An Overview of some key provisions in Finance Bill, 2017

The Union Budget 2017 was set out with the agenda of TEC India (Transform, Energise and Clean India) to incentivise India Inc. and provide relief to the individuals hit hard by demonetisation. In line with the stated objectives of the demonetisation exercise undertaken in November 2016, the Finance Minister unveiled a series of post-demonetisation digital reforms. Peeking into the pre-budget speculations, rejig of long term capital gains tax rates was one of the most feared change. However, there was no tweaking in the rate of long term capital gains in the budget proposals. Rather, some tax-payer friendly amendments were made, which cheered the markets and gave a new high to the stock indices. The Union Budget also proposed the introduction of certain provisions for promotion of real-estate in line with the 'Housing for all' scheme of the government. Some noteworthy amendments have also been made in the provisions with respect to house property and rent. In this article, the author has discussed some of the key budget announcements around incentivising digital transactions and the modifications in respect of capital gains and house property provisions along with some other major proposals. Read on to know more…

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Incentivising digital transactions

In India, *"digital"* has become a buzzword and India is at the cusp of a massive digital transformation. The move towards a digital economy has always been one of the key focus areas of the government. The Finance Minister with Budget 2017 sets out the vision of Digital India aiming for speed, accountability and transparency. The thrust

of incentivising the digital transactions lies in disincentivising the cash transactions and some of the budget proposals have been made accordingly. Some of the major tax proposals to promote less cash economy are as under:

- **Introduction of new Section 269ST imposing restriction on cash transactions**

  It has been proposed that from AY 2017-18, any person cannot receive more than ₹3 lakh in cash either (a) in a day from any single person or (b) for a single transaction or (c) for different transactions relating to one event or occasion from a person. For this purpose, Section 269ST has been proposed to be inserted wherein exclusions with respect to certain class of assessees (like a banking company/post office savings bank etc.) and certain transactions such as accepting loan or deposit in cash for ₹20,000 or more from same person as mentioned in Section 269SS of the Income-tax Act, 1961 (the Act) have also been carved out.

  Further, the government has also proposed that in case of any contravention of this provision, one may have to pay penalty equal to the amount received under Section 271DA of the Act.

  The proposed introduction of these provisions has also necessitated certain amendments with respect to TCS on jewellery. Currently, cash purchase of jewellery exceeding ₹5 lakh requires the purchaser to collect tax at source. However, with the introduction of Section 269ST, such a cash purchase of jewellery (exceeding ₹5 lakh) would not be possible and hence, the TCS provisions are suitably amended.

- **Lower tax rate in presumptive taxation scheme**

  Section 44AD of the Act provides that for a taxpayer engaged in eligible business and having turnover of ₹2 crore or less, a sum equal to 8 % of the total turnover or gross receipts shall be deemed to be the profits and gains chargeable to tax.

  The Central Board of Direct Taxes in a press release dated 19th December 2016, stated that to achieve the government's mission of moving towards a less cash economy and to incentivise small traders or business to proactively accept the payments by digital means, it has been proposed to reduce the existing rate of deemed profit of 8 % to 6 % in respect of the amount of total turnover or gross receipts received through banking channels or digital means. The press release also clarified that the legislative amendment in this regard shall be carried out through the Finance Bill, 2017.

  In line with the above, a concessional rate of 6% has been announced for the Assessment Year (AY) 2017-18 and subsequent years for the purpose of Section 44AD of the Act in respect of turnover realised through digital mode or normal banking channels. It has also been clarified that the existing rate of 8 per cent shall continue to apply in respect of the total turnover or gross receipts received in cash.

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- **Ceiling in respect of capital expenditure made in cash**

  Amendment to Actual cost of asset–Section 43(1)

  The existing provisions under Section 40A(3) of the Act place a restriction in respect of revenue expenditure incurred in excess of a specified limit in cash, by making it a subject matter of disallowance. However, there is no check in respect of capital expenditure incurred in cash. In view of the same, it is proposed that any expenditure on acquisition of a capital asset for which the cash payment is made in excess of ₹10,000 (per person per day), shall not form part of the actual cost of the asset.

  This would not only impact the depreciation claim of the taxpayer, but also the subsequent capital gains computation at the time of disposal of said asset.

  If one carefully looks at the language of the provisions, a possible reading of the provisions may suggest that the entire purchase price of

the asset, and not just the amount paid in cash, could be disregarded as "actual cost" for the purpose of Section 43(1) of the Act. However, such an interpretation may result in an extreme situation and may not even be the intention. Similar language is used in the provisions of Section 40A(3) of the Act and customarily, only so much of the expenditure as is incurred in cash is hit by the provisions of the said Section.

Amendment to Section 35AD

The investment-linked deduction provided under Section 35AD of the Act in respect of specified business is proposed to be denied in case it is incurred in cash exceeding ₹10,000 per person per day.

- **Other miscellaneous provisions**
  - Under the existing provisions of Section 40A(3) of the Act, revenue expenditure incurred in cash exceeding ₹20,000 is not allowed as deduction while computing the total income except in certain specified circumstances. In Finance Bill 2017, this ceiling is proposed to be reduced to ₹10,000.
  - In wake of the digitisation agenda being voiced by the statements to clean up electoral funding, it has been announced that in order to avail the benefits of Section 13A of the Act, the maximum cash donation that can be received by a political party is ₹2,000.
  - It has also been proposed that the donations made in cash in excess of ₹2,000 will not fetch any tax benefit under Section 80G of the Act.

As evident from the above, the government announced a series of proposals for moving towards its vision of less cash and digital economy. The thrust of government's move of digitisation covers not only a reduced cash element in the transactions but also an effective use of technology for a faster working and compliance. While, in the year 2016, a gradual move towards e-assessment was piloted, in the current budget, faster assessments and compliances have been brought in. Following may be briefly noted:

- The time limits for completion of assessment and reassessment have been revised from existing 21 months to 18 months for AY 2018-19 and subsequently to 12 months for AY 2019-20 and onwards, from the end of AY in which income was first assessable.
- The time limit for filing revised return of income is proposed to be reduced by one year and it can be filed on or before the relevant AY or before the completion of assessment, whichever is earlier. Further, penalty has also been proposed to be levied for furnishing belated return of income.

Capital gains reforms

- **Reduced holding period for long term capital asset being land or building**

  The profits on sale of capital asset become taxable as long term or short term on the basis of period of holding of the asset. With a view to provide an impetus to the real-estate sector, the government has proposed to reduce the holding period for immovable property, being land or building or both, from the existing thirty six months to twenty four months for it to qualify as long-term capital asset.

- **Shifting base year for computation of capital gains**

  Section 55 of the Act has been proposed to be amended to provide that the cost of acquisition of an asset acquired before 1st April 2001 shall be allowed to be taken as Fair Market Value (FMV) as on 1st April 2001 (as against 1st April 1981 as per the existing provisions). Also, the cost of improvement shall include only those capital expenditure incurred after 1st April 2001.

  This move shall address the issue of non-availability of old data for computation of FMV, especially with respect to immovable properties acquired before 1st April 1981. Further, it will

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also benefit the assessees as the inflation index has substantially gone up and the current indexation benchmark of 1st April 1981 is very old.

This benefit received an unequivocal appreciation from various stakeholders for revisiting the several other limits under the Act which are archaic and require reconsideration.

- **Expanding the scope of long term bonds under 54EC**

  Section 54EC of the Act which provides for exemption of capital gains to the extent of ₹50 lakh on transfer of specified long-term capital asset has been proposed to be widened in scope to include bonds as may be issued by certain sectors which shall be notified in due course.

- **Exemption of long term capital gains tax u/s 10(38)**

  Under the existing provisions, any long term capital gains arising from sale of certain securities are fully tax-exempt if the Securities Transaction Tax (STT) of 0.1 per cent is paid at the time of sale. Currently, such an exemption is not conditioned to payment of STT at the time of purchase of shares.

  The government has now proposed to provide that the exemption under this Section for income arising on sale of equity shares acquired on or after 1st October 2004 shall be available only if acquisition of shares is chargeable to STT. However, an exemption shall be provided for the genuine cases where STT could not have been paid (like acquisition of shares in IPO, FPO, bonus shares or right shares etc.) by way of a notification in this regard. There also remains an ambiguity on capital gain tax arising on disposal of shares converted through ESOP plan of the company. It will be interesting to see whether the government adequately notifies such genuine cases or not.

- **Special provisions for computation of capital gains in case of Joint Development Agreement**

  Joint Development Agreement (JDA), has been one of the most prevalent form of land development in the real estate sector. The year in which transfer of a capital asset takes place under a JDA has been a subject matter of litigation before the Courts. While some Courts have held the date of JDA as the date of transfer, other decisions have emphasised factors such as the year of handing over the possession to the developer, handing over possession along with receipt of full consideration, transfer of legal title, etc. as relevant factors for determining the year of taxability of capital gains in such arrangements.

  The government with a view to settle the above, has proposed a new sub-Section under Section 45 of the Act to provide that capital gains shall be chargeable to tax in the previous year in which the certificate of completion for whole or part of the project is issued by the competent authority. However, this shall not apply to an assessee who transfers his share in project to any other person on or before the date of issue of certificate of completion. Also, a new Section 194-IC has been proposed in the Act to provide that, in case of monetary consideration received by the assessee, apart from the certificate of completion, tax at the rate of 10 % shall be deductible from the amount of such monetary consideration.

House property reforms

- **No notional income for house property held as stock-in-trade**

  It has been proposed that in case of house property held as stock in trade, the annual value of such property or part of the property shall be taken to nil, for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority. In view of the same, an amendment is proposed to be made in Section 23 of the Act.

  This proposal is believed to address certain business exigencies of real estate developers and will bring in some respite in cases of genuine delays in sale of such stock-in-trade.

- **Restricted House Property Loss**
  The Finance Bill, 2017 has proposed a restriction of ₹2 lakh with respect to set-off of loss from let out property against any other head of income under Section 71 of the Act. Balance loss, if any, can be carried forward to be set-off against house property income of subsequent 8 years.
  At present, there is no such limit for set-off of loss from let out house property and this brings disparity *vis-à-vis* a self-occupied property for which the loss from house property is capped to ₹2 lakh. The proposed provisions will bring a self-occupied property and the let out property on the same footing.

- **Withholding tax provisions on rent**
  Under the existing provisions, tax is required to be deducted by companies or individuals and HUFs who are subject to tax audit. In order to widen the scope of tax deduction at source to bring in the compliance net even those individuals and HUFs who are not subject to tax audit, a new Section 194-IB has been proposed to be inserted in the Act.
  The proposed Section 194-IB provides that individuals paying rent of ₹50,000 or more for a month/part of the month during the previous year will be required to withhold tax at the rate of 5 per cent in the last month of the previous year or last month of tenancy, as the case may be.
  Further, in order to reduce the compliance burden, the deductor will not be required to obtain Tax-deduction Account Number (TAN). Where the tax is required to be deducted on account of non-availability of PAN of the deductee, such deduction will not exceed the amount of rent payable for the last month of the previous year or last month of tenancy, as applicable. Procedure for such compliance will be clarified in due course of time.

Section 47 of the Act has been proposed to be amended to provide that conversion of preference shares into equity shares shall not be regarded as transfer to ensure tax neutrality and consequential amendments has been proposed in Section 49 and 2(42A) of the Act.

This amendment casts a significant responsibility on a common individual which will also have to face the necessary consequences of non–withholding of tax.

In this article, while we have concentrated on the budget proposals with respect to digital economy, capital gains and house property, several other noteworthy amendments were also proposed in the Finance Bill, 2017. To mention a few:

- It has been proposed to extend the period of carry forward of credit in respect of Minimum Alternate Tax (MAT)/Alternate Minimum Tax (AMT) paid from existing 10 AYs to 15 AYs. Though, there were representations made to abolish MAT provisions from the Act, this extension of carry-forward of MAT credit may provide relief to the taxpayers.
- Also, Section 47 of the Act has been proposed to be amended to provide that conversion of preference shares into equity shares shall not be regarded as transfer to ensure tax neutrality and consequential amendments has been proposed in Section 49 and 2(42A) of the Act.

Thus, overall if one gauges the budget from the market momentum, it is believed to have managed a fine balance amongst the stakeholders. Nevertheless, certain areas which were mounted with wishful expectations like deferral of Income Computation and Disclosure Standards (ICDS), increase in the limit of Section 80C deduction, announcement of standard deduction for salaried class etc. did not find a mention in the budget proposals. However, the initiatives taken in Finance Bill, 2017 promotes less cash economy and is a step forward to the campaign of 'Digital India' launched in July 2015. At the same time, the proposed reforms also align with the government's policy for ease of doing business in India. ■

Life is 10% what happens to us and 90% how we react to it. - Dennis B. Kimbro