

## Putting Some Key Provisions of Finance Bill (No.2), 2019 in Perspective—What Lies Ahead

*The most awaited Union Budget 2019 has seen light of the day! With a vision of making India a US \$ 5 trillion economy, this Budget focuses on infrastructure development, education, ease of doing business and strengthening of the rural economy. On the tax front, the Finance Bill, 2019 proposes changes on one side giving fillip to the eligible startups and on the other intends to plug in the loopholes in terms of reporting and compliance. With thrust on bringing greater transparency and ease of living, this bill emphasis on digitisation and reducing the human interaction between tax payers and the tax authorities. The Finance Bill also proposes to introduce certain provisions for promotion of real estate and use of electric vehicles. The present article highlights important changes proposed in the Finance Bill relating to Personal and Corporate Taxation.*



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### Rates of Taxes

With no changes in the slab rates and tax rates for individuals/HUFs/AOP/BOI, considering responsibility of taxpayers in the highest tax bracket to contribute more to the nation's development, Finance Bill, 2019 proposes to levy higher rates of surcharge as follows:

Taxable income in INR	Surcharge (%)	Effective tax rate (%)
>50 Lakhs up to 1 Crore	10	34.32
> 1 Crore up to 2 Crore	15	35.88
>2 Crore up to 5 Crore	25	39.00
> 5 Crore	37	42.74

It may be noted that higher surcharge shall also be applicable to Foreign Portfolio Investors (FPIs) set up as trusts.

Further, continuing Government's commitment to reduce the corporate tax rates, it is proposed to extend the benefit of concessional corporate tax rate of 25 percent (increased by applicable

surcharge) to domestic companies having a turnover up to INR 400 crore as against INR 250 Crores until last financial year.

### ***Moving towards digitisation and less cash economy***

India is at the cusp of a massive digital transformation. Moving towards digital / less cash economy has been one of the key focus areas of the Government. Some of the major tax proposals to promote less cash economy are as under:

### **Facility for accepting payment through electronic mode – Section 269SU**

Every person carrying on business whose total sales, turnover, or gross receipts exceeds INR 50 Crores during the immediately preceding previous year, shall be required to provide a facility for accepting payment through prescribed electronic modes, in addition to existing electronic facility they have if any.

Non-compliance would attract penalty of INR 5,000 for every day during which the failure continues. These amendments will take effect from 1<sup>st</sup> November, 2019.

### **TDS on withdrawal of cash - Section 194N**

This section casts responsibility on Banking company, Co-operative society, Post office to deduct TDS at the rate of 2 percent upon payment of any sum or aggregate of sums in cash in excess of INR 1 crore.

However, Bill does not clarify if such limit of 1 crore applies to each bank or bank accounts or

aggregate of payments from all banks. Also, it has to be clarified that though cash withdrawals are not income, credit of TDS will be allowed.

### **Prescription of electronic mode of payments/ receipts**

There are various provisions in the Act prohibiting cash transactions. To encourage other electronic modes of payment, it is proposed to amend following sections to include “*such other electronic mode as may be prescribed,*” in addition to the already existing permissible modes for payment or receipt:

- Donation received by political party [Section 13A]
- Expenditure of capital nature on specified business [Section 35AD]
- Disallowance of any expenditure [Section 40A]
- Determination of actual cost on acquisition of an asset [Section 43(1)]
- Full value of consideration for transfer of assets in certain cases [Sections 43CA, 50C]
- Special provision for computing profits and gains of business on presumptive basis [Section 44AD]
- Deduction in respect of employment of new employees [Section 80JAA]
- Mode of taking or

accepting certain loans and deposits [Section 269SS]

- Mode of undertaking transactions [269ST]
- Mode of repayment of certain loans and deposits [Section 269T]

Further, Government had earlier introduced concept of e-assessment. *To ensure the idea meets its objective, this Bill proposes to introduce Faceless e-assessment (jurisdiction free assessment). Under this, cases shall be allocated to assessment units in a random manner and notices shall be issued electronically by a central cell, without disclosing the name, designation, or location of the Assessing Officer. The central cell will be the single point of contact between the tax payer and the department.*

### ***Tax incentives for individuals***

### **Tax relief for affordable housing - Section 80EEA**

Individual buyers (not owning any other property at the time of sanction of loan) can claim deduction for interest on home loan up to INR 150,000 provided that loan is sanctioned by financial institution during the period 1 April 2019 to 31 March 2020 and stamp duty value of the property does not exceed INR 45 Lakhs.

### **Tax relief on interest on purchase of electric vehicle- Section 80EEB**

An individual can claim deduction up to INR 150,000 for interest paid towards loan for purchase of an electric vehicle provided loan has been sanctioned by financial

institution during period 1 April 2019 to 31 March 2023.

## Incentives for National Pension Scheme (NPS) subscribers

Upon closure of an account or opting out of the scheme, out of 60 percent that can be withdrawn as lump sum only 40 percent was tax exempt. It is now proposed to increase tax exemption to 60 percent.

Further, eligible deduction on contribution by Central Government to NPS for its employees is proposed to increase to 14% as against 10% applicable till last FY.

Also, it is proposed then, Central Government employee will be eligible for deduction under section 80C upon contribution to a specified account of pension scheme, subject to fulfillment of prescribed conditions.

## Additional compliances by tax payers introduced

### Mandatory furnishing of return of income

Section 139 is proposed to be amended to provide mandatory filing of returns in following cases :

- Person claiming exemption under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB, if before claim of exemption, total income is more than the maximum amount not chargeable to tax.
- To ensure persons entering into certain high-value transactions furnish the return of

income, it is proposed to provide that a person shall be mandatorily required to file his/her return of income, if during the previous year, he undertake any of the following transaction:

- Has deposited an amount (in aggregate) exceeding INR 1 Crore in one or more current accounts maintained with a banking company or a co-operative bank
  - Has incurred expenditure exceeding INR 2 Lakhs (in aggregate) for self or another person on foreign travel
  - Has incurred expenditure exceeding INR 1 lakh (in aggregate) towards consumption of electricity
- Further, provision of Section 239 are proposed to provide that every claim of refund shall be made by furnishing return of income.

### Inter-changeability of PAN and Aadhaar

To ensure ease of compliance, it is proposed to provide for inter-changeability of PAN with the Aadhaar number and levy of penalty under section 272B of INR 10,000 for each default in quoting PAN or Aadhaar number.

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### Compliance of TDS by Individuals/ HUF not covered u/s. 194C or 194J - Section 194M

At present, an individual or HUF not subject to tax audit are not liable to comply with TDS provisions under section 194C or 194J. In order to fix this loophole, new section proposes to provide for levy of TDS on sum paid account of contractual work or professional fees at the rate of 5 percent where such payment exceeds INR 50 Lakhs in a year. For ease of compliance, individuals or HUFs shall be able to deposit the tax deducted using their PAN.

It may be noted that proposed amendment will also be applicable where payment is made for personal purposes. This amendment shall come into effect from 1 September 2019.

### TDS on purchase of immovable property – Section 194-IA

Presently, buyer is required to deduct tax at source at 1 percent on the amount of consideration paid on purchase of



## Are you geared up for Quarterly Consolidation?

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immovable property. The term 'consideration for immovable property' is currently not defined. Therefore, it is proposed to include all *charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee, or other charges of similar nature*, which are incidental to the transfer of immovable property within the ambit of consideration for immovable property. This amendment shall come into effect from 1 September 2019.

## **TDS on non-exempt portion of life insurance**

Currently, a person paying any sum to a resident under a life insurance policy (which is not exempt under section 10(10D)) is liable to deduct TDS at 1 percent on the gross sum under section 194DA.

To remove difficulties, since taxes are paid on net income (i.e., after deducting the amount of insurance premium paid from the total sum received), it has been proposed to provide levy of TDS on the net income at the increased rate of 5 percent. This amendment shall come into effect from 1 September 2019.

## **Prefilling of return of income and widening scope of Statement of Financial Transaction (SFT)**

The existing threshold of INR 50,000 for reporting in SFT is proposed to be removed with a view to ensure prefilling of information of small amount of transaction as well.

## **Introduction tax on buy back of shares by listed Indian companies**

Currently, proceeds from the

buyback of shares by listed companies are taxable in the hands of shareholders as capital gains at applicable tax rates depending on period of holding. Whereas unlisted companies undertaking the buyback of shares are liable to pay additional income tax at 20 percent of the "distributed income", as per Section 115QA.

It is now proposed to extend applicability of Section 115QA to the buyback of shares by a company listed on a recognised stock exchange as well.

## **Concessional STCG tax rate applicable to equity-oriented fund of funds set up for disinvestment of CPSE (certain equity-oriented fund of funds)**

Presently, a concessional LTCG tax rate is applicable under section 112A of the Act, on the transfer of units of equity-oriented fund of funds. To further incentivise such fund of funds, concessional 15 percent tax rate on STCG under section 111A is proposed to be extended to investors on the transfer of units of such fund of funds.

## **Deemed accrual of gift made to a person outside India**

Currently, gifts made by residents to persons outside India are claimed to be non-taxable on the basis that the income does not accrue or arise in India.

With an intent to bring this under ambit of tax, clause (viii) to Section 9(1) is proposed to be inserted, by which provision of Section 56(2)(x) are extended to persons outside India.

Therefore, income arising

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from any sum of money paid, or transfer of specified property in India by a person resident in India to a person outside India shall be deemed to accrue or arise in India. Also, exemption provided in proviso to Section 56(2)(x) will similarly apply.

## **Rationalising of Secondary adjustments provision**

Concept of secondary adjustment was introduced vide Finance Act, 2017 requiring adjustment in books of account of assessee and its associated enterprise (AE) to ensure actual allocation of profits between them are consistent with transfer price determined as a result of primary adjustment.

Further, if as a result of primary adjustment there is increase in total income, the excess money available with AE is required to be repatriated within the time prescribed.

Therefore, in order to make

secondary adjustment regime easy to comply with, it is proposed to provide that cash repatriation can be made from any AE that is a non-resident in India. Further, where cash is not repatriated into India within the prescribed time limit, assessee will not be required to make secondary adjustment if they pay a one-time additional tax of 18 percent (with applicable surcharge) on the excess money.

However, no tax credit or tax deduction for such additional tax will be available to the taxpayer.

### Carry forward of losses and computation of book profit of distressed company

The restriction on carry forward of loss upon change in shareholding is proposed not to apply to a company and their subsidiary and the subsidiary of such subsidiary where change in the shareholding takes place pursuant to resolution plan approved by the NCLT.

Also, aggregate amount of unabsorbed depreciation and brought forward loss is proposed to be allowed to be reduced while computing the book profit for MAT purposes.

### Tax incentives to eligible Startups

Currently, loss incurred by eligible start-ups in earlier years is allowed to be carried forward and set off against the income of the previous year if all the shareholders who held shares carrying voting power on the last day of the year(s) in which the loss was incurred continue to hold those shares on the last day of the year of

set-off, and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

Apart from this condition, with an intent to provide relief, this Bill extends eligibility to claim carry forward and set of losses where a change in shareholding has taken place during the previous year, where on the last day of the year of set-off the shares of the company carrying not less than 51 percent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51 percent of the voting power on the last day of the year(s) in which the loss was incurred.

Besides, the Finance Minister in her speech proposed to start a television programme exclusively for start-ups.

### Incentivising claiming deduction under section 54GB

Currently roll over benefit is allowed upon investment in the equity shares of eligible company relating to LTCG arising out of residential property. To incentivise investment in eligible start-ups, investment made up to 31<sup>st</sup> March 2021 will be allowed as deduction and condition of minimum shareholding/voting rights of fifty percent is proposed to be relaxed to twenty five percent.

### Incentives to IFSC

To incentivise operation of units in IFSC, it is proposed to increase the quantum of deduction under section 80LA to 100 percent of income for

any 10 consecutive years out of 15 years, beginning from the year of obtaining the requisite permission for setting up the unit.

Further, Section 115A is amended to allow deduction under section 80LA to unit of IFSC.

### No DDT for dividends paid out of accumulated income

Presently, DDT is not levied on dividend declared, distributed, or paid out of current income by IFSC. Non leviability of DDT is proposed to be extended to dividends declared, distributed, or paid out of *accumulated income*.

### Miscellaneous

- It is proposed to relax definition of demerger to comply with IND-AS in terms of recording property and liabilities by the resulting company.
- Any interest receivable by a non-resident by unit in IFSC in respect of monies borrowed is proposed to be exempt under section 10.
- Any interest receivable by a non-resident with respect to rupee denominated bonds is proposed to be exempt under section 10.
- Section 201 is proposed to be amended where deductor shall not be deemed to be assessee in default for the want of deduction of TDS on payment made to non-residents, if such

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non-residents pay taxes due, file the return of income. However, deductor shall be liable to interest under section 201 till the date of filing of return by the non-resident.

- It is proposed to empower CBDT to prescribe transaction undertaken by certain classes of persons to which the provisions of Section 56(2)(x) and 50CA shall not be applicable. This aims at avoiding genuine hardships in cases where consideration for transfer of shares is approved by certain authorities and persons transferring the shares may not have control over determination of consideration.
- Section 89 provides for tax relief where salary is paid in arrears or in advance. It is proposed to amend Section 140A, 143, 234A, 234B, 234C to provide that computation of tax liability shall be made after allowing relief under section 89.
- Section 276CC – prosecution on failure to furnish return of income is proposed to be amended to increase the threshold to INR 10,000 from existing INR 3,000 and allow credit of tax collected at source and self-assessment tax paid if any while computing tax payable.
- Transfer pricing documentation provisions-Section 92D are proposed to be amended to provide that every constituent entity of an international group will be required to file a master file even when there is no international transaction undertaken by such constituent entity.
- It has been proposed to clarify with retrospective effect from AY 2017-18 that in case of an Alternate Reporting Entity (ARE) resident in India, the due date of filing CbCR by the ARE in India will be 12 months from the end of the accounting year of the ultimate parent entity, which is not a resident in India.

## and Imposition of tax Act, 2015 (BMI Act)

Currently BMI Act applies to persons resident in India. It is now proposed to include non-resident or not ordinarily resident also under the ambit of BMI Act with retrospective effect from 1 July 2015, in relation to income earned or asset acquired during the period they were resident in India.

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## New Direct Tax Law

The Government of India constituted a task force in November 2017 to draft a new direct tax law that will replace the existing Income tax Act, 1961 which is expected to submit its report by 31 July 2019. However, it may be noted that there was no announcement in relation to new direct tax law in the Finance Minister's speech.

Thus with this Union Budget, Government sees light at the end of the tunnel, but whether it meets reality, one will have to wait and see. ■



**Black Money (undisclosed foreign income and assets)**