



THE INSTITUTE OF
CHARTERED ACCOUNTANTS
WIRC – Pune Branch

FINANCE BILL (No. 2), 2019 |
Analysis of DIRECT TAX proposals

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INDEX

- ❑ RATES OF TAXES
- ❑ INDIVIDUAL & SMALL TAX PAYERS
- ❑ DEDUCTION OF TAX AT SOURCE
- ❑ STARTUPS
- ❑ SHARES & SECURITIES
- ❑ DEMERGER – Ind AS
- ❑ INCENTIVES TO INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)
- ❑ NON BANKING FINANCIAL COMPANIES (NBFCs)
- ❑ AFFORDABLE HOUSING SCHEME
- ❑ LESS CASH ECONOMY
- ❑ TAXATION ON NON-RESIDENTS
- ❑ TRANSFER PRICING
- ❑ CHARITABLE TRUST
- ❑ PROCEDURAL PROVISIONS, PENALTY AND PROSECUTION



RATES OF TAX

RATES OF TAX

- ❑ No change in basic income-tax rates for AY 2020-21 (except in case of companies)
- ❑ Surcharge in case of Individuals/HUF/BOI/AJPs increased:

Total Income	Surcharge
> ₹50 lakhs but ≤ ₹1 crore	10%
> ₹1 crore but ≤ ₹2 crore	15%
> ₹2 crore but ≤ ₹5 crore	25%
> ₹5 crore	37%

- ❑ Effect of change in rate of surcharge on MMR in case of Individuals:

Income	MMR	Existing Tax Rate*	Proposed Tax Rate*	Increase in Effective Rate
50L to 1cr	30%	34.32%	34.32%	-
1cr to 2cr	30%	35.88%	35.88%	-
2cr to 5cr	30%	35.88%	39.00%	3.12%
Above 5cr	30%	35.88%	42.74%	6.86%

* Incl surcharge and cess

RATES OF TAX (cont'd)

- ❑ Will interest u/s 234C be payable on shortfall of advance tax for Quarter 1?
- ❑ Rebate for Resident Individuals: Rebate u/s 87A has been increased to ₹12,500/- vide Finance Act, 2019 for resident individuals whose total income does not exceed ₹5,00,000/-. The amount of rebate will be the actual tax payable or Rs. 12,500/-, whichever is lower.
- ❑ Corporate Tax Rate*:

Turnover/gross receipts limit	Rate of tax
(i) In PY 2016-17 ≤ ₹ 250crs PY 2017-18 ≤ ₹ 400 crs	25%
(ii) other than those referred to in item (i)	30%

- ❑ FM Speech – Proposed change in corporate tax rate will cover 99.3% of the companies. Only 0.7% of companies will come under 30% tax bracket.

**Surcharge @7% if taxable income exceeds ₹1 Cr and @12% if taxable income exceed ₹10crs*



INDIVIDUALS & SMALL TAXPAYERS

TDS u/s 194M on Payment to Contractors & Professionals

<input type="checkbox"/> DEDUCTOR	Individual or HUF (other than those liable to tax audit in the preceding financial year)
<input type="checkbox"/> DEDUCTEE	Any resident
<input type="checkbox"/> NATURE OF PAYMENT	<input type="checkbox"/> Payment for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract <input type="checkbox"/> Fees for professional services
<input type="checkbox"/> RATE OF DEDUCTION	5%
<input type="checkbox"/> TIME OF DEDUCTION	Payment or Credit, whichever is earlier
<input type="checkbox"/> THRESHOLD	No TDS where aggregate of such sums credited or paid to a resident during a financial year does not exceed <input type="checkbox"/> 50 lakhs
<input type="checkbox"/> OTHERS	Provisions of S. 203A shall not apply

S. 194M proposed to be effective from Sept 1, 2019 – Threshold to be computed from which date

MANDATORY FILING OF RETURN – S. 139

- ❑ A person shall be **mandatorily required to file his return of income**, if during the previous year, he
 - **has deposited** an amount or aggregate of the amounts > **₹1cr** in *one or more current account* maintained with a banking company or a co-operative bank; or
 - **has incurred expenditure** of an amount or aggregate of the amounts > **₹2 lakhs** for himself or any other person *for travel to a foreign country*; or
 - **has incurred expenditure** of an amount or aggregate of the amounts > **₹1 lakhs towards consumption of electricity**; or
 - fulfils such other prescribed conditions, as may be prescribed.

- ❑ This amendment is the **new avatar of the earlier ‘one by six’ scheme** contained in proviso 1 to section 139(1) mandating furnishing of returns by individuals and HUFs.

MANDATORY FILING OF RETURN – S. 139 (cont'd)

- ❑ A person **claiming rollover benefits** on investment in a house or a bond or other assets, u/s 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB of the Act, shall necessarily be required to furnish a return, → if → **before claim** of the rollover benefits, → his **total income is more than the maximum amount not chargeable to tax.**

Will rollover benefits be denied on account of non-filing of return?

INCENTIVES TO NATIONAL PENSION SYSTEM (NPS) SUBSCRIBERS

- ❑ Contribution to NPS referred in S. 80CCD by Central Govt. employee for a fixed period of not less than 3 years → **Deduction u/s 80C**
- ❑ Contribution by Central Govt. to NPS account of employee → Increase in limit of deduction u/s 80CCD from 10% to **14%**
- ❑ Any payment from NPS Trust to an assessee on closure of his account or on his opting out of the pension scheme → exemption u/s 10(12A) increased from 40% to **60%**

S. 80EEA – DEDUCTION OF INTEREST ON LOAN TAKEN FOR HOUSE PROPERTY

Particulars	S. 80EE	S.80EEA
Deduction	Interest on housing loan taken by individual	Interest on housing loan taken by individual not eligible for deduction u/s 80EE
Limit on interest deduction	₹ 50,000	₹ 150,000
W.e.f.	AY 2017-18	AY 2020-21
Conditions	<ul style="list-style-type: none"> ▪ The loan has been sanctioned during FY 2016-17; ▪ Value of residential house \leq ₹ 50 lakhs; ▪ The assessee does not own any residential house on the date of sanction of the loan. ▪ Loan amount sanctioned \leq ₹ 35 lakhs; 	<ul style="list-style-type: none"> ▪ The loan has been sanctioned during FY 2019-20; ▪ The stamp duty value of residential house \leq ₹ 45 lakhs ▪ The assessee does not own any residential house on the date of sanction of the loan.

S. 80EEA – DEDUCTION OF INTEREST ON LOAN TAKEN FOR HOUSE PROPERTY (cont'd)

Particulars	S. 80EE	S.80EEA
Restriction	Where a deduction under this section is allowed for any interest referred to in subsection (1), 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.	

Will loan taken for construction of house property be eligible for deduction u/s 80EEA?

Can deduction of interest be claimed u/s 24(b) in addition to deduction u/s 80EEA

S. 80EEB – DEDUCTION OF INTEREST ON LOAN TAKEN FOR PURCHASE OF ELECTRIC VEHICLE

- ❑ Deduction upto ₹ 1.5 lakhs for the interest payable by an individual on a loan taken by him for the **purchase of an electric vehicle**.
- ❑ Deduction allowed only if such loan is sanctioned by the financial institution between April 1, 2019 and March 31, 2023.
- ❑ Interest claimed as a deduction u/s 80EEB not allowed to be claimed under other provisions of the Act.
- ❑ “electric vehicle” means a vehicle which is **powered exclusively by an electric motor**.....

Are hybrid cars are out?

Is the deduction available only for one electric vehicle?



DEDUCTION OF TAX AT SOURCE

TDS u/s 194N on Cash Withdrawals

<input type="checkbox"/> DEDUCTOR	Banking Company; Co-op society engaged in banking business; post office
<input type="checkbox"/> DEDUCTEE	Any person, except – Govt., banking company or co-op society engaged in banking, business correspondents of such banking entities, white ATM operator, other persons as may be notified
<input type="checkbox"/> NATURE OF PAYMENT	Cash payment from an account maintained by deductor
<input type="checkbox"/> RATE OF DEDUCTION	2 %
<input type="checkbox"/> TIME OF DEDUCTION	At the time of payment
<input type="checkbox"/> THRESHOLD	TDS on cash withdrawal exceeding ₹ 1crore

S. 194N proposed to be effective from Sept 1, 2019 – Threshold to be computed from which date

TDS u/s 194N on Cash Withdrawals

- TDS in on income – Is cash withdrawal income?

- Grant of TDS credit

- Will bearer cheque be construed to be cash withdrawal?

- Risk of S. 40A(3) disallowance & Penalty u/s 269ST increased



- Constitutional Validity

- Limit of ₹1cr *qua* each account of the deductee or aggregate of all accounts maintained with one bank

- How would deduction of tax work in case of joint account holders and trusts?

- S. 194N will be effective from Sept 1, 2019 – From when should the threshold of ₹1cr to be computed?

S. 194IA – PURCHASE OF IMMOVABLE PROPERTY

<input type="checkbox"/> DEDUCTOR	Any person, being transferee (other than person referred to in S. 194LA)
<input type="checkbox"/> DEDUCTEE	Resident transferor
<input type="checkbox"/> NATURE OF PAYMENT	Consideration for transfer of any immovable property (other than agricultural land) <ul style="list-style-type: none">▪ “immovable property” means any land (other than agricultural land) or any building or part of a building.
<input type="checkbox"/> RATE OF DEDUCTION	1%
<input type="checkbox"/> TIME OF DEDUCTION	Payment or Credit, whichever is earlier
<input type="checkbox"/> THRESHOLD	No TDS where consideration < ₹ 50 lakhs
<input type="checkbox"/> OTHERS	Provisions of TAN not applicable

“consideration for immovable property” shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property;

TDS u/s 194DA on Payment in respect of Life Insurance Policy

- ❑ U/s 194DA, tax on any sum paid under a life insurance policy which is not exempt u/s 10(10D) is deductible at rate of 1%. Under the existing provisions TDS is on the gross amount.
- ❑ The proposed amendment seeks to increase the TDS rate from 1% to 5% and further provides for TDS on the income comprised therein.
- ❑ The amendment is proposed to remove the hardship that were faced by the tax payers due to mismatch of the gross amount on which TDS has been deducted which used to appear in Form 26AS and net income reflected in Return of Income.

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RELAXING THE RIGOURS OF S. 201 & S. 40 ON PAYMENTS TO NON-RESIDENTS

Existing Provisions

Non-compliance with TDS provisions → ASSESSEE-IN-DEFAULT u/s 201(1)



ASSESSEE DEEMED **NOT** TO BE IN DEFAULT where **resident payee** has –

- (a) has furnished his return of income u/s 139,
- (b) has taken into account such sum for computing income in such return of income;
- (c) has paid the tax due on the income declared by him in such return of income; and
- (d) furnishes an accountant's certificate to this effect in the prescribed form and

←
Correspondingly, no disallowance u/s 40(a)(ia)

Proposed amendment

Similar dispensation available in case of payment to non-resident

- Amendment u/s 201(1) : w.e.f Sept 1, 2019
- Amendment u/s 40(a)(i) : w.e.f. April 1, 2020

Will the benefit be available for expenditure incurred between April 1 to Aug 31, 2019?

TIME LIMIT TO PASS TDS ORDER – S. 201(3)

“(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given **or two years from the end of the financial year in which the correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later.**”

- ❑ 2 years to be computed from the date of filing the original or the revised correction statement filed u/s 200(3):
 - In the context of pre-2014 amended S. 201(3), in the case of ***Tril Infopark Ltd. vs. ITO [2017] (88 taxmann.com 390)(Chennai Trib)*** it has been held that the date of filing of revised statement u/s 200(3) would be taken for purpose of computation of period of time limit u/s 201(3).

ELECTRONIC FILING OF STATEMENT OF TRANSACTIONS ON WHICH TAX HAS NOT BEEN DEDUCTED

- ❑ S. 206A of the Act relates to furnishing of statement in respect of payment of certain income by way of interest to residents where no tax has been deducted at source.
- ❑ At present, the section provides for filing of such statements on a floppy, diskette, magnetic tape, CD-ROM, or any other computer readable media. To enable online filing of such statements, it is proposed to substitute this section so as to provide for filing of statement (where tax has not been deducted on payment of interest to residents) in prescribed form in the prescribed manner.
- ❑ It is also proposed to provide for correction of such statements for rectification of any mistake or to add, delete or update the information furnished.
- ❑ Payment of interest by a banking company or cooperative society or public company – TDS threshold for interest increase by FA, 2019 – Consequential amendment brought in S. 206A



START-UPS



S. 54GB - CAPITAL GAIN ON TRANSFER OF RESIDENTIAL PROPERTY NOT TO BE CHARGED

- ❑ Roll-over benefit available in relation to LTCG arising from transfer of a residential property (a house or a plot of land) by an Individual or HUF, if the net consideration is utilized for subscription/investment in eligible start-ups, subject to satisfaction of certain conditions.
- ❑ Conditions proposed to be relaxed:
 - Minimum shareholding in eligible start-ups: Reduced from 50% to **25%**
 - Restriction on transfer/sale of new asset, being computer or computer software: Reduced from 5 years to **3 years**.
- ❑ The sunset clause of transfer of residential property for investment in eligible start-ups has been extended from March 31, 2019 to **March 31, 2021** .

S. 79 - CARRY FORWARD AND SET OFF OF LOSSES ON CHANGE IN SHAREHOLDING

- ❑ **Existing provisions:** Eligible start-up allowed to carry forward and set off the loss incurred in any year prior to the previous year against the income of the previous year, → if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—
 - (i) continue to hold those shares on the last day of such previous year; and
 - (ii) such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated
- ❑ **Proposed:** Such start-up shall also be allowed carry-forward and set-off of loss where change in shareholding is not more than 49%, i.e. either the condition of 51% beneficial holding or identity of shareholders retained can be fulfilled.
- ❑ Dispensation provided in case of certain distressed companies, i.e. companies in which the NCLT has appointed new directors on application by the Central Govt u/s 242 (2) of CA and change in shareholding on resolution plan approved by NCLT u/s 242 after giving reasonable opportunity to PCIT – Corresponding amendment u/s 115JB

S. 56(2)(viib) – TAX ON EXCESS SHARE PREMIUM

- ❑ Where a closely held company receives, in any previous year, from any resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the FMV of the share shall be chargeable to tax in the hands of the company under “Income from other sources”
- ❑ Exclusions: Consideration received by
 - Venture Capital Undertaking from Cat I AIF & **Cat II AIF** (proposed amendment)
 - Eligible start-ups satisfying conditions under DPIIT notification number G.S.R. 127(E), dated February 19, 2019.
- ❑ Exemption proposed to be withdrawn in case of start-ups where conditions are violated in subsequent years
 - Deemed income chargeable to tax in year of violation;
 - $\text{Income} = \text{Consideration} \textit{ minus} \text{ Face Value}$

OTHER INCENTIVES

- FM speech contains various proposals for promoting start-ups in India, which have not found place in the bill. These amendments are likely to come by way of circulars, notifications, guidelines, etc.

“Special administrative arrangements shall be made by Central Board of Direct Taxes (CBDT) for pending assessments of startups and redressal of their grievances.”

“To resolve the so-called ‘angel tax’ issue, the start-ups and their investors who file requisite declarations and provide information in their returns will not be subjected to any kind of scrutiny in respect of valuations of share premiums.”

“The issue of establishing identity of the investor and source of his funds will be resolved by putting in place a mechanism of e-verification. With this, funds raised by start-ups will not require any kind of scrutiny from the Income Tax Department.”



SHARES & SECURITIES

BUY-BACK OF SHARES

- ❑ S. 115QA – On buy-back of unlisted shares, a domestic company is required to pay additional income-tax at the rate of 20% (plus applicable surcharge and cess) on distributed income (i.e. consideration paid *minus* issue price)
- ❑ S. 10(34A) – Correspondingly, the income arising on buy-back is exempt in the hands of the shareholders
- ❑ It is proposed to extend S. 115QA to listed shares as well w.e.f. July 5, 2019 and correspondingly grant exemption to the shareholder
- ❑ This provision will result in steep taxation, the quantum being much larger than the tax on capital gains that would have been paid by the shareholder u/s 46A
 - Is S. 46A redundant post this amendment
- ❑ Non-residents may be liable to capital gains tax in their country of residence

PASS THROUGH OF CAPITAL LOSSES – Cat I & II

AIF – S. 115UB

Proposed amendment:

- The unabsorbed losses under the head “PGBP” shall be permitted to be carried forward and set-off in the hands of the investment fund;
- Losses other than loss under the head “PGBP” shall not be considered as pass through in the hands of the unit holders, if such loss relates to a unit which is not held by a unit holder for a period of at least twelve months;
- New sub-section is proposed to be added (2A), which has the effect of permitting pass-through status for losses other than the PGBP loss, in the hands of unit holder holding the units of the fund as on March 31, 2019.

OTHER AMENDMENTS

- ❑ Meaning of “equity oriented fund” u/s 111A broadened - Concessional rate of tax for STCG (15%) shall also apply to transfer of units of such funds which has investments in funds
- ❑ Board to make rules to provide that S. 50CA shall not apply to consideration received or accruing as a result of transfer of unquoted shares by such class of persons and subject to such conditions as may be prescribed.
- ❑ Similarly, Board to prescribe rules for exempting receipts from prescribed class of persons from the rigours of S. 56(2)(x).



DEMERGER – Ind AS

S. 2(19AA)

- ❑ IndAS-103 on Business combination provides for accounting of business combination which includes demerger.
 - Acquirer under common control transaction should account transaction at book value and for transaction other than common control at fair value.
- ❑ S. 2(19AA)(iii) provides that property and liabilities of the undertaking being transferred by the demerged company are transferred at values appearing in its book of account.
- ❑ Doubts were raised whether accounting of demerger by resulting company at fair value violates section 2(19AA)(iii)
- ❑ Effects of Non – Qualifying Demerger

S. 2(19AA) (cont'd)

- ❑ It is proposed that the requirement of recording property and the liabilities at book value shall not apply where the property and the liabilities of the undertakings received by a resulting company are recorded at a value different from the book value (as recorded in the books of demerged company) immediately before the demerger on account of compliance with IndAS.
- ❑ Amendment is prospectively effective from AY 2020-21. It is arguable that the said amendment is curative in nature [*CIT V. Alom Extrusion 319 ITR 306 (SC)*, *Allied Motors V. CIT 224 ITR 205 (SC)*] and shall be treated as retrospective in nature.

Demerger approved in AY 2020-21 but appointed date is April 1, 2018.
Will the proposed amendment apply?



INCENTIVES TO INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC)

VARIOUS AMENDMENTS

❑ Income of units located in IFSC:

- Capital Gains exemption available to IFSC units on transfer of bonds, derivatives, rupee denominated bonds, Global Depository Receipts extended to cover other securities as may be notified. [S. 47(viiab)]
- Also, capital gains exemption on above transfer of assets is now also available to Cat III AIF, located in IFSC and which is completely held by non-residents [S. 47(viiab)]
- Tax holiday extended for IFSC units to 100% of income in any 10 years out of block of 15 years from permission/registration date, at the option of the assessee (S. 80LA). Earlier it was 100% for first 5 years and 50% for next 5 years starting with the registration date.

VARIOUS AMENDMENTS (cont'd)

❑ **Payment by units located in IFSC:**

- No DDT payable on dividend declared by a unit (company) in IFSC, deriving income solely in convertible foreign exchange either out of its current income or accumulated income (S. 115O). Amendment made from AY 2017-18 to relate back to the first year in which the exemption from DDT was given for distribution from current income.
- No DDT payable by a mutual fund set up in IFSC with all non-resident unit holders and deriving income only in convertible foreign exchange (S. 115R)
- Interest payment to non-resident by IFSC unit in respect of monies borrowed after September 1, 2019 is exempt from tax [S. 10(15)(ix)]



**NON BANKING FINANCIAL
COMPANIES (NBFCs)**

AMENDMENTS

- ❑ S. 43D – “deposit taking NBFC” or “systematically important non-deposit taking NBFC” can recognise interest income on certain bad and doubtful debts, on earlier of receipt or credit to profit and loss account.
- ❑ *Vasisth Chay Vyapaar Ltd [2019] 410 ITR 244 (SC)* has affirmed the decision of the Delhi High Court that interest income on sticky loans shall be recognised only where the same is actually received.
- ❑ Presently, the provisions apply to PFI, banks, SFC, SSIC and housing finance companies. Will help specified NBFCs as well.
- ❑ S. 43B – Interest on any loan or borrowing from a “deposit taking NBFC” or “systematically important non-deposit taking NBFC” shall be allowed only when the said interest is actually paid
 - Amendment proposed based on “matching principle”
 - Borrower would be allowed to claim deduction only on payment of interest, irrespective of whether the loans are bad or doubtful.
 - Interest converted into loan not to be allowed.
 - If deduction allowed in past based on method of accounting, no deduction when interest is actually paid.



AFFORDABLE HOUSING SCHEME

S. 80IBA – TAX HOLIDAY

- ❑ Tax holiday (i.e. deduction of 100% profits) promoting affordable housing was available to projects approved before March 31, 2020 and fulfilling the prescribed criteria.
- ❑ Proposed to amend the eligibility criteria to be fulfilled by projects approved on or after September 1 2019
 - Revisions are to align the features of “affordable housing” project u/s 80-IBA with that under GST law.
- ❑ The revised conditions are as follows:
 - For metropolitan cities [Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai] – the total land plot should be at least 1,000 sq. m and the carpet area of each unit should not exceed 60 sq. m and the project must utilize at least 90% of the floor area ratio.
 - For other cities, the plot size must be at least 2,000 sq m and the carpet area cannot exceed 90 sq. m and the project should utilize at least 80% of the floor area ratio
 - The stamp duty value of such residential unit in the housing project shall not exceed ₹45 lakh
 - If a house in the project is allotted to an individual no other house should be allotted to his/her spouse or children in the same project



LESS CASH ECONOMY



RECOGNISING ELECTRONIC MODE OF PAYMENT

- ❑ Various provisions in the Income-tax Act discourage cash payments & encourage receipt from **bank or an account payee bank draft or use of electronic clearing system through a bank account**. Refer 13A, 35AD(8), 40A(3), 43(1), 43CA(4), 44AD, 50C, 56(2)(x), 80JJAA, 269SS, 269ST, 269T
- ❑ Proposed amendment: Other electronic modes as may be prescribed will also be recognized in addition to the already existing permissible modes of payment, to promote less cash economy.
- ❑ FM Speech refers to certain electronic modes *viz. BHIM UPI, UPI-QR Code, Aadhaar Pay, certain Debit cards, NEFT, RTGS etc.*

ACCEPTANCE OF PAYMENT THROUGH PRESCRIBED ELECTRONIC MODE

- ❑ S. 269SU: Every person carrying on business, if his turnover or gross receipts exceeds ₹50 crore in immediately preceding previous year shall provide facility to accept payment through prescribed electronic modes in addition to other electronic modes for accepting payment.
- ❑ Necessary amendment made in Payment and Settlements Act, 2007 to provide that no bank or system provider will charge for using electronic facility prescribed above
- ❑ S. 271DB: Penalty of ₹5000 per day for failure to comply with above provisions
- ❑ Provisions are effective from November 1, 2019



TAXATION ON NON-RESIDENTS

DEEMED ACCRUAL OF GIFT MADE TO A PERSON OUTSIDE INDIA

Income –	ROR	RNOR	NR
Received in India	✓	✓	✓
Deemed to be received in India	✓	✓	✓
Accrued or arises in India	✓	✓	✓
Deemed to accrue or arise in India	✓	✓	✓
Accrued or arises outside India	✓	✓*	

ROR – Resident and Ordinarily Resident; RNOR – Resident but Not Ordinarily Resident; NR – Non Resident

*Restricted to income from business controlled or profession set-up in India

“9. (1) The following incomes shall be deemed to accrue or arise in India :—

.....

(viii) income of the nature referred to in sub-clause (xviiia) of clause (24) of section 2, arising from any sum of money paid, or any property situate in India transferred, on or after the 5th day of July, 2019 by a person resident in India to a person outside India.”

❑ **S. 2(24)(xviiia):** Income includes any sum of money or value of property referred to u/s 56(2)(x)

DEEMED ACCRUAL OF GIFT MADE TO A PERSON OUTSIDE INDIA (cont'd)

- Can income by way of gift accrue?
- What is the scope of section 9? Is it deeming 'accrual' or deeming 'place of accrual to be India'?
- Amendment covers sum of money paid or property transferred after July 5, 2019. Does that infer that transactions prior to the said date were not chargeable to tax under the Act?
- Whether 'person outside India' means only non-resident or covers residents as well. The EM suggests that the proposed amendment covers receipt of money or property by a non-resident.
- Will the proposed amendment cover fresh issue of shares?
- NR to NR gift – Is it taxable?
- How will the TDS mechanism work?
- Can donor be treated to be an assessee-in-default? Will his liability u/s.163 as an agent of non-resident continue?



RELAXATION IN CONDITIONS OF SPECIAL TAXATION REGIME FOR OFFSHORE FUNDS

- ❑ S. 9A provides for a safe harbour in respect of offshore funds.
- ❑ Fund management activity carried out by an eligible investment fund through an eligible fund manager acting on behalf of such fund in India shall not constitute business connection of such fund in India.
- ❑ The benefit of S. 9A available subject to the fulfilment of certain conditions by the eligible investment fund and the eligible fund manager.
- ❑ Certain conditions applicable to investment fund relaxed.



TRANSFER PRICING

SECONDARY ADJUSTMENTS – S. 92CE

- ❑ S. 92CE requires an assessee to carry out secondary adjustment where primary adjustment to transfer price has been made. The excess money *viz.* ALP (-) Value of international transaction is required to be repatriated to India. If not repatriated within prescribed time limit, interest has to be computed on the same, which has to be offered to tax.
- ❑ Amendments effective from April 1, 2018 (i.e. AY 2018-19):
 - condition of threshold of ₹1cr and of primary adjustment made upto AY 2016-17 are **alternate conditions**. The word ‘and’ appearing the first proviso to section 92CE(1) has been substituted by ‘or’;
 - the provision shall apply to advance pricing agreements signed on or after April, 1 2017;
 - no refund of the taxes already paid till date under the pre-amended section 92CE(1) (i.e. existing provisions) would be allowed;
 - the assessee shall be required to calculate interest on the excess money or part thereof;
 - the excess money may be **repatriated from any of the associated enterprises** of the assessee which is not resident in India;

SECONDARY ADJUSTMENTS – S. 92CE (cont'd)

□ Amendments effective from Sept 1, 2019:

- in a case where the excess money or part thereof has not been repatriated in time, the assessee will have the **option to pay additional income-tax** at the rate of 18% on such excess money or part thereof in addition to the existing requirement of calculation of interest till the date of payment of this additional tax. The additional income-tax shall be further increased by applicable surcharge and cess.
- the additional tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid;
- no deduction in respect of the amount on which such tax has been paid, shall be allowed under any other provision of the Act; and
- if the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest from the date of payment of such tax.

OTHER AMENDMENTS

- ❑ Interest referred u/s 194LC paid by Indian company or business trust to non-residents on Masala bonds issued between Sept 17, 2018 to March 31, 2019 – **Exempt**
- ❑ S. 92D – Master File to be furnished even when there is no international transaction undertaken by such constituent entity.
- ❑ Application u/s 195(2) & 195(7) which is currently manual will be made online. Manner to be prescribed. Also, the manner of determination of appropriate portion of sum chargeable to tax by the Assessing Officer to be prescribed.
- ❑ S. 92CD – **Clarification** with regard to power of the Assessing Officer in respect of modified return of income filed in pursuance to signing of the advance pricing agreement – Provision prospectively effective from Sept 1, 2019



CHARITABLE TRUST

S. 12AA

- ❑ S. 12AA provides for manner of granting of registration or cancellation of trust and institution
 - For granting registration, PCIT has to make inquiries about the genuineness of the trust
- ❑ Proposed amendment enlarges the scope of PCIT to satisfy himself about the compliances under other law which are material for the purpose of achieving the objects of the trust before granting registration
- ❑ Also, where non-compliances of other law has occurred and the same is not disputed or attained finality then he can cancel the registration of the trust.
- ❑ *DIT(E) v. G.K.R. Charities [2013] 214 Taxman 555 (Bom HC)* nullified

S. 12AA – ISSUES (cont'd)

- Can mere non-compliance of other laws (which may include state laws) result in denial/cancellation of the registration of trust;
- What is a material compliance of the requirement under the other laws in the course of achieving the objects of the trust would be very difficult to ascertain;
- Proposed amendment may affect the genuine trust which are engaged in running schools, hospitals where there may be non-compliance in respect of one of the activity/division of that trust;
- It would also significantly delay the time in granting the registration and thus, the hamper the receipt of donation from donors;
- Would it also apply to religious trust?
- Whether it would lead to exit tax u/s. 115TD – Tax on accreted income of trust.



**PROCEDURAL PROVISIONS,
PENALTY AND PROSECUTION**

PROCEDURAL PROVISIONS, PENALTY AND PROSECUTION

- ❑ Interchangeability of PAN & Aadhar Number – S. 139A;
- ❑ Failure to quote PAN/ Aadhaar Number & verification thereof – Penalty u/s 272B of
 - ❑ 10,000/- for each such default;
- ❑ Failure to intimate Aadhaar Number shall not result in PAN being ‘invalid’ but it will result in PAN being ‘inoperative’ in a prescribed manner – S. 139AA ;
- ❑ S. 270A to include returns furnished for the first time u/s 148, to facilitate levy of penalty in case if there is any under-reporting or misreporting of income during the same;
- ❑ Prosecution u/s 276CC will not be initiated against a person if there is a failure to furnish return voluntarily and total tax payable by such person, other than company, after giving credit of prepaid taxes does not exceed ❑ 10,000/-

PROCEDURAL PROVISIONS, PENALTY AND PROSECUTION (cont'd)

- ❑ Current threshold limit of ₹50,000/- for reporting of specified financial transaction (SFT) removed – S. 285BA;
- ❑ Penalty u/s 271FAA extended to all persons required to report SFT;
- ❑ Enhancing time limitation for sale of attached property under rule 68B of the Second Schedule of the Act to upto 10 years.
- ❑ Instead of filing Form No. 30 as required previously, now assessee can claim refund in its return u/s 139 itself.
- ❑ While computing the amount of tax payable, any relief allowable under the provisions of section 89 be reduced from tax payable on total income to compute the amount of interest – Sections 140A, 143, 234A, 234B and 234C

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