# An Analysis of Union Budget 2019-20

Includes:

- Analysis of Interim Budget 2019-20
- Recent Tax Rulings

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# Analysis of Union Budget 2019-20

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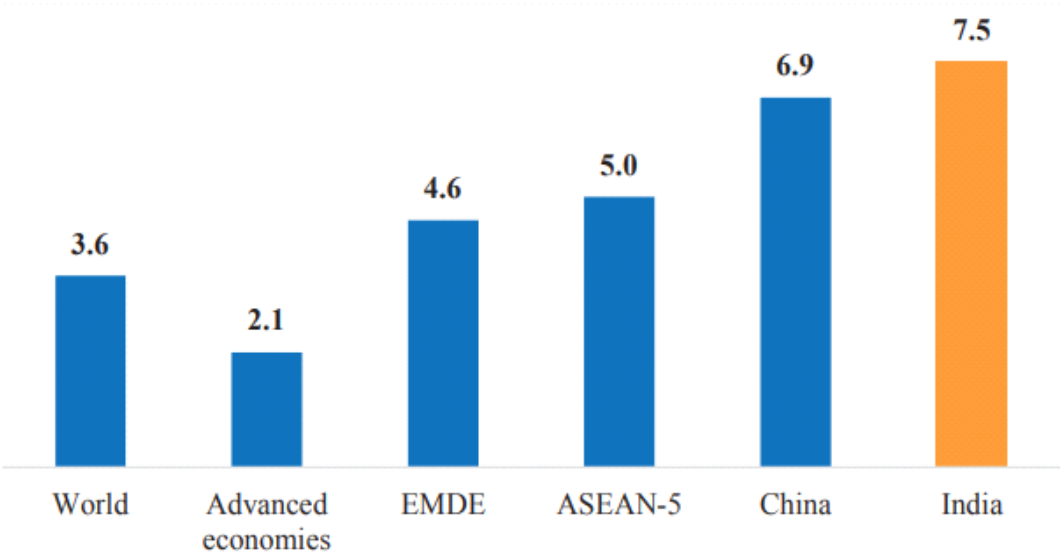
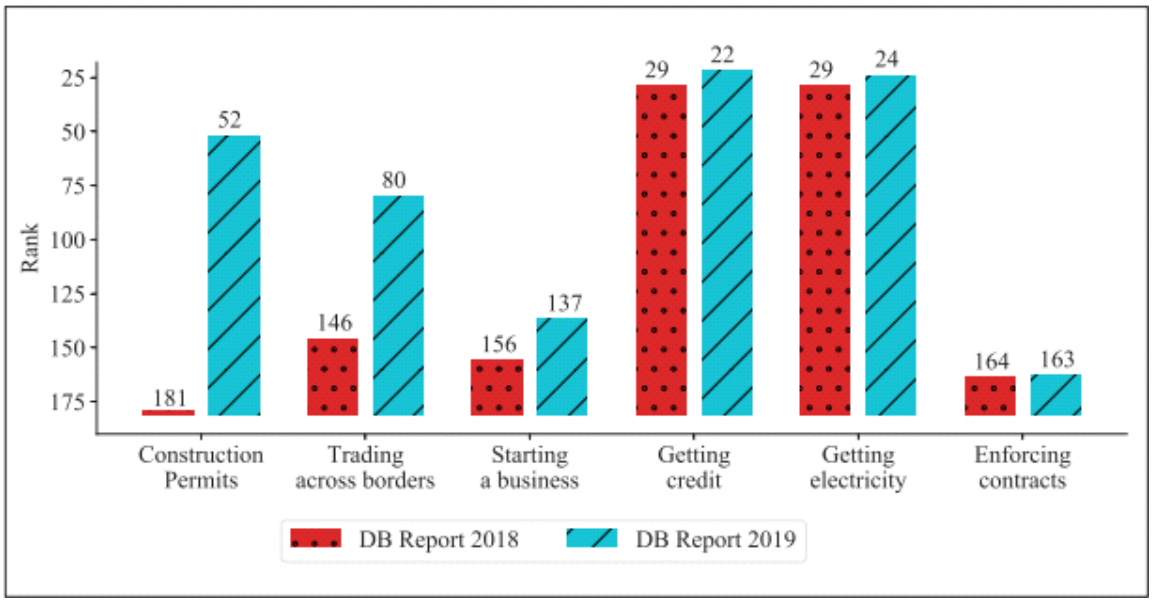
# Indian Economy : Facts & Figures

## Growth of GDP in India and the world




Note: (1). EMDE – Emerging Market and Developing Economies; (2). ASEAN-5 composed of 5 countries: Indonesia, Malaysia, Philippines, Thailand, and Vietnam.
Source: Economic Survey 2018-19 (last 5 years average)

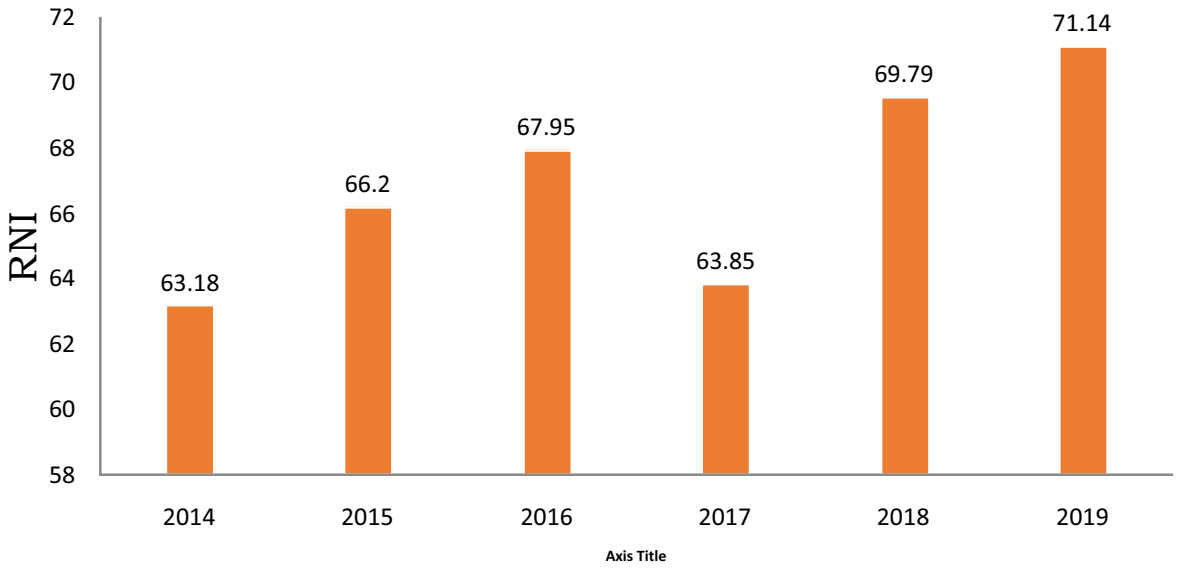
## India's progress in Ease of Doing Business Report Rankings




(GDP Growth Rate)

Source: Economic Survey 2018-19

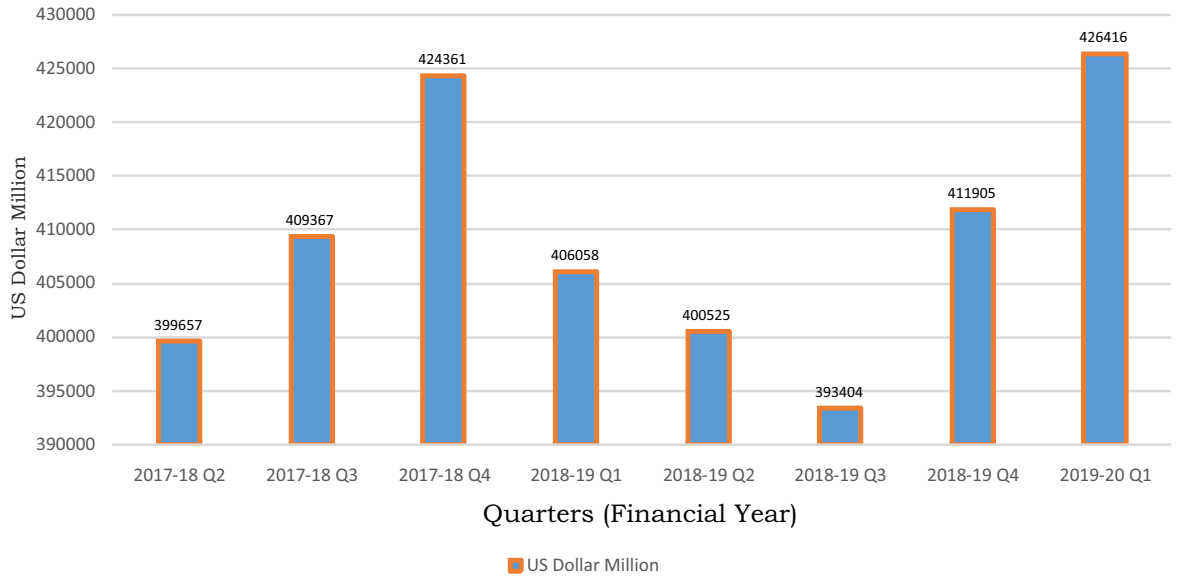
## Rupee against USD




Closing rate of 31st December of each year is taken

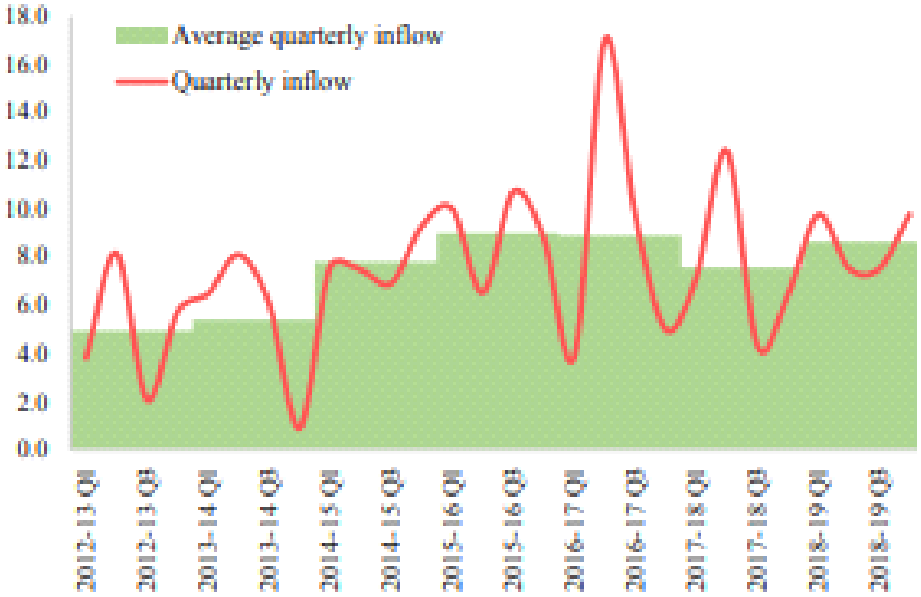
Source: RBI

## Foreign Exchange Reserves



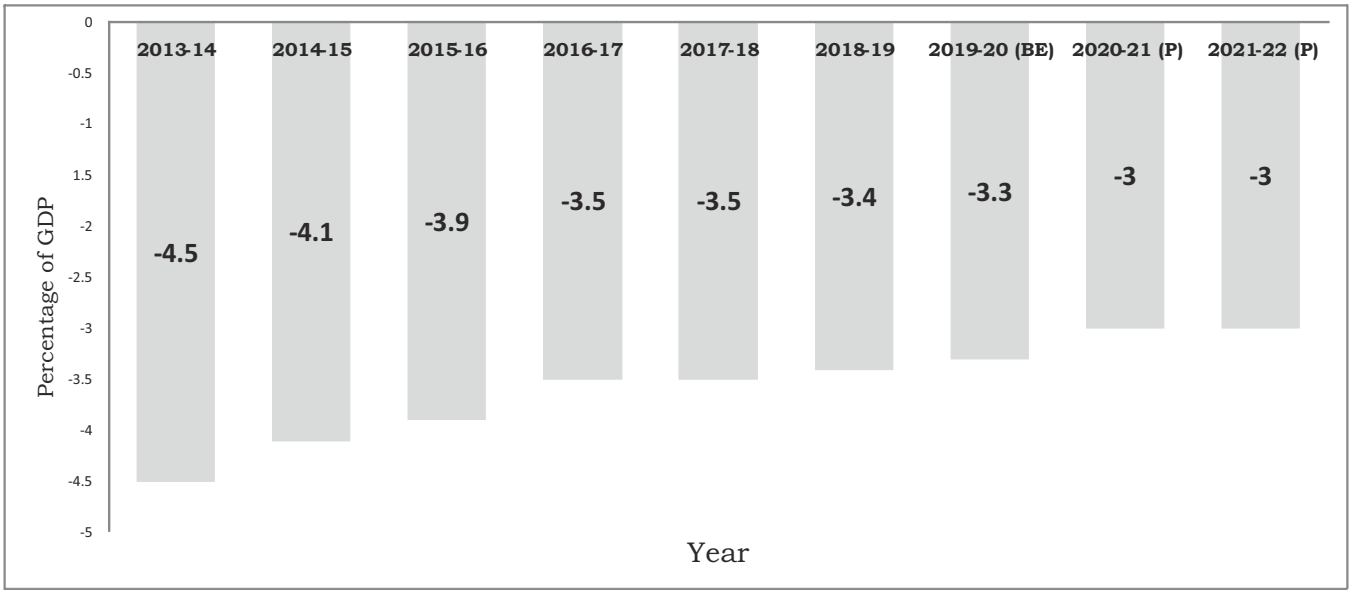

Note: Balance has been taken as on end of the quarter.
Source: RBI

# Net FDI inflows (US$ billion)



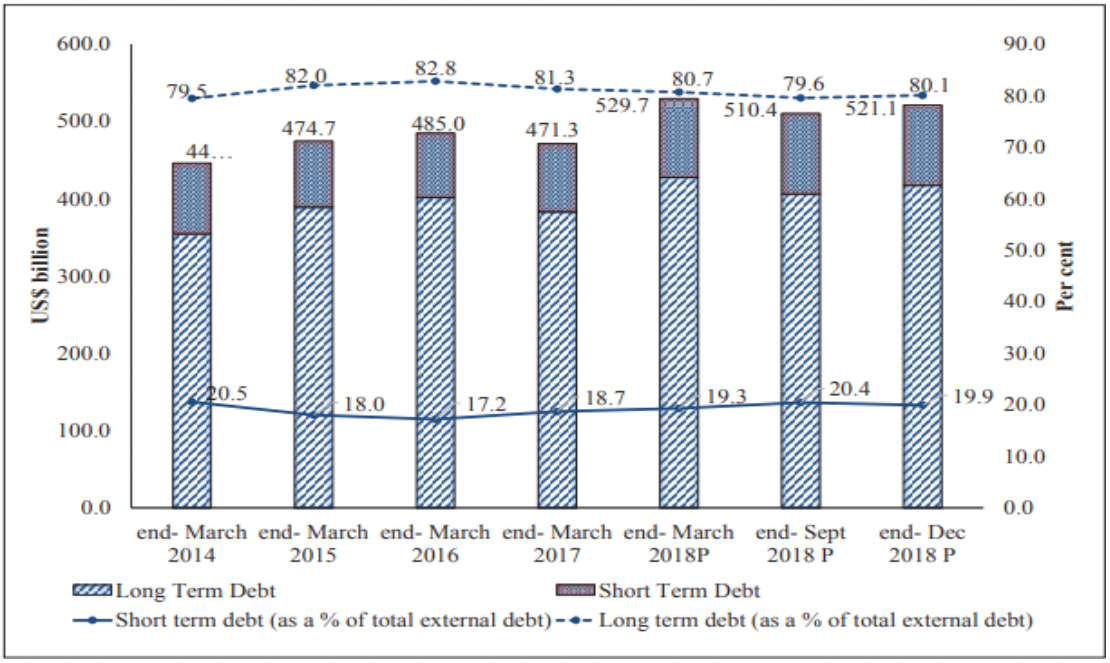

Source: Economic Survey 2018-19

# Fiscal Deficit Trend



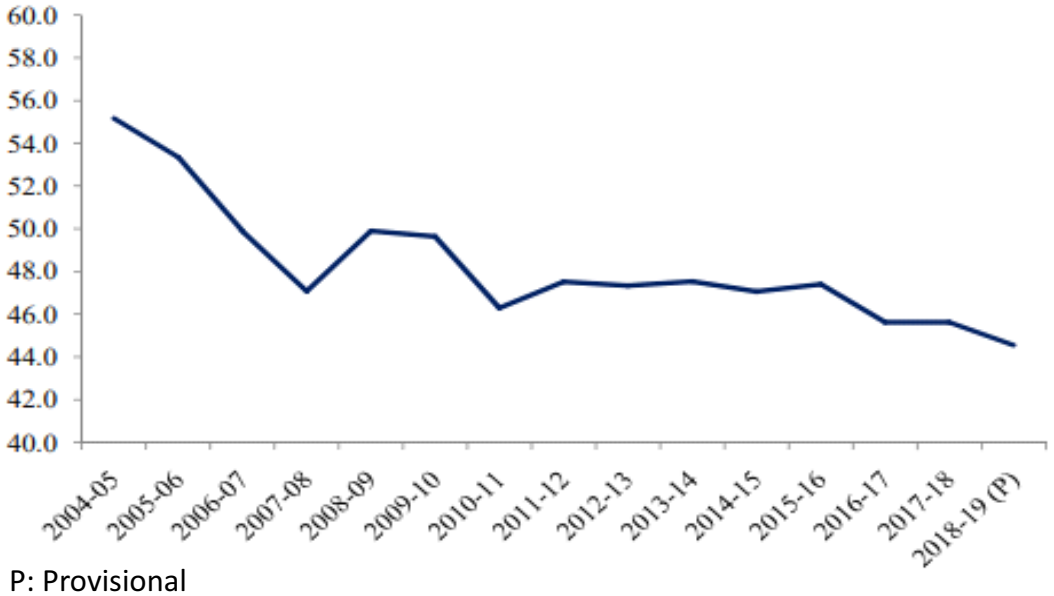

BE: Budget Estimates
P: Projections
Source: Economic Survey 2018-19

# India's Outstanding External Debt




Source: Economic Survey 2018-19

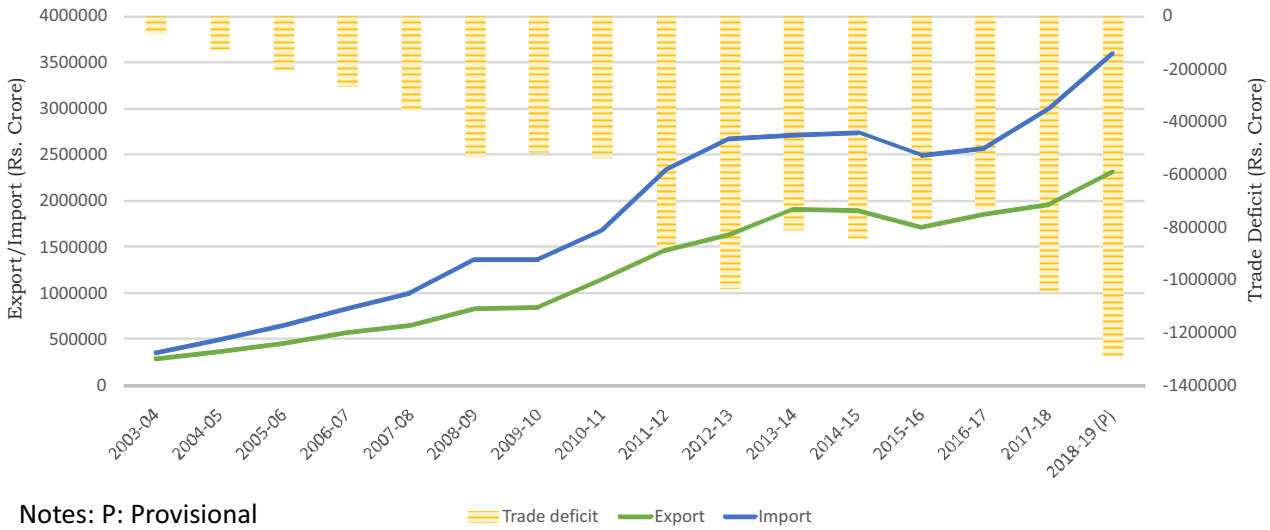
# Trend in Centre's Debt-GDP ratio (in per cent)




P: Provisional

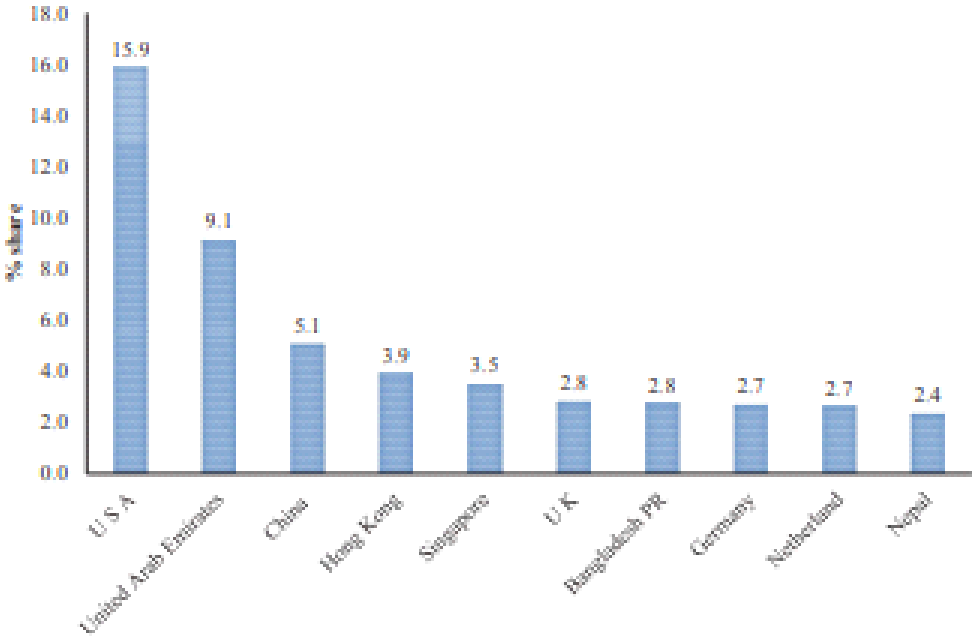
Source: Economic Survey 2018-19

# Export /Import and Trade deficit



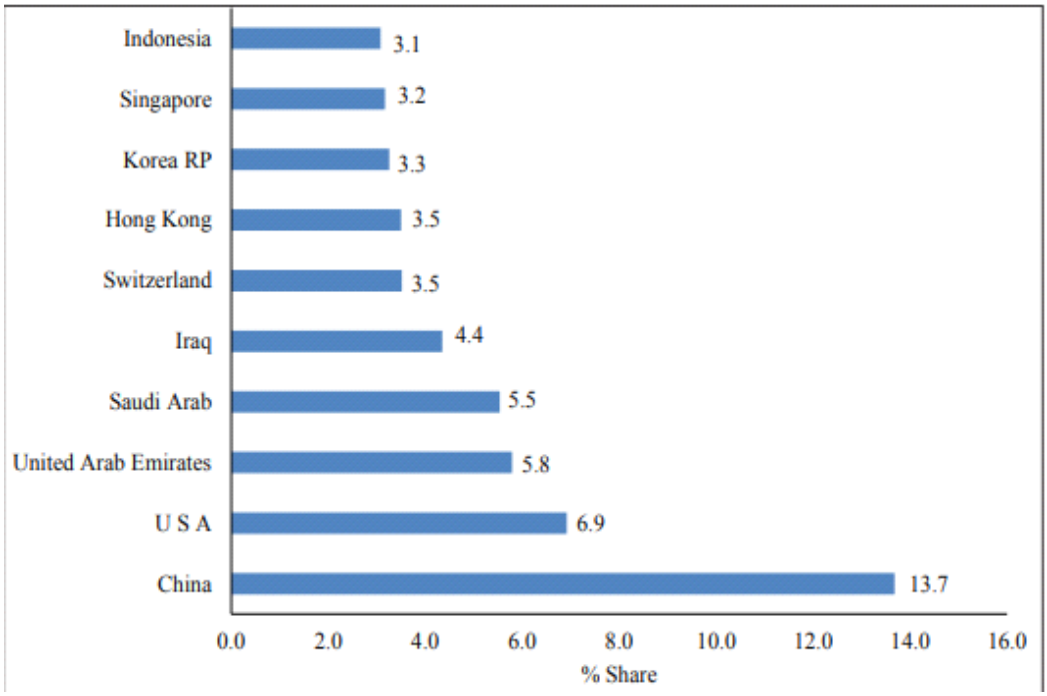

Notes: P: Provisional
Source: Economic Survey 2018-19

# Top 10 Export Destinations of India in 2018-19




Source: Economic Survey 2018-19

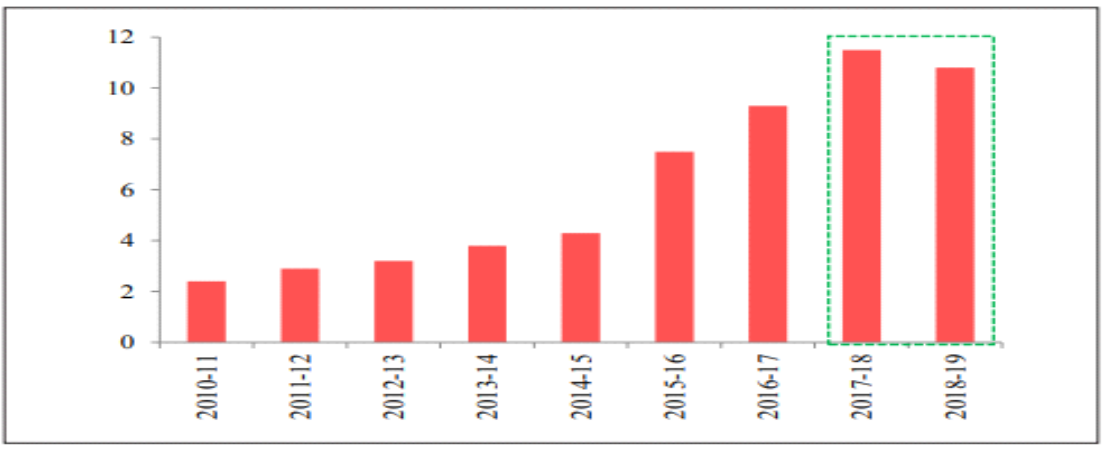
# Top 10 Import Sources of India in 2018-19




Source: Economic Survey 2018-19

# Non Performing assets as a percentage of Gross Advances

**Figure 17: Non performing assets as a percentage of Gross Advances**




Data source: Reserve Bank of India

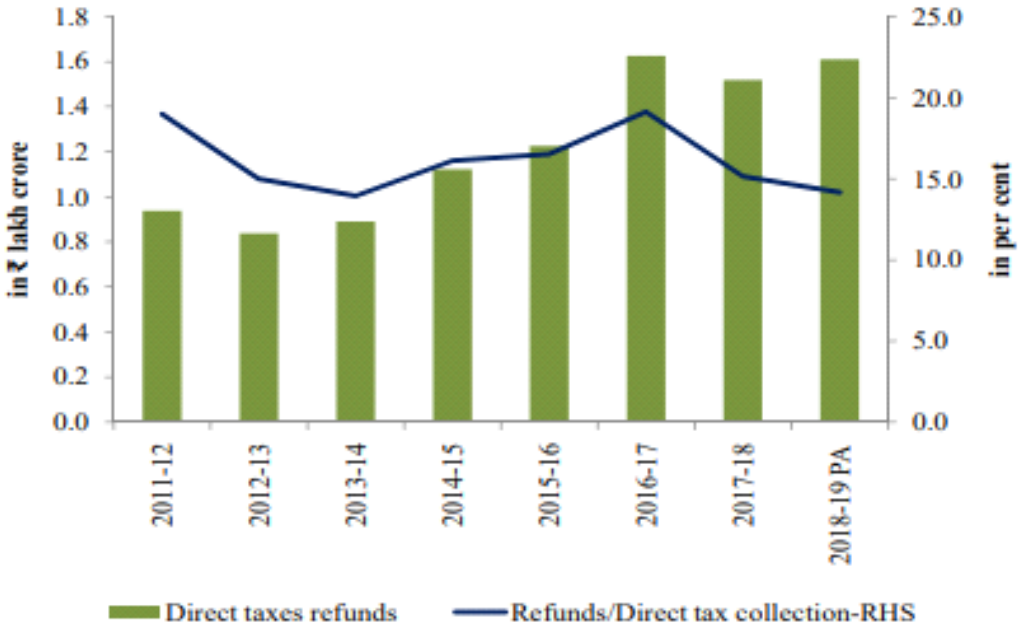
Source: Economic Survey 2018-19

## Estimated and revised estimate receipts of 2018-19

| | Estimated Budget 2018-19 (in crores) | Revised Estimates 2018-19(in crores) | Shortfall | Excess |
|---|---|---|---|---|
| 1.Corporate Tax | 621000 | 671000 | | 50,000 |
| 2. Income tax | 529000 | 529000 | - | - |
| 3. Custom Duty | 112500 | 130038 | - | 17538 |
| 4. Excise Duty | 259600 | 259612 | - | 12 |
| 5. Service Tax | - | 9283 | - | - |
| 6. GST | 743900 | 643900 | 1,00,000 | - |
| 7. Non Tax revenue | 245088.75 | 245276 | - | 187.25 |
| 8. Non debt capital receipts | 92199.08 | 93155 | - | 955.92 |
| 9. Borrowing & other liability | 581210.43 | 593197 | - | 11986.57 |
| TOTAL | **3184498.26** | **3174461** | **1,00,000** | **80679.74** |

Source: Budget at a Glance 2019-20

## Direct Tax Refunds

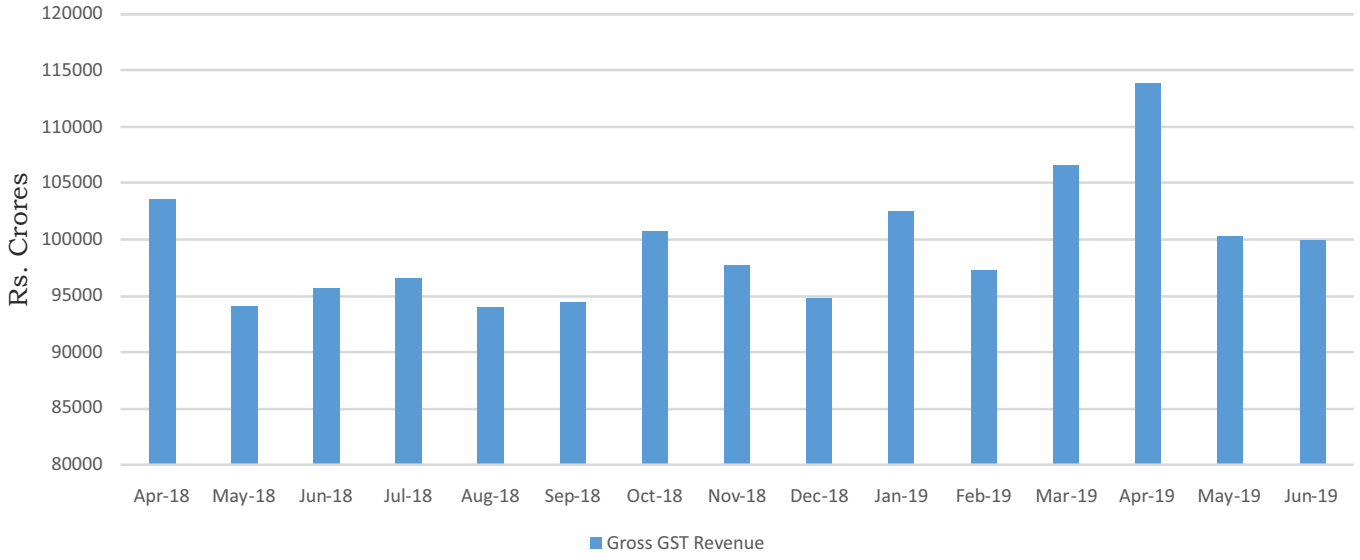



Source: Economic Survey 2018-19

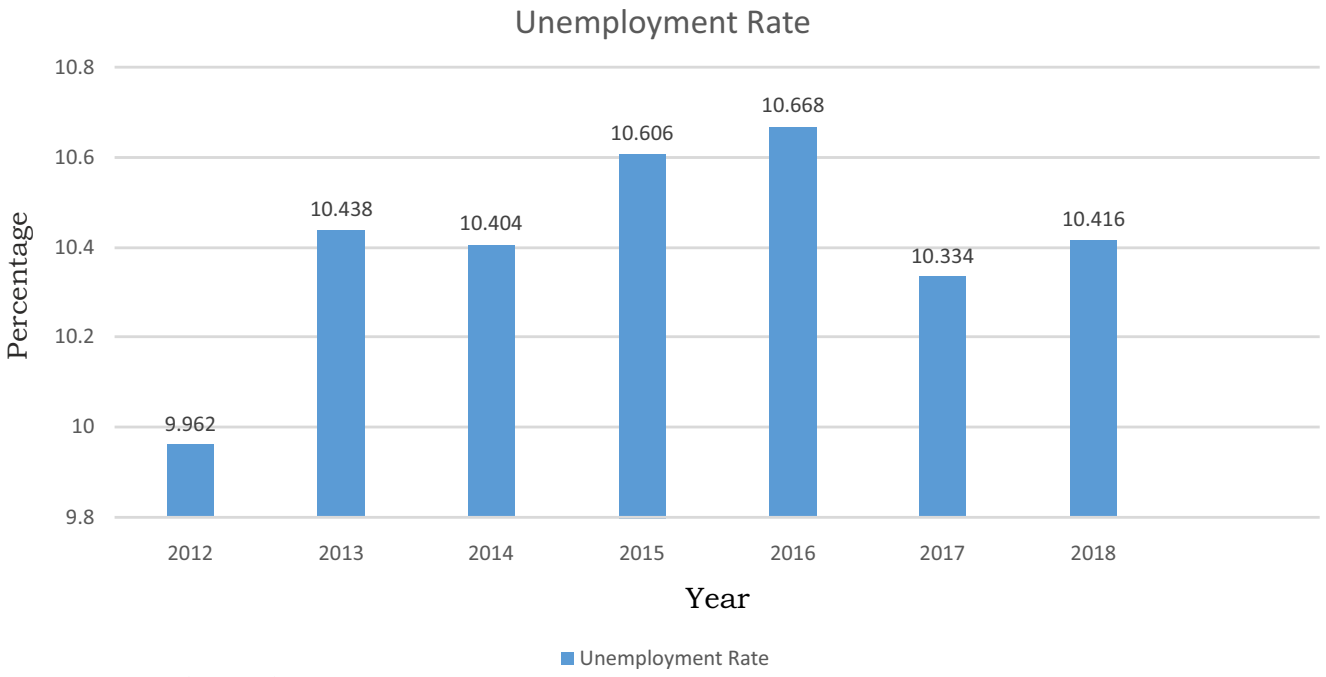
# Comparison of Gross GST Revenue

(April'18 to June'19)

(Figures in Rs. Crore)



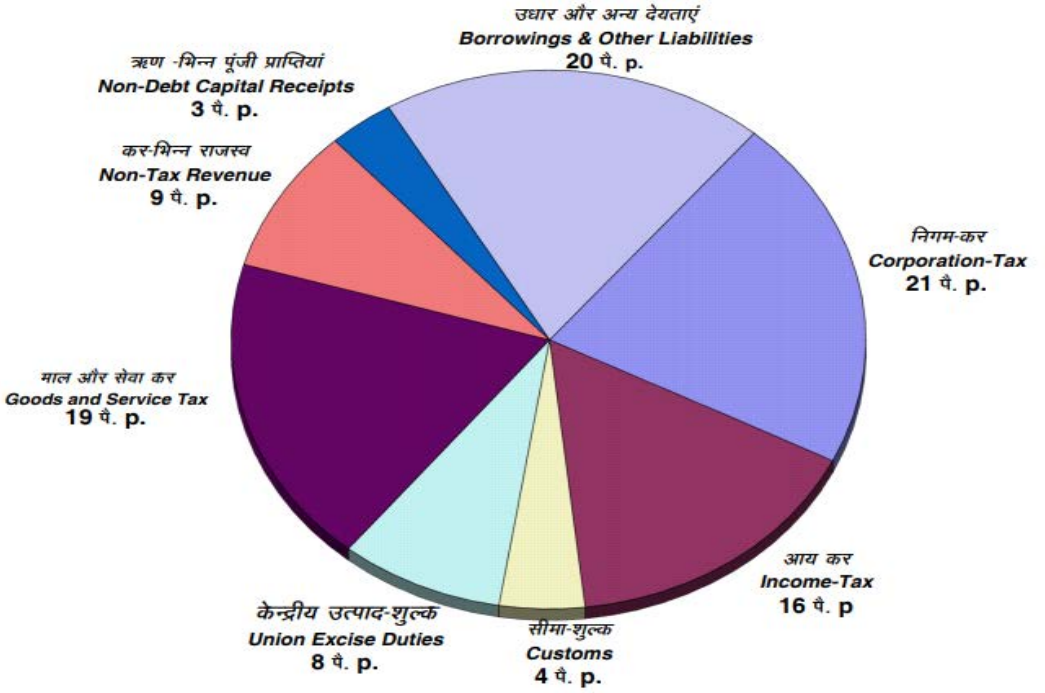

# Unemployment Rate (Percentage of total youth labour force Aged 15-24)




Source: World Bank

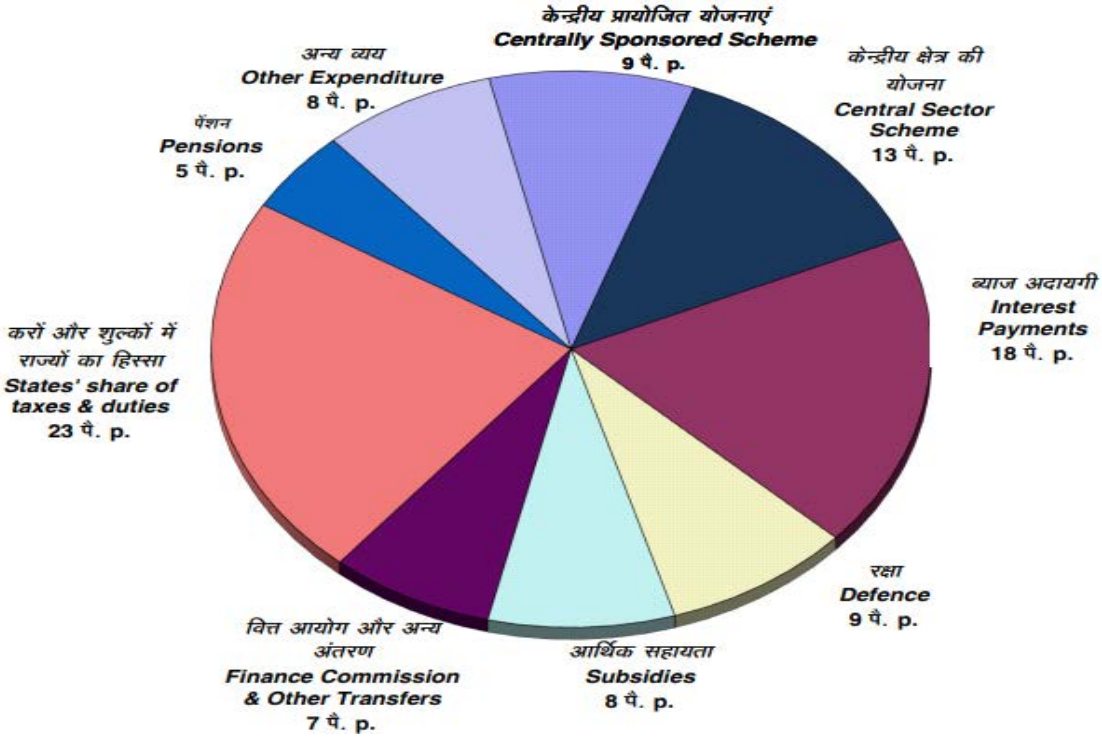
# Union Budget – At a Glance

## Revenue Sources




Source: Union Budget 2019-2020

## Expenditure -Application




Source: Union Budget 2019-2020

# HIGHLIGHTS OF IMPORTANT AMENDMENTS RELATING TO INCOME TAX

## RATES OF TAXES

**For Individuals (Other than Senior Citizen and Super Senior Citizen), HUF, AOP, BOI and Artificial Jurisdiction Person Whether Incorporated or Not***

| Rate of Tax | A.Y. 2019-20 | A.Y. 2020-21 |
|---|---|---|
| Nil | Up to Rs. 2,50,000 | Up to Rs. 2,50,000 |
| 5% | From Rs. 2,50,001 to Rs. 5,00,000 | From Rs. 2,50,001 to Rs. 5,00,000 |
| 20% | From Rs. 5,00,001 to Rs. 10,00,000 | From Rs. 5,00,001 to Rs. 10,00,000 |
| 30% | Exceeding Rs. 10,00,000 | Exceeding Rs. 10,00,000 |
| Surcharge @ 10% (subject to marginal relief) | 10% (In case total income exceeding Rs. 50 Lakhs up to Rs. 1 crore) | 10% (In case total income exceeding Rs. 50 Lakhs up to Rs. 1 crore) |
| Surcharge @ 15% (subject to marginal relief) | When total income exceeds Rs. 1 crore | When total income exceeds Rs. 1 crore but not exceeding 2 crore. |
| Surcharge @ 25% (subject to marginal relief) | _ | When total income exceeds Rs. 2 crore but not exceeding 5 crore. |
| Surcharge @ 37% (subject to marginal relief) | _ | When total income exceeds to Rs. 5 crore. |

**For Senior Citizens – Being a Resident in India (i.e. whose age is more than or equal to 60 years but less than 80 years)***

| Rate of Tax | A.Y. 2019-20 | A.Y. 2020-21 |
|---|---|---|
| Nil | Up to Rs. 3,00,000 | Up to Rs. 3,00,000 |
| 5% | From Rs. 3,00,001 to Rs. 5,00,000 | From Rs. 3,00,001 to Rs. 5,00,000 |
| 20% | From Rs. 5,00,001 to Rs. 10,00,000 | From Rs. 5,00,001 to Rs. 10,00,000 |
| 30% | Exceeding Rs. 10,00,000 | Exceeding Rs. 10,00,000 |
| Surcharge @ 10% (subject to marginal relief) | 10% (In case total income exceeding Rs. 50 Lakhs up to Rs. 1 crore) | 10% (In case total income exceeding Rs. 50 Lakhs up to Rs. 1 crore) |
| Surcharge @ 15% (subject to marginal relief) | When total income exceeds Rs. 1 crore | When total income exceeds Rs. 1 crore but not exceeding 2 crore. |
| Surcharge @ 25% (subject to marginal relief) | _ | When total income exceeds Rs. 2 crore but not exceeding 5 crore. |
| Surcharge @ 37% (subject to marginal relief) | _ | When total income exceeds to Rs. 5 crore |

* Section 87A, as amended by FA, 2019 provides for rebate from income tax, an amount of tax or Rs. 12,500/- whichever is less where the total income of a resident does not exceed Rs. 5,00,000/-

## For Super Senior Citizens – Being a Resident in India (i.e. whose age is 80 years or more)

| Rate of Tax | A.Y. 2019-20 | A.Y. 2020-21 |
|---|---|---|
| Nil | Up to Rs. 5,00,000 | Up to Rs. 5,00,000 |
| 20% | From Rs. 5,00,001 to Rs. 10,00,000 | From Rs. 5,00,001 to Rs. 10,00,000 |
| 30% | Exceeding Rs. 10,00,000 | Exceeding Rs. 10,00,000 |
| Surcharge @ 10% (subject to marginal relief) | 10% (In case total income exceeding Rs. 50 Lakhs up to Rs. 1 crore) | 10% (In case total income exceeding Rs. 50 Lakhs up to Rs. 1 crore) |
| Surcharge @ 15% (subject to marginal relief) | When total income exceeds Rs. 1 crore | When total income exceeds Rs. 1 crore but not exceeding 2 crore. |
| Surcharge 25% (subject to marginal relief) | _ | When total income exceeds Rs. 2 crore but not exceeding 5 crore. |
| Surcharge @ 37% (subject to marginal relief) | _ | When total income exceeds to Rs. 5 crore. |

## For Co-operative Society

| Rate of Tax | A.Y. 2019-20 | A.Y. 2020-21 |
|---|---|---|
| 10% | Up to Rs. 10,000 | Up to Rs. 10,000 |
| 20% | From Rs. 10,001 to Rs. 20,000 | From Rs. 10,001 to Rs. 20,000 |
| 30% | Exceeding Rs. 20,000 | Exceeding Rs. 20,000 |
| Surcharge @ 12% (subject to marginal relief) | When total income exceeds Rs. 1 crore | When total income exceeds Rs. 1 crore |

## For Firm and Local Authority

| Rate of Tax | A.Y. 2019-20 | A.Y. 2020-21 |
|---|---|---|
| 30% | Whole of the total income | Whole of the total income |
| Surcharge @ 12% (subject to marginal relief) | When total income exceeds Rs. 1 crore | When total income exceeds Rs. 1 crore |

## For Domestic Company

| Rate of Tax | A.Y. 2019-20 | A.Y. 2020-21 |
|---|---|---|
| 25 % of total income | Total Turnover/Gross Receipt in P.Y. 2016-17 was upto Rs. 250 Crore | Total Turnover/ Gross Receipt in P.Y. 2017-18 was upto Rs. 400 Crore |
| 30 % of total income | Total Turnover/Gross Receipt in P.Y. 2016-17 exceeds Rs. 250 Crore | Total Turnover/Gross Receipt in P.Y. 2016-17 exceeds Rs. 250 Crore |
| Surcharge @ 7 % (subject to marginal relief) | When total income exceeds Rs. 1 crore but does not exceeds Rs. 10 Crore | When total income exceeds Rs. 1 crore but does not exceeds Rs. 10 Crore |
| Surcharge @ 12 % (subject to marginal relief) | When total income exceeds Rs. 10 crore | When total income exceeds Rs. 10 crore |

## For Company other than Domestic Company

| Rate of Tax | A.Y. 2019-20 | A.Y. 2020-21 |
|---|---|---|
| 50 % | Specific Royalty/FTS | Specific Royalty/FTS |
| 40 % | Balance Total Income | Balance Total Income |
| Surcharge @ 2 % (subject to marginal relief) | When total income exceeds Rs. 1 crore but does not exceeds Rs. 10 Crore | When total income exceeds Rs. 1 crore but does not exceeds Rs. 10 Crore |
| Surcharge @ 5 % (subject to marginal relief) | When total income exceeds Rs. 10 crore | When total income exceeds Rs. 10 crore |

## Cess on Income Tax

| Particulars | Existing | Proposed |
|---|---|---|
| Health and Education Cess | 4% of income tax including surcharge | 4% of income tax including surcharge |

# TDS on Payment made by Individuals or HUF to Contactors and Professionals

- Provisions of Section 194C and 194J provides for TDS on payments made to contactors or professionals. However, the said sections are not attracted on individuals or HUF where the payments are made for obtaining any service of personal use or when the said individual or HUF were not liable to tax audit u/s 44AB during the immediately preceding financial year.
- It is proposed to insert a new section 194M in the Act to cover the aforementioned assessees within the purview of TDS. The said proposal provides that where any amount is paid or payable by an individual or HUF (which are not covered u/s 194C or 194J) to a resident for carrying out any contractual work or for any professional services then the payer is liable to deduct TDS @ 5% where the sum exceeds Rs. 50,00,000/- during a financial year.
- It is also proposed to amend Section 197 that in aforesaid cases of tax deduction, the recipient of income shall be eligible to get the certificate for deduction at lower rate.
- Further, as per Section 203A, every person who is liable to deduct tax, has to obtain a tax deduction account number (TAN). However, for the purpose of this Section, it is proposed that tax can be deducted by the payer using their Permanent Account Number (PAN) itself and there's no need to obtain TAN in order to reduce the compliance burden thereon.
- **w.e.f. 01.09.2019**

## TDS on Cash Withdrawals

- A new Section 194N has been proposed to be inserted to provide for deduction of tax at source @2% on the payment made by any banking company, co-operative society or a post office to any person from the account maintained by such person, where the amount exceeds Rs. 1 Crores during a financial year.
- However, the said section will not be applicable on the payments made to the government, any banking company, co-operative society, post office, business correspondent of a banking company or co-operative society, any white label automated teller machine operator of a banking company or co-operative society, or other persons as are specified by Central Government in consultation with RBI.
- TDS is required to be deducted @ 2% on payment made to any person exceeding Rs. 1 Crores from any account maintained.
- **w.e.f. 01.09.2019**

## 194-IA: Charges Falling within the Scope of Consideration

- Section 194-IA provides for deduction of tax at source on transfer of immovable property other than agriculture land where the consideration paid for transfer of an immovable property exceeds Rs. 50,00,000/-.
- Explanation is proposed under Section 194-IA to deal with the scope of consideration for immovable property. By virtue of the proposed amendment "consideration for immovable property" is explained to 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.

- Therefore, where the amount paid or payable for transfer of immovable property including the aforementioned charges exceeds Rs. 50 lakhs the payer is liable to deduct TDS @ 1% u/s 194-IA.
- **w.e.f. 01.09.2019**

## Gifts to fall within the Scope of Income Deemed to Accrue or Arise in India

- Section 9 deals with the income of an assessee which shall be deemed to accrue or arise in India. It is proposed to insert a new clause (viii) in the said section in order to include within the purview of Section 9 the income referred u/s 2(24)(xviia) received by person resident outside India from person resident in India after 05.07.2019.
- Section 2(24)(xviia) covers within its scope the income which are referred u/s 56(2)(x). Following sums are listed under the said section:
  - Any sum of money received by an assessee in excess of Rs. 50,000 without any consideration.
  - Any immovable property:
    - Received without consideration and the SDV of which exceeds Rs. 50,000; or,
    - Received for a consideration, where the SDV of the property exceeds the consideration of such property by an amount equal to 5% of the consideration or Rs. 50,000/-, whichever is higher.
  - Any other property:
    - Received without consideration and its FMV exceeds Rs. 50,000/-
    - Received for a consideration, which is less than the FMV by an amount exceeding Rs. 50,000/-.
- Therefore, where any of the afore-mentioned sum of money or property as referred u/s 56(2)(x), is received by person resident outside India from it shall be the income deemed to accrue or arise in India for the purpose of Section 9.
- **w.e.f. 01.04.2020**

## Widening the Scope of Statement of Financial Transactions (SFT)

- Section 285BA(1) provides for an obligation of various persons, who are required to furnish a Statement of Financial Transaction (SFT) or reportable account to the income-tax authority or any other authority as prescribed.
- In order to enable the auto populated returns of income, it is propose to amend the aforesaid section by inserting a new clause (l) under section 285BA(1) which will impose the aforesaid obligation to a person, other than those referred to in clauses (a) to (k) of Section 285BA(1), as may be prescribed.
- Further amendment is also proposed to omit the limit of Rs. 50,000/- for reporting specified financial transaction so that small transactions are also reported to enable auto populated returns of income.
- Further also, Section 285BA(4) provides that where the income-tax authority considers the aforementioned statement to be defective, he may intimate the said defect to the assessee, and if the same is not rectified by the assessee within the prescribed time, the statement so submitted shall be treated as invalid and the provisions of IT Act will apply as if no statement is being filed by the assessee.
- It has been proposed to amend that, where, as per Section 285BA any defective statement is filed, the

provisions of the Act shall apply as if the assessee has submitted the inaccurate information, instead of treating it to be invalid.

- Consequent amendment in Section 271FAA is also made to widen the scope of imposition of penalty of Rs. 50,000/- for every person referred in amended section 285BA(1) furnishes the said statement with inaccurate information subject to fulfilment of conditions mentioned in said section. As per existing provision, the penalty can be imposed upon the prescribed reporting financial institutions only.
- **w.e.f. 01.09.2019**

## Mandatory Furnishing of Return of Income

- Section 139(1)(b) provides that every person other than a company or firm has to file its return of income, only when the income of the assessee during the previous year exceeds the maximum amount chargeable to tax.
- Also, Proviso sixth to Section 139 provides that an individual, HUF, AOP, BOI, artificial judicial shall be liable to furnish a return of income u/s 139 where the total income of the said assessee exceeds the maximum amount chargeable to income-tax during a financial year, without giving effect to the provisions of Section 10(38) or 10A or 10B or 10BA or Chapter VI-A.
- It is proposed to amend the aforesaid proviso by inserting Section 54 or section 54B or section 54D or section 54EC or section 54F or section 54G or section 54GA or section 54GB to the said proviso.
- Thus, return of income is required to be filed by the said assessee where the total income of a previous year exceeds the maximum amount chargeable to income-tax without giving effect to the provisions of Section 10(38) or 10A or 10B or 10BA or 54 or 54B or 54D or 54EC or 54F or 54G or 54GA or 54GB Chapter VI-A.
- Further, it is proposed to insert a new proviso after sixth proviso to section 139(1) to provide that if the person is not required to file the Return of income u/s 139(1)(b) then also he shall be liable to file its return of income where the assessee has entered into any of the below-mentioned high value transactions:
  - Assessee has deposited any amount in aggregate exceeding Rs. 1 Crores in one or more current accounts as maintained with banking company or a co-operative bank.
  - Assessee has incurred any expenditure for travel to a foreign country for himself or any other person in excess of Rs. 2 Lakhs in aggregate.
  - Assessee has incurred expenditure towards consumption of electricity exceeding Rs. 1 Lakh in aggregate.
  - Assessee fulfils any other conditions as may be prescribe.
- **w.e.f. 01.04.2020**

## Inter-changeability of PAN and Aadhaar

- Section 139(1) provides that every person mentioned in the said section who has not been allotted PAN, shall apply for the PAN to the assessing officer within the prescribed time limit.
- It is proposed to amend the list of persons as mentioned in Section 139(1), whereby the new class of person who intends to enter into such transaction as may be prescribed by the board in the interest of revenue, is proposed to be inserted.
- Further, it is proposed to insert a new sub-section (5E) to Section 139A to provide that any person who

is required to furnish/ intimate/quote PAN under provisions of the Act can furnish Aadhaar number instead of PAN where the person has not been allotted a PAN but possesses Aadhar and also where the person has been allotted a PAN and he has intimated his Aadhaar number as per Section 139AA(2).

- Consequently, where any person is required to quote PAN or General Index number in any document under section 139(6) and 139(8), it will be valid if Aadhaar number is quoted in lieu of PAN or General Index Number.
- It is also proposed to insert a new Section 139(6A) to provide that any person entering into any transaction as may be prescribed shall quote his PAN or Aadhaar number, in the documents therein shall also authenticate the same. It is also proposed to insert a new Section 139(6B) to impose an obligation on the receiver of the said document to ensure that PAN or Aadhaar Number is duly quoted and is authentic.
- Therefore, vide aforesaid amendments PAN or Aadhaar can be used inter-changeably.
- Consequently amendment has been made in u/s 272B to provide for penalty of Rs. 10000/- for each default u/s 139(6B).
- Further, in Section 25 of CGST Act it is proposed to insert that every registered person or every individual in order to be eligible for grant of registration or every person other than an individual in order to be grant of registration, who have taken or intend to take registration under the said Act, shall undergo the mandatory submission or authentication process of the Aadhaar.
- **w.e.f. 01.09.2019**

## Validity of PAN if not linked to Aadhaar

- Section 139AA(2) provides that where the person has been allotted a PAN, he shall intimate his Aadhaar Number to the prescribed authorities. However, where the Aadhaar is not intimated to the said authority the PAN allotted to the said person shall be deemed to be invalid and other provisions of the Act shall apply as if the person has not applied for the PAN.
- It is proposed to amend the provisions of the aforesaid section by making the PAN inoperative after the date to be notified instead of making PAN invalid.
- Now, where the Aadhaar is not intimated to the authority within the prescribed time limit, the PAN shall become inoperative after the date to be notified in prescribed manner.
- **w.e.f. 01.09.2019**

## TDS on Cash Withdrawal to Discourage Cash Transactions

- New section 194N has been proposed to be inserted which mandates the banking company or a co-operative society engaged in the business of banking or a post office to deduct TDS @ 2%, at the time of making payment in excess of Rs.1 crore to any person from his account maintained with such banking company or a co-operative society or a post office.
- TDS shall be deducted only if the payment is made in cash.
- However, no tax shall be deducted if the payment is being made to:
  - o the Government;
  - o banking company or a co-operative society engaged in the business of banking or a post office;
  - o any business correspondent of a banking company or co- operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve

Bank of India under the Reserve Bank of India Act, 1934;

- o any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;
- o such other person or class of persons which the central government may specify by way of notification in official gazette after cosnsultation with RBI

- **w.e.f. 01.09.2019**

## Mandating Acceptance of Payments Through Prescribed Electronic Modes

- New section 269SU has been proposed to be inserted with an objective to reduce generation and circulation of black money and to promote digital economy.
- As per the said section, every person carrying on the business and having total sales, turnover or gross receipt of more than Rs.50 crore, shall provide the facility for accepting payment through the prescribed electronic modes. The said facility shall be in addition to the other electronic mode, if any.
- A new section 271DB has been proposed to be inserted to impose a penalty for failure to comply section 269SU.
- The penalty of Rs.5,000/- shall be imposed for every day during which such failure continues and it shall be imposed by the Joint Commissioner of Income Tax.
- No penalty shall be levied if it proved that there were good and sufficient reasons for such failure.
- **w.e.f. 01.11.2019.**

## Consequential Amendment in Payment and Settlement Act, 2007

- In consequence to section 269SU, it has been proposed to amend the Payment and Settlement Act, 2007 by inserting new section 10A therein.
- As per the said section bank and other system provider shall not impose any charge upon anyone, either directly or indirectly for using the electronic modes of payment prescribed under section 269SU.
- **w.e.f. 01.11.2019.**

## Measures for Promoting Cash Less Economy

- In order to promote the cash less economy, the Board has been empowered to prescribe the additional electronic modes, other than already mentioned modes, for the purpose of following sections:
  - – Section 13A which states that the income of the political parties from house properties or other sources or capital gain or voluntary contributions shall not be included in the total income of such party. Clause (d) of first proviso to the said section specifies the banking channels in which the contribution in excess of Rs.2,000/- has to be received by the said political party.
  - – Section 35AD which provides deduction for the capital expenditure incurred wholly and exclusively towards the specified business. Section 35AD(8)(f) specifically mentions that if any expenditure in excess of Rs.10,000/- to person in a day has been paid in any mode other than the specified banking channels, the same shall not be considered as capital expenditure.

- Section 40A which specifies certain payments or expenses which are not allowed as deduction in certain circumstances, while compuing the income of the assessee. Section 40A(3), (3A) and (4) disallows the expenditure for which the payment exceeding Rs.10,000/- to person in a day is made by any mode, other than the specified banking channels.
- Section 43(1) which provides the definition of 'actual cost' of the assets. The said section specifically states that payment in excess of Rs.10,000/- for any expenditure for acquisition of any asset or part thereof made to any person in a day other than the specified banking channels shall be ignored while computing the 'actual cost' of the asset.
- Section 43CA which provides that in case of transfer of assets (other than capital asset), the consideration received or accrued is less than the stamp duty value then the said stamp duty value shall be adopted for computing the profit or gain from such transfer. However, in case the date of agreement fixing the value of consideration and the date of registration of transfer is different then the stamp duty value on the date of agreement shall be considered for computing the profit or gain, subject to the condition that the consideration or a part thereof has been received by the specified banking channels on or before the date of transfer agreement. Now the said benefit would also be available if the payments is made through additional modes to be prescribed by CBDT.
- Section 50C which provides that in case of transfer of capital asset, the consideration received or accrued is less than the stamp duty value then the said stamp duty value shall be adopted for computing the profit or gain from such transfer. However, in case the date of agreement fixing the value of consideration and the date of registration of transfer is different then the stamp duty value on the date of agreement shall be considered for the purpose of said section, subject to the condition that the consideration or a part thereof has been received by the specified banking channels on or before the date of transfer agreement. Now the said benefit for taking stamp duty as on date of agreement would also be available if the payments is made through additional modes to be prescribed by CBDT.
- Section 56(2)(x) states that if any person receives from another person any immovable property for a consideration which is less than the stamp duty value of such property then the difference between the stamp suty value and the value of consideration shall be chargeable income form other sources. However, in case the date of agreement fixing the value of consideration and the date of registration of transfer is different then the stamp duty value on the date of agreement shall be considered for computing the profit or gain, subject to the condition that the consideration or a part thereof has been received by the specified banking channels on or before the date of transfer agreement.
- Section 44AD lays down the specific provision for computing profit and gain of business on presumptive basis. As per the said section, 6% of the total turnover or gross receipt which is received by th specified banking channels, shall be deemed to be the profits and gainsof business and profession.
- Section 80JJAA provides for the deduction equal to 30% of the additional employee cost incurred, for 3 A.Y. including the year of employment. While explaining the term 'additional employee cost', the said section specifically states that the said cost shall be considered to be nil if the payments of the emoluments to the employees by the existing business, is not made by the specified banking channels. Now the said restriction would also be applied if the payment is not made through additional electronic modes to be prescribed.

- **w.e.f. 01.04.2019 (A.Y. 2020-21 onwards)**

## Electronic Modes of Accepting Deposits

- Section 269SS prohibits the persons from taking or accepting loans, deposits or any specified sum equal to Rs. 20,000/- or more, otherwise than the specified banking channels. Now, the said section as been proposed to be amended to empower the Board to make rules for accepting loans, deposits or any specified sum is received through any electronic mode
- Section 269ST prohibits the person from receving an amount of Rs.2,00,000/- or more in aggregate from a person in a day or in respect of a single transaction or in respect to the transaction relating to an event or occasion from a person. There is no such prohibition if the amount has been received by the specified banking channels. Now, the said section has been proposed to be amended to empower the Board to prescribe the other additional electronic modes through which the amount can be received.
- Section 269T prohibits the banking company or a co-operative bank and any other company or co-operative society and any firm or other person from repaying any loan or deposit or any specified advance received, if the amount to be repaid is 20,000/- or more. There is no such prohibition if the amount is being paid by the specified banking channels. Now, the said section has been proposed to be amended to empower the Board to prescribe the other additional electronic modes through which the said loan or deposit or any specified advance can be repaid.
- **w.e.f. 01.09.2019**

# Incentivising the IFSC

- **Transfer of certain securitites by Category III Alternate Investment Fund in IFSC not a taxable transfer**
  - As per existing clause (viiab) of Section 47, any transfer of a capital asset, being bonds or Global Depository Receipts or rupee denominated bond of an Indian company or derivative, made by a non-resident through a recognised stock exchange located in International Financial Services Centre ("**IFSC**") shall not be regarded as a transfer where the consideration for such transaction is paid/ payable in foreign currency.
  - In view of treating the transfer of certain securities by Category III- Alternative Investment Fund ("**AIF**") in IFSC as tax-neutral transfer, it is proposed to amend the said section so as to provide that any transfer of the above-mentioned capital assets made by a specified fund through a recognised stock exchange located in any IFSC shall not be regarded as transfer where the consideration for such transaction is paid/payable in foreign currency.
  - It is also proposed to provide that transfer, at a recognised stock exchange located in any IFSC, of such other securities as may be notified by the Central Government in this behalf, shall not be regarded as transfer in the hands of a non-resident or a specified fund.
  - In the Explanation to the aforesaid section, clause (e) is proposed to be inserted to define "specified fund" as under:
    - a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate,—
      - which has been granted a certificate of registration as a Category III AIF and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992;
      - which is located in any IFSC;

  - which is deriving income solely in convertible foreign exchange;
  - of which all the units are held by non-residents.
- It is also proposed to insert the definitions of the expressions "securities", "trust", "unit" and "convertible foreign exchange" in the Explanation to Section 47(viiab).
- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

## • Amendment proposed in Section 10

- In order to enable external borrowing by units located in IFSC, sub-clause (ix) is proposed to be inserted in clause (15) of Section 10 to provide that any interest payable by a unit located in IFSC to a non-resident in respect of monies borrowed by it on or after 01.09.2019 shall be exempt from tax.
- For the purpose of aforesaid exemption, “IFSC” shall have the meaning assigned to it in Section 2(q) of the Special Economic Zones Act, 2005 and “unit” shall have the meaning assigned to it in Section 2(zc) of the said Act.
- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

## • No tax on distributed profits out of accumulated income derived after 01.04.2017

- Presently, Section 115-O(8) provides that any company, being a unit located in IFSC shall not be liable to pay any tax on distributed profits in respect of its total income derived solely in convertible foreign exchange, for any A.Y. on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after 01.04.2017, out of its current income.
- To facilitate distribution of dividend by companies operating in IFSC, it is proposed to amend the aforesaid sub-section to provide that any dividend paid out of accumulated income derived from operations in IFSC, after 01.04.2017 shall also not be liable for tax on distributed profits.
- **w.e.f. 01.09.2019**

## • Incentivising relocation of Mutual Fund in IFSC

- The existing provisions of Section 115R(2) provide that any income distributed by (i) a specified company, or (ii) a mutual fund to its unit holders shall be chargeable to tax and such entities shall be liable to pay additional income tax on such distributed income at the rates prescribed therein.
- It is proposed to insert a proviso to the aforesaid sub-section to provide that no additional income-tax shall be chargeable in respect of any income distributed from 01.09.2019 onwards by a specified Mutual Fund, out of its income derived from transactions made on a recognised stock exchange located in any IFSC.
- It is further proposed to insert the definition of the expressions "specified Mutual Fund", "unit", "convertible foreign exchange", “recognized stock exchange” and "International Financial Services Centre" in the Explanation to Section 115R(2). The expression “specified Mutual Fund” means a Mutual Fund as specified in Section 10(23D) and:
  - is located in any International Financial Services Centre;
  - derives income solely in convertible foreign exchange;
  - of which all the units are held by non-residents.
- **w.e.f. 01.09.2019**

- **Deduction u/s 80LA increased to 100% for any 10 consecutive assessment years**
  - The current provisions of Section 80LA provide for profit linked deduction to a unit of an IFSC as under:
    - 100% of income for first 5 consecutive assessment years beginning with the A.Y. in which the specified permission was obtained; and
    - 50% of income for next 5 consecutive assessment years.
  - It is proposed to amend the said section by substituting sub-section (1) with sub-sections (1) and (1A) to increase the deduction provided to a unit of an IFSC to 100% of income for any 10 consecutive assessment years, at the option of the assessee, out of 15 years beginning with the A.Y. in which the necessary permission was obtained.
  - **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

- **Section 115A not applicable to a unit in IFSC claiming deduction u/s 80LA**
  - Section 115A provides the method of calculation of income-tax payable by a non-resident (not being a company) or by a foreign company, where the total income includes any income by way of dividend (other than referred in section 115-O), interest, royalty and fees for technical services; etc.
  - As discussed above, Section 80LA provides for deduction in respect of certain incomes to a unit located in IFSC. However, as per Section 115A(4), if an assessee has any income referred to in Section 115A(1) then no deduction shall be allowed to such assessee under Chapter VIA which includes Section 80LA. In order to ensure that units located in IFSC claim full deduction, it is proposed to insert a proviso in sub-section (4) of Section 115A to provide that the conditions contained in the said sub-section shall not apply to a unit of an IFSC for which deduction is allowed u/s 80LA.
  - **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

# Section 80EEB: Deduction for Purchase of Electric Vehicles

- With a view to promote electric vehicles in order to reduce vehicular pollution, it is proposed to insert a new section 80EEB so as to provide for a deduction to an individual, in respect of interest on loan taken for purchase of an electric vehicle from any financial institution up to Rs. 1,50,000/- subject to the condition that the loan has been sanctioned by the financial institution during the period ranging from 01.04.2019 to 31.03.2023.
- It has been further proposed that where a deduction is allowed under the said section for any interest, then deduction shall not be allowed in respect of such interest under any other provisions of the IT Act.
- Further, in the Memorandum explaining the Finance (No.2) Bill, 2019, it has been mentioned that deduction shall be allowed u/s 80EEB if the assessee does not own any other electric vehicle on the date of sanction of loan. However, no such condition has been laid down in the text of Section 80EEB as provided in the Finance (No.2) Bill, 2019.
- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

# Exemption of Interest Income of a Non-resident from Rupee Denominated Bonds

- The existing provisions of Section 194LC provide that interest income 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, or Rupee Denominated Bonds ("**RDB's**") shall be eligible for TDS at a concessional rate of 5%.
- Further, vide press release dated 17.09.2018, it was announced that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of RDB's issued outside India during the period 17.09.2018 to 31.03.2019 ("**Specified Interest**") shall be exempt from tax and no TDS shall be deducted from the said interest.
- Now, in order to incorporate the said exemption in the IT Act, it has been proposed to amend Section 10 by inserting clause (4C) to provide that the Specified Interest shall be exempt from income tax in the hands of the non-resident.
- **w.e.f. 01.04.2019 (A.Y. 2019-20 onwards)**

# Incentives to NBFCs

- Section 43D of the Act, inter-alia provides that interest income in relation to certain categories of bad or doubtful debts received by certain institutions or banks or corporations or companies, shall be chargeable to tax in the previous year in which it is credited to its P&L account or in the year in which it is actually received, whichever is earlier. The benefit of this section is currently available to public financial institutions, scheduled banks, cooperative banks, etc.
- The provisions of the aforesaid section have been proposed to be extended to the following categories of Non-banking Financial Companies ("**NBFCs**"):
  - Deposit taking NBFCs;
  - Systemically important non-deposit taking NBFCs
- Consequentially, as per matching principle in taxation, it is proposed to amend Section 43B as follows:
  - Clause (da) is proposed to be inserted to provide that any sum payable by an assessee as interest on any loan or advances from a deposit-taking NBFC and systemically important non deposit-taking NBFC shall be allowed as a deduction if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.
  - Explanation 3AA is proposed to be inserted to provide that where a deduction in respect of any sum referred to in clause (da) is allowed in computing the business of the previous year in which the liability to pay such sum was incurred, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.
  - Explanation 3CA is proposed to be inserted to provide that a deduction of any interest as referred in clause (da), shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid.
  - It is also proposed to define the expressions "deposit taking non-banking financial company", "non-

banking financial company" and "systemically important non-deposit taking non-banking financial company" in Explanation 4 to the said section.

- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

# Conditions for classifying as Eligible Investment Fund u/s 9A relaxed

- Section 9A of the Act provides for a safe harbour in respect of offshore funds and provides that the activities of eligible investment fund shall not constitute business connection in India.
- For being an eligible fund, certain conditions are specified in Section 9A(3).
- Two of such conditions have been proposed to be relaxed as follows:-
  - Proviso to Clause (j) - The corpus of the fund shall not be less than Rs. 100 Crore at the end of a period of 6 months from the end of the month of its establishment or incorporation or at the end of such previous year, whichever is later. Earlier the requirement of corpus fund of Rs. 100 Crore was to be checked only at the end of previous year in which such fund was established irrespective of its date of establishment or incorporation.
  - Clause (m) - The remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the amount calculated in such manner as may be prescribed.Earlier, the remuneration for eligible fund manager was to be determined on the Arm's Length Price of the activity.
- **w.r.e.f. 01.04.2019 (A.Y. 2019-20 onwards)**

# Deduction of Interest on Affordable Housing in Order to Enhance Ease of Living for Individuals

- To provide a push to the 'Housing for all' objective of the Government,new deduction u/s 80EEA is proposed for an individual assessee on interest payable by him to financial institutions on loan taken for the purpose of acquisition of a residential house property.
- The deduction of interest payable from the gross total income is allowable subject to the following conditions:
  - The loan is sanctioned by the financial institution between 01.04.2019 to 31.03.2020;
  - Stamp duty value of the residential house property does not exceed Rs. 45 Lakh; and
  - The assessee does not own any residential house property on the date of sanction of loan.
- The limit of deduction allowable is Rs. 1.5 Lakh.
- Deduction of interest which is allowed u/s 80EEA, is not allowable under any of the provisions of the IT Act for the same A.Y. or subsequent A.Y.s.This deduction is in addition to deduction upto Rs. 2,00,000/- provided u/s 24(b). Thus, Assessee can now claim enhanced interest deduction up to Rs. 3.5 lakhon purchasing an affordable house.
- The deduction is also available for loan taken from a Housing finance company.
- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

## Alignment of definition of "Affordable Housing" with GST Act

- The existing provisions of Section 80-IBA provide for deduction of 100% of profits & gains from developing and building housing projects to certain assessees subject to fulfilment of certain conditions.
- For the housing projects which shall be approved on or after 01.09.2019,it has been proposed to align the definition of "affordable housing" with the definition provided under the GST Act.
- Accordingly, deduction shall be allowed to assessees subject to modified conditions as follows:
  - The project is completed within a period of 5 years from the date of approval by the competent authority
  - The carpet area of the shops and other commercial establishments included in the housing project does not exceed 3% of the aggregate carpet area
  - Project is on a plot of land measuring not less than
    - 1000 Sq. Meter, where project is located within metropolitan cities of Benguluru, Chennai, Delhi NCR (Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai.
    - 2000 Sq. Meter for other locations
  - Project is only housing project on plot of land
  - Carpet area of residential unit does not exceed
    - 60 Sq. Meters for Metropolitan areas/cities (existing limit 30 Sq. meter for projected located within cities Chennai, Delhi, Kolkata or Mumbai
    - 90 Sq. Meters for other locations (existing limit 60 Sq. Meter)
  - The stamp duty value of residential unit is upto Rs. 45 Lakh
- Floor area ratio utilization requirement of 90% is now proposed to be extended to project located within metropolitan cities of Bengaluru, Chennai, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad, Hyderabad in addition to 4 Metros.
- Existing condition of maintenance of separate books of accounts in respect of housing project is also to be complied with.
- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

## Rationalization of Provisions Relating to Angel Tax

- Section 56(2)(viib) provides that in case the consideration for issue of shares received by a closely held company from any resident exceeds the face value of such shares, then the aggregate consideration received for such shares in excess of the FMV of such shares, shall be taxable. However, this provision shall not apply in cases specified in Proviso to Section 56(2)(viib).
- It is proposed to amend the said proviso so that Section 56(2)(viib) shall not apply where the consideration for issue of shares is received by a venture capital undertaking from a specified Category II Alternative Investment Fund. Further, as per the said proviso, Section 56(2)(viib) shall not apply where the consideration for issue of shares is received by a company from a class or classes of persons as may be notified by the Central Government subject to fulfilment of certain conditions.
- It is proposed that failure to comply with the conditions shall result into taxability of any consideration received for issue of share in excess of the face value of such share for the previous year in which such failure takes place.
- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

# Incentives for Start-ups

- Relaxation of conditions for carry forward and set off of losses by start-ups
  - Under the existing provision of Section 79(b), a company being an eligible start-up, but not a public company, can 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, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of 7 years beginning from the year in which such company is incorporated.
  - It is proposed to substitute Section 79, in order to allow the eligible start-ups to carry forward and set-off the loss incurred in any year prior to previous year against the income of the previous year, if either of the conditions specified at clause (a) or clause (b) of existing provision is satisfied i.e.
    a) on the last day of the previous year, the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred;
    b) 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, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of 7 years beginning from the year in which such company is incorporated.
  - **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

- **Proposed amendments in Section 54GB to incentivise eligible start-ups**
  - As per the existing provisions of Section 54GB, capital gains arising from the transfer of a residential property owned by an Individual or HUF, is not chargeable to income-tax, in case the said assessee(s) utilise the net consideration for subscription in the equity shares of an eligible company before the return filing date and the eligible company further, within a period of 1 year from the date of subscription in equity shares by the assessee, utilises this amount for purchase of new asset.
  - A pre-requisite to claim the said exemption is that after the subscription in shares of eligible company, the assessee shall hold more than 51% share capital or more than 51% voting rights. Further, one of the other conditions to avail the said exemption is that equity shares of the company acquired by the assessee or the new asset acquired by the company shall not be transferred upto 5 years from the date of their acquisition.
  - The sun set date for said exemption in case of an investment in eligible start-ups was 31.03.2019.
  - Now, vide the Finance (No.2) Bill, 2019, it is proposed to amend Section 54GB as under:
    - The sun set date for exemption of capital gains arising from transfer of residential property has been extended to 31.03.2021 if the said capital gains are invested in an eligible start-up;
    - The condition of minimum shareholding of 51% of share capital or voting rights as mentioned above, is proposed to be reduced to 25%;
    - Restriction on transfer of new asset within 5 years from the date of acquisition is proposed to be reduced to 3 years in case of a new asset being computer or computer software acquired by an eligible start-up.
  - **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

# Carry Forward and Set Off of Losses of Distressed Companies

- Section 79 of the IT Act provides for not allowing carry forward and set-off of losses to the companies in case of change in shareholding beyond 49%.
- Various exceptions were provided to this standard rule.
- Amendment were made to the section by Finance Act 2018 to provide an exception to a company wherein the change in shareholding took place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 ("**IBC**").
- On similar lines, a new exception has been proposed to be introduced to include companies, their subsidiary and the subsidiary of such company, where-
  - on a petition made by central government u/s 241 of the Co. Act, the Board of Directors of such company has been suspended and replaced by the NCLT u/s 242 of the Companies Act, 2013 ("**Co. Act**") with the directors nominated by the central government, and
  - a change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT under section 242 of the Co. Act, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
- Hence, such companies will be eligible to carry forward and set off their losses even when there has been a change in shareholding due to the action of NCLT and central government as discussed above.
- For the purpose of this section, a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.
- While the above is the only amendment to the section, the entire section has been restructured to constitute two sub-sections, Sub-section (2) lays down the exceptions to Sub-section (1) as against the earlier provision wherein all exceptions were captured in proviso.
- **w.e.f. 01.04.2020**

# Benefit in Calculation of MAT to Distressed Companies

- Clause (iih) was inserted to Explanation 1 to Section 115JB of the IT Act, by Finance Act 2018 w.e.f. 01.04.2018 that provided for book profit to be reduced by unabsorbed depreciation and loss brought forward, while calculating MAT, in case of a company against whom an application for corporate insolvency resolution has been admitted under IBC.
- It has now been proposed to extend the clause to cover under its ambit a company, and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government under section 242 of the said Act.
- Hence, such companies will be allowed to reduce the aggregate amount of unabsorbed depreciation and loss brought forward from their book profit while calculating MAT u/s 115JB.
- **w.e.f. 01.04.2020**

# Exemption from Deeming of Fair Market Value of Shares for Certain Transactions

- In case of transfer of unquoted shares, tax may be attracted in the hands of transferor as well as transferee.
- Section 50CA of the IT Act provides for deeming of fair market value of unquoted shares for computing the capital gains from the transfer of such shares, in the hands of transferor.
- Section 56(2)(x) of the IT Act, inter alia, provide for chargeability of income in the hands of transferee, in case of receipt of money or specified property for no or inadequate consideration. For determining the amount of income for receipt of certain shares, the fair market value of the shares is taken into account.
- For both these provisions, the fair market value is determined based on the prescribed method.
- The lawmakers have realized, that determination of fair market value based on the prescribed rules may result into genuine hardship in certain cases where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination.
- In order to provide relief to such types of transactions from the applicability of sections 56(2)(x) and 50CA, provision has been proposed to be inserted to empower the Board to prescribe transactions undertaken by certain class of persons to which the provisions of the said sections shall not be applicable.
- **w.e.f. 01.04.2020**

# Online Filing to Improve Effectiveness of Tax Administration

- The government is laying a lot of stress on use of technology to improve overall efficiency of tax administration.
- In line with the same, following measures have been proposed
  - Application to AO u/s 195
    - Under section 195(2) of the IT Act a person making payment to a non-resident may file an application before the assessing officer to obtain certificate/order from the Assessing officer for lower or nil withholding tax.
    - Till now the process was manual.
    - An amendment is proposed to prescribe an online form for filing the application and provide a manner for determining appropriate portion of sum chargeable to tax by assessing officer
    - **w.e.f. 01.11.2019**
  - Quarterly return in respect of payment of interest to residents without deduction of tax
    - Under section 206A, a Banking Company, co-operative society or a public company referred to in Section 194A(3)(i), responsible for paying to a resident any income in form of interest without deducting tax, are required to file a quarterly return with the income tax authority.
    - Earlier such return was required to be filed in a computer readable media such as CD-ROM, floppy etc.
    - Now an amendment is proposed in the section to allow filing of return through an electronic form.
    - A facility to allow amendment or edit to the information filed is also proposed to be introduced.
    - **w.e.f. 01.09.2019**

# Tax on buy back of shares by a Listed Company

- The anti-abuse provision of section 115QA charged tax @ 20% on amount of distributed income on buy back of shares by an unlisted company.
- This measure was taken to curb the practice of distributing money to the shareholders of the company through a buy back of shares instead of distribution of dividend which attracted dividend distribution tax.
- Now the same provision is being extended to listed companies as well. i.e. a 20% tax will be levied in case a listed company distribute income by way of buy back of shares.
- Consequently, exemption u/s 10(34A) is proposed to be extended to shareholders of the listed company on account of buy-back of shares on which additional income -tax has been paid by the company.
- **w.e.f. 05.07.2019**

# Cancellation of Registration of the Trust or Institution

- Section 12AA of the IT Act provides for manner of granting of registration in case of a trust or institution for availing benefits u/s 11 of the IT Act.
- Section 12AA also provides for manner of cancellation of the said registration.
- Additional grounds have been proposed to be taken into consideration at the time of granting of registration and subsequently to allow the Commissioner or Principal Commissioner to cancel the registration of the trust or institution.
- The amendment proposed are as under-
  - at the time of granting the registration to a trust or institution, the Principal Commissioner or the Commissioner shall, inter alia, also satisfy himself about the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects;
  - where a trust or an institution has been granted registration under clause 12AA(1)(b) or has obtained registration at any time under section 12A and subsequently it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality, the Principal Commissioner or Commissioner may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.
- **w.e.f. 01.09.2019**

## Facilitation of De-merger of Ind-AS Compliant Companies

- As per Section 2(19AA) "demerger", one of the condition for tax neutral demeregers stipulated in sub clause (iii) requires resulting companies to record the property and liabilities of the undertaking of demerged company at values appearing in its books of account immediately before the demerger i.e. at book value.
- However, Indian Accounting Standards ("**Ind-AS**") stipulates that Ind-AS compliant companies to account for the property and the liabilities of the undertaking at a value different from the book value. Hence, condition (iii) of section 2(19AA) was not getting fulfilled.
- To remove the difficulty, a proviso is proposed in sub clause (iii) to do away with the existing condition for Ind-AS compliant Companies.

- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

## Relaxation of Provisions of Section 201 and Section 40 for Non Deduction of TDS in case of payment to Non Residents

- Existing Section 40(a)(i) provides for dis-allowance of expenditure on payment to non resident without deduction or after deduction on non payment of TDS.
- A relaxation is available u/s 40 (a)(ia) r.w.r.t. first proviso to section 201(1) wherein the aseessee is not considered to be an assessee in default u/s 201 and consequently the disallowance in hands of payer is not attracted, if the payee has filed its return of Income u/s 139, disclosed such payment for computing his return of income, paid tax on such income and furnished an accountant's certificate to this effect. However, this relaxation was available in case of resident payees only.
- The relaxation which was erstwhile not available to payments made to non resident payees has now been proposed to be extended for payments to non residents payees also u/s 40(a)(i).
- First proviso to section 201(1) and Proviso to Section 201(1A) in relation to calculation of interest also to be amended to extend the benefit.
- **Amendments in section 201(1) and Section 201(1A) applicable w.e.f. 01.09.2019**
- **Amendments in section 40(a)(i) applicable w.e.f. 01.04.2020**

## AO not to reassess or recompute the income afresh but required to follow APA in case a modified return filed pursuant to it

- Section 92CC empowers CBDT to enter into Advanced Pricing Agreement (APA) with the assessee for determination of Arm's Length Price in relation to an international transaction.
- Section 92CD(3) provides the mechanism of giving effect of an APA, in cases wherein assessment or reassessment has already been completed before the period allowed for filing modified return. Due to the existing language of words used in sub section 3, apprehensions were raised that AO had power to reassess or recompute the total income afresh after modified return was filed to give effect to the APA.
- To remove ambiguities existing provisions are proposed to be amended to bring clarity so as to bind AO to give effect of APA only in modified return filed pursuant to this section.
- **w.e.f. 01.09.2019**

## One Time Payment option for Secondary Adjustments made under Transfer Pricing Provisions u/s 92CE

- Transfer Pricing provisions u/s 92CE provide for Primary Adjustment to transfer price on account of five situations. The effect of primary adjustments results in a situation wherein, the arm's length price as determined on account of above primary adjustments varies in comparison to actual transaction price with the associated enterprise. Hence, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee and thus consequently leads to the situation of excess money which is available with its associated enterprise.
- This excess money requires secondary adjustment i.e. if the same is not repatriated to India within 90 days of relevant date as per Rule 10CB, it shall be deemed to be an advance made by the assessee to such associated enterprise and the same shall be liable for interest.

- Several concerns were raised regarding effective implementation of secondary adjustments regime and seeking clarity in law.
- The following amendments have been proposed in the section for effective implementation of the secondary adjustment provisions:-
  (i) the condition as stipulated in Proviso to 92CE(1) of threshold of Rs. 1,00,00,000/- and of the primary adjustment made upto assessment year 2016-17 are to be considered as alternate conditions instead of additional conditions ("**and**");
  (ii) the assessee shall be required to calculate interest on the excess money or part thereof;
  (iii) the provision of this section shall apply to the agreements which have been signed on or after 1st April, 2017; however, no refund of the taxes already paid till date under the pre amended section would be allowed;
  (iv) the excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India;
  (v) 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 @ 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 tax is proposed to be increased by a surcharge @12%;
  (vi) the 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;
  (vii) the deduction in respect of the amount on which such tax has been paid, shall not be allowed under any other provision of this Act; and
  (viii) 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
- **Proposed Amendments (i) to (iv) to be retrospectively applicable from 01.04.2018**
- **Proposed Amendments (v) to (viii) to be applicable from 01.09.2019**

## Providing for pass through of losses in case of Category I and Category II AIF

- Section 115UB contains special provision for tax on income of investment fund and its unit holders. As per the existing provisions the loss of investment fund is not passed through to investor/unit holder though the profits other than business profits are passed through to investors/unit holders. Further the business profit of the Alternative Investment Fund ("**AIF**" ) is charged at AIF level.
- The provisions of section 115UB(2) are proposed to be amended to provide that:
  – Loss arising to investment fund under the head "profits and gains of business or profession" shall be allowed carry forward and set off in accordance with provision of Chapter VI and thus such loss shall not accrue or arise or received ('pass through') by unit holder.
  – Other loss, if any, shall not accrue or arise to unit holders, if such loss is in respect of units not held by the unit holders for a period of atleast 12 months
  – Accumulated losses other than business loss, if any, of investment fund as on 31.03.2019 shall be deemed to be loss of unit holder.

- The said deemed loss is allowed to be set off and carry forward in the hands of unit holders in accordance with Chapter VI for the remaining period.
- For computing remaining period, the year in which the loss had occurred for the first time would be reckoned as the first year.

- **w.e.f. 01.04.2020 (AY 2020-21 onwards)**

## What is an AIF?

AIF means any fund established or incorporated in India under SEBI (Alternative Investment Funds) Regulations, 2012. It is a privately pooled investment vehicle which collects funds from sophisticated investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors.

**Types:**

Category I AIF such as Venture capital funds (Including Angel Funds) , SME Funds, Social Venture Funds , Infrastructure funds

Category II AIF such as real estate funds, private equity funds (PE funds), funds for distressed assets, etc.

Category III AIF such as hedge funds, PIPE Funds, etc

## Applicability of Concessional Rate to Certain Equity Oriented Fund of Funds

- As per the existing provisions of section 111A, the explanation covers the definition of "Equity Oriented Funds" as per the meaning defined under section 10(38), which confines the investment of these funds by way of equity shares in domestic companies.
- As per the proposed amendments, the above definition of Equity Oriented Funds has been substituted, with the definition given u/s 112A which extends the investment of these funds in the units of another fund which is traded on recognized stock exchange.
- Now the STCG of funds of funds would be chargeable @ 15%.
- **w.e.f. 01.04.2020(AY 2020-21 onwards).**

## Credit of Relief provided under Section 89

- As per the existing provisions of Section 140A, Section 143, Section 234A, Section 234B and Section 234C, relief under Section 89 was not considered while computing the tax/ interest liability, which results in increased tax/interest liability for the taxpayers.
- As per the proposed amendments, the relief under section 89 will be provided while calculating tax/ interest liability under Section 140A, Section 143, Section 234A, Section 234B and Section 234C, along with the other reliefs.
- **w.r.e.f. 01.04.2007(AY 2007-08 onwards).**

## Tax Deduction on insurance payment on net basis

- Existing provisions u/s 194DA provides for deduction of tax at source at 1% of amount paid under life insurance policy.
- Amendment is proposed in the said section to provide TDS at the rate of 5% on the amount of income comprised in the sum payable to resident under life insurance policy.
- **W.e.f. 01.09.2019**

## Section 286: Clarification regarding definition of "accounting year"

- Section 286 contains provisions relating to specific reporting regime in the form of Country-by-Country Reportin respect of an international group. It provides that every parent entity or the Alternate Reporting Entity ("**ARE**"), resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of 12 months from the end of the said reporting accounting year, in the form and manner as may be prescribed.
- An unintended anomaly exists in the said section regarding the interpretation of the expression 'accounting year' as to whether in case of an ARE resident in India whose ultimate parent entity is not resident in India, the accounting year would be the previous year of the ARE resident in India or the accounting year applicable in the country where the ultimate parent entity of the ARE is resident.
- In order to bring clarity in law, it is proposed to amend section 286 so as to provide that the accounting year in case of the ARE of an international group, the parent entity of which is not resident in India, the reporting accounting year shall be the one applicable to such parent entity. This amendment is clarificatory in nature.
- **w.r.e.f. 01.04.2017 (A.Y. 2017-18 onwards)**

# Payment of Unpaid Dues with Interest and Refund of Excess Amount Paid under the IDS, 2016

- As per section 187 of the Finance Act, 2016 ("**FA 2016**"), applicable tax, surcharge and penalty in respect of undisclosed income declared under the Income Declaration Scheme, 2016 ("**IDS**"), shall be paid on or before notified date. Further, as per section 191 of the FA, 2016, any amount of tax, surcharge and penalty paid under IDS shall not be refundable.
- In order to address genuine concerns of the declarants under the IDS, following proposals are made:
  - In case the applicable tax, surcharge and penalty has not been paid within the due date, the Central Government may notify the class of persons who may make the payment of such amount on or before the notified date along with interest @ 1% for every month or part of month comprising of period commencing on the date immediately following the due date and ending on the date of such payment
  - Central Government may notify the class of persons to whom the amount of tax, surcharge and penalty, paid in excess of the amount payable under IDS, shall be refundable.".
- **w.r.e.f. 01.06.2016.**

# Maintenance of Records by Constituent Entity even if there is no International Transaction

- Section 92D provides for maintenance and keeping of information and document by persons entering into an international transaction and filling of required forms.
- It is proposed to substitute Section 92D in order to provide that the information and document to be kept and maintained by a constituent entity of an international group and filling of required form, shall be applicable even when there is no international transaction undertaken by such constituent entity.
- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

# Incentives to National Pension System (NPS) subscribers

- Increase in exemption limit u/s 10
  - At present, as per Section 10(12A), 40% of the payment made to the assessee from National Pension System Trust, on closure of his account or on his opting out of the pension scheme, shall not be included in the total income of the assessee.
  - It is proposed to amend the aforesaid section to increase the said exemption limit of 40% to 60%.
  - **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**
- Increase in deduction u/s 80CCD to Central Government employees
  - As per existing provision of Section 80CCD(1)(a), an assessee being an employee of Central Government or any other employer shall be eligible for deduction from total income w.r.t. any amount paid or deposited in his notified pension account, to the extent of 10% of his salary in the previous year.
  - It is proposed to amend the said section in order to increase the said limit from 10% to 14% in case of Central Government employees only.
  - **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

- Additional Tax Saving Investments for Central Government employees
  - In order to provide additional options for tax saving investments to Central Government employees, it is proposed to insert new clause (xxv) in Section 80C to provide that any amount contributed by a Central Government employee to a specified account of the pension scheme shall be eligible for deduction under the said section. The lock-in-period of the said investment is 3 years.
  - **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

## Correct Referencing of Section 145B(1) Made in Section 56(viii)

- Prior to Finance Act, 2018 ("**FA 2018**"), Section 145A(b) dealt with method of accounting in relation to income by way of intetest received on compensation or enhanced compensation as referred to in Section 56(viii). Thereafter, FA 2018 had substituted the provisions of section 145A with new Section 145A and Section 145B. So now, Section 145B deals with the provisions of method of accounting in relation to aforesaid interest income. However, no consequential amendment in Section 56(viii) was made under FA 2018.
- Hence, it is proposed to amend section 56(viii) of the Act to provide the correct reference of section 145B(1) in section 56(viii), in place of the existing reference of Section 145A(b).
- **w.r.e.f. 01.04.2017 (A.Y. 2017-18 onwards)**

## Underreporting of Income where Return of Income filed u/s 148 for the first time, covered in Section 270A

- Section 270A provides for penalty in case of under-reporting and misreporting of income. The existing provisions provide for various situations for the purposes of levy of penalty under this section. However, these provisions do not contain the mechanism for determining under-reporting of income and quantum of penalty to be levied in the case where the person has under-reported income and furnished the return of income for the first time u/s 148.
- In order to cover the cases of under reporting of income where the person has furnshied the return of income for the first time u/s 148, provisions of section 270A is proposed to be amended. In such cases, Penalty shall be computed in the same manner as computed in case of furnishing of no return of income.
- **w.r.e.f. 01.04.2017 (A.Y. 2017-18 onwards)**

## Rationalisation of Prosecution Provisions for Failure to Furnish Returns of Income

- Section 276CC provides for prosecution proceedings in case of failure to furnish return of income in due time. Proviso to Section 276CC provides that a person shall not be proceeded against if the tax payable by such person, not being a company, determined on regular assessment as reduced by the amount of advance tax and TDS, does not exceed Rs. 3,000/-. The existing provisions do not consider to take into account the amount of self-assessment tax and TCS while determining the amount of tax payable.
- Acccordingly, It is proposed that the amount of self-assessment tax paid before the expiry of the A.Y. and TCS shall also be considered while determining the amount of tax payable for the purpose of section 276CC.

- It is also proposed to increase the aforesaid threshold limit of tax payable from Rs. 3,000/- to Rs. 10,000/-.
- **w.e.f. 01.04.2020 (A.Y. 2020-21 onwards)**

## Enhancement in Scope of Tax Recoveries done in Pursuant to Agreements with Foreign Countries

- Section 228A provides the procedure of recovery of tax in pursuance of agreements with foreign countries. Accordingly, if any tax is recoverable by a foreign country from a person having any property in India, the Board, may ask the jurisdictional officer for the recovery of such tax in pursuance of agreement with such foreign country. Further, where an assessee is in default or is deemed to be in default in making a payment of tax under the IT Act, the Tax Recovery Officer may ask the Board to take appropriate action as per the terms of the agreement with foreign country, if the assessee has property in such foreign country. Thus, Section 228A provides for tax recovery based upon the person having property in or outside India as the case may be.
- It is proposed to amend Section 228A so as to extend the provisions of tax recovery as per the terms of agreement with foreign countries, even in the cases where details of property of the person are not available but such person is resident in India or in a foreign country, as the case may be.
- **w.e.f. 01.09.2019**

## Claim of Refund by filling of return u/s 139

- Section 239(1) provides that every claim of refund under Chapter XIX shall be made in the prescribed form and verified in the prescribed manner. Further, Section 239(2) provides time limits for claim of refund in different cases.
- In order to simplify the procedure for claim of refund, it is proposed to amend Section 239(1) so as to provide that every claim for refund under Chapter XIX of the Act shall be made by furnishing return in accordance with the provisions of Section 139. Further, section 239(2) is also proposed to be omitted.
- **w.e.f. 01.09.2019**

## Enhancing Time Limit for Sale of Attached Property

- Rule 68B of the Second Schedule states that no sale of immovable property attached towards the recovery of demand, shall be made after the expiry of 3 years from the end of the F.Y. in which the order giving rise to a demand for the recovery of which the immovable property has been attached, becomes final.
- In order to protect the interest of the revenue, especially in those cases where demand has been crystallised on conclusion of the proceedings, it is proposed to amend the said Rule so as to extend the period of limitation from 3 years to 7 years. It is further proposed to insert a new proviso in the said Rule so as to provide that the Board may, for reasons to be recorded in writing, extend the aforesaid period of limitation by a further period of 3 years.
- **w.e.f. 01.09.2019**

# HIGHLIGHTS OF IMPORTANT AMENDMENTS RELATING TO INDIRECT TAXES

## OVERVIEW OF THE LEGACY SCHEME

- The Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 ("Legacy Scheme") is proposed to be implemented in order to bring an end to pending disputes under the old indirect tax regime.
- Taxpayers who submit a declaration under this Legacy Scheme ("Declarant") for their previous Tax Dues which are pending on or before 30.06.2019 shall be granted relief from the imposed duty up to a specified amount, along with a waiver of penalty and interest, and immunity from any other proceedings under the Excise Act or Finance Act in such matters.

### Tax Dues on Which Relief is Available

- The amount of duty payable by a Declarant as per a notice or an order;
- The amount of duty disputed by a Declarant or the sum of the amount disputed by both the Assessee and the department in an appeal;
- The sum as quantified in an enquiry, audit or investigation against a Declarant;
- The amount voluntarily disclosed by the Declarant; or
- Amount in Arrears.

### Tax Relief Under the Legacy Scheme

- Where the amount of Tax Dues as per a **notice or an order or statement** is:
  - Less than or equal to **Rs. 50 lakhs:** Only **30%** of the Tax Dues have to be paid
  - **More than Rs. 50 lakhs:** Only **50%** of the Tax Dues have to be paid.
- Where duty is not demanded or is not under dispute or has already been paid, the entire amount demanded as penalty or late fee shall be available as relief.
- Where Tax Dues relating to an amount in arrears is:
  - Less than or equal to **Rs. 50 lakhs**: Only **40%** of the Tax dues have to be paid
  - **More than Rs. 50 lakhs**: Only **60%** of the Tax Dues have to be paid.
- For voluntary disclosure, there is no relief on the amount of duty payable. However, relief from interest and penalty is given.

## Criteria for Ineligibility Under the Legacy Scheme

- Final hearing of an appeal or notice has been carried out before 30.06.2019.
- Assessee has been previously convicted for an offence for the matter with regard to which he intends to file a declaration.
- Assessee has been issued a notice for refund or erroneous refund.
- Assessee has been subject to an enquiry, audit or investigation where the Tax Dues have not been quantified on or before 30.06.2019.
- Assessee voluntarily disclosing the amount has:
  - Been subject to an audit or investigation, or
  - Has indicated the amount in an indirect tax return but has not paid it.
- Assessee that has made an application before the Settlement Commission.
- Assessee making declarations with respect to excisable goods in the 4th Schedule to the Excise Act.

## Adjustment of Predeposit

- Any amount paid as predeposit at any stage of appellate proceedings or as deposit during audit, enquiry or investigation proceedings shall be adjusted against the amount payable under the Legacy Scheme.
- However, in case the amount of predeposit or deposit is greater than the amount payable as per the Legacy Scheme, refund of the difference between the two amounts shall not be available.

## Procedure under the Legacy Scheme

- A designated committee ("**Committee**") shall verify the declarations submitted under this Legacy Scheme.
- After the verification:
  - If the amount submitted by the Declarant matches the amount as per the Committee, a statement shall be issued to the Declarant within 30 days of the date of receipt of declaration.
  - If the amount as per the Committee is higher, the Declarant shall be given an opportunity to be heard, and the Committee shall subsequently issue a statement within 60 days from the date of receipt of declaration.
- The Declarant is required to make the payment of the Tax Dues within 30 days from the date of issuing the statement. Payment of the Tax Dues under the Legacy Scheme cannot be made by ITC, and neither ITC can be taken.
- Once such payment has been made, the Declarant shall be issued a discharge certificate.

## Withdrawal of Previous Proceedings

- Any reply, reference or appeal against a notice or an order previously filed by the Declarant in regard to the Tax Dues shall be deemed to be withdrawn.

- However, for any cases pending before the High Court or the Supreme Court, the Declarant shall have to file an application for withdrawal before the Court and subsequently furnish such proof.

## Discharge Certificate

- There shall be no proceedings relating to the matter and the time period covered in the declaration against the Declarant.
- There shall be no further prosecution against the Declarant for the matter declared under the Legacy Scheme once the discharge certificate has been issued.
- However, if within a year of the issue of the discharge certificate it is found that any particulars furnished in the declaration were false, it shall be presumed that the declaration was never made and proceedings for the Tax Dues under the applicable enactment shall be instituted.

# GOODS AND SERVICES TAX

## Amendments in Composition Scheme

- The value of 'aggregate turnover' for determining eligibility for composition scheme shall:
  - Include the value of supplies made from 1st April of that F.Y. till the date of registration.
  - Exclude the value of exempt supply of service provided by way of extending deposits, loans or advances.
- If more than one registered person has same PAN then a registered person shall not be eligible to opt for composition scheme unless all such registered persons opt to pay tax under composition scheme.
- Section 10(2A) has been inserted in the CGST Act which provides composition scheme who are engaged in supply of service or supply of goods & services.
  - Eligibility: Dealers whose aggregate turnover is below Rest. 50 lakhs in preceding F.Y.
  - Tax payable: not exceeding 3% of turnover in State or Union Territory
  - Turnover in State or Union Territory excludes the value of supplies made from 1st April of that F.Y. till the date of registration and the value of exempt supply of service provided by way of extending deposits, loans or advances.
  - Earlier the Composition Scheme under the CGST Act was only available to the supplier of goods. However, the composition scheme relating to supply of service was available vide Notification dated 07.03.2019.

## New Return System

- The registered person under composition scheme shall now furnish annual return instead of quarterly return. However, the payment of tax by the composition taxpayers shall be quarterly.
- As per Budget speech the person having taxable turnover of less than Rs. 5 crore shall file quarterly return.

- Except the persons who are under composition scheme and person who are exempted from filing returns monthly, all the other registered persons shall make the payment of tax monthly.

## National Appellate Authority for Advance Ruling

- National Appellate Authority ("**NAA**") has been constituted under Section 101A which shall consists of 3 members i.e.
  - President [who has been judge of Supreme Court or Chief Justice of High Court or Judge of High Court for a period not less than 5 years];
  - Technical Member (Centre) [who has been member of Indian Revenue {Customs and Central Excise} Service group A and has completed 15 years of service in Group A]; and
  - Technical Member (State) [who has been officer of State Government not below rank of Additional Commissioner of VAT or State tax with at least 3 years of experience in administration of existing law or SGST or the field of finance and taxation].
- The Composition of NAA has one judicial member and thus the same appears to be in line with the decision of Hon'ble Supreme Court in case of UOI vs. R. Gandhi [(2010) 6 SCR 857].
- Appeal shall lie before the NAA when conflicting advance rulings have been given by Appellate Authorities of two or more states.
- Appeal has to be filed within 30 days from the date of communication of ruling sought to be appealed against. The NAA can condone the delay for the further period of 30 days.
- Ruling shall be binding on the applicants, being distinct person, who had sought the ruling and all registered person having the same PAN and concerned officers and jurisdictional officers.

## Other Miscellaneous Amendments

- The Central Government has been empowered to enhance the aggregate turnover from Rs. 20 lakhs to Rs. 40 lakhs in case supplier is engaged in the exclusive supply of goods. Person shall be considered as engaged in exclusive supply of goods even when they are engaged in exempt supply of services by way of extending deposits, loans or advances.
- Commissioner (including the Commissioner of State Tax) has been grated power to extend the time limit for furnishing of annual return for specified registered person and due date of furnishing of monthly and annual statement by person collecting tax at source.
- Section 49(10) has been inserted to provide facility to the registered person to transfer any amount of tax, interest, penalty, fees or any other amount under any head to another head of electronic cash ledger.
- Interest on tax payable in case of delayed return shall be levied on net tax liability i.e. the amount debited from cash ledger. This amendment has overturned the decision of Megha Engineering & Infrastructures Ltd. vs. Commissioner of Central Tax [(2019) 104 taxmann.com **393 /Supra , Refer chapter _____of this publication].**
- Central Government may disburse refund of state tax to the taxpayers.
- National Anti-profiteering Authority has been empowered to impose penalty upto 10% of the amount which has been profiteered.
- It has been announced in the budget speech that:

- Free accounting software for return preparation will be made available to small businesses.
- A fully automated GST refund module shall be implemented.
- Multiple tax ledgers for a taxpayer shall be replaced by one.
- To move to an electronic invoice system wherein invoice details will be captured in a central system at the time of issuance. This will eventually be used to prefill the taxpayer's returns. There will be no need for a separate e-way bill. Its roll out would begin from January, 2020.

# OTHER INDIRECT TAXES

## No Service Tax on service of Grant of Liquor Licence

- Retrospective exemption from service tax has been granted on the service by way of grant of liquor license.
- The said issue was discussed in the 26th GST Council meeting and via MOF Circular dated 31.06.2018; it was clarified that GST was not leviable on license fee for alcoholic liquor for human consumption and the same would also apply mutantis mutandis to the demand raised by the Service Tax authorities on licence fee for alcoholic liquor for human consumption in the Pre-GST era.
- The issue has also been settled in the favour of assessee and against the revenue by various Hon'ble High Courts in the following decisions:
  - Jagatjit Industries Ltd. vs. UOI [Delhi High Court WP 3277/2017]
  - Divya Singla & Ors. vs. UOI [Punjab & Haryana High Court CWP 12390/2017]
  - United Spirits Limited vs. UOI [Orissa High Court WP (C) No. 9049/2017]

## Imposition of Excise Duty for levy of NCCD

- Nominal excise duty as has been imposed on tobacco products and crude petroleum for levy of NCCD.
- The same has been done to overcome the decision of Hon'ble Supreme Court in the case of Bajaj Auto Limited vs. Union of India & Ors. [2019 (366) E.L.T. 577 (S.C.) **/Supra , Refer chapter _____of this publication]** wherein it was held that NCCD, which is in the nature of Excise duty, cannot be levied when Excise duty itself is not leviable.
- **w.e.f. 06.07.2019.**

## Other Miscellaneous Amendments

- Retrospective exemption has been granted from service tax in cases relating to upfront amount payable in respect of service by way of granting long term lease of 30 years or more of plots for development of infrastructure for financial business for the period 01.10.2013 to 30.06.2017. The said exemption is provided since the long term lease of 30 years or more may be akin to sale of land.
- Retrospective exemption from service tax has been granted on certain services provided by Indian Institute of Managements. This is in line with the exemption granted under the GST regime.

# HIGHLIGHTS OF IMPORTANT AMENDMENTS RELATING TO MISCELLANEOUS LAWS

## RATIONALIZATION OF PROVISIONS RELATED TO BENAMI LAW

### No Prior Approval Required for Initiaing enquiry where Benami Proceedings already Initiated

- Section 23 of the Prohibiton of Benami Property Transaction Act, 1988 ("**PBPT Act**") provide for conduct of an enquiry or investigation by the Initiating Officer with the prior approval of the Approving Authority.
- An explanation is proposed to be inserted in section 23 of the PBPT Act to clarify that no prior approval of the Approving Authoirty would be required where the Initiating Officer has already initiated proceedings by issuing notice u/s 24(1) of the PBPT Act.
- **w.r.e.f. 01.11.2016.**

### Time Limit of 90 Days at IO Level shall be Calculated from the Last Date of Month in which Notice u/s 24(1) is Issued

- Section 24(3) of the PBPT Act provides for provisional attachment of a property for a maximum period of 90 days. Section 24(4) of the PBPT Act provides for passing of order by the Initiating Officer within a period of 90 days. In both the cases, the time limit starts from the date of issue of show cause notice u/s 24(1) of the PBPT Act.
- It has been proposed to amend Section 24(3) and Section 24(4) of the PBPT Act to the effect that time limit under both the sub sections shall be counted from the last date of month in which notice u/s 24(1) is issued.
- **w.e.f. 01.09.2019.**

### Period of Stay Granted by any Court shall be Excluded for the Purpose of Limitation

- Section 24(4) of the PBPT Act provides for passing of order by initiang officer within a period of 90 days. Section 24(5) of the PBPT Act provides for making reference to the Adjudicating Authority within the period of 15 days from the date of order passed u/s 24(4) of the PBPT Act. Further, section 26(3) of the PBPT Act provides for passing of order by the adjudicating authority within the period of 1 years from the end of month in which reference u/s 24(5) of the PBPT Act was received.

- To exclude the period during which proceedings are stayed by any court, explanations have been proposed to be inserted both in section 24 and section 26(7) of the PBPT Act to suitably amend the law to provide adequate time to the respective authority.
- It has further been proposed that if after exclusion of the stay period:
  - remaining period of limitation for passing order u/s 24(4) of the PBPT Act by the Initiating Officer is less than 30 days, then such remaining period shall be extended to 30 days;
  - remaining period of limitation for making reference u/s 24(5) of the PBPT Act by the Initiating Officer is less than 7 days, then such remaining period shall be extended to 7 days;
  - remaining period of limitation for passing order u/s 26(3) of the PBPT Act by the Adjudicating Authority is less than 60 days, then such remaining period shall be extended to 60 days;
- **w.e.f. 01.09.2019.**

## Penalty for Failure to Comply with Summon and Furnish Information

- With a view to ensure compliance of the provisions of the Benami Law, Section 54A has been proposed to be inserted in the PBPT Act to provide for penalty of Rs. 25,000/- for each failiure to comply with summons issued and to furnish information u/s 19 and 21 of the PBPT Act respectively.
- However, no penalty shall be imposed if it is proved that there were good and sufficient reasons which prevented the respective person from complying with the summons or furnishing information.
- **w.e.f. 01.09.2019.**

## Admissibility of Records of Other Authority as Evidence for Prosecution Proceedings

- It is proposed to insert a new section 54B in the PBPT Act so as to provide that entries in the records or other documents in the custody of an authority shall be admitted as evidence in a prosecution proceedings of any person for an offence under the PBPT Act.
- **w.e.f. 01.09.2019.**

## Competent Authority can Sanction the Prosecution

- As per section 55 of the PBPT Act, no prosecution under the PBPT Act shall be instituted against any person without the previous sanction of the Board (Central Board of Direct Tax).
- It is proposed to amend the said section to provide that now previous sanction of the 'competent authorithy' shall be required for instituting the prosecution under the PBPT Act. 'Competent Authority' means a Commissioner, a Director, a Principal Commissioner of Income-tax or a Principal Director of Income-tax as defined under respective sections of the IT Act.
- **w.e.f. 01.09.2019.**

# RATIONALISATION OF THE PROVISIONS OF THE BLACK MONEY ACT

## Redifining the Term 'Assessee' to Include Non-Resident in Certain Cases

- As per section 2(2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("**Black Money Act**"), 'assessee' means a person resident in india within the meaning of section 6(6) of the IT Act.
- Further, as per provisions of section 72(c) of the Black Money Act, where any asset has been acquired prior to commencement of the Said Act, and tax in respect of which has not been paid under the black money compliance window given by the Government as per the provisions of section 59 to section 72 of the Black Money Act, then such asset shall be deemed to have been acquired in the year in which a notice u/s 10 of the Black Money Act is issued by the Assessing Officer for making an assessment and the provisions of the Black Money Act shall apply accordingly.
- In order to clarify the legislative intent behind enactment of the Black Money Act which was to tax foreign income and assets, definition of 'assessee' has been proposed to be ameded to include the non-resident or not ordinarily resident in India within the meaning of section 6(6) of the IT Act, who was resident in India either in the previous year to which the undisclosed foreign income and asset as referred to in section 4 of the Black Money Act, relates; or in the previous year in which the undisclosed asset located outside India was acquired. Further, previous year, in case of acquisition of undisclosed asset, shall be determined without giving effect to the provisions of section 72(c) of the Black Money Act.
- **w.r.e.f. 01.07.2015.**

## Other Proposed Amendments in Black Money Act

- **Clarificatory amendment in relation to reassessment u/s 10**
  - Section 10 of the Black Money Act provides for assessment or reassessment under the Black Money Act.
  - A clarificatory amendment is proposed in section 10(3) and section 10(4) of the Black Money Act to include the terms "reassess" and "reassessment" respectively.
  - **w.r.e.f. 01.07.2015**
- **Power of Joint Commission to issue direction**
  - Considering the significances of cases assessed under the Black Money Act, It is proposed to amend section 84 of the Black Money Act so that the Joint Commissioner may issue direction to the assessing officer in relation to proceedings under the Black Money Act.
  - **w.e.f. 01.09.2019**
- **Power of Commissioner(Appeals) to enhance or reduce the penalty**
  - Existing provision of section 17(1)(b) of the Black Money Act provides that Commissioner (Appeals) may confirm or cancel the penalty order. However, it nowhere mentions that Commission (Appeals) can also vary the penalty order either to enhance or reduce the penalty.
  - A clarificatory amendment is proposed in section 17 of the Black Money Act to clarify that the Commissioner (Appeals) may also vary the penalty order so as to enhance or reduce the penalty.
  - **w.e.f. 01.09.2019**

# FINANCE ACT, 2004

## Levy of STT on Intrinsic Value in case of Exercised Options

- As per Section 99 of Finance Act, 2004 ("**FA 2004**"), the value of taxable securities transaction in respect of sale of an option in securities, where option is exercised, shall be the settlement price.
- In order to rationalise the levy of STT, it is proposed to amend Section 99 so as to provide that value of taxable securities transaction in respect of sale of an option in securities, where option is exercised, shall be the intrinsic value i.e. difference between the strike price and the settlement price.
- **w.e.f. 01.09.2019**

# UNIT TRUST OF INDIA (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 2002

## Extension of Tax Concession to the Special Undertaking of the Unit Trust of India (SUUTI)

- Section 13 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 provides that notwithstanding anything contained in the IT Act or any other enactment relating to tax or income, profits or gains, no income-tax or any other tax shall be payable by the SUUTI upto 31.03.2019 in respect of any income, profits or gains derived, or any amount received.
- It is proposed to amend Section 13 of the Said Act so as to extend the exemption from income tax or any other tax on SUUTI for a further period of two years till 31.03.2021.
- **w.r.e.f. 01.04.2019**

# BANKING & FINANCE SECTOR

## Enahanced Due Diligence by Reporting Entities

- Under the Prevention of Money Laundering Act, 2002 ("**PMLA**"), various entities such as banks, financial insittions, intermediaires etc. are designated as reporting entities. Such reporting entities are primarily responsible for identification, verification and maintaining records of their clients and thereafter submitting such records to the Director, Financial Intelligence Unit of India ("**FIU**").
- Proposed insertion of Section 12AA in the PMLA seeks to impose enhaced due diligence obligations on such reporting entities for specified transactions. While undertaking enhaced due diligence, the reporting entity is required to examine the sources of fund of the client and record the purpose of conducting the specified transaction. Further, as per the proposal, in case client fails to client fails to fulfil the requirements, the reporting entity must not allow the transaction.
- **w.e.f. date to be notified by Central Government**

## RBI Restored as Regulator of Housing Finance Companies

- The decision of establishing National Housing Bank ("**NHB**") was announced in the Union Budget 1987-88 as an apex institution for housing finance companies ("**HFCs**"). Recently in March, 2019, the RBI transferred its ownership stake in NHB to the government.
- In order to address the conflicting role of NHB as refinancier and regulator of HFCs, the Government has proposed several amendment to the National Housing Bank Act, 1987 ("**NHB Act**") to replace RBI as the regulator of the HFCs. The amendment also propose that the registration applications made by HFCs which are pending with NHB will stand transferred to RBI and the existing HFCs which have been granted certificates of registrations by NHB shall be deemed to have been validly registered.
- **w.e.f. date to be notified by Central Government**

## Power to Increase NOF Threshold for NBFCs

- The Government vide proposed amendment in Section 45-IA(1)(b) of the Reserve Bank of India Act ,1934 ("**RBI Act**") seeks to give power to Reserve Bank of India ("**RBI**") to precribe the Net Owned Fund ("**NOF**") requirement for NBFCs uptill Rs. 100,00,00,000/-. Currently, this power is limited to Rs. 2,00,00,00/- only.
- Further, the said amendment also proposes to empower RBI to notify different amount of NOF for different categories of NBFSc.
- **w.e.f. date to be notified by Central Government**

## More Teeth to RBI as regulator of NBFCs

- In wake of the ongoing stress situation in the NBFC sector, several amendments in the RBI Act have been proposed which would equip RBI to intervene in the management of NBFCs (other than Government Company) in crisis situations. A brief summary of the proposed amendment is as follows:
  - **Power to remove directors (Section 45ID)**
    - RBI to have power to remove directors and officers of NBFC

- in the public interest;
- in case affairs of NBFC are being conducted in a manner which is detrimental to the interest of deposits or creditros or financial stability; or
- for securing proper management.

– Any director so removed shall not take part, directly or indirectly, in management of any other NBFC for such period as RBI may direct subject to a max. of 5 years.

– **Power to supercede board of directors (Section 45IE)**
  – RBI to have power to supersede the board of directors of the NBFC for a period up to 5 years and appoint a suitable Administrator for such period. This power is exercisable on the grounds mentioned above.

– **Power to frame schemes for amalgamation etc. (Section 45MBA)**
  – In public interest or in the interest of financial stability, RBI will have power to frame schemes for amalgamation or reconstructions of NBFCs or for splitting such NBFCs in different units. Such scheme may provide for, inter-alia, reduction is pay and allowance of senior management of the NBFC or cacnellation of shares pf NBFC held by such persons.

- **w.e.f. date to be notified by Central Government**

## Stringent Action against NBFC's Auditors

- The proposed insertion of new Section 45MAA in the RBI Act would provide RBI the power to debar the auditor from exercising duties as auditor of any other Bank or Financial Instititon which is regulated by RBI for a period of up to 3 years in case the auditor fails to comply with directions give by RBI under Section 45MA of the RBI Act. Section 45MA (Power and duties of auditors) empowers RBI to issue direction to the auditors of the NBFCs relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of account. The said Section also empowers RBI to order the auditors to conduct a special audit of the NBFC.
- Currently, as per Section 58B(4AA) of the RBI Act, if any auditor fails to comply with any direction given or order made by the RBI under section 45MA (Power and duties of auditors), he may be punished with a fine of up to Rs. 5,000/-. The Government has proposed amendment in Section 58B(4AA) to increase the said limit to Rs. 10,00,000/-.
- **w.e.f. date to be notified by Central Government**

## Watch on Group Companies of NBFCs

- The proposed amendment in RBI Act vide insertion of Section 45NAA extend the power of RBI over the group companies of NBFCs. As per the proposed amendment, RBI would have the power to direct NBFCs to annex to its financial statement of furnish separately, the information or financials relating to its group companies. RBI would also have to power to inspect or audit any group companies of a NBFC.
- The proposed definition of group companies includes subsidiaries, holding companies, joint ventures, associate companies, promoters, related parties, companies using common brand name and group company having 20% of more equity investment by the entity.
- **w.e.f. date to be notified by Central Government**

## Increased Penalties for violation of RBI Act

- The proposed amendents in Section 58B and 58G of the RBI Act seek to increase the penalty thresholds prescribed thereunder for violation of the provisions of the RBI Act in follwoing manner:
  - Fine u/s 58B(2) on any person **failing to produce documents** or furnish information under the RBI Act is proposed to be increased from **Rs. 2,000/- to Rs. 1,00,000/-** and fine in case of continuing failure is proposed to be increased from **Rs. 100/- per day to Rs. 5,000/-** per day.
  - Maximum fine u/s 58B(4A) for **contravention of Section 45-IA(1)** (Requirement of Registration and Net Owned Fund) is proposed to be increased from **Rs. 5,00,000/- to Rs. 25,00,000/-**. In case this contravention is committed by a NBFC, the fine u/s 58G is proposed to be increased from **Rs. 5,00,000/- to Rs. 10,00,000/-** and fine in case of continuing failure is proposed to be increased from **Rs. 25,000/- per day to Rs. 1,00,000/-** per day.
  - Minimum fine u/s 58B(4AAA) for **contravention of order under Section 45QA** (Power of Company Law Board to Offer Repayment of Deposit) is proposed to be increased from **Rs. 50/- to Rs. 5,000/-.**
  - Fine u/s 58B(6) for contravention any other provisions of the RBI Act is proposed to be increased from Rs. 2,000/- to Rs. 1,00,000/- and fine in case of continuing failure is proposed to be increased from Rs. 100/- per day to Rs. 10,000/- per day.
  - Fine u/s 58G for any NBFC committing any contravention of the provisions of **Chapter IIIB (Provisions Relating to Non-Banking Institutions Receiving Deposits and Financial Institutions)** of the RBI Act is proposed to be increased from **Rs. 5,00,000/- to Rs. 10,00,000/-** and fine in case of continuing failure is proposed to be increased from **Rs. 25,000/- per day to Rs. 1,00,000/- per day.**
- **w.e.f. date to be notified by Central Government**

## Increase in Maximum Number of Whole Time Directors of New Bank

- Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 provides for the power of Central Government to make scheme under the Acts. The proposed amendment u/s 9(3)(a) seeks to increase the maximum number of whole-time directors that can be appointed by Central government in the corresponding new bank from 4 to 5. Further, the proposed amendment empowers the Central Government to post a whole-time director so appointed to any other corresponding new bank.
- **w.e.f. date to be notified by Central Government**

# SECURITIES & CAPITAL MARKET LAWS

## Penalty for Failure to Furnish Information

- Section 23A of the Securities Contracts (Regulations) Act, 1956 ("**SCRA Act**") is proposed to be amended to widen its ambit to levy penalty on failure to furnish information to Securities and Exchange Board of India ("**SEBI**") under the provisions of the SCRA Act. Currently, penalty under Section 23A is only levied in case of failure to furnish information to a recognized stock exchange.

- Consequently, any person furnishing false, incorrect or incomplete information to SEBI would also be covered under Section 23A.
- **w.e.f. date to be notified by Central Government.**

## Electronic Communication by SEBI to be sufficient

- Section 15C of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") currently provides that if any listed company or person fails to address investors' grievances event after being called upon by SEBI in writing, such person shall be liable for a penalty of minimum Rs. 1,00,000/- and which may extend to Rs. 1,00,000/- per day subject to maximum of Rs. 1,00,00,000/-.
- Section 15C is now proposed to be amended to provide that electronic communication issued by SEBI would also satisfy the requirement of being called upon in writing.
- **w.e.f. date to be notified by Central Government.**

## Penalty for default by Stock Broker

- Section 15(a) of the SEBI Act is proposed to be amended to provide that a monetary penalty of up to Rs. 1,00,00,000/- can be imposed on stock broker, registered under the SEBI Act, upon his failure to issue contract notes, in the form and manner specified by the stock exchange of which such stock broker is a member.
- **w.e.f. date to be notified by Central Government.**

## New Provision for Imposing Penalty on Forging of Electronic Database of SEBI

- New Provision, Section 15HAA is proposed to be inserted in the SEBI Act to provide for the penal provisions imposing monetary penalty on any person who alters, destructs, mutilates, conceals or falsifies any information, records, etc. required under the SEBI Act, so as to impede, obstruct, or influence the investigation, inquiry, etc. or proper administration of any matter falling within the jurisdiction of the SEBI.
- The new provision also imposes penalty on persons who alter, destruct etc. the electronic regulatory database of the SEBI.
- The penalty under the said provision shall be minimum Rs. 1,00,000/- which may extend to Rs. 10,00,00,000/- or 3 times the amount of profits made by committing such acts, whichever is higher.
- **w.e.f. date to be notified by Central Government.**

# INSURANCE LAWS

## Relaxation to IFSC located Foreign Insurance Company

- Section 6(2) of the Insurance Act, 1938 provides a foreign company engaged in re-insurance business through a branch established in India must net owned funds of at least Rs. 5000,00,00,000/-.
- Section 6 is proposed to be amended by inserting Section 6(3) to provide that a foreign company engaged in re-insurance business through a branch established in an International Financial Service Centre ("**IFSC**") shall have minimum net owned funds of Rs. 1000,00,00,000/-.

# KEY PROPOSALS BUDGET SPEECH

## Foreign Investment in India

- **Foreign Portfolio Investors:** Presently, as per the prevailing foreign investment regulations, total foreign holding of each FPI is restricted to 10% of the total paid-up equity capital on a fully diluted basis or 10% of the paid-up value of each series of debentures or preference shares or warrants issued by a listed company and the consolidated foreign holding of all the FPIs is restricted to 24% paid-up equity capital on a fully diluted basis or paid up value of each series of debentures or preference shares or warrants. Now, the key proposal is to increase the limit of foreign holding of FPIs in a listed company from the existing 24% to sectoral foreign investment limit prescribed for the respective nature of businesses and that too with an option given to the concerned corporates to limit the FPI investment to a lower threshold. Necessary amendments in the relevant regulations are expectedin due course.
- **Non-resident Indian:** Presently, as per the prevailing foreign investment regulations, total foreign holding of an individual NRI is restricted to 5% of the total paid-up equity capital on a fully diluted basis or 5% of the paid-up value of each series of debentures or preference shares or warrants issued by a listed company and the consolidated foreign holding of all the NRIs is restricted to 10% paid-up equity capital on a fully diluted basis or 10% paid up value of each series of debentures or preference shares or warrants. Now, it is proposed to merge NRI-Portfolio Investment Scheme Route with the Foreign Portfolio Investment Route. Necessary amendments in the relevant regulations are expected in due course.
- **Know Your Customer:** It is proposed to rationalize and streamline the existing Know Your Customer (KYC) norms for FPIs to make it more investor friendly without compromising the integrity of cross-bordercapital flows.Necessary amendments in the relevant regulations are expected in due course.

## Public Shareholding in Listed Companies

- Rule 19(2)(b) of the Securities Contracts (Regulations) Rules, 1957requires the maintenance of a minimum public shareholding of 25% at all times of each class or kind of equity shares or convertible debentures issued by a listed company. In the Budget Speech, the Hon'ble Finance Minister has proposed to undertake consultation with SEBI to increase the minimum public shareholding threshold in a listed company from present 25% to 35%.

## Social Stock Exchange

- To achieve social welfare objectives related to inclusive growth and financial inclusion,in the Budget Speech, the Hon'ble Finance Minister has proposed establishment of a social stock exchange which would operate under the regulatory ambit of SEBI for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like amutual fund.

# AMENDMENTS BROUGHT BY THE INTERIM BUDGET 2019-2020

## Additional Benefit to Salaried Employees

- A new clause (ia) to Section 16 was inserted by the FA, 2018 whereby the deduction from salary income with respect to transport allowance and medical reimbursement were subsumed in a standard deduction of Rs. 40,000/-.
- By the FA, 2019, standard deduction for the salaried employees has been increased to Rs. 50,000/- from Rs. 40,000/-.
- Standard deduction of Rs. 50,000/- shall be available from salary income subject to the total amount of salary.
- **w.e.f. 01.04.2020**

## Section 23(2): Benefit extended to 2 House Properties

- Section 23(2) provides for calculation of annual value of a house or part of a house for the purpose of computing the income from house property. The said section provides that the annual value of a self-occupied house or the house which cannot be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, is to be taken as NIL.
- Further, Section 23(4) provides that where more than 1 house property is held by the assessee, then the annual value of only 1 house property is to be taken as NIL and for other house properties, annual value is to be computed by treating them as deemed to be let-out properties.
- Now, Section 23(4) is amended by FA, 2019, where annual value of 2 house properties as referred in Section 23(2) can be taken as NIL while computing the income from house property.
- **w.e.f. 01.04.2020**

## Notional Rent on House Property held as Stock-in-trade

- As per Section 23(5), where property consisting of any building or land appurtenant thereto is held as stock-in-trade and property is not let out during the F.Y., Annual Value of such property is taken to be Nil up to 1 year from the end of F.Y. in which certificate of completion of construction is obtained.
- Vide FA, 2019 it has been amended to provide that the benefit shall now extend up to 2 years from the end of the F.Y., in which the certificate of completion of construction is obtained.
- **w.e.f. 01.04.2020**

## Deduction of Interest on Borrowed Capital

- Section 24(b) provides for the deduction up to Rs. 2,00,000/- from income from house property with respect to the interest on borrowed capital taken for the purpose of acquisition, construction of a single

house property, where the acquisition/construction is completed within 5 years.

- Now, FA 2019 has amended the aforesaid section to provide deduction of interest on borrowed capital in respect of 2 residential house properties.
- It has been further provided that the aggregate of deduction in respect of 2 residential house properties u/s 24 pertaining to interest on borrowed capital shall not exceed Rs. 2,00,000/-.
- **w.e.f. 01.04.2020**

## Exemption u/s 54 extended to 2 Residential Houses

- Section 54 provides for benefit of exemption from Capital Gains arising in hands of an Individual/ HUF on account of transfer of long-term capital asset being a residential house in India where, the assessee purchases or constructs 1 residential house property within the prescribed time limit.
- Vide FA, 2019, Section 54(1) has been amended by adding a proviso to the section, which will now allow the said benefit in respect to 2 house properties, subject to a condition that the capital gain does not exceed Rs. 2 Crores. However, the said benefit can be availed by the assessee only once in a lifetime.
- Consequently, when any long-term capital gain arises on transfer of a residential house property and the capital gain therefrom is not more than Rs. 2 Crores then the assessee in order to claim exemption u/s 54 can purchase/construct 2 residential houses in India.
- **w.e.f. 01.04.2020**

## Extension in Time Limit of approval u/s 80-IBA

- A new Section 80-IBA was inserted by FA, 2016 providing a deduction with respect to profits and gains arising on account of developing and building of housing projects. For claiming said benefit the project was required to be approved by the competent authority before 31st March, 2019.
- Vide FA, 2019, Section 80-IBA has been amended where the time limit for approval of the project has been extended to 31st March, 2020.
- Now, for the purpose of claiming the deduction u/s 80-IBA the project can be approved anytime between 01.06.2016 to 31.03.2020.
- **w.e.f. 01.04.2020**

## Increase in Rebate of Income Tax u/s 87A

- Section 87A provides that where the total income of a resident does not exceed Rs. 3,50,000/- he shall be entitled for deduction from income tax of amount of income tax or Rs. 2,500/-, whichever is less.
- FA, 2019 has amended Section 87A and accordingly, increased the threshold amount of total income up to Rs. 5,00,000/- along with the increase in amount of rebate up to Rs. 12,500/-.
- The individual taxpayer having taxable income up to Rs 5,00,000/- shall be allowed full rebate of income tax and will not be liable to pay any income tax thereon.
- It should be noted that the benefit has been provided by way of rebate and not by increasing the maximum amount not chargeable to tax. Accordingly, no benefit has been provided to resident individuals having total income exceeding Rs. 5,00,000/-.
- **w.e.f. 01.04.2020**

## Increase in threshold for TDS u/s 194A

- Section 194A as amended by FA 2018, provided for deduction of tax at source from interest, other than interest on securities, paid by any Banking Company, a Post Office or a Cooperative Society engaged in carrying on the business of banking to any Indian resident, where the payment of interest exceeds Rs. 10,000/- during a financial year.
- By FA, 2019 the provisions of Section 194A(3) has been amended whereby the threshold for TDS has been increased from Rs. 10,000/- to Rs. 40,000/-. Therefore, no TDS is required to be deducted u/s 194A if the amount of interest as specified in the said section doesn't exceed Rs. 40,000/-.
- **w.e.f. 01.04.2019**

## Increase in threshold for TDS from Rental Income

- Section 194-I provides for deduction of tax at source from the rent paid/payable to a resident where the payment made exceeds the threshold limit of Rs. 1,80,000/- during a financial year.
- Vide FA, 2019, Section 194-I has been amended to increase the threshold limit of Rs. 1,80,000/- to Rs. 2,40,000/- during a financial year.
- On paying any rent to an Indian resident, the payer shall be liable to deduct tax at source at the prescribed rate where the amount of rent exceeds Rs. 2,40,000/- during a financial year.
- **w.e.f. 01.04.2019**

## Rates of Stamp Duty

- The rates of stamp duty under the Indian Stamp Act, 1899 were proposed to be amended by the Finance Bill No. 1 of 2019. The proposed rates of stamp duty for various instruments are as follows:
  - **Issue of Debenture (Article 27): 0.005%**
    - Currently, the stamp duty leviable on the issuance of debenture is 0.05% per year of the face value of the debenture, subject to the maximum of 0.25% or Rs. 25,00,000 whichever is lower.
  - **Transfer/Re-issuance of Debenture (Article 27): 0.0001%**
    - Currently, the stamp duty leviable on transfer/re-issuance of Debenture is 50% of duty payable on conveyance for consideration equal to face value of debentures.
  - **Issue of security other than debenture on delivery basis (Article 56A): 0.005%**
    - Currently, as per the Rajasthan Stamp Act, 1998, the stamp duty leviable on share certificates is 0.1% of market value of shares.
  - **Transfer of security other than debenture on delivery basis (Article 56A): 0.015%**
  - **Transfer of security other than debenture on non-delivery basis (Article 56A): 0.003%**
  - **Derivatives:**
    - Futures (equity and commodity): 0.002%
    - Options (equity and commodity): 0.003%
    - Currency and interest rate derivatives: 0.0001%
    - Other derivatives: 0.002%
  - **Government securities (Article 56A): 0%**
  - **Repo on corporate bonds (Article 56A): 0.00001%**
- **w.e.f. date to be notified by the Government**

## Stamp Duty on Dematerialised Transactions

- Section 8A of the Indian Stamp Act, 1899 which was inserted vide Finance Act, 2000 provides that no stamp duty shall be chargeable on transfer of beneficial ownership of securities dealt with by a depository.
- The exemption provided u/s 8A is proposed to be amended and accordingly, transfer of securities in dematerialised form is proposed to be charged with stamp duty.
- **w.e.f. date to be notified by Government**

## Framework of Stamp Duty Collection

- A framework for transaction related to securities in stock exchanges and depositories with respect to collection and liability of payment of stamp duty is proposed by inserting section 9A and 9B under the Indian Stamp Act, 1899. The proposed framework is provided hereunder:
  - In case of issue of securities, the stamp duty is to be levied on the market value of such securities and the responsibility to collect the stamp duty is upon the depository in case of issuance in dematerialised form.
  - In case of transfer of securities:
    - through stock exchange, the stamp duty is to be collected on the market value of such securities and the responsibility to collect the stamp duty is upon the stock exchange.
    - by depository, the stamp duty is to be collected on the consideration amount and the responsibility to collect the stamp duty is upon the depository.
- **w.e.f. date to be notified by the Government**

## Debentures Defined

- The definition of debenture is proposed to be included u/s 2(10A) of the Indian Stamp Act, 1899. Currently, the issue on levy of stamp duty on debentures which do not amount to marketable securities is a contentious matter. The proposed definition of 'Debentures' eliminates the pre-condition of debentures fulfilling definition of 'marketable securities' and provides for an inclusive definition of debentures which includes securitized debt instruments; certificate of deposit, commercial usance bill, commercial paper and such other debt instrument of original or initial maturity up to 1 year as the Reserve Bank of India may specify from time to time and bonds also.
- **w.e.f. date to be notified by the Government**

## One Transaction, One Duty, One Instrument

- Section 4 of the Indian Stamp Act, 1899 relating to 'Several Instrument used in single transaction of sale, mortgage or settlement' is proposed to be amended to include a provision granting exemption on payment of stamp duty on various instrument which are used in case of issue, sale or transfer of securities.
- The proposed Section 4(3) prescribes that in case of issue, sale or transfer of securities, stamp duty would only be levied in case of principal instrument which would the instrument on which duty is chargeable under Section 9A.
- The aforesaid exemption proposed through Section 4(3) is only applicable for securities issued in dematerialized form and is not applicable for securities issued in physical form.

- The aforesaid proposed amendment in Section 4 may have the impact of exempting the levy of stamp duty on instruments such as mortgage deed which is executed in case of transaction of issuance of debentures. However, since only rate of stamp duty on certain specified instruments, e.g. Debentures, is matter under the Union List under 7th Schedule of the Constitution, it will be matter of judicial determination whether the aforesaid amendment is within the power of the Union Government or whether the Union Government has encroached upon the powers of State Government regarding levy of duty on instruments such as Mortgage Deed.
- **w.e.f. date to be notified by the Government**

## Market Value

- The proposed amendments in the Indian Stamp Act, 1899 seek to clarify the manner in which the market value of securities will be computed for levy of ad-valorem duty.
- In case of security traded in stock exchange, the relevant value would be price at which security is so traded.
- In case of security transferred through depository but not traded in Stock Exchange, the relevant value would be price/ consideration mentioned in the instrument.
- In case of security dealt in physical form, the relevant value would be price/ consideration mentioned in the instrument.
- **w.e.f. date to be notified by the Government**

## Liability to Pay Stamp Duty

- The liability to pay stamp duty is proposed to be amended u/s 9A, 9B and 29 of the Indian Stamp Act, 1899 as to who, in the absence of contrary contract, would be liable to bear the expense of the stamp duty provided as under:
  - In case of issue of securities, to be paid by issuer.
  - In case of transfer of securities through Stock Exchange, to be paid by the buyer.
  - In case of transfer of depository through depository or physically, to be paid by the transferor.
- **w.e.f. date to be notified by the Government**

# RECENT TAX RULINGS

## DIRECT TAX

## Commissioner vs. Mahindra & Mahindra Ltd.
## [2018] 302 CTR 213 (SC)

- **Waiver of Loan Taken for Acquiring Capital Assets is Neither Taxable as Perquisite Nor as Remission of Liability**

The issue under consideration before the Apex Court was that whether waiver of loan by the creditor is taxable as a perquisite u/s 28(iv) of the IT Act or taxable as a remission of liability u/s 41(1) of the IT Act. In the said case, Assessee had acquired certain tooling and other equipments for which the seller agreed to provide loan to the Assessee at specified interest rate. Subsequently, another entity took over the seller entity and the said another entity agreed to waive outstanding loan amount of the Assessee. The department claimed that the waived amount of loan represented income of the Assessee u/s 28(iv) or alternatively, u/s 41(1).

Apex Court observed that in order to invoke the provision of Section 28(iv), the benefit which is received has to be in some other form rather than in the shape of money. It was further observed that Section 41(1) deals with remission of trading liability. It is applicable when there is an allowance or deduction claimed by the Assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the Assessee and subsequently, if the creditor remits or waives any such liability, then the assessee shall be liable to pay tax u/s 41(1). In the instant case, Assessee purchased plant& machinery and tooling equipments which are capital assets of the Assessee and the said purchases had not been debited to the trading account or to the profit or loss account in any of the assessment years. There is a difference between 'trading liability' and 'other liability'.

In view of the above, Apex Court held that waiver of loan taken for acquiring capital assets shall neither be taxable u/s 28(iv) nor u/s 41(1) of the IT Act.

## Maxopp Investment Ltd. vs. CIT
## [2018] 402 ITR 640 (SC)

- **For Determining Disallowance u/s 14A, Dominant Intention Behind Acquiring the Shares is Not Relevant**
- **Rule 8D is Prospective in Nature**

The issue under consideration before the Apex Court ("**Court**") was whether provisions of Section 14A of the IT Act would apply when shares are held for the purpose of investment or for gaining control or as stock-in-trade. Another issue for consideration was whether Rule 8D of the IT Rules is retrospective or prospective in nature.

After analysis of applicable law and detailed discussion, the Apex Court observed that to carve out a distinction between 'stock-in-trade' and 'investment', various high courts are referring to 'dominant intention test' i.e. if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend, then the profit would be said to have accrued from investment. However, the Apex Court did not agree with the 'test of dominant intention' for the purpose of Section 14A, which is based on theory of apportionment of expenditure'.

It was held that where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, the Court is not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10(34) of the IT Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A which is based on the 'theory of apportionment of expenditure' between taxable and non-taxable income as held in **Walfort Share & Stock Brokers (P.) Ltd. [2010] 326 ITR 1 (SC)** case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring the shares (held as investment or stock-in-trade) will have to be apportioned.

Similarly, in the context of shares purchased for the obtaining/retaining control over the Company, the Apex Court held that this distinction based on dominant intention test is also not relevant because in that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee.

Thus, the Apex Court did not subscribe to the theory of dominant intention applied by the High Court. Further, in respect of Rule 8D of the IT Rules, it was held that the said rule is prospective in nature and could not have been made applicable in respect of the Assessment Years prior to 2007.

# New Okhla Industrial Development Authority vs. CCIT
## (2018) 406 ITR 178 (SC)

- **New Okhla Industrial Development Authority ("NOIDA") is Not a Municipality as Contemplated in Article 243P(e) of the Constitution**
- **Income of NOIDA is Not Eligible for Exemption u/s 10(20) of the IT Act**

The issue under consideration before the Court was whether NOIDA constituted under UP Industrial Area Development Act, 1976 is eligible for exemption u/s 10(20) of the IT Act.

As per Section 10(20) of the IT Act, income of a local authority is exempt. Court observed that prior to Finance Act, 2002, term 'local authority' was not defined. Accordingly, definition of 'local authority' as specified in General Clauses Act, 1897 was used for interpretation. After Finance Act, 2002, an explanation was inserted for the purpose of defining 'local authority' which is exhaustive too. Therefore, definition contained in General Clause Act, 1897 is no more applicable. Now, for claiming exemption u/s 10(20), one should be a local authority

as per the definition contained in the said explanation. Claim of the Assessee is that it is covered by the municipality as defined in clause (ii) of the said explanation, as referred to in Article 243P(e) of the Constitution.

Court observed that Article 243P(e) provides that the "Municipality means an institution of self-government constituted under Article 243Q. Sub-clause (1) of Article 243Q provides that there shall be constituted in every State - a Nagar Panchayat, a Municipal Council and a Municipal Corporation, in accordance with the provisions of this Part. Proviso to Article 243Q of the Constitution provides that a municipality may not be constituted under Article 243Q and industrial establishment may be constituted. However, exemption from constituting Municipality does not lead to mean that the industrial establishment which is providing municipal services to an industrial township is same as Municipality as defined in Article 243P(e).

Apex Court further observed that the constitutional provisions as contained in Part IXA provides for constitution of Municipalities, its powers and responsibilities. The special features of the Municipality as contemplated in constitutional provisions cannot be said to be present in authority as delineated by statutory scheme of the Said 1976 Act.

Court further observed that Article 243P(e) defines Municipality as an institution of self-government constituted under Article 243Q. Further, the words in proviso "a Municipality under this clause may not be constituted" clearly means that the words "may not be constituted" used in proviso are clearly in contradistinction with the word constituted as used in Article 243P(e) and Article 243Q. Thus, notification issued under proviso to Article 243Q(1) is not akin to constitution of Municipality. It is, thus, clear that industrial township constituted under the said 1976 Act, to which notification under proviso to Article 243Q(1) dated 24-12-2001 is also issued, is not akin to Municipality as contemplated under Article 243Q.

In view of the above, the Court held that NOIDA does not fall within the ambit of the term 'Municipality' as referred in Article 243P(e) and accordingly, not eligible for exemption u/s 10(20).

# PCIT vs. Prem Pal Gandhi

## [2018] 401 ITR 253 (PUNJAB & HARYANA)

- **Gain from Penny Stock Not a Bogus Transaction Merely on the Basis of Suspicion of the AO**

The issue under consideration before the Hon'ble Punjab and Harayana High Court was whether the sale of shares by the assessee was a sham transaction or not. In the instant case, the Assessee purchased shares of a company sold the same with two years of purchases at a very high price than the purchase price. The assessing officer made additions merely on the basis of his suspicion that sale of shares were fictitious transactions and that the appreciation actually represented the Assessee's income from undisclosed sources.

The Hon'ble Punjab and Haryana High Court observed that the Assessing Officer had not produced any evidence whatsoever in support of his suspicion, on the basis of which additions were made. On the other hand, although the appreciation was very high, the shares were traded on the National Stock Exchange and the payments and receipts were routed through the bank account. There was no evidence to indicate that the company was

a closely held company and the trading on the National Stock Exchange was manipulated in any manner. In light of these findings the Hon'ble Court held that no question of law arises in the given case.

# Chambal Fertilisers and Chemicals Ltd. vs. PCIT
## [IN APPEAL NO. 68/2018 (RAJASTHAN)]

- **Education Cess, Not Being a "Tax", Cannot be Disallowed**

In this case, the issue for consideration before the Hon'ble Court was that whether Education Cess claimed by the Assessee as a deduction while computing its income, can be disallowed u/s 40(a)(ii) of the IT Act or not. In order to analyse the same, the court provided due consideration to the **Circular bearing F. NO. 91/58/66-ITJ (19) dated 18.05.1967** relied by the assessee and observed that the Tribunal has erred in not relying upon the said circular which clearly provides that the term 'Cess' was deleted from clause 40(a)(ii) of the IT Bill, 1961 by the selection committee. The effect of the omission of the word 'cess' is that only taxes paid are to be disallowed in the assessments for the year 1962-63 and onwards and not cess. Further, the court considered the judgments of the Apex Court relied by the assessee and concluded that Cess, not being a tax, cannot be disallowed under the provisions of Section 40(a)(ii).

# PCIT vs. Sun on Peak Hotel (P.) Ltd.
## [2018] 95 taxmann.com 320 (Gujarat)

- **Acceptance of Stamp Valuation u/s 50C during Assessment Can't Automatically Give Rise to Penalty Proceedings**

In this case, the Assessee initially opposed the action of the AO to treat the valuation adopted by the stamp valuation authorities as deemed sales consideration u/s 50C of the IT Act, but later on accepted the liability to pay capital gain on the basis value adopted u/s 50C and filed a revised return of income. Revenue contended that the Assessee was required to declare the valuation adopted by the Stamp Valuation authority and offer capital gain on the basis of such valuation which he failed to do, and therefore, it was guilty of providing inaccurate particulars of income and hence, liable to penalty u/s 271(1)(c) of the IT Act.

The court stated that it is well settled that capital gain can be levied on actual sale consideration and not on fair market value. Section 50C(1) makes a deviation in this principle and introduces a concept of deemed consideration for the purpose of Section 48. The court observed that u/s 50C(2), the assessee has an opportunity to dispute the stamp duty valuation of a property in question before the AO upon which the AO would refer the question of valuation to the Valuation Officer. Accordingly, application of section 50C(1) is not automatic and is subject to an opportunity to the assessee to question such valuation during the assessment proceedings also. Since, assessee has, at one stage, disputed stamp duty valuation during assessment proceedings, therefore, the acceptance of stamp duty valuation at a later stage during assessment cannot automatically give rise to penalty proceedings u/s 271(1)(c) of the IT Act.

# Alamelu Veerappan Vs. ITO
## (2018) 257 TAXMAN 72 (MADRAS)

- **Validity of Reassessment Proceedings in Case of Deceased Assessee**

The issue under consideration before the Court was whether notice u/s 148 of the IT Act issued in the name of the deceased assessee is enforceable in law and the subsidiary issue being as to whether the legal representative of the deceased assessee, can be compelled to participate in the proceedings and respond to the impugned notice.

The Hon'ble Court reiterated the settled principle that issuance of notice in the name of dead person is not enforceable in the eyes of law. Further, the revenue would not be justified in contending that they, having no knowledge about the death of the assessee, are entitled to plead that notice is not defective. Court further observed that notice was issued to the legal representative after being intimated about the death of the assessee. However, the same was beyond the period of limitation. Court opined that merely because the department was not intimated about the death of the assessee, limitation period under the statute cannot be extended. Further, Revenue failed to show before the Court whether there is any statutory obligation on the part of the legal representatives of the deceased assessee to immediately intimate the death of the assessee or take steps to cancel the PAN registration. For the above reasons, Court held the impugned reassessment notice to be unenforceable and without jurisdiction.

# Sunrise Academy of Medical Specialities (India) Pvt Ltd vs. ITO
## [2018] 409 ITR 109 (Kerala)

- **Satisfactory Explanation u/s 68 would not Save Company from Excess Share Premium Taxability u/s 56(2)(viib)**

The issue for consideration before the court was that whether the share premium received by the Assessee in excess of the face value, shall be treated as its income as per Section 56(2)(viib) of the IT Act, even if the Assessee offered the explanation of nature and source of such premium as per proviso to Section 68 of the IT Act. While dealing with the issue, the court discussed that premium received by any private company on sale of shares, in excess of its face value, would be treated as income from other sources, u/s 56(2)(viib). The said section triggers at the stage receipt of consideration for shares itself. On the other hand, Section 68 treats any credit in the books of accounts, even by way of allotment of shares for which no satisfactory explanation is offered, to be liable to income-tax. The Court observed that income u/s 56(2)(viib) cannot be controlled by the provisions of section 68 of the IT Act as when a resident investor is unable to explain the nature and source for the credit seen in the books of accounts or the explanation offered is not satisfactory then the entire credit would be charged to tax u/s 68. However if an explanation is offered and it is satisfactory in case of a private company, then the charge to tax will only be to that portion exceeding the FMV determined as per

Section 56(2)(viib).

In view of the above, it was held that satisfactory explanation for the purpose of Section 68 would not save a closely held company from the clutches of provisions of Section 56(2)(viib).

# Uthangarai Sri Vidya Mandir Educational and Social Welfare Trust vs. ACIT
## [2019] 263 Taxman 422 (Madras)

- **Mechanical direction by AO to deposit certain percentage of disputed demand, not a pre-condition for grant of stay of recovery**

In the given case, pursuant to search and seizure action u/s 132, the assessment of assessee was made u/s 153A. Assessee filed an appeal against the assessment order and meanwhile, also filed an application seeking a stay of recovery of disputed demand before the AO. In respect of the same, the AO passed an order u/s 220(6) calling upon the assessee to remit 20% of disputed demand of tax as a pre-condition for grant of stay of recovery as per Office Instruction dated 31-7-2017. In the given case, the issue for consideration before the Hon'ble High Court of Madras was that whether the AO was correct in demanding the deposit of certain percentage of disputed demand before granting stay of recovery without examining the facts and circumstances of the case.

In light of the above facts, the court held that the AO while adjudicating upon a request for stay of recovery, is required to test the existence of a prima facie case, financial stringency and the balance of convenience in the matter. The AO in the instant case has proceeded mechanically in calling upon the assessee to remit 20% of the disputed demand without examining the facts and circumstances of the case in accordance with the law and the Circulars/Instructions issued by CBDT and hence, the impugned order has to be set aside.

# PCIT vs. NRA Iron & Steel (P.) Ltd
## [2019] 412 ITR 161 (SC)

- **Additions u/s 68 with respect to share capital/premium on failure to establish the creditworthiness of investor companies**

In the instant case, the Assessee company in its return of income showed money aggregating to Rs. 17.60 crores being received as share capital/premium. The AO added back Rs. 17.60 crores to total income of the assessee on the ground that assessee had failed to discharge onus by cogent evidence either of creditworthiness of so-called investor-companies, or genuineness of transaction.

The Hon'ble Apex Court observed that the AO had conducted detailed enquiry which revealed that:

(i) There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies

were non-existent and had no office at the address mentioned by the assessee.

(ii) The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90,00,000 to Rs. 95,00,000.

(iii) There was no explanation whatsoever offered as to why the investor companies had applied for shares of the Assessee Company at a high premium.

(iv) Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.

(v) The mere mention of the income tax file number of an investor was not sufficient to discharge the onus u/s 68 of the Act.

Considering the above findings of the AO, the court further observed that-

i) the lower authorities did not advert to field enquiry conducted by AO which revealed that in several cases investor companies were found to be non-existent and onus to establish identity as well as credit worthiness of investor companies, was not discharged by assessee;

ii) the entire transaction seemed bogus and lacked credibility.

In light of the aforesaid observations, the Hon'ble Supreme Court held that merely because assessee company had filed confirmations from investor companies to show that entire amount had been paid through normal banking channels, it cannot be said that onus on assessee to establish the creditworthiness of investor companies, stood discharged and hence, AO was justified in passing assessment order making additions u/s 68 for share capital/premium received by assessee company.

# PCIT v. Aarham Softronics
## [2019] 261 Taxman 529 (SC)

- **Deduction @100% is Available u/s 80-IC Even After 5 Years of Establishment of Unit**

The larger bench of the Hon'ble Supreme Court ("**SC**") in the instant case held that the Assessees are entitled to claim 100% deduction of profits and gains even after 5 years of establishment of industrial unit, where such Assessees have carried out substantial expansion of units. Vide the said judgment, the judgment of division bench of this court in case of **CIT vs. M/s. Classic Binding Industries, C.A No(S). 7208 of 2018** was reversed wherein further deduction @100% for next 5 years was denied.

Before the SC, the core issue was that merely on account of substantial expansion of industrial unit, whether the Assessees would be allowed to claim deduction @100% of profit after 5 years of establishment of unit, despite that the Section 80-IC allows for deduction @100% only for first 5 AYs from the establishment of unit. The Hon'ble Apex Court held that:

1. Section 80-IC(2) & Section 80-IC(3) provide deduction to new units established in particular States, and to existing units if substantial expansion was carried out.

2. The judgment in **CIT vs. M/s. Classic Binding Industries (supra)** passed by the division bench of this

court contains mistake as the division bench emphasized merely on the definition of 'initial assessment year' provided u/s 80-IB(14)(c) which is applicable on the deduction related to this section only. The definition of 'initial assessment year' provided u/s 80-IC was not considered despite that Section 80-IC is a special provision in respect of only those undertakings established in particular States.

3. As per Section 80-IC(8)(v), there can be 'initial assessment year', relevant to previous year in which the undertaking or the enterprise begins to manufacture/produce article or things; or completes substantial expansion. Further, the Hon'ble SC nowhere objected the legitimacy of substantial expansion of the industrial units.

4. As per Section 80-IC, the deduction @ 25% for the next five years is on the assumption that the new unit remains static without involving substantial expansion thereof. However, the moment substantial expansion takes place, another "initial assessment year" is triggered. This new event entitles that unit to start claiming deduction @ 100% of the profits and gains from year of substantial expansion.

5. The purpose behind enacting Section 80-IC was to encourage the undertakings or enterprises to establish and set up units in the States of hilly areas and to make them industrially advanced. By considering the same, deduction @100% of profits and gains is allowed even when there is substantial expansion of the existing unit.

# Chamber of Tax Consultants vs. CBDT
## [2019] 263 Taxman 551 (Bombay)

- **CBDT guidelines providing greater weightage for disposal of an appeal by the CIT(A) in a particular manner, violates the proviso to Section 119(1)**

The CBDT issued a Central Action Plan ("**CAP**") for the financial year 2018-19. This plan contained various provisions made by CBDT setting out targets of tax collection, disposal of cases by income tax authorities and for awarding points for such disposals. In the instant case, the issue under consideration before the Hon'ble Bombay High Court was whether the timelines setup in the CAP for disposal of appeals by CIT(A) expeditiously, will put unnatural pressure on the Commissioners and result in miscarriage of justice. Further, whether providing of additional incentive and giving higher weightage for each quality order passed by CIT(A) in favour of revenue, is permissible under the law.

The court observed that setting up of timeline by the CBDT for disposal of appeals by CIT(A) expeditiously, is only to enable the revenue to collect taxes and for judging their output performance. When an expert body like CBDT sets out disposal norms, it has the necessary expertise to come to a proper conclusion after taking into consideration all relevant factors and court has no power to interfere into the same. Therefore, the court held that the disposal norms are not arbitrary or unreasonable and the same will not result in miscarriage of justice.

Further, the court found that the policy provided under CAP w.r.t. incentive for quality orders is based on the following criteria's:

a. enhancement has been made,

b. order has been strengthened, in the opinion of the CCIT, or

c. penalty under section 271(1) has been levied by CIT(A)

The court further observed that providing additional credits for passing quality order will definitely influence the decisions of the Appellate Commissioners and they will be tempted to pass an order in a particular manner. Further, this will surely increase the liability of the assessees. Moreover, the same will transgress in the Commissioner's exercise of discretionary quasi-judicial powers and the interference or controlling of the discretion of a statutory authority in exercise of the powers from an outside agency or source, may even be superior authority, is wholly impermissible and invalid. Therefore, the court held that the said directions relating to quality orders will be a violation of proviso to Section 119(1), as it will influence the CIT(A) to pass orders in a particular manner so as to achieve a greater target of disposal and thus the said directions are to be set aside.

# Dalmia Power Ltd vs. ACIT
## [2019] 105 taxmann.com 28 (Madras)

- **Revised return filed in pursuant to a scheme of amalgamation approved by NCLT, beyond the prescribed period stipulated u/s 139(5) is valid in law**

In the instant case, the assessee entered into scheme of amalgamation which was duly approved by NCLT with effect from appointed date. There is a specific clause in the said scheme, which permits the assessee to file revised returns, if required. In pursuant to the same, the assessee filed the revised returns of income manually as the system was not accepting the revised returns electronically, beyond the prescribed period. The AO has not accepted the said revised returns of income on account of being filed beyond the prescribed time limit u/s 139(5) and without obtaining any condonation of delay u/s 119(2)(b). The issue before the Hon'ble High Court of Madras was whether Section 139(5) is applicable for cases, where revised return of income has been filed pursuant to scheme of amalgamation, approved by NCLT?

The Hon'ble court observed that the said scheme of amalgamation permits filing of revised returns of income, beyond the prescribed period without incurring any liability on account of interest, penalty or any other sum. Thus, the revised returns were filed by the assessee pursuant to the said scheme and not with respect to any omission or any wrong statement in the original return of income as required by Section 139(5). Further, the approval of the said scheme by NCLT does not operate as a mere arrangement but it becomes a statutory force overriding any circular issued by CBDT.

Thus, the court held that Section 139(5) and the relevant circular r/w Section 119(2)(b) and Rule 12(3), is not applicable in the present case where revised returns of income were filed pursuant to scheme of amalgamation approved by NCLT, beyond the time period prescribed u/s 139(5). Further, the discretionary power u/s 119(2)(b) is to be exercised by the Board only for avoiding genuine hardship and the same was not the case here.

# ITO vs. TechSpan India (P.) Ltd.
## (2018) 302 CTR 74 (SC)

- **Underlying Principles to Determine Whether there is 'Change of Opinion'**

In this case, the Court went into examining the scope of expression 'change of opinion' for the purpose of reassessment proceedings carried out u/s 148 of the IT Act. It is a settled legal position that reassessment proceedings can't be initiated on 'change of opinion'. To check whether it is a case of 'change of opinion' or not, one has to see its literal meaning as well as legal meaning. The word 'change of opinion' implies formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by the AO resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection.

Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the AO any opinion on the questions that are raised in the proposed re-assessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings.

# Justice K.S. Puttaswamy (RETD.) vs. Union of India
## (2018 (9) SCJ 224)

- **Section 139AA is Constitutionally Valid**

In this case, the Apex Court examined the validity of Section 139AA of the IT Act in light of Article 21 of the Constitution. Section 139AA provides the mandatory requirement for linking Aadhaar No. with PAN and quoting Aadhaar No. at the time of filing of return of income. While dealing with the issue, the Hon'ble Apex court relied upon its judgment in case of K.S. Puttaswamy vs. Union of India dated 24.08.2017 wherein the constitutional bench has held that the right to privacy is not an absolute right. In the said case, triple tests were laid down for judging the permissible limits for invasion of privacy while testing the validity of any legislation which are as follows:

- The existence of a law.
- A "legitimate State interest"; and
- Such law should pass the "test of proportionality" i.e. need for interference into privacy.

In the instant case, the court held that the Section 139AA completely satisfies the aforesaid triple tests of right to privacy contained under K.S. Puttaswamy (supra) judgment on account of the following reasons:

- Section 139AA is a statutory provision properly backed by law. Thus, it satisfies the first condition i.e. existence of law.
- Aadhaar No. being a unique identifier, the problem of bogus or duplicate PANs can be dealt with in a more systematic and full proof manner. Hence, there is a legitimate state interest.
- Linking of PAN with Aadhaar helps in extracting data with respect to tax evasion, duplicate PAN's, non-

PAN transactions, etc. As prevention and investigation of crime and protection of the revenue are among the legitimate aims of the Government, Section 139AA also passes the test of proportionality.

Thus, in view of the above, Section 139AA has successfully met the triple test of right to privacy and is constitutionally valid.

# Binod Kumar Agarwala vs. CIT
## [2018] 303 CTR 406 (Calcutta)

- **Additions Can be Made Based on Window-Dressed Financials Prepared for Bank Loans**

In the given case, the assessee submitted a balance sheet to a bank which was at variance with the balance sheet presented by the assessee before the AO. The issue under consideration was whether any addition to income can be made on the basis of balance sheet and profit and loss accounts certified to have been prepared on estimate basis to avail bank loan and having no relation with the actual figures of the balance sheet and profit and loss accounts.

The Hon'ble High Court held that once assessee presents the financial statements, as certified by a Chartered Accountant, for obtaining bank loan, he can't subsequently backtrack from such position at the time of filing annual accounts for purpose of taxation. The assessee can't argue that earlier accounts had been prepared on estimation basis for presentation thereof to bank. The balance sheet and profit and loss accounts of an assessee accompanied by a certificate as to its fairness, cannot be tailor-made to suit a particular purpose or window-dressed to make it attractive for bankers to rely thereupon and all the gloss and sheen removed thereafter when it was the time to pay tax. Therefore, it was open to the AO and the income tax authorities to pin the assessee down on the basis of the assessee's representation contained in the earlier balance sheet.

# PCIT vs. Vaidya Panalalmanilal (HUF)
## [2018] 409 ITR 587 (Delhi)

- **Deduction u/s 54F is Permissible to HUF, even if New Residential House was Purchased in the Name of Members of HUF**

The issue for consideration before the Court was that if a HUF purchases a new residential house in the name of its members instead of its name, then whether the HUF is eligible for claiming deduction u/s 54F of the IT Act. To delve upon this issue, the court observed that:

- There was no dispute in the fact that the newly acquired asset out of the sale proceeds of capital asset was shown in the accounts of HUF.
- Mere technicality that the sale deed was executed in the name of members of the HUF and not HUF, would not be enough to defeat the claim of deduction. By mere names of the purchasers in the sale deed, the rights of the HUF and other members of the HUF do not get defeated.

Thus, by considering the above factual aspects, the court held that the execution of sale deed in the name of members of the HUF would not disentitle the HUF to claim deduction u/s 54F of the IT Act.

# PCIT vs. Hardik Bharat Patel
## [2018] 100 taxmann.com 410 (Bombay)

- **Income from Sale of Shares Acquired Out of Borrowed Funds Can be Treated as Capital Gains**

The issue before the Court was that where the amount invested in shares was out of the borrowed funds, then whether in view of **Circular No. 6 of 2016 dated 29.02.2016 ("Circular"),** income on sale of the said shares has to be treated as business income or capital gain.

The Court observed that as per the Circular, assessee has an option to treat the income in case of long term holding of shares and securities either as capital gains or business income and option exercised by the assessee shall be accepted by the AO. However, the Circular makes no distinction whether the investment made in shares was out of the borrowed funds or own funds. Thus, the distinction which has been sought to be made by the Revenue cannot override the Circular, which is binding upon it.

In view of the above, the Court held that income arising from sale of investments made out of the borrowed funds can be treated as capital gain in the instant case.

# DIT (Exemption) vs. Delhi Public School Society
## [2018] 403 ITR 49 (Delhi)

- **Application for Exemption u/s 10(23C)(vi) Can't be Rejected on the Ground that Receipt of Franchisee Fees Amounts to 'Business Activity'**

The issue under consideration before the court was whether the department was correct in rejecting the Assessee's application u/s 10(23C)(vi) of the IT Act seeking exemption, on the grounds that the franchisee fee received by it from the satellite schools in lieu of its name, logo and motto amounts to 'business activity' with a profit motive and no separate books of account were maintained by the Assessee for business activity as required u/s 11(4A) of the IT Act.

The court observed that the interpretation of Section 10(23C)(vi) is one that requires fulfilment of a two pronged test: (i) that any business activity if carried out by the educational institution applying for exemption, should be incidental to their educational purpose, and (ii) that proper accounts of such business activity ought to be maintained. The court also reiterated that mere incurrence of profit does not automatically presupposes a business activity that invalidates the exemption u/s 10(23C)(vi); the same has to be tested on whether such profits are being utilized within the meaning of the larger charitable purpose as defined in Section 2(15) or not. If all these tests are satisfied, then, even if the profits received by the assessee as such increase exponentially, they will still be eligible for exemption u/s 10(23C)(vi).

In the instant case, Court observed that Assessee society has maintained books of accounts as well got them audited. Further, the realization of profit by the Assessee is through an activity incidental to the dominant educational purpose that its memorandum of association sets out and is in turn being channelled back into the maintenance and management of the same schools, thus, fulfilling its objectives as stated in the memorandum. Hence, the activities carried on qualifies as 'charitable purpose' within the meaning of Section 2(15) and fulfilled the requirements u/s 10(23C)(vi) to qualify for exemption.

Note- SLP(C) No. 38347 of 2018 was filed before the Apex Court against the aforesaid judgment, however the same was dismissed vide order dated 12.11.2018.

# Jagdish C. Dhabalia vs. ITO
## [2019] 262 Taxman 453 (Bombay)

- **Exemption u/s 54EC shall be determined considering deeming fiction u/s 50C**

In the given case, the assessee sold a plot of land for sale consideration of Rs.25 lakhs and invested entire amount in bond as specified u/s 54EC. In return of income, assessee had declared Long-Term Capital Gain ("LTCG") on transfer of land at Rs. 21.19 lakhs which was computed considering the actual sale consideration and not the stamp duty valuation. The assessee claimed full exemption of such LTCG u/s 54EC. During course of scrutiny assessment, the AO by considering the stamp duty value of said land determined LTCG of assessee at Rs.49.47 lakhs and accordingly, charged Rs. 24.47 lakhs (i.e. Rs. 49.47 lakhs – Rs. 25 lakhs) to tax as LTCG. The issue came before the Hon'ble High Court of Bombay was that whether the exemption w.r.t. taxability of capital gain u/s 54EC is to be determined considering the deeming fiction contained in Section 50C or the actual sale consideration received by the assessee.

The court observed that while giving full effect to the deeming fiction contained u/s 50C for the purpose of computation of the capital gain u/s 48, for which Section 50C is specifically enacted, the automatic fallout thereof would be that the computation of the assessee's capital gain and consequently, the computation of exemption u/s 54EC, shall have to be worked out on the basis of substituted deemed sale consideration of transfer of capital asset in terms of Section 50C.

The court based on the aforesaid observation and in light of the facts of the case held that computation of capital gain and consequently computation of exemption u/s 54EC, shall have to be worked out on the basis of substituted deemed sale consideration for transfer of capital asset in terms of Section 50C.

# PCIT vs. Ferromatic Milacron India (P.) Ltd
## [2018] 99 taxmann.com 154 (Gujarat)

- **Depreciation is Allowable on Non-compete fees**

In this case, assessee made payment to its erstwhile partner to ward off competence and to protect its existing

business. In consideration, said partner agreed not to solicit business from a person whose business relationship is with the assessee. So, the issue for consideration before the court was whether depreciation will be allowed on payment of non-compete fee to a person who had closely worked with the assessee in the same business.

There is no dispute that payment of non-compete fees is capital expenditure as Assessee acquired certain enduring benefits. However, for claim of deprecation on any capital expenditure, requirement of section 32(1)(ii) must be satisfied. As per the said section, depreciation shall be allowed on an 'asset' and as per the definition of 'asset' contained in the said section, it includes apart from tangible assets, intangible assets being know how, patent, any other business or commercial rights of similar nature etc.

Court observed that the rights acquired by the assessee in the instant case by payment of non-compete fees, not only gave enduring benefit but also protected the assessee's business against competence, that too from a person who had closely worked with the assessee in the same business. The expression " any other business or commercial rights of similar nature" is wide enough to include the present situation, hence depreciation will be allowed on non-compete fees.

# RECENT TAX RULINGS

## INDIRECT TAX

## State of Haryana v. Carpo Power Ltd.
### 2019 (23) G.S.T.L. J172 (S.C.)

**Form-C under CST Act can be Issued in GST Regime**

The issue under consideration before the Supreme Court was a decision by the High Court of Punjab and Haryana regarding issuance of Form-C under Central Sales Tax Act, 1956 ("**CST Act**") after the implementation of GST laws where the Assessee was no longer a registered dealer under the CST Act as it had migrated to GST. Therefore, as per section 8 of the CST Act, the Assessee was not eligible for issuance of Form-C since only registered dealers are eligible for the availment of concessional rate. The High Court held that dealers are still registered dealers under section 7 of the CST Act as State 'sales tax law' will include State GST Act. Therefore, registration under State GST will be construed as registered under state sales tax law. Further, while interpreting section 8 of the CST Act, Hon'ble Court held that Form-C can still be issued for inter-state movement of Petroleum crude; high speed diesel; motor spirit (commonly known as petrol); natural gas; aviation turbine fuel; and alcoholic liquor for human consumption which are used for telecommunication, mining, generation and distribution of electricity or any other form of power. This decision of the High Court was upheld by the Supreme Court in the instant case.

## Bajaj Auto Limited vs. Union of India & Ors.
### 2019 (366) E.L.T. 577 (S.C.)

**Exemption to Excise Duty is Extendable to Cess and Duty which are of same Nature as of Excise Duty**

The issue under consideration before the Hon'ble Supreme Court was the liability towards National Calamity Contingent Duty ("**NCCD**"), Education Cess ("**EC**") and Secondary & Higher Education Cess ("**SHEC**") of a manufacturing establishment, which is exempted from payment of excise duty under the Excise Act. The Hon'ble Court was of the view that since EC and SHEC are surcharge levied and collected on the total value of the excise duty, and the excise duty itself is exempted, thus, there cannot be any question of any recovery of EC and SHEC, as the base does not exist. However, the real issue which survives for consideration is the NCCD as it is levied on the product itself. In this regard, the Court held that since NCCD is in the nature of an excise duty, it has to bear the same character as that of excise duty. NCCD will not cease to be an excise duty even if it is levied on the product.

# Willowood Chemicals Pvt. Ltd vs. UOI
## 2018 (19) G.S.T.L. 228 (Guj.)

### Procedure and time limit for filing Form GST TRAN-1 is valid and mandatory

In this case, the constitutional validity of the second proviso to Section 140(1) of the CGST Act and Rule 117 of the CGST Rules was challenged before the High Court of Gujarat. The challenge of the petitioner in the said case was that firstly, the subordinate legislature did not have the authority to prescribe a time limit which was not envisaged in the parent Act, i.e., the CGST Act and transitional credit was a vested right of the taxpayers which could not be denied by the government. It was also contended that the time limit prescribed under Rule 117 of the CGST Rules should be read as directory and not mandatory. The court rejected the contentions of the Petitioner and held that the time limit had been prescribed under statutory rule-making power conferred upon the legislature, and in a case where the entire tax structure of a country was being shifted to a new one, it was vital that there should be a finality with respect to claims, credits, transfers of such credits and all issues related to the previous tax regime. Input tax credit is a form of concession provided by the legislature and can be made available subject to conditions, thus in this case the conditions subject to which transitional credit would be available were valid.

# Atin Krishna vs. UOI
## P.I.L. Civil No. 12929 of 2019

### No GST to be levied on imported goods at duty-free shops

In this case, the High Court of Allahabad held that when goods are imported from outside India, kept in customs warehouse and supplied by duty free shops ("**DFS**") to passengers therefrom, the goods are not cleared for home consumption and do not cross the custom frontier of India. Here, the stage for payment of customs duty under Customs Act, 1962 and consequently, levy of duty under IGST Act does not arise. When an arriving passenger purchases goods from a DFS at the arrival terminal of an airport, this supply takes place before these goods are cleared for home consumption. The arriving passenger later pays the applicable custom duties on the same, and thus no GST is applicable on the supply by the DFS. Similarly, in case of supply of goods to a departing passenger, the goods supplied are never cleared for home consumption and the warehoused goods are exported directly by the DFS, therefore the levy Customs duty and of the IGST do not arise. The court further held that the invoice issued to the passengers after the sale of the goods would be deemed to be a "shipping bill" for the purpose of export under Section 69 of Customs Act. Further, since export of goods is a zero-rated supply, the DFS would be eligible to claim refund of ITC on GST paid on service of renting of immovable property by Airport Authority of India and procurement of domestic goods and services.

(Relevant exemption notification and Circular prescribing the process for refund of Credit have been issued on 29.06.2019)

# M/s Garden Silk Mills Ltd vs. Union of India
## Special Civil Application No. 7397 of 2018 decided on 11.04.2019

### Re-credit of Input Tax Credit manually in GSTR-3B

The issue under consideration before the Hon'ble Gujarat High Court was regarding re-credit of the amount of refund rejected to the Electronic Credit Ledger ('ECL') under GST Law in absence of availability of online utility as the amount sought to be refunded has been debited to ECL by the petitioner before claiming refund. The Hon'ble Court directed the proper officer to re-credit the amount of refund rejected to the ECL on the basis of Form GST RFD-PMT 03 or in case no mechanism is available with the proper officer, the petitioner shall be permitted to manually take ITC of the amount of the refund rejected in Form GSTR-3B on suo motu basis.

# Safari Retreats Pvt. Ltd. vs. Commissioner, CGST
## [2019] 105 taxmann.com 324 (Orissa)

### ITC of GST on Goods & Services used for Construction of Immovable Property

The issue under consideration was whether ITC in respect of inputs and input services which are used in construction of an immovable property which is further rented out can be availed. The Hon'ble High Court of Orissa has read down the Section 17(5)(d) of the CGST Act which disallows the ITC of GST paid on goods and services procured for construction of immovable property. The Hon'ble High Court held that as the petitioner has used the goods and services for construction of immovable property, which is further rented out, ITC of GST paid on such goods and services shall be allowed. It was observed by the Hon'ble High Court that if the Assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the ITC.

# Megha Engineering & Infrastructures Ltd. vs. Commissioner of Central Tax
## [2019] 104 taxmann.com 393

### Interest on delayed payment of GST shall be leviable on the Gross tax liability (including ITC)

The issue for consideration before the Hon'ble High Court of Telangana was whether the department can demand for payment of interest payment on the ITC portion of the tax paid. The Appellant filed delayed returns for the period July 2017 to May 2018 and contended that interest for filing delayed return should be calculated only on the net tax liability after deducting the ITC from the total tax liability. The Court analysed the procedure for return filing as prescribed under section 39 of CGST Act and observed that until the Appellant

files GSTR-3B and avails the ITC, the ITC will remain in the cloud and it will not tantamount to actual payment of tax. The Hon'ble Court further observed that till the time credit is lying in electronic credit ledger, its ownership remains with the Appellant. It is only after the utilisation of credit with the output tax liability that its ownership gets transferred to the government. Since the ownership of such money is with the Appellant till the time of actual payment, the Government becomes entitled to interest up to the date of their entitlement to appropriate it.

However, it is pertinent to highlight that the Hon'ble High Court of Delhi in Landmark Lifestyle vs. UOI and Ors. [W.P. (C) No. 6055/2019] has recently stayed the order wherein interest on gross amount of tax was charged.

# Saji S. & Ors vs. Commissioner, State GST Department
## 2018 (19) G.S.T.L. 385 (Ker.)

### GST Paid under One Head can be Adjusted under Another Head

The issue in this case was that the Assessee's goods had been detained in transit and the required amount of tax and penalty was subsequently paid by the Assessee. However, the amount was paid under the head 'SGST' whereas it should have been paid under 'IGST'. It was argued by the department that the Assessee should pay the required amount under the correct head and seek refund of the amount paid wrongly since adjustment of the amount would take a few months if carried out by the department. The Hon'ble Court rejected this argument. The court referred to Section 77 of the CGST Act which provides for the refund of the tax paid mistakenly under one head instead of another, and to Rule 92 of the CGST Rules which allows for the refund amount to be completely adjusted against any outstanding demand under the Act. The court was of the view that in light of such provisions it was clear that the department was empowered to adjust the amount of tax paid under one head with the other. It was thus held that the amount paid by the Assessee should be adjusted under the required head, and that further inconvenience should not be caused to him on this count.

# Filco Trade Centre Pvt. Ltd. vs. Union of India
## 2018 (17) G.S.T.L. 3 (Guj.)

### GST Provision Denying CENVAT Credit on Stock of Goods Purchased Prior to One Year Struck Down

The issue under consideration before the Court was the constitutional validity of Section 140(3)(iv) of the CGST Act relating to transitional provisions which would limit the eligibility of a first stage dealer to claim credit of the eligible duties in respect of goods which were purchased from the manufacturers prior to twelve months of the appointed day. The Hon'ble Court was of the view that the benefit of credit of eligible duties on the purchases made by the first stage dealer as per the then existing CENVAT credit rules was a vested right, and Section 140(3)(iv) was curtailing this right with retrospective effect. It was held that even though the provision does not make any hostile discrimination between similarly situated persons, the same does impose

a burden with retrospective effect without any rational or reasonable basis for imposition of the same and thus the provision was struck down as unconstitutional.

# Torrent Power Ltd. vs. Union of India
## 2018 (17) G.S.T.L. 183 (Guj.)

### Essential Activities having Direct and Close Nexus with Principal Supply will be Covered under Composite Supply

The issue under consideration before the Court was levy of GST/service tax on the recovery charges like application fees, meter rent, testing fees etc. collected by the electricity distribution company ("**DISCOMS**") from the Consumers. As per Para 4(1) of **Circular No. 34/8/2018-GST dated 01.03.2018,** it was clarified that GST will be leviable on the above transactions. It was contended that the said services are ancillary/ related to the service of 'Transmission and Distribution of Electricity' which is exempted under services tax and GST. The Hon'ble Court held that such services are essential services as the same are required to provide the principle supply of 'Transmission and Distribution of Electricity' and such services have direct and close nexus with the principal supply. Further, taxability of such ancillary/ related services will be as per the levy of GST on principal supply. Since, the principal supply is exempted from the tax liability; GST shall not be leviable on the ancillary supply provided by DISCOMS.

# DLF Commercial Projects Corporations vs. CST, Gurugram
## Appeal No. ST/60476/2018 dated 22.05.2019 before the Chandigarh CESTAT

### Service Tax on Development Rights

The issue under consideration before the Hon'ble Tribunal was regarding leviability of service tax on transfer of development rights ("**DR**") under a Joint Development Agreement ("**JDA**"). The Hon'ble Tribunal observed that once the landowner transfers the DRs to developer for a consideration, it is obligated to transfer the undivided interest in the land in favour of developer's buyers for which no separate consideration is charged. Thus, the undivided interest in the land gets transferred by the landowner to the developer in return of the initial consideration only. Therefore, it is the ownership of the land, which stands transferred effectively by the landowner in return of consideration payable by the developers. Further, the Hon'ble Tribunal also observed that DRs are 'benefits arise out of land', which is outside the purview of 'service' as defined in section 65B(44) of the Finance Act. Hence, the Hon'ble Tribunal held that the DR is to be termed as immovable property and the activity in question is only acquisition of land on which no service tax is payable.

# GLOSSARY

1. **Budget Documents:** The list of budget documents presented to the Parliament, besides the Finance Minister's Budget Speech, are the following:
   a. Annual Financial Statement (AFS)
   b. Demands for Grants (DG)
   c. Appropriation Bill
   d. Finance Bill
   e. Memorandum Explaining the Provisions in the Finance Bill
   f. Macro-Economic Framework Statement
   g. Fiscal Policy Strategy Statement
   h. Medium Term Fiscal Policy Statement
   i. Medium Term Expenditure Framework Statement- (to be presented in parliament in the Session after the Budget session).
   j. Expenditure Profile1
   k. Expenditure Budget2
   l. Receipts Budget
   m. Budget at a Glance
   n. Highlights of Budget- Key Features.
   o. Outcome Budget
2. **Annual Financial Statement (AFS)**: It shows estimated receipts and expenditure for the coming F.Y. in relation to estimates for the previous year as also the actual amounts for the year prior to it. (Provided u/a 112 of the Constitution).
3. **Annual Reports**: It contains a descriptive account of the activities of each Ministry/Department during the previous year.
4. **Appropriation Bill:** Appropriation Bill gives power to the Government to withdraw funds from the Consolidated Fund for meeting the expenditure during the F.Y. (Presented u/a 114(3) of the Constitution).
5. **Budget at a Glance**: This document shows the brief of receipts and disbursements, details of resources transferred by the Central Government to State and Union Territory Governments. It also shows the revenue deficit, the gross primary deficit and the gross fiscal deficit of the Central Government.
6. **Capital Budget:** The Capital Budget consists of capital receipts and payments. It includes investments in shares, loans and advances granted by the Central Government to State Governments, Government companies, corporations and other parties.
7. **Consolidated Fund:** All revenues received by the government, the loans raised by it, and receipts from recoveries of loans granted by it, form the Consolidated Fund. All expenditure of the government is incurred from the Consolidated Fund and no amount can be withdrawn from the fund without authorisation from the parliament. This fund was constituted under Article 266 (1) of the Constitution. All revenues received by the government by way of direct taxes and indirect taxes, money borrowed and receipts from loans given by the government flow into the Consolidated Fund.

8. **Contingency Fund:** This is the fund which the government resorts to in times of calamities, emergencies etc, to meet urgent, unforeseen expenditures without having to wait for the parliament's authorisation. It is placed at the disposal of the President for such financial exigencies.

9. **Demands for Grants (DG)**: It is the form in which the estimates of expenditure from the Consolidated Fund to be included in the AFS and presented in Lok Sabha to be voted upon. (Presented u/a 113 of the Constitution).

10. **Detailed Demands for Grants**: It further elaborates the provisions included in the Demands for Grants as also the actual expenditure during the previous year.

11. **Economic Survey**: It brings out the economic trends in the country which facilitates a better appreciation of the mobilisation of resources and their allocation in the Budget.

12. **Expenditure Budget**: The estimates made for a scheme/programme are brought together and shown on a net basis on Revenue and Capital basis along with explanatory notes to understand the objectives of the underlying expenditures.

13. **Expenditure Profile**: It gives an aggregation of various types of expenditure and certain other items across demands. (Titled Expenditure Budget- Vol- I till the previous year).

14. **Finance Bill:** It details the imposition, abolition, remission, alteration or regulation of taxes proposed in the Budget. (Presented u/a 110(1)(a)).

15. **Fiscal Deficit:** Fiscal Deficit is the difference between the Revenue Receipts plus Non-debt Capital Receipts (NDCR) and the total expenditure. This indicates the total borrowing requirements of Government from all sources. It is the gap between the government's total spending and the sum of its revenue receipts and non-debt capital receipts. It represents the total amount of borrowed funds required by the government to completely meet its expenditure.

16. **Fiscal Policy Strategy Statement**: It outlines the strategic priorities of the Government for the existing F.Y. and also explains how the current fiscal policies are in conformity with sound fiscal management principles and gives the rationale for any major deviation in key fiscal measures. (Presented u/s 3(4) of the FRBM Act).

17. **FRBM Act:** Fiscal Responsibility and Budget Management Act, 2003 is an Act of the Parliament of India to institutionalize financial discipline, reduce India's fiscal deficit, improve macroeconomic management and the overall management of the public funds by moving towards a balanced budget. Some of the budget documents as listed above are introduced under the provisions of this Act.

18. **Gross Domestic Product (GDP)**: As per OECD Glossary of Technical Terms, GDP is an aggregate measure of production equal to the sum of the gross values added of all resident institutional units engaged in production (plus any taxes, and minus any subsidies, on products not included in the value of their outputs). The sum of the final uses of goods and services (all uses except intermediate consumption) measured in purchasers' prices, less the value of imports of goods and services, or the sum of primary incomes distributed by resident producer units. "Gross" signifies that no deduction has been made for the depreciation of machinery, buildings and other capital products used in production. "Domestic" means that it is production by the resident institutional units of the country. The products refer to final goods and services, that is, those that are purchased, imputed or otherwise, as: final consumption of households, non-profit institutions serving households and government; fixed assets; and exports (minus imports). Data are internationally comparable by following the System of National Accounts. This indicator is measured in USD per capita (GDP per capita) and in million USD at current prices and PPPs. Data are under 2008 System of National Accounts (SNA 2008) for all countries except for Chile, Japan and Turkey

(SNA 1993). Following are the ways to calculate GDP:

- Expenditure Method
- Income Method
- Production (Output) Method

19. **Highlights of Budget- Key features**: This document explains the key features of the Budget. It is broadly a summary of the announcements made in the Budget Speech.
20. **Macro-Economic Framework Statement**: It contains an assessment of the growth prospects of the economy along with statement of specific underlying assumptions, GDP growth rate, domestic economy and stability of the external sector of the economy, fiscal balance of the Central Government and the external sector balance of the economy. (Presented u/s 3(5) of the FRBM Act).
21. **Medium-Term Fiscal Policy Statement**: It sets out the 3-year rolling targets for 5 specific fiscal indicators in relation to GDP at market prices, namely (i) Revenue Deficit, (ii) Fiscal Deficit, (iii) Effective Revenue Deficit (iv) Tax to GDP ratio and (v) Total outstanding Central Government Liabilities at the end of the year. (presented u/s 3(2) of the FRBM Act).
22. **Medium-Term Expenditure Framework Statement**: It sets forth the 3-year rolling target for certain expenditure indicators along with description of the underlying assumptions and risks. (Presented u/s 3 of the FRBM Act).
23. **Memorandum Explaining the Provisions in the Finance Bill**: It is a document that explains the taxation provisions and their implications contained in the Finance Bill.
24. **Money Bill:** A Bill is said to be a Money Bill if it only contains provisions related to taxation, borrowing of money by the government, expenditure from or receipt to the Consolidated Fund of India as specified under Article 110 (1). Bills that only contain provisions that are incidental to these matters would also be regarded as Money Bills.
25. **Outcome Budget**: It broadly indicates the outcomes of the financial budget of a Ministry/Department, indicating actual deliverables linked with outlays targeted during the year and in the medium term.
26. **Plan and Non-Plan Expenditure:** Plan expenditures are estimated after discussions between each of the ministries concerned and the Planning Commission. Non-plan revenue expenditure is accounted for by interest payments, subsidies (mainly on food and fertilisers), wage and salary payments to government employees, grants to States and Union Territories governments, pensions, police, economic services in various sectors, other general services such as tax collection, social services, and grants to foreign governments. Non-plan capital expenditure mainly includes defence, loans to public enterprises, loans to States, Union Territories and foreign governments.
27. **Receipts Budget**: It provide details of tax and non-tax revenue receipts and capital receipts, statement on the arrears of tax revenues and nontax revenues, statement of Revenue Impact of Tax Incentives under the Central Tax System which seeks to list the revenue impact of tax incentives that are proposed by the Central Government.
28. **Revenue Budget:** The revenue budget consists of revenue receipts of the Government and its expenditure. Revenue receipts are divided into tax and non-tax revenue.
29. **Revenue Deficit:** Revenue Deficit refers to the excess of revenue expenditure over revenue receipts.
30. **Union Budget**: Also referred to as the AFS, is a statement of the estimated receipts and expenditure of the government for that particular year and is introduced annually under Article 112 of the Constitution.

## NOTES

## NOTES

# KNOW YOUR FINANCE MINISTER

Ms. Nirmala Sitharaman, an economist, Indian politician, social worker and currently serving as the Finance Minister of India, was born on August 18, 1959 in Madurai, Tamil Nadu to middle-class parents Shri Narayanan Sitharaman and Smt. Savitri. Ms. Sitharaman's father worked in Indian Railways while her mother was a homemaker. She inherited her father's discipline and her mother's love for books. Ms. Sitharaman is married to Dr. Parakala Prabhaka and has a daughter. Her family is settled in Hyderabad, Telangana.

After completing her lower education as an "exemplary student", Ms. Sitharaman graduated in Economics from Seethalakshmi Ramaswamy College, Tiruchirappalli. She then moved to Delhi in 1980 to pursue her Masters in Economics from Jawaharlal Nehru University. She also holds Ph.D. in the "Indo-European Textile Trade within the GATT framework" and M.Phil in international relations.

Before, Ms. Sitharaman forayed into politics, she was a part of corporate world of United Kingdom where she was living with her husband. During the couple's stint in London, Ms. Sitharaman served as an assistant to an Economist in the Agricultural Engineers Association, was a part of Price Waterhouse Coopers as a senior manager in research division and later on, briefly employed with BBC World Service.

Ms. Sitharaman's first semi-political innings began when she became a member of the National Commission for Women (NCW) in 2003 during the tenure of Prime Minister Atal Bihari Vajpayee. She was formally introduced to politics in 2006 when she joined the Bharatiya Janata Party (BJP). Her individuality and head strong personality is reflected from the fact that she is a BJP leader from a Congress supporting family.

Soon after the historic win of BJP in 2014 General Elections, Ms. Sitharaman was appointed as the Minister of State (independent charge) for Commerce &Industry as well as Minister of State for Finance and Corporate Affairs under the Ministry of Finance. In June 2014, Ms. Sitharaman was unanimously elected to the Rajya Sabha from Andhra Pradesh. On September 3, 2017, she succeeded Mr. Arun Jaitley as the Defence Minister of India and became the second woman and the first full time woman defence minister of India in the Modi Government's first tenure. Also, she is the second woman to be a part of the Cabinet Committee on Security (CCS). Some of the illustrious decisions taken by Ms. Sitharaman during her tenure as the Defence Minister of India are formulisation of new defence manufacturing policy, setting up of two Defence Production Corridors, Indian Air Force strike on Balakot in Pakistan, launch of 'Mission Raksha Gyan Shakti', setting up of Defence Investor Cell (a one-step solution for all types of defence production related queries) made functional in Department of Defence Production (DDP).

On the basis of her proved capabilities and being a task-master to address the challenges, Ms. Sitharaman, on May 31, 2019, has been appointed as the Finance and Corporate Affairs Minister of India in the Modi Government's second tenure, breaking yet another glass ceiling and becoming the first full-time female finance minister of India.

*"One whose knowledge is confined to books and whose wealth is in the possession of others can use neither knowledge nor wealth when the need for them arises."*

*— Chanakya*

CACS

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