these sections can be carried forward **up to 15<sup>th</sup> assessment years immediately succeeding the assessment years in which such tax credit becomes allowable.**

It is also proposed to amend section 115JAA and 115JD so as to provide that the amount of tax credit in respect of MAT/ AMT shall not be allowed to be carried forward to subsequent year to the extent such credit relates to the difference between the amount of foreign tax credit (FTC) allowed against MAT/ AMT and FTC allowable against the tax computed under regular provisions of Act other than the provisions relating to MAT/AMT.



**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.**

*Currently, the tax credit under section 115JAA in respect of MAT paid by companies u/s 115JB and tax credit under section 115JD in case of non corporate assesses can be carried forward up to 10<sup>th</sup> assessment years.*

**E.PROMOTING DIGITAL ECONOMY**

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**RESTRICTING CASH DONATIONS**

It is proposed to amend **section 80G** so as to provide that no deduction shall be allowed under the section 80G in respect of donation of any sum exceeding Rs. 2,000/- unless such sum is paid by any mode other than cash.



This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

*Under the existing provisions of section 80G, deduction is not allowed in respect of donation made of any sum exceeding Rs.10,000/-, if the same is not paid by any mode other than cash.*

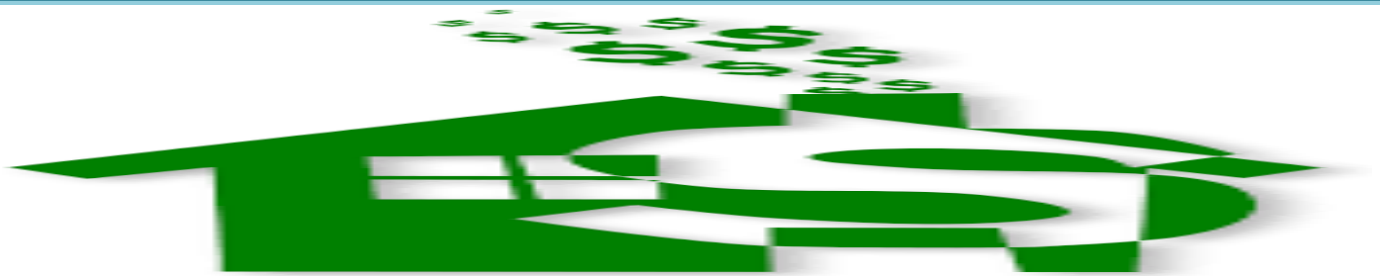
**DISALLOWANCE OF DEPRECIATION UNDER SECTION 32 AND CAPITAL EXPENDITURE UNDER SECTION 35AD ON CASH PAYMENT**

It is proposed to -

- To amend the provisions of **section 43** of the Act to provide that where an assessee incurs any expenditure for acquisition of any asset in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs. 10,000/-, such expenditure shall be ignored for the purposes of determination of actual cost of such asset.
- To amend **section 35AD** of the Act to provide that any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a

bank account, exceeds Rs. 10,000/-, no deduction shall be allowed in respect of such expenditure.

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This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

*Under the existing provisions of the Act, revenue expenditure incurred in cash exceeding certain monetary threshold is not allowable as per sub-section (3) of section 40A of the Act except in specified circumstances as referred to in Rule 6DD of the Income-tax Rules, 1962. However, there is no provision to disallow the capital expenditure incurred in cash.*

*Further, section 35AD of the Act, inter-alia provides for investment linked deduction on the amount capital expenditure incurred, wholly or exclusively for the purposes of business, during the previous year for a specified business except capital expenditure incurred for acquisition of any land or goodwill or financial instrument.*

## MEASURES TO DISCOURAGE CASH TRANSACTIONS

It is proposed to amend the provision of section 40A of the Act to provide the following:

- i. Reduce the existing threshold of cash payment to a person from twenty thousand rupees to ten thousand rupees in a single day **[section 40A(3)]**;
- ii. Deeming a payment as profits and gains of business of profession if the expenditure is incurred in a particular year but the cash payment is made in any subsequent year of a sum exceeding ten thousand rupees to a person in a single day **[section 40A(3A)]**; and

- iii. Further expand the specified mode of payment under respective sub-section of **section 40A** from 'an account payee cheque drawn on a bank or account payee bank draft' to 'by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account'.



This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

*The existing provision of sub-section (3) of Section 40A of the Act, provides that any expenditure in respect of which payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, shall not be allowed as a deduction.*

*Further, sub-section (3A) of section 40A also provides for deeming a payment as profits and gains of business of profession if the expenditure is incurred in a particular year but the payment is made in any subsequent year of a sum exceeding twenty thousand rupees otherwise than by an account payee cheque drawn on a bank or account payee bank draft.*

## MEASURES FOR PROMOTING DIGITAL PAYMENTS IN CASE OF SMALL UNORGANIZED BUSINESSES

It is proposed to amend **section 44AD** of the Act to reduce the existing rate of deemed total income of **8% to 6%** in respect of the amount of such total turnover or gross receipts received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year. However, the existing rate of deemed profit of 8% referred to in section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in any other mode.



## EFFECTIVE

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

*As per the existing provisions of section 44AD, in case of an eligible assessee engaged in eligible business having total turnover or gross receipts not exceeding two crore rupees in a previous year, a sum equal to 8% of the total turnover or gross receipts, or, as the case may be, a sum higher than the aforesaid sum declared by the assessee in his return of income, is deemed to be the profits and gains of such business chargeable to tax under the head "profits and gains of business or profession".*

## RESTRICTION ON CASH TRANSACTIONS

It is proposed to insert **section 269ST** in the Act to provide that no person shall receive an amount of three lakh rupees or more,—

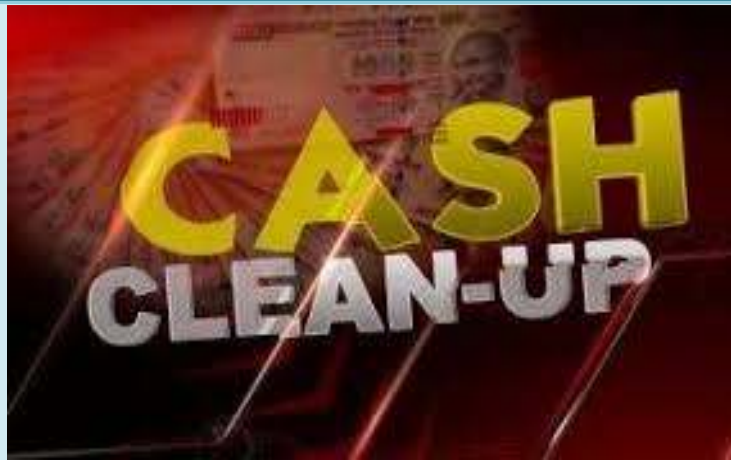
- (a) in aggregate from a person in a day;
  - (b) in respect of a single transaction; or
  - (c) in respect of transactions relating to one event or occasion from a person,
- otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

It is further proposed -

- To provide that the said restriction shall not apply to Government, any banking company, post office savings bank or co-operative bank. Further, it is proposed that such other persons or class of persons or receipts may be notified by the Central Government, for reasons to be recorded in writing, on whom the proposed restriction on cash transactions shall not apply. Transactions of the nature referred to in section 269SS are proposed to be excluded from the scope of the said section.
- To insert new **section 271DA** in the Act to provide for levy of penalty on a person who receives a sum in contravention of the provisions of the proposed section 269ST. The penalty is proposed to be a sum equal to the amount of such receipt. The said penalty shall however not be levied if the person proves that there were good and sufficient reasons for such contravention. It is also

proposed that any such penalty shall be levied by the Joint Commissioner.

- To consequentially amend the provisions of **section 206C** to omit the provision relating to tax collection at source at the rate of 1% of sale consideration on cash sale of jewellery exceeding five lakh rupees.



**These amendments will take effect from 1st April, 2017.**

## F. TRANSPARENCY IN ELECTORAL FUNDING

It is proposed to amend the provisions of section 13A to provide for additional conditions for availing the benefit of the said section which are as under:

- No donations of Rs.2000/- or more is received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds,
- Political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under section 139.

it is also proposed to amend the said section to provide that the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond



**This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19 and subsequent years.**

*The existing provisions of section 13A of the Act, inter-alia provides that political parties that are registered with the Election Commission of India, are exempt from paying income-tax. To avail the exemption, the political parties are required to submit a report to the Election Commission of India as mandated under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) furnishing the details of contributions received by a political party in excess of Rs.20,000 from any person.*

*However, under existing provisions of the Act, there is no restriction of receipt of any amount of donation in cash by a political party.*

## G. EASE OF DOING BUSINESS

### CLARITY RELATING TO INDIRECT TRANSFER PROVISIONS

It is proposed to amend the **section 9** so as to clarify that the *Explanation 5 shall not apply* to any asset or capital asset mentioned therein being investment held by non-resident, directly or indirectly, in a Foreign Institutional Investor, as referred to in clause (a) of the Explanation to section 115AD, and registered as Category-I or Category-II Foreign Portfolio Investor under the SEBI act 1992.



The amendment will be effective retrospectively from 1<sup>st</sup> April'2012, and will, accordingly apply in relation to assessment year 2012-13 and subsequent years.

*Section 9 of the Act deals with cases of income which are deemed to accrue or arise in India. The Finance Act'2012, amendments in the provisions of section 9 included insertion of Explanation 5 in section 9(1) (I) w. e. f 1<sup>st</sup> April'1962. The Explanation 5 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.*

## ENABLING OF FILING OF FORM 15G/15H FOR COMMISSION PAYMENTS SPECIFIED UNDER SECTION 194D

23

It is proposed to amend **section 197A** so as to make them eligible for filing self-declaration in Form No. 15G/15H for Non-deduction of tax at source in respect insurance commission referred to in section 194D



The amendment will be effective from 1<sup>st</sup> June'2017.

*Section 194D of the Act provides for TDS at the rate of 5% for payments in the nature of insurance commission beyond a threshold limit of Rs. 15,000 per financial year.*

*Further, As per section 197A of the Act 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.*

## **INCREASING THE THRESHOLD LIMIT FOR MAINTENANCE OF BOOKS OF ACCOUNTS IN CASE OF INDIVIDUALS AND HINDU UNDIVIDED FAMILY**

It is proposed to amend the provisions of **section 44AA** to increase monetary limits of income and total sales or turnover or gross receipts, etc specified in said clauses for maintenance of books of accounts from Rs. 1,20,000/- to Rs. 2,50,000/- and from Rs. 10,00,000/- to Rs. 25,00,000/- respectively in the case of Individuals and Hindu undivided family carrying on business or profession.





**EFFECTIVE**

The amendment will be effective from 1<sup>st</sup> April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

*The existing provisions of **clause (i) and clause (ii) of sub-section (2) of section 44AA** of the Act cast an obligation on every person carrying on business or profession [other than those mentioned in sub-section (1) such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette] to maintain such books of accounts and documents in the previous year to enable the Assessing Officer to compute his total income in accordance with the provisions of Act, provided that the income and total sales or turnover or gross receipts, etc specified in said clauses exceeds Rs. 1,20,000/- and Rs. 10,00,000/- respectively.*

#### **EXCLUSION OF CERTAIN SPECIFIED PERSON FROM REQUIREMENT OF AUDIT OF ACCOUNTS UNDER SECTION 44AB**

It is proposed to amend the section 44AB to exclude the eligible person, who declares profits for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, total turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year, from requirement of audit of books of accounts under section 44AB



**EFFECTIVE**

**The amendment will be effective from 1<sup>st</sup> April'2017 and will apply in relation to the assessment year 2017-18 and subsequent years.**

*Section 44AB of the Act provides that every person carrying on the business is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceeds one crore rupees. The threshold limit for applicability of presumptive taxation in case of eligible business carried on by eligible person under section 44AD was increased to two crore rupees from one crore rupees with effect from 1<sup>st</sup> April'2017 relevant to Assessment year 2017-18 by Finance Act, 2016.*

*Further vide press release dated 20<sup>th</sup> June'2016, it was clarified that if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees*

#### **EXEMPTION FROM TAX COLLECTION AT SOURCE UNDER SUB-SECTION (1F) OF SECTION 206C IN CASE OF CERTAIN SPECIFIED BUYERS**

It is proposed to amend section 206C, to exempt the following class of buyers such as the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; local authority as defined in explanation to clause (20) of Section 10; a public sector company which is engaged in the business of carrying passengers, from the applicability of the provision of sub- section (1F) of section 206C of the Act.



**EFFECTIVE**

**The amendment will be effective from 1<sup>st</sup> April'2017.**

*As per sub section (1F) of section 206C of the Act, provides that the seller who receives consideration for sale of a motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer.*

26

## **SIMPLIFICATION OF THE PROVISIONS OF TAX DEDUCTION AT SOURCE IN CASE FEES FOR PROFESSIONAL OR TECHNICAL SERVICES UNDER SECTION 194J**

It is proposed to amend **section 194J** to reduce the rate of deduction of tax at source to *two per cent from ten per cent* in case of payments received or credited to a payee, being a person engaged only in the business of operation of call center.



EFFECTIVE

The amendment will be effective from 1<sup>st</sup> April'2017.

*The existing provisions of sub section (1) of section 194J of the Act provide that a specified person is required to deduct an amount equal to ten per cent of any sum payable or paid (whichever is earlier) to a resident by way of fees for professional services or fees for technical services provided such sum paid/payable or aggregate of sum paid/payable exceeds thirty thousand rupees to a person in a financial year.*

## **SCOPE OF SECTION 92BA OF THE INCOME-TAX ACT RELATING TO SPECIFIED DOMESTIC TRANSACTIONS**

It is proposed to provide that expenditure in respect of which payment has been made by the assessee to a person referred to in under **section 40A(2)(b)** are to be excluded from the scope of section 92BA of the Act. Accordingly, it is also proposed to make a consequential amendment in section 40(A)(2)(b) of the Act.



EFFECTIVE

These amendments will take effect from 1<sup>st</sup>April, 2017 and will, accordingly, apply in relation to the assessment year 2017- 18 and subsequent years.

*The existing provisions of section 92BA of the Act, inter-alia provide that any expenditure in respect of which payment has been made by the assessee to certain "specified persons" under section 40A(2)(b) are covered within the ambit of specified domestic transactions.*

#### **TAX NEUTRAL CONVERSION OF PREFERENCE SHARES TO EQUITY SHARES**

It is proposed to amend the **section 47** to provide that the conversion of preference share of a company into its equity share shall not be regarded as transfer.



EFFECTIVE

These amendments will take effect from 1<sup>st</sup>April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

*Under the existing provisions of the Act, conversion of security from one form to another is regarded as transfer for the purpose of levy of capital gains tax. However, tax neutrality to the conversion of bond or debenture of a company to share or debenture of that company is provided under the section 47. No similar tax neutrality to the conversion of preference share of a company into its equity share is provided.*

## COST OF ACQUISITION IN TAX NEUTRAL DEMERGER OF A FOREIGN COMPANY

It is proposed to amend **section 49** so as to provide that cost of acquisition of the shares of Indian company referred to in section 47(vic) in the hands of the resulting foreign company shall be the same as it was in the hands of demerged foreign company.

CUSTOMER  
ACQUISITION



EFFECTIVE

These amendments will take effect from 1<sup>st</sup> April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

*The existing provision of section 47(vic), the transfer of shares of an Indian company by a demerged foreign company to a resulting foreign company is not regarded as transfer.*

## PROCESSING OF RETURN WITHIN THE PRESCRIBED TIME AND ENABLE WITHHOLDING OF REFUND IN CERTAIN CASES

It is proposed that provisions of section 143(1D) shall cease to apply in respect of returns furnished for assessment year 2017-18 and onwards.

However, to address the concern of recovery of revenue in doubtful cases, it is proposed to insert anew section 241A to provide that, for the returns furnished for assessment year commencing on or after 1st April, 2017, where refund of any amount becomes due to the assessee under section 143(1) and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up-to the date on which the assessment is made.



EFFECTIVE

These amendments will take effect from 1<sup>st</sup>April, 2017 and will, accordingly, apply to returns furnished for assessment year 2017-18 and subsequent years

*The provisions of sub-section (1D) of section 143 provide that the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2) of the said section.*

### RATIONALIZATION OF SECTION 211 AND SECTION 234C RELATING TO ADVANCE TAX

It is proposed –

- I. To amend **clause (b) of sub-section (1) of section 211** to provide that the assessee who declares profits and gains in accordance with presumptive taxation regime provided **under section 44ADA (in case of professionals)** shall also be liable to pay advance tax in one installment on or before the 15th of March.
- II. To make consequential amendments in sub-section (1) of section 234C to provide that in respect of an assessee referred to in section 44ADA, interest under the said section shall be levied, if the advance tax paid on or before the 15th March, is less than the tax due on the returned income.
- III. To provide that that if shortfall in payment of advance tax is on account of under-estimation or failure in estimation of income of the nature referred to in section 115BBDA, the interest under section 234C shall not be levied subject to fulfillment of conditions specified therein.



Advance  
TAX



EFFECTIVE

These amendments will take effect from 1<sup>st</sup>April, 2017 and will, accordingly, apply to returns furnished for assessment year 2017-18 and subsequent years

Section 211 of the Act provides for installments of advance tax and due dates for depositing the same. Clause (b) of sub-section (1) of the said section provides that an eligible assessee engaged in an eligible business referred to in section 44AD is liable to pay advance tax in a single installment on or before the 15th of March every financial year. Vide Finance Act 2016, presumptive taxation regime has been extended to professionals also has clarified the tax on certain dividends received from domestic companies to be levied under section 115BBDA of the Act with effect from the 1st April, 2017, if such income exceeds ten lakh rupees.

However, in view of the uncertain nature of declaration and receipt of dividend incomes, an assessee liable to pay advance tax may not be able to correctly determine such liability within the payment schedule as specified under section 211 and shall, therefore, incur levy of interest on deferment of advance tax as specified under clauses (a) or (b) of section 234C(1).

### **INTEREST ON REFUND DUE TO DEDUCTOR**

It is proposed to insert a **new sub-section (1B)** in the said section to provide that where refund of any amount becomes due to the deductor, such person shall be entitled to receive, in addition to the refund, simple interest on such refund, calculated at the rate of **one-half per cent (1.5%)** for **every month or part of a month** comprised in the period, from the date on which claim for refund is made in the prescribed form or in case of an order passed in appeal, from the date on which the tax is paid, to the date on which refund is granted.

It is also proposed to provide that the interest shall not be allowed for the period for which the delay in the proceedings resulting in the refund is attributable to the deductor.



EFFECTIVE

This amendment will take effect from 1st April, 2017.

The existing section 244A of the Act provides that an assessee is entitled to receive interest on refund arising out of excess payment of advance tax, tax deducted or collected at source, etc.

## H.ANTI-ABUSE MEASURES

### EXEMPTION OF LONG TERM CAPITAL GAIN U/S 10(38)

It is proposed to amend **section 10(38)** to provide that exemption under this section for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the **acquisition of share** is chargeable to Securities Transactions Tax under Chapter VII of the Finance (No 2) Act, 2004.

However, to protect the exemption for genuine cases where the Securities Transactions Tax could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company acquisition by non-resident in accordance with FDI policy of the Government etc., it is also proposed to notify transfers for which the condition of chargeability to Securities Transactions Tax on acquisition shall not be applicable.



EFFECTIVE

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

*Under the existing provisions of the Section 10(38) of the Income-tax Act, 1961, the income arising from a transfer of long term capital asset, being equity share of a company or a unit of an equity oriented fund, is exempt from tax if the transaction of sale is undertaken on or after 1st October, 2014 and is chargeable to Securities Transaction Tax under Chapter VII of the Finance (No.2) Act, 2004.*

### FAIR MARKET VALUE TO BE FULL VALUE OF CONSIDERATION IN CERTAIN CASES

A new section 50CA is inserted to provide that where consideration for transfer of share of a company (other than quoted share) is less than the Fair Market Value (FMV) of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "Capital gains".





EFFECTIVE

**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.**

*As per the existing provisions, the Act contained provisions for deeming of full value of consideration in certain cases such as deeming of stamp duty value as full value of consideration for transfer of immovable property in certain cases.*

#### **WIDENING SCOPE OF INCOME FROM OTHER SOURCES**

It is proposed to insert a new clause (x) in sub-section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". It is also proposed to widen the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47.

Consequential amendment is also proposed in section 49 for determination of cost of acquisition.



EFFECTIVE

**These amendments will take effect from 1st April, 2017 and the said receipt of sum of money or property on or after 1st April, 2017 shall be chargeable to tax in accordance with the provisions of proposed clause (x) of sub-section (2) of section 56.**

*Under the existing provisions of section 56(2)(vii), any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to income-tax in the hands of the resident under the head "Income from other sources" subject to certain exceptions. Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to income-tax in case such receipt is in excess of Rs. 50,000 and is received without consideration or for inadequate consideration.*

*The existing definition of property for the purpose of this section includes immovable property, jewellery, shares, paintings, etc. These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases. Therefore, receipt of sum of money or property without consideration or for inadequate consideration does not attract these anti-abuse provisions in cases of other assessees.*

## **DISALLOWANCE FOR NON-DEDUCTION OF TAX FROM PAYMENT TO RESIDENT**

It is proposed to amend section 58 so as to provide that provisions of section 40(a)(ia) shall, so far as they may be, apply in computing income chargeable under the head "income from other sources" as they apply in computing income chargeable under the head "Profit and gains of business or Profession".



**EFFECTIVE**

**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.**

*Existing provisions of section 58 of the Act, specify the amounts which are not deductible in computing the income under the head "Income from other sources" which include certain disallowances made in computation of income under the head "Profits and gains of business or profession". These disallowances include disallowances such as disallowance of cash expenditure, disallowance for non-deduction of tax from payment to non-resident, etc.*

**LIMITATION OF INTEREST DEDUCTION IN CERTAIN CASES**

34

It is proposed to insert a **new section 94B**, in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less. Further, some important provisions are as under:

- The provision shall be applicable to an Indian company, or a permanent establishment of a foreign company being the borrower who pays interest in respect of any form of debt issued to a non-resident or to a permanent establishment of a non-resident and who is an 'associated enterprise' of the borrower.
- The debt shall be deemed to be treated as issued by an associated enterprise where it provides an implicit or explicit guarantee to the lender or deposits a corresponding and matching amount of funds with the lender.
- The provisions shall allow for carry forward of disallowed interest expense to eight assessment years immediately succeeding the assessment year for which the disallowance was first made and deduction against the income computed under the head "Profits and gains of business or profession to the extent of maximum allowable interest expenditure.
- In order to target only large interest payments, it is proposed to provide for a threshold of interest expenditure of one crore rupees exceeding which the provision would be applicable.
- It is further proposed to exclude Banks and Insurance business from the ambit of the said provisions keeping in view of special nature of these businesses.



**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.**

**SECONDARY ADJUSTMENTS IN CERTAIN CASES**

35

"Secondary adjustment" means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. As per the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD transfer pricing guidelines), secondary adjustment may take the form of constructive dividends, constructive equity contributions, or constructive loans.

In order to align the transfer pricing provisions in line with OECD transfer pricing guidelines and international best practices, it is proposed -

- To insert a new section 92CE to provide that the assessee shall be required to carry out secondary adjustment where the primary adjustment to transfer price, has been made suo motu by the assessee in his return of income; or made by the Assessing Officer has been accepted by the assessee; or is determined by an advance pricing agreement entered into by the assessee under section 92CC; or is made as per the safe harbour rules framed under section 92CB; or is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or 90A.
- To provide that where as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee , in the manner as may be prescribed.
- To provide that such secondary adjustment shall not be carried out if, the amount of primary adjustment made in the case of an assessee in any previous year does not exceed one crore rupees and the primary adjustment is made in respect of an assessment year commencing on or before 1st April,2016.



**EFFECTIVE**

**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.**

## RESTRICTION ON EXEMPTION IN CASE OF CORPUS DONATION BY EXEMPT ENTITIES TO OTHER EXEMPT ENTITIES

36

It is proposed to insert a new Explanation to section 11 of the Act to provide that any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1) of section 11, being contributions with specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income.

It is also proposed to insert a proviso in clause (23C) of section 10 so as to provide similar restriction as above on the entities exempt under sub-clauses (iv), (v), (vi) or (via) of said clause in respect of any amount credited or paid out of their income.



**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.**

*As per the existing provisions of the Act, donations made by a trust 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 sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, except those made out of accumulated income, is considered as application of income for the purposes of its objects.*

*Similarly, donations made by entities exempted under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 to any trust or institution registered under section 12AA, except those made out of accumulated income, is also considered as application of income for the purposes of its objects.*

*However, donation given by these exempt entities to another exempt entity, with specific direction that it shall form part of corpus, is though considered application of income in the hands of donor trust but is not considered as income of the recipient trust. Trusts, thus, engage in giving corpus donations without actual applications.*

## Mandatory furnishing of return by certain exempt entities

37

In order to verify that certain entities which enjoy exemption under section 10 actually carry out the activities for which the exemption has been provided under the Act, it is proposed to provide that any person as referred to in clause (23AAA), Investor Protection Fund referred to in clause (23EC) or clause (23ED), Core Settlement Guarantee Fund referred to in clause (23EE) and any Board or Authority referred to in clause (29A) of section 10 shall also be mandatorily required to furnish a return of income.



EFFECTIVE

**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.**

*The existing provisions of sub-section (4C) of section 139 mandate filing of return by certain entities which are exempt from the levy of income-tax.*

## FEE FOR DELAYED FILING OF RETURN

In order to ensure that return is filed within due date, it is proposed to insert a new section 234F in the Act to provide that a fee for delay in furnishing of return shall be levied for assessment year 2018-19 and onwards in a case where the return is not filed within the due dates specified for filing of return under sub-section (1) of section 139. The proposed fee structure is as follows:—

- (i) a fee of five thousand rupees shall be payable, if the return is furnished after the due date but on or before the 31st day of December of the assessment year;
- (ii) a fee of ten thousand rupees shall be payable in any other case.

However, in a case where the total income does not exceed five lakh rupees, it is proposed that the fee amount shall not exceed one thousand rupees.

In view of above, it is proposed to make consequential amendment in section 140A to include that in case of delay in furnishing of return of income, alongwith the tax and interest payable, fee for delay in furnishing of return of income shall also be payable.

It is also proposed to make consequential amendment in sub-section (1) of section 143, to provide that in computation of amount payable or refund due, as the case may be, on account of processing of return under the said sub-section, the fee payable under section 234F shall also be taken into account. Consequentially, it is also proposed that the provisions of section 271F in respect of penalty for failure to furnish return of income shall not apply in respect of assessment year 2018-19 and onwards.



EFFECTIVE

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

### **Penalty on professionals for furnishing incorrect information in statutory report or certificate**

The thrust of the Government in recent past is on voluntary compliance. Certification of various reports and certificates by a qualified professional has been provided in the Act to ensure that the information furnished by an assessee under the provisions of the Act is correct. Various provisions exist under the Act to penalize the defaulting assessee in case of furnishing incorrect information. However, there exist no penal provision for levy of penalty for furnishing incorrect information by the person who is responsible for certifying the same.

In order to ensure that the person furnishing report or certificate undertakes due diligence before making such certification, it is proposed to insert a new section 271J so as to provide that if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of ten thousand rupees for each such report or certificate by way of penalty.

It is further proposed to define the expressions "accountant", "merchant banker" and "registered valuer". It is also proposed to provide through amendment of section 273B that if the person proves that there was reasonable cause for the failure referred to in the said section, then penalty shall not be imposable in respect of the proposed section 271J.



EFFECTIVE

**These amendments will take effect from 1st April, 2017.**

## I.RATIONALISATION MEASURES

### CLARIFICATION REGARDING THE APPLICABILITY OF SECTION 112

It is proposed to amend **section 50** of the Finance Act, 2016 so as to provide that the effective date of amendment made to section 112(1) (c)(iii) vide Finance Act, 2016 shall be **01-04-2013 instead of 01-04-2017.**



EFFECTIVE

**This amendment will take effect, retrospectively from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.**

*Finance Act, 2012 with effect from 1st April, 2013 amended the provisions of section 112(1)(c) to provide concessional rate of taxation of ten per cent for long-term capital gains arising from the transfer of unlisted securities in case of non-resident. There was an uncertainty as to whether the provision of section 112(1) (c)(iii) is applicable to the transfer of share of a private company.*

*Finance Act, 2016 amended section 112(1)(c) to clarify that the share of company in which public are not substantially interested shall also be chargeable to tax at the rate of ten per cent with effect from 1st April, 2017. As the concessional rate was provided with effect from 1st April, 2013, there was uncertainty about the applicability of the amendment to the intervening period.*



**RATIONALISATION OF PROVISIONS OF SECTION 10AA**

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It is proposed to clarify that the amount of deduction referred to in section 10AA shall be allowed from **the total income of the assessee** computed in accordance with the provisions of the Act before giving effect to the provisions of the section 10AA and the deduction under section 10AA in no case shall exceed the said total income.



**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.**

*Under the section 10AA, deduction is allowed from the total income of an assessee, in respect of profits and gains from his Unit operating in SEZ, subject to fulfilment of certain conditions. Section 10AA allows deduction in computing the total income of the assessee, hence the deduction is to be allowed for the total income of the assessee as computed in accordance with the provision of the Act before giving effect to the provisions of section 10AA. However, courts have taken a view (while deciding the matter pertaining to section 10A which also contains similar provision) that the deduction is to be allowed from the total income of the undertaking and not from the total income of the assessee.*

**DEFINITION OF 'PERSON RESPONSIBLE FOR PAYING' IN CASE OF PAYMENTS COVERED UNDER SUB-SECTION (6) OF SECTION 195**

In order to bring clarity to the meaning of 'person responsible for paying' in case of payment by a resident to a non-resident in accordance with section 195(6) of the Act, it is proposed to amend the said section of the Act to provide that in the case of furnishing of information relating to payment to a non-resident, not being a company, or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act, 'person responsible for paying' shall be the payer himself, or, **if the payer is a company, the company itself including the principal officer thereof.**



**This amendment will take effect from 1st April, 2017**

*The existing provisions of section 204 of Act, has defined the meaning of 'person responsible for paying' to include employer, company or its principal officer or the payer. Further clause (iii) of section 204 of the Act, inter alia, provides that in the case of credit or payment of any sum chargeable under the provisions of this Act, the 'person responsible for paying' shall be the payer himself, or, if the payer is a company, the company itself including the principal officer thereof. However, the said section does not cover in respect of payment of any sum as per sub-section (6) of section 195. Which mandates the 'person responsible for paying' to furnish information relating to payment of any sum, whether chargeable to tax or not.*

### **ACTUAL COST OF ASSET IN CASE OF WITHDRAWAL OF DEDUCTION IN TERMS OF SUB-SECTION (7B) OF SECTION 35AD**

It is proposed to amend the provisions of the section 43 of the Act, to provide that where any capital asset in respect of which deduction allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of sub-section (7B) of the said section, the actual cost to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purposes of business since the date of its acquisition.



**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.**

*The existing provisions of Section 35AD of the Act, inter alia provides for investment linked deduction on amount of capital expenditure incurred, wholly or exclusively, the purposes of business, during the previous year for a specified business excluding capital expenditure incurred for acquisition of any land or goodwill or financial instrument. Further sub-section (7B) of Section 35AD provides that where any asset on which benefit of section 35AD is claimed and allowed, is used for a purpose other than specified business, the benefit of deduction already granted under section 35AD shall be deemed to be the income of the assessee. However, it further provides that the deemed income shall be net of normal depreciation as would be entitled.*

*Clause (1) of section 43 defines "actual cost" for the purposes of claiming depreciation under section 32 of the Act in certain situations. However, there is no clarity on determination of actual cost for the purposes of allowance of depreciation of such assets in respect of which the deduction which is already allowed in a*

*previous year under section 35AD of the Act, is withdrawn in terms of sub-section (7B) of the said section.*

## CLARITY OF PROCEDURE IN RESPECT OF CHANGE OR MODIFICATIONS OF OBJECT AND FILING OF RETURN OF INCOME IN CASE OF ENTITIES EXEMPT UNDER SECTIONS 11 AND 12

It is proposed to amend section 12A so as to provide that where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996] and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, it shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner.

In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act.



EFFECTIVE

**This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and**

*The existing provisions of section 12A of the Act provide for conditions for applicability of sections 11 and 12 in relation to the benefit of exemption in respect of income of any trust or institution. Further, the provisions of section 12AA of the Act provide for registration of the trust or institution which entitles them to the benefit of sections 11 and 12. It also provides the circumstances under which registration can be cancelled, one such circumstance being satisfaction of the Principal Commissioner or Commissioner that its activities are not genuine or are not being carried out in accordance with its objects subsequent to grant of registration. However, at present there is no explicit provision in the Act which mandates said trust or institution to approach for fresh registration in the event of adoption or undertaking modifications of the objects after the registration has been granted.*

## STRENGTHENING OF PAN QUOTING MECHANISM IN THE TCS REGIME

In order to strengthen the PAN mechanism, it is proposed to insert new **section 206CC** to provide the following:

- i. any person paying any sum or amount, on which tax is collectable at source under Chapter XVII BB (hereafter referred to as collectee) shall furnish his Permanent Account Number to the

person responsible for collecting such tax (hereafter referred to as collector), failing which tax shall be collected at the twice the rate mentioned in the relevant section under Chapter XVII BB or at the rate of five per cent. whichever is higher.

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- ii. The declaration filed under sub section (1A) of section 206C shall not be valid unless the person filing the declaration furnishes his Permanent Account Number in such declaration.
- iii. In case any declaration becomes invalid under above sub-section, the collector shall collect the tax at source in accordance with the provisions of sub-section (1).
- iv. No certificate under sub section (9) of section 206C shall be granted unless it contains the Permanent Account Number of the applicant.
- v. The collector knows about the correct PAN of the collectee. It is also proposed to provide for mandatory quoting of PAN of the collectee by both the collector and the collectee in all correspondence, bills and vouchers exchanged between them.
- vi. The collectee shall furnish his Permanent Account Number to the collector who shall indicate the same in all its correspondence, bills, vouchers and other documents which are sent to collectee.
- vii. where the Permanent Account Number provided by the collectee is invalid or it does not belong to the collectee, then it shall be deemed that Permanent Account Number has not been furnished to the collector.
- viii. to exempt the non-resident who does not have permanent establishment in India from the provisions of this proposed section 206CC of the Act.



**This amendment will take effect from 1st April, 2017.**

*Statutory provisions for deduction of tax at source (TDS) at higher rate of 20% or the applicable rate whichever is higher) in case of non-quoting of Permanent Account Number (PAN) is provided under section 206AA of the Act and it exist since April, 2010. PAN acts as a common thread for linking the information in the departmental data base. It may also be noted that the process of allotment of PAN is made simple and robust. PAN application can be made online and PAN gets allotted in less than a week.*

**RATIONALIZATION OF DEDUCTION UNDER SECTION 80CCG**

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It is proposed to phase out this deduction by providing that **no deduction under section 80CCG shall be allowed from assessment year 2018-19**. However, an assessee who has claimed deduction under this section for assessment year 2017-18 and earlier assessment years shall be allowed deduction under this section till the assessment year 2019-20 if he is otherwise eligible to claim the deduction as per the provisions of this section.



This amendment will take effect from the 1st April, 2018 and shall accordingly apply in relation to assessment year 2018-19 and subsequent years.

*Under the existing provisions of section 80CCG, deduction for three consecutive assessment years is allowed up to Rs. 25,000/- to a resident individual for investment made in listed equity shares or listed units of an equity oriented fund subject to fulfillment of certain conditions. This deduction was introduced vide Finance Act, 2012*

**RESTRICTION ON SET-OFF OF LOSS FROM HOUSE PROPERTY**

It is proposed to insert sub-section (3A) in the section 71 to provide that set-off of loss under the head "Income from house property" against any other head of income shall be restricted to two lakh rupees for any assessment year. However, the unabsorbed loss shall be allowed to be carried forward for set-off in subsequent years in accordance with the existing provisions of the Act.



This amendment will take effect from the 1st April, 2018 and shall accordingly apply in relation to assessment year 2018-19 and subsequent years.

*Section 71 of the Act relates to set-off of loss from one head against income from another.*

## EXTENSION OF THE POWER TO SURVEY

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It is proposed to widen the scope of the said section by amending sub-section (1) to include any place, at which an activity for charitable purpose is carried on.



This amendment will take effect from 1<sup>st</sup> April, 2017.

*The existing provisions of section 133A empower an income-tax authority to enter any place, at which a business or profession is carried on, or at which any books of account or other documents or any part of cash or stock or other valuable article or thing relating to the business or profession are kept, for the purposes of conducting a survey.*

## LEGISLATIVE FRAMEWORK TO ENABLE CENTRALISED ISSUANCE OF NOTICE AND PROCESSING OF INFORMATION UNDER SECTION 133C

In order to expedite verification and analysis of the information and documents so received, it is proposed to amend section 133C to empower the Central Board of Direct Taxes to make a scheme for centralised issuance of notice calling for information and documents for the purpose of verification of information in its possession, processing of such documents and making the outcome thereof available to the Assessing Officer for necessary action, if any.



This amendment will take effect from 1<sup>st</sup> April, 2017.

*Section 133C of the Act empowers the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.*

**CORRECT REFERENCE TO FEMA INSTEAD OF FERA**

The definition of person outside India is occurring in clause (w) of FEMA.



**This amendment will take effect retrospectively from 1st April, 2013, and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent years.**

*Existing sub-clause (ii) of clause 4 of section 10 refers to any income of an individual by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the Foreign Exchange Management Act, 1999 (42 of 1999), and the rules made thereunder.*

*The provision to the said sub-clause refers individual to be a person resident outside India, as defined in clause (q) of section 2 of Act 46 of 1973, i.e., Foreign Exchange Regulation Act, 1973, (FERA).*

**J. TAX-EXEMPTION TO PARTIAL WITHDRAWAL FROM NATIONAL PENSION SYSTEM (NPS)**

It is proposed to amend the section 10 so as to provide exemption to partial withdrawal not exceeding 25% of the contribution made by an employee in accordance with the terms and Conditions specified under Pension Fund Regulatory and Development Authority Act, 2013 and regulations made there under.



**This amendment will take effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19 and subsequent years**

*The existing provision of section 10(12A) provides that payment from National Pension System (NPS) trust to an employee on closer of his account or opting out shall be exempt up to 40% of total amount payable to him.*



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