

Chamber of Tax Consultants

Direct Tax PROVISIONS of The
FINANCE (No.2) BILL, 2019

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Index

Transfer Pricing & Taxation of Non- Resident

Shares & Securities, Capital Markets

Procedural Amendments, Penalty & Prosecution

Sector Specific Amendments

Removal of difficulties

Allied Laws

Transfer Pricing and Taxation of Non-Resident

RELAXATION IN CONDITIONS OF SPECIAL TAXATION REGIME FOR OFFSHORE FUNDS

Existing provisions :-

- Section 9A provides for a safe harbour in respect of offshore funds.
- It provides that the fund management activity carried out by an eligible investment fund through an eligible fund manager acting on behalf of such fund in India shall not constitute business connection of such fund in India.
- The section also provides that the eligible investment fund shall not be resident in India u/s. 6 merely because eligible fund manager undertaking fund management activity on its behalf is situated in India.
- The benefit of section 9A is available subject to the fulfilment of certain conditions by the eligible investment fund and the eligible fund manager such as residence of fund, corpus, size, investors & broad based investment diversification and payment of remuneration to fund manager.

Applicability
w.e.f. 1 April 2019

RELAXATION IN CONDITIONS OF SPECIAL TAXATION REGIME FOR OFFSHORE FUNDS

Proposed Amendment :-

- *Proposed to amend the first proviso to clause (j) to provide that the corpus of the fund shall not be less than one hundred crore rupees at the end of a period of six months from the end of the month of its establishment or incorporation or at the end of such previous year, whichever is later;*
- *Further proposed to amend clause (m) to provide that 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.*

SECONDARY ADJUSTMENT AND GIVING AN ONE-TIME PAYMENT OPTION TO ASSESSEE

Existing provisions :-

- Section 92CE requires an assessee to carry out secondary adjustment where the primary adjustment to transfer price has been made *suo motu*, or made by the Assessing Officer and accepted by him; or is determined by an advance pricing agreement; or is made as per safe harbour rules; or is arising as a result of resolution of an assessment through mutual agreement procedure under an bilateral tax treaty.
- The said provisions require repatriation of excess money to India and if the same is not repatriated within the prescribed time, the excess money shall be deemed to be an advance made by the assessee to the associated enterprise and interest on such advance, computed in the prescribed manner shall be treated as income of the assessee.
- Further, the existing proviso to section 92CE(1) provides that secondary adjustment shall not be made if, the amount of primary adjustment made in the case of an assessee in any previous year does not exceed one crore rupees and the primary adjustment is made in respect of an assessment year commencing on or

SECONDARY ADJUSTMENT AND GIVING AN ONE-TIME PAYMENT OPTION TO ASSESSEE

Applicability
w.e.f. 1 April 2018

Proposed Amendment :-

Proposed to amend section 92CE of the Act to provide that:

- 1. the condition of threshold of one crore rupees and of the primary adjustment made upto assessment year 2016-17 are alternate conditions. The word 'and' appearing the first proviso to section 92CE(1) has been substituted by 'or';*
- 2. the provision of this section shall apply to the advance pricing agreements signed on or after April, 1 2017;*
- 3. no refund of the taxes already paid till date under the pre-amended section 92CE(1) (i.e. existing provisions) would be allowed;*
- 4. the assessee shall be required to calculate interest on the excess money or part thereof;*
- 5. the excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India;*

SECONDARY ADJUSTMENT AND GIVING AN ONE-TIME PAYMENT OPTION TO ASSESSEE

Applicability w.e.f.
1 September, 2019

Proposed Amendment :-

Proposed to amend section 92CE of the Act to provide that:

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

SECONDARY ADJUSTMENT AND GIVING AN ONE-TIME PAYMENT OPTION TO ASSESSEE- ISSUES

Issues:

- The proposed amendment to the proviso to section 92CE(1) puts to rest the controversy on interpretation of the term ‘and’
- The alternate of paying additional tax, is akin to dividend distribution tax. In various countries, there are two models for secondary adjustment – Loan model, which India adopted last year and dividend model, which is proposed to be brought in now. The proposed alternate seems to be a better option as matter ends on payment of additional tax and there is no need to compute interest every year, as in reality the funds may never be repatriated.
- The proposed amendment of repatriation of excess money from any AE resident outside India address the concern of repatriation in a case where the arm’s length price has been arrived at based Transactional Net Margin Method whereby it is not possible to quantify the primary adjustment AE-wise.

SECONDARY ADJUSTMENT AND GIVING AN ONE-TIME PAYMENT OPTION TO ASSESSEE- ISSUES

Issues:

- Issues arising in loan model-subject matter of criticism :-
 - AE may decline to pay the SA amount - not being in accordance with the contractual terms;
 - Money's may never come in and hence perpetual addition ;
 - Indian Law cannot force a foreign AE to pass entries in its books ;
 - If interest is not ultimately received and it is written-off, whether bad-debt will be allowable ? A point of litigation;
 - If PA is under TNMM and transactions with several AE's are benchmarked, no clarity in law as regards receipt of money from particular AE;
 - In the loan model some doubts are raised whether setting-off of inter-company balances would be permissible ;
 - In loan model, if deemed advance is not repatriated doubts raised whether there is FEMA violation ;
- Question whether SA (loan model and dividend model) applies to “non-resident” ? Apparently, NO “where the excess money has not been repatriated within the prescribed time the assessee may, at his option, pay....

POWER OF THE ASSESSING OFFICER IN RESPECT OF MODIFIED RETURN IN PURSUANCE TO SIGNING OF THE ADVANCE PRICING AGREEMENT

Applicability w.e.f.
1 September, 2019

Existing provisions :-

- Sub-section (1) of section 92CD requires an assessee to file a modified return in accordance with and limited to advance pricing agreement (“APA”), within three months of entering into the agreement where the original return of income has been filed prior to the date of entering into the APA..
- Sub-section (3) of section 92CD provides that where assessment or reassessment proceedings for an assessment year relevant to a previous year to which the APA applies has been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed, ‘proceed to assess or reassess or recompute’ the total income of the relevant assessment year having regard to and in accordance with the agreement.

POWER OF THE ASSESSING OFFICER IN RESPECT OF MODIFIED RETURN IN PURSUANCE TO SIGNING OF THE ADVANCE PRICING AGREEMENT

Proposed Amendment :-

- *Proposed to amend sub-section (3) to provide that in cases where assessment or reassessment has already been completed and modified return of income has been filed by the taxpayer under sub-section (1) of said section, the Assessing Officers shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA.*
- *Accordingly, the words “proceed to assess or reassess or recompute the total income of the relevant assessment year” appearing in the existing section 92CD, are proposed to be substituted with the words “pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, as the case may be,”*

MAINTENANCE, KEEPING AND FURNISHING OF INFORMATION AND DOCUMENT BY CERTAIN PERSONS

Applicability
w.e.f. 1 April,
2020

Existing provisions :-

- Section 92D(1) as worded presently provides that every person who has entered into an international transaction or specified domestic transaction shall keep and maintain the prescribed information and document in respect thereof.
- Proviso thereto inserted vide Finance Act, 2016 required a constituent entity of an international group to furnish a Master File as prescribed under Rule 10DA, subject to fulfillment of thresholds of consolidated group revenue and international transactions prescribed under the same Rule.

Proposed to substitute section 92D to indicate that the information and document to be kept and maintained by a constituent entity of an international group, and filing of Master File, shall be applicable even when there is no international transaction undertaken by such constituent entity.

EXEMPTION FOR INTEREST PAYABLE TO A NON-RESIDENT ON MASALA BONDS

Applicability w.e.f.
1 April, 2019

Existing provisions :-

- Section 194LC provides for a lower rate of withholding tax on interest payable to a non-resident by an Indian company or business trust in respect of monies borrowed by it from a source outside India by way of issue of rupee denominated bond before July 1, 2020.
- Consequent to review of the state of economy on September 14, 2018 by the Prime Minister, the Finance Minister announced a multi-prolonged strategy to contain the Current Account Deficit and augment the foreign exchange inflow.
- In order to incentivise low cost foreign borrowings through offshore rupee denominated bond, vide press release dated September 17, 2018, CBDT announced grant of exemption on interest income referred in para 2.1.1 above, in respect of rupee denominated bonds issued outside India during the period September 17, 2018 to March 31, 2019 and consequently, no tax was required to be deducted on the payment of interest in respect of the said bonds.

EXEMPTION FOR INTEREST PAYABLE TO A NON-RESIDENT ON MASALA BONDS

Proposed Amendment :-

The exemption announced through the said press release is proposed to be incorporated under the Act by inserting clause (4C) in section 10.

Shares & Securities, Capital Markets

Tax on EXCESS SHARE Premium- Sec- 56(2)(viib)

Existing provisions :-

- Section 56(2)(viib) essentially provides for taxation of excess share premium to be taxed as “Income from other sources” in the hands of the company issuing shares at such excess premium. The excess is to be measured as the difference between the issue price and the fair market value. Such fair market value is to be computed in the manner specified in the section. This provision applies only to shares issued by closely held companies to resident shareholders.
- The first proviso to section 56(2)(viib), in clause (i), grants exemption to issue of shares by a venture capital undertaking to a venture capital fund. The term “venture capital fund”, as defined, includes only Category I AIF.
- In clause (ii), it grants exemption to issue of shares by a company as may be notified by the Central Government. As per notification no. 24/2018/F. No. 370142/5/2018-TPL (PT) dated May 24, 2018, the section is not applicable to issue of shares by “start ups” which are granted approval by the Inter-Ministerial Board of Certification as per DPIIT notification July 13, 2019.

Tax on EXCESS SHARE Premium- Sec- 56(2)(viib)

Applicability
w.e.f. 1 April
2020

Proposed Amendment [Clause 21] :-


- *Clause (i) of the first proviso to be amended to grant exemption from application of this section on issue of shares by a VCU even to a Category II AIF.*
- *A new proviso to be added (as second proviso) which has the effect of withdrawing the exemption granted to an issue of shares by a “start up” if the condition specified in the exemption notification is breached by the start up in a subsequent year. It provides that in case of such failure to comply with the conditions, any consideration received for issue of shares that exceeds face value shall be deemed to be the income of the year in which such failure has taken place.*

Rationale

- In respect of amendment to clause (i) -“currently the benefit of exemption is available to Category I AIF. With a view to facilitate VCUs to receive funds from Category II AIF, it is proposed to amend the section.
- In respect second proviso- “certain notifications issued under this sub-clause by the Central Govt. provide for exemption, subject to the fulfilment of certain conditions. With a view to ensure compliance to the conditions... it is proposed to” withdraw the exemption and treat it as income of the year in which the failure to comply has taken place

Tax on EXCESS SHARE Premium- Sec- 56(2)(viib)

Existing provisions :-

- As far as the newly proposed second proviso is concerned, the latest notification issued by the Central Government is Notification No. SO 1131(E) [NO. 13/2019 (F. No. 370142/5/2018-TPL(PT)] dated March 5, 2019.
- As per this notification, a start-up will be eligible for exemption under section 56(2)(viib) if it fulfils the conditions specified in DPIIT notification number G.S.R. 127(E), dated February 19, 2019.
- The said DPIIT notification, in para 4, lays down following conditions:
 - It is recognised by DPIIT;
 - Aggregate paid-up share capital and share premium of the start up does not exceed Rs. 25 crores; and
 - It does not invest in certain specified assets like land, buildings (other than used for business etc.), shares and securities, capital contribution to other entities, jewellery, artwork etc. for a period of 7 years from the year in which shares are issued at a premium.
-  In case of revocation of recognition or in case of investment made in any items mentioned in (iii) above during the first 7 year period, the exemption granted u/s. 56(2)(viib) would get withdrawn and there would be tax liability in the year in which the condition is breached.

Tax on EXCESS SHARE Premium- Sec- 56(2)(viib)- Issues

Issues:-

- The amount to be treated as income is stated in the proposed new proviso as “any consideration received for issue of shares that exceed the face value of such share”. It appears that the amount to be treated as income can only be the excess of consideration over the fair value and not the face value as stated in the provision.

Power to Exempt From Application of Sec 50CA/56(2) (x)

Existing provisions :-

- Section 56(2)(x) provides for taxation of the excess of fair market value of any property received by a person over the consideration paid by him in case of certain defined properties and subject to certain exceptions, as income from other sources. Similarly gift of cash is taxable under this provision in the hands of the recipient.
- Section 50CA provides for taxation of capital gains on transfer of unquoted shares based on the fair value of such shares in case the actual consideration is lower than the fair value. Fair value in such cases is determined as per the prescribe Rule 11UA.
- Section 56(2)(x) provides for taxing the excess of fair value of certain property received by an assessee over the consideration paid by him therefor. Fair value is to be determined as per Rule 11UA, even for the purposes of this section. This section, however, is not applicable in certain

Power to Exempt From Application of Sec 50CA/56(2)(x)

Applicability
w.e.f. 1 April
2020

Proposed Amendment [Clause 19 / 21(iii)(B)] :-

- *A proviso to be inserted in section 50CA to empower the CG to prescribe rules for exempting such class of persons and subject to such conditions as it may prescribe from application of this section.*
- *Similarly, a new clause (XI) is added in the proviso to section 56(2)(X) to empower the CG to prescribe rules for exempting receipts from prescribed class of persons from the rigours of that provision.*

Rationale

“ Determination of fair market value based on prescribed rules may result in genuine hardship in certain cases where the consideration for transfer is approved by certain authorities and the person transferring has no control over such determination. In order to provide relief in such cases, this power to prescribe rules is introduced”

Power to Exempt From Application of Sec 50CA/56(2) (X)

○ Examples :

- Transfer under High Court Order ;
- Transfer under order of Charity Commissioner
- Transfer under order/decreed of Court ;

Pass Through Losses of AIF- Cat I &II- Sec-115UB

Existing provisions :

- Section 115UB, *inter alia* provides for “pass through” of income earned by Category I & II Alternative Investment Funds (“AIF’s”). The only exception to this is the income chargeable under the head “profits and gains from business or profession”, which is taxed at the fund level itself. Income other than “PGBP”, is exempt in the hands of the Investment fund and is taxable in the hands of the unit holder.

- Sub-section (2) to section 115UB deals with carry forward and set-off of losses of an investment fund. The current regime, does not permit the pass through of losses and the such unabsorbed losses are retained at the fund level and are not allocated to the unit holder .The mechanism provided for carry forward and set-off of loss of the fund is as under:
 - Compute Total Income without giving effect to exemption u/s. 10(23FBA) –
 - Set -off inter head losses in the computation of the fund itself without allocating anything to the unitholders ;
 - The unabsorbed losses are to be carried forward and set-off of losses by the Investment Fund in future, as per the

Pass Through Losses of AIF- Cat I & II- Sec-115UB

Applicability
w.e.f. 1 April
2020

Proposed Amendment :-

- *The sub-clauses (i) and (ii) sub-section (2) of section 115UB are substituted to provide that :*
 - i. *The unabsorbed Losses under the head “PGBP” shall be permitted to be carried forward and set-off in the hands of the fund as per normal provisions of Chapter VI;*
 - ii. *The Losses other than loss under the head “PGBP” shall not be considered as pass through in the hands of the unit holders, if such loss relates to a unit which is not held by a unit holder for a period of at least twelve months;*
- *new sub-section is proposed to be added (2A), which has the effect of permitting pass-through status for losses other than the PGBP loss, in the hands of unit holder holding the units of the fund as on 31 March 2019.*

Rationale

“to remove the genuine difficulty faced by Cat I & II AIF’s by awarding pass –through status to the unit holders for loss other than the loss under the head “PGBP”.

Treatment of losses of Aif I & II

Types of Losses	Present Law	Proposed Amendment
Unabsorbed losses u/h PGBP	<ul style="list-style-type: none"> · Carry- forward by trust · Set-off by trust (as per Ch. VI) 	<ul style="list-style-type: none"> · Carry- forward by trust · Set-off by trust (as per Ch. VI)
Unabsorbed Losses under other head	<ul style="list-style-type: none"> · Carry- forward by trust · Set-off by trust (as per Ch. VI) 	<ul style="list-style-type: none"> · distribute to unit holder (>12 months) · Carry- forward & Set-off by unit holder (as per Ch. VI) · Losses relatable to unitholder < 12 month lapse
<u>Accumulated unabsorbed losses till 31.3.19</u>	-	<ul style="list-style-type: none"> · Carry- forward by trust
Losses u/h PGBP	-	<ul style="list-style-type: none"> · Set-off by trust (as per Ch. VI)
Losses under other heads	-	Distribute to unit holders as on 31.3.19

Procedural Amendments

MANDATORY FURNISHING OF RETURN OF INCOME BY CERTAIN PERSONS

Existing provisions :-

- Section 139 deals with furnishing of returns. Subject to certain exceptions, Individuals and HUFs whose total income does not exceed the maximum amount not chargeable to tax, are not required to file a Return of Income.
- Further, currently, a person claiming rollover benefit of exemption from capital gains tax on investment in specified assets like house, bonds etc., is not required to furnish a return of income, if after claim of such rollover benefits, his total income is not more than the maximum amount not chargeable to tax .

MANDATORY FURNISHING OF RETURN OF INCOME BY CERTAIN PERSONS

Proposed Amendment :-

- *Proposed to amend existing Section 139 by insertion of Explanation 1 where it is required to mandatorily file a return of income if during previous year:
 1. *has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current account maintained with a banking company or a co-operative bank; or*
 2. *has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or*
 3. *has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity;**

- *It is also proposed to amend the sixth proviso to section 139 of the Act to provide that a person who is claiming such rollover benefits on investment in a house or a bond or other assets, under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB of the Act, shall necessarily be required to furnish a return, if before claim of the rollover benefits, his total income is more than the maximum amount not chargeable to tax.*

MANDATORY FURNISHING OF RETURN OF INCOME BY CERTAIN PERSONS- Issues

Issues :-

- If ROI not filed before 139(1) due date, exemptions u/s 54/54B etc cannot be denied. No provisions like 80-AC in this behalf;
- However, other consequences of non-filing of ROI would follow, i.e. fee payable u/s 234F, prosecution u/s 276CC (especially for companies);
- New 7th proviso (i.e. new $\frac{1}{4}$) criteria applies to persons other than company or a firm ;
- Deposit of Rs.1 crore is only qua all current accounts per bank. Thus savings Account/Fixed Deposit Account not to be clubbed; all deposits to be aggregated

Interchangeability of PAN with aadhar -Sec 139A & 272B



Existing provisions :-

- Section 139A of the Act provides, in clauses (i) to (iv), circumstances under which it is mandatory on the part of an assessee to apply for and obtain PAN and quote the same in the correspondences with the authorities.
- Existing section 272B provides for penalty for non-compliance of section 139A which requires application of PAN while entering into certain transactions.

Rationale

- As per the Explanatory memorandum, clause (vii) is proposed to be inserted to keep an audit trail of large number of transactions and for widening and deepening the tax base.
- It is stated that sub-section (5E) is proposed to be added so as to make the use of PAN and Aadhaar Number interchangeable for the purpose of the Act

Interchangeability of PAN with aadhar -Sec 139A & 272B

Applicability
w.e.f. 1 Sept 2019

Proposed Amendment [Cl. 40 & 64] :

- *proposed to add a new clause (vii) to existing section 139A(1) to enable the Government to prescribe more types of transactions where PAN would be required to be mandatorily quoted.*
- *proposed to insert a new sub section viz. (5E) to section 139A which provides that where an assessee has not been allotted a PAN but possesses Aadhaar Number can quote Aadhaar Number in place of PAN for the purpose of the Act. It further provides that even where PAN is allotted, the assessee may quote Aadhaar Number in lieu of PAN if he has intimated his Aadhaar in accordance with the provisions of sub section (2) of section 139AA.*
- *Further proposed to insert sub section (6A) to provide that every person entering into the prescribed transactions to not only quote PAN or Aadhaar Number on the documents pertaining to such transactions but also authenticate such PAN and Aadhaar Number in such manner as may be prescribed. Further, another sub section (6B) is proposed to be inserted requiring every person receiving documents referred to in sub section (6A) shall ensure that PAN or Aadhaar, as the case may be has been duly quoted and also authenticated as required.*
- *Corresponding amendments are made in section 272B which imposes penalty to ensure proper compliance of the provisions relating to quoting and authentication of PAN or Aadhaar Number.*

Section 139A- An overview

Section	Particulars
(1)	Mandatory cases where PAN must be obtained a. Presently, clauses (i) to (vi) b. <u>New clause (vii) – notified transactions</u>
(1A)	Notified class or classes of persons to mandatorily apply for PAN
(1B)	Notified class or classes of persons to mandatorily apply for PAN (for the purpose of collecting information useful for the purposes of the Act)
(2)	Power to AO to allot PAN – (prescribed nature of transactions)
(3)	Voluntary application for PAN
(4)	Migration to new series of PAN
(5)	Responsibility on Assessee to quote his PAN on prescribed documents
(5A)	Responsibility on Assessee to intimate his PAN to TDS deductor
(5B)	TDS deductor to quote PAN
(5C)	Buyer to intimate his PAN to seller u/s. 206C
(5D)	Seller to quote Buyer’s PAN on prescribed documents

Section 139A- An overview

Section	Particulars
(5E)	<p><u><i>Starts with non-obstante clause.</i></u> <u><i>Person in (5) to (5D) may not mandatorily apply for PAN, hence no PAN may be allotted. They can quote Aadhaar. To them, PAN will now be allotted.</i></u></p>
(6)	Person receiving documents shall ensure PAN is quoted by the person giving such documents.
(6A)	<ul style="list-style-type: none">· <u><i>Prescribed transaction</i></u>· <u><i>Quote Aadhaar or PAN</i></u>· <u><i>Such Aadhaar or PAN to be “authenticated” in prescribed manner.</i></u>
(6B)	<u><i>Person receiving documents shall ensure PAN/Aadhaar is “authenticated”.</i></u>

Issues

- While it is suggested that PAN and Aadhaar Number can be used ‘interchangeably’, the provisions only provide for use of Aadhaar Number in lieu of PAN and not vice versa. Further, proposed amendment in section 139AA may rule out the possibility of PAN being used in lieu of Aadhaar Number.
- While sub section (5E), being a non-obstante provision, proposes to enable an assessee to quote Aadhaar Number in lieu of PAN required to be furnished under the Act, there is no corresponding amendment in another non-obstante provision of section 206AA which provides a higher rate for deduction of tax at source for failure to furnish PAN.

Consequences of not linking aadhar with PAN- Sec 139AA

Existing provisions :-

- Section 139AA of the Act mandates quoting of Aadhaar Number at the time of making an application for allotment of PAN and at the time of furnishing the return of income.
- Sub section (2) of section 139AA provides that every person who has been allotted PAN as on July 1, 2017 and who is eligible to obtain Aadhaar Number shall intimate the Aadhaar Number to such authority in such form and manner as may be prescribed on or before the date to be notified by the Central Government in the Official Gazette
- Proviso to sub section (2) of section 139AA provides that in case of failure to intimate the Aadhaar Number, PAN of the assessee would be deemed to be invalid and other provisions of the Act shall apply as

Consequences of not linking pan with AADHAR

Applicability
w.e.f. 1 Sept 2019

Proposed Amendment [Clause 41] :-

proposed to amend section 139AA(2) to the effect that failure to intimate Aadhaar Number shall not result in PAN being 'invalid' but it will result in PAN being 'inoperative' in a prescribed manner.

Rationale

To protect validity of transactions previously carried out through PAN such that the PAN would be made inoperative in a prescribed manner, and not invalid.

Issues

- The amendment seems to have been proposed to comply with the directions of Hon'ble Supreme Court in case of Binoy Viswam Vs. Union of India (2017) 396 ITR 66 wherein it was held that the provision which has the impact of rendering PAN *void ab intio* would unsettle the settled rights thereby undoing all the acts done by a person on the basis of such a PAN is to be read down by making it clear that it would operate prospectively.
- However, the amendment in the section proposes to make PAN 'inoperative after the date so notified in such manner as may be prescribed'. Thus, the notification and the rules to be prescribed in this regard would assume relevance to analyse whether or not the directions of Hon'ble Supreme Court are followed in spirit.

Statement of financial transactions

Section amended

WIDENING OF SCOPE OF STATEMENT OF FINANCIAL TRANSACTIONS (“SFT”) AND CORRESPONDING PENAL PROVISIONS

Section 285BA & 271FAA

- Section 285BA casts an obligation on certain specified persons like Banks, Financial Institutions, Mutual Funds etc. to furnish Statement of Financial Transaction (‘SFT’) reporting certain specified financial transactions or reportable account in prescribed form to prescribed authority being Director/Joint Director of Income Tax as per Rule 114E.
- Section 271FAA provides for penalty in certain cases for furnishing inaccurate information in SFT.

Proposed amendment [FB-Cl.63 & 66]

- It is proposed to introduce a clause ‘(l)’ to sub-section (1) of section 285BA, wherein the scope of section 285BA is widened to cover person, other than those referred to in clauses (a) to (k), as maybe prescribed.
- It is also proposed to remove the current threshold of rupees fifty thousand on aggregate value of transactions during a financial year for furnishing of information.
- It is also proposed to amend the provisions of sub-section (4) of aforesaid section so as provide that if the defect in the statement is not rectified within the time specified therein, the provisions of the Act shall apply as if such person had furnished inaccurate information in the statement as against treating the same as invalid.
- Amendments are also proposed in section 271FAA to increase its applicability to all the entities required to file SFT.

Rationale

- aimed to widen the scope of SFT with an objective to ensure that Department gets information of various transactions to enable the proposed pre-filing of return of income. Further, in order to ensure that SFT is filed and the data filled therein is correct appropriate amendment to penal provisions is proposed.

Statement of financial transactions

Section amended

WIDENING OF SCOPE OF STATEMENT OF FINANCIAL TRANSACTIONS (“SFT”) AND CORRESPONDING PENAL PROVISIONS

Our Comments

- Though penalty provisions have been expanded to levy penalty in case of furnishing of inaccurate data is SFT but there is no proper mechanism is proposed to ensure that the person in respect of whom inaccurate data is furnished in the SFT can get the same rectified in a time bound manner. Thus, in cases where inaccurate data is furnished in the SFT and the same is not rectified by the person furnishing the same in a timely manner then the assessee would have no choice but to rectify the said data in the pre filled Return of Income while filling the Return of Income. This will lead to a situation that there will be a mismatch between disclosure made by an assessee in the Return of Income and the erroneous details available with the department from the SFT that may lead to additions in the assessment of that assessee.

SECTOR SPECIFIC AMENDMENTS

Section amended	EXEMPTION FOR INTEREST PAYABLE TO NON-RESIDENT
Proposed amendment [FB- C1.6]	It is proposed to insert sub-clause (ix) in clause (15) of section 10 to exempt any income by way of interest payable to a non-resident by a unit located in the IFSC in respect of monies borrowed by it on or after September 1, 2019.
Rationale	The proposed amendment will be from AY 2020-21. this provision is inserted to incentivise and facilitate external borrowings by units located in the IFSC.

Section amended	CAPTITAL GAIN EXEMPTION FOR TRANSACTION ON STOCK EXCHANGE IN IFSC EXPANDED
Existing provision- Sec 47(viiab)	Clause (viiab) in Sec. 47 was inserted by the FA 2018 to provide that the transfer of a capital asset, being bond or Global Depository Receipt referred to in section 115AC, rupee denominated bond of an Indian company or a derivative, by a non-resident on a recognised stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in foreign currency, will not be regarded as a transfer for the purpose of section 45 of the Act
Proposed amendment [FB- Cl.17]	<ul style="list-style-type: none"> ➤ The scope of the term “capital asset” is widened to include notified securities in addition to the existing categories. ➤ It is proposed to amend clause (viiab) to also exempt transfers of capital assets made by a “specified fund” located in the IFSC, deriving income solely in convertible foreign exchange and of which all the units are held by non-residents. ➤ The term “specified fund” means Category III Alternative Investment Fund regulated under the SEBI (AIF) Regulations, 2012
Rationale	the proposed amendment is inserted with a view to provide tax-neutral transfer of specified securities by Category III Alternative Investment Fund (AIF) in IFSC.

Section amended	CLAIM FOR DEDUCTION U/S. 80LA OF THE ACT
Existing provision- Sec 80LA	<p>Presently, section 80LA of the Act provides for profit linked deduction of an amount equal to hundred per cent of income for five consecutive AYs and fifty percent of income for the next five consecutive AYs. Such deduction is allowed on the income from-</p> <ul style="list-style-type: none">➤ Offshore Banking Units (“OBU”) in SEZ;➤ Banking undertaking in an SEZ or other undertaking which develops, develops and operates or develops, operates and maintains an SEZ; and➤ Any unit of an IFSC
Proposed amendment [FB- Cl.28]	<ul style="list-style-type: none">➤ It is proposed to substitute sub-section (1) by a new provision which will only cover OBU, other provisions remaining unchanged.➤ It is further proposed to insert new sub-section (1A) for a unit in an IFSC for which a deduction of hundred percent of income for ten consecutive assessment years, at the option of the assessee, out of fifteen years, beginning with the assessment year relevant to the previous year in which permission u/s 23 of the BRA or SEBI or any other relevant law was obtained..➤ Consequential changes are proposed in sub-section (2).
Rationale	the proposed amendment is made to further incentivise operations in the IFSC.

Section 80-LA - Issues

- The proposed amendment is applicable from A Y 2020-21. Hence, existing units which have received approval prior to A.Y 2020-21 will be eligible as well.
- If an existing unit has started claiming deduction prior to AY 2020-21, it can, claim hundred percent tax holiday for the balance period remaining out of ten consecutive A.Y., within the fifteen year period.
- If an existing unit has not yet started claiming deduction under the old provision, it can claim hundred percent deduction for ten AY starting from AY 2020-21 within such fifteen year period.
- If a unit has incurred loss in any year (after beginning to claim the deduction) prior to A.Y 2020-21, that year too would be considered in computing the 10 year period under the new provision.
- There is no provision analogous to section 80-IA(5), in section 80LA, which will be the fate of past losses and depreciation of the unit while computing deduction for year in which there is profit, is unclear.

Section amended	TAX ON DISTRIBUTED INCOME TO UNIT HOLDERS
Existing provision- Sec 115-R	Section 115R of the Act provides that any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income
Proposed amendment [FB-Cl.37]	<ul style="list-style-type: none"> ➤ It is proposed to insert third proviso to sub-section (2) of section 115R to provide that no additional income-tax shall be chargeable in respect of any amount of income distributed out of its income derived from transactions made on a recognised stock exchange located in any IFSC, on or after the September 1, 2019, by a Mutual Fund located in an IFSC, deriving income solely in convertible foreign exchange and of which all the unit holders are non-residents. ➤ The proposed amendment will be applicable with effect from September 1, 2019.
Rationale	This amendment is proposed to incentivize relocation of Mutual Funds in the IFSC.
Our comments	The mutual funds are subject to stringent guidelines under the law. Under the existing regulations, the Mutual Fund may not be able to comply with all the conditions of the proposed amendment. To enable the mutual funds take the benefit of this amendment, suitable amendments would also be required in the SEBI and FEMA regulations.

Section amended	TAX ON DIVIDENDS, ROYALTY AND TECHNICAL SERVICE FEES IN THE CASE OF FOREIGN COMPANIES
Existing provision- Sec 115-A	Section 115A of the Act provides for the method of calculation of 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. Sub-section (4) of section 115A prohibits any deduction under chapter VIA (which includes section 80LA) in computing such total income.
Proposed amendment [FB- Cl.33]	<ul style="list-style-type: none"><li data-bbox="410 639 2440 739">➤ It is proposed to insert a proviso to sub-section (4) that the conditions contained in sub-section (4) shall not apply to a deduction allowed to a unit in an IFSC u/s. 80LA of the Act.<li data-bbox="410 796 1676 839">➤ The proposed amendment will be applicable from AY 2020-21.
Rationale	This amendment is inserted with a view to ensure that deduction claimed by the units located in IFSC is not restricted in any manner and they can claim full deduction.

Section amended	DIVIDEND DISTRIBUTION TAX BY COMPANIES IN IFSC
Existing provision- Sec 115-O	Section 115-O (8) of the Act provides that no tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an IFSC, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends on or after the 1st day of April, 2017, out of its current income, either in the hands of the company or the person receiving such dividend.
Proposed amendment [FB- Cl.35]	<ul style="list-style-type: none"> ➤ It is proposed to amend sub-section 8 to provide that any dividend paid by a company out of current income or accumulated income as a unit in the IFSC, after April 1, 2017 shall also not be liable for tax on distribution of profits. ➤ The proposed amendment will be applicable with effect from September 1, 2019.
Rationale	This amendment is proposed to facilitate distribution of dividend by companies operating in IFSC out of accumulated profits.
Our comments	The date of April 1, 2017 is taken to relate the original amendment in sub-section (8) of section 115-O made by the FA 2016.

Section amended	CERTAIN DEDUCTIONS TO BE ALLOWED ON PAYMENT BASIS
Existing provision- Sec 43B	Section 43B grants deduction in respect of certain expenses on actual payment regardless of the year in which the liability to pay such sum was incurred under the method of accounting regularly employed by the assessee. One category of expenses is interest on loan from scheduled banks, co-operative banks, PFIs, SFC, SIIC, etc
Proposed amendment [FB- Cl.13]	<ul style="list-style-type: none">➤ Clause (da) u/s 43B of the Act to provide that interest on any loan or borrowing from a “deposit taking NBFC” or “systematically important non-deposit taking NBFC” shall be allowed only when the said interest is actually paid. The terms “deposit taking NBFC” “systematically important non-deposit taking NBFC” and “NBFCs” are to take meanings from the relevant provisions of the RBI Act, 1934.➤ Proposed to introduce transitional provision in Expl 3AA that if an assessee is allowed deduction in respect of such interest in AY 2019-20 or earlier in which the liability to pay was incurred, no further deduction shall be allowed under clause (da) on payment basis.➤ To introduce Explanation 3CA that any interest converted into loan or borrowing shall not be deemed to be actually paid.
Rationale	as per “matching principle” in taxation whereby interest on certain categories of bad or doubtful debts by NBFCs is proposed to be taxed on receipt basis

Section amended	SPECIAL PROVISION FOR TAXING INTEREST INCOME
Existing provision- Sec 43D	Section 43D inter alia provides that interest income of certain categories of bad or doubtful debts received by certain institutions or banks or corporation or companies will be chargeable to tax in the previous year in which it is credited to its profit and loss account or actually received, whichever is earlier. This provision is an exception to the accrual system of accounting and overrides all other provisions of the Act. At present, the benefit of this provision is available to PFIs, scheduled banks, co-operative banks, SFC, SIICs and housing finance companies. However, NBFCs did not have this dispensation even though they are well regulated by RBI.
Proposed amendment [FB- Cl.15]	proposed to amend section 43D to include “deposit taking NBFC” or “systematically important non-deposit taking NBFC” in the categories of lenders which can recognise interest income on certain bad and doubtful debts on the earlier of receipt or credit to profit and loss account..
Rationale	the amendment is proposed to provide level playing field to certain categories of NBFCs who are adequately regulated with Banks & Finance institution who are allowed the benefit of Section 43D.
Our comments	The SC in the case of Vasisth Chay Vyapaar Ltd [2019] 410 ITR 244 (SC) has affirmed the decision of the Delhi High Court that interest income on sticky loans shall be recognised only where the same is actually received. The principle in 410 ITR 244 (SC) is being followed by lower authorities regularly on the issue of income recognition. The amendment would help to reduce litigation in cases of NBFCs.

Start-uPs- Incentives for start- ups

Section amended	Roll over benefits of LTCG for investment in start-ups
Existing provision- Sec 54GB	<p>Provides for roll-over benefit where the long-term capital gains arises from transfer of a residential property (a house or a plot of land) and the assessee before filing its return of income u/s.139(1) of the Act utilises the net consideration for subscription/investment in eligible start-ups and satisfies various other conditions provided therein.</p>
Proposed amendment [FB- Cl.20]	<p>The proposed amendments to this section seeks to relax some of these conditions.</p> <ul style="list-style-type: none"><li data-bbox="435 704 2458 911">➤ The minimum limit of shareholding of the assessee is proposed to be reduced to 25% instead of 50% prescribed earlier. Hence, now, if the eligible assessee holds more than 25% of shareholding/investment in the eligible start-up, then he will be entitled to the benefits of the said section;<li data-bbox="435 975 2458 1075">➤ It is proposed that the restriction of transfer/sale of new asset, being computer or computer software shall be for the period of 3 years as against 5 years (pre-amendment).<li data-bbox="435 1139 2458 1239">➤ The sunset clause of transfer of residential property for investment in eligible start-ups has been extended to March 31, 2021 from March 31, 2019.
Rationale	To facilitate the ease of doing business in case of eligible start-ups.

Start-ups- Incentives for start-ups

Section amended	LAPSE OF LOSSES IN CASE OF CHANGE IN SHAREHOLDING OF START UPS
Existing provision- Sec 79	<p>The restriction provided for carry forward and set off of losses on change in shareholding in section 79 was relaxed in case of closely-held start-ups via Finance Act, 2017, whereby carry forward and set off of losses was allowed if all the shareholders continue to hold the shares on last day of previous year in which set-off is claimed and the last day of the previous year in which loss was incurred.</p> <p>Hence, as long as all the shareholders continued to hold shares of the start-up, losses were allowed to be carried forward and set-off even if there was more than 51% dilution in the shareholding of the company. However, situation where there was less than 51% dilution in the company yet some shareholders had sold their stake, was not covered in the section. In such a case, as per the present language of the section, the start-ups would lose their losses, though the same is allowed in case of other companies in general making them worse off than a non start up companies. The proposed amendment seeks to address this anomaly.</p>
Proposed amendment [FB- Cl.22]	<p>It is now proposed that the loss incurred by the closely-held start-ups would be allowed to be carried forward if either of the following conditions are satisfied:</p> <ul style="list-style-type: none">➤ loss of any year would be allowed to be carried forward as per the provisions of the Act, if shares carrying not less than 51% of the voting power were beneficially held by persons who beneficially held the same on the last of the year in which the loss was incurred; or➤ loss incurred during 7 years beginning from the year in which the company is incorporated shall be allowed to be carried forward and set off even if there is more than 51% dilution, where all the shareholders holding the shares carrying voting power on the last day of the year in which loss was incurred continue to hold those shares on the last day of the year in which set off is claimed.

Start-ups- Incentives for start-ups'

Section amended	LAPSE OF LOSSES IN CASE OF CHANGE IN SHAREHOLDING OF START UPS
Rationale	proposed amendment mainly rationalises the present provision that was brought in 2017 allowing the start-ups to carry forward losses even if the founders sell their stake. In other words, the proposed amendment allows the shareholders of the start-up companies to sell their shareholding to the extent of 49%.
Our comments	<ul style="list-style-type: none"><li data-bbox="435 701 2435 851">➤ The Explanatory Memorandum suggests that the condition that the losses should be incurred in the first 7 years is also proposed to be deleted. However, the language of the amendment does not suggest so.<li data-bbox="435 915 2435 1065">➤ The aforesaid proposed amendment has been made effective from April 1, 2020, however, the same should have been made effective with retrospective effect from April 1, 2018 so that the anomaly could have been addressed in past years too.

Incentive for distressed companies

Section amended	Particulars
Existing provision- Sec 79	Provides for relaxation in case of change in shareholding pursuant to a resolution plan approved under Insolvency and Bankruptcy Code, 2016 (IBC) after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
Proposed amendment [FB- Cl.22 & 34]	<ul style="list-style-type: none">➤ proposed to extend same benefit even in case of other distressed companies. Section 79 is proposed to be amended to provide that it would not apply to a company and its subsidiary and the subsidiary of such subsidiary, where,—<ul style="list-style-type: none">• the NCLT, on an application moved by the CG u/s 241 of the Co's Act, 2013 (that the affairs of the company are being conducted in a manner prejudicial to public interest) , has suspended the Board of Directors of such company and has appointed new directors nominated by the CG, u/s 242 of the said Act; and• a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Co's Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.➤ Consequential amendment is brought in section 115JB which provides that aggregate amount of unabsorbed depreciation and loss (excluding depreciation) brought forward shall be allowed to be reduced in case of such companies, its subsidiaries and the subsidiary of such subsidiary;➤ It is also clarified that company shall be subsidiary of another company if such other company holds more than half in nominal value of equity capital.
Rationale	proposed amendment provides relaxations to such distressed companies

Charitable trust

Section amended	Particulars
Existing provision- Sec 12AA	Section 12AA provides for manner of granting of registration or cancellation of trust and institution. In order to grant registration, the Principal Commissioner of Income-tax ('PCIT') was to make inquiries about the genuineness of the trust.
Proposed amendment [FB- Cl.7]	The proposed section enlarges the scope of the PCIT to satisfy himself about the compliances under other law which are material for the purpose of achieving the objects of the trust before granting registration; Further it is also proposed that where non-compliances of other law has occurred and the same is not disputed or attained finality then he can cancel the registration of the trust.
Rationale	to ensure that the trust do not deviate from their main objects, the aforesaid amendment is proposed.

Charitable trust - Issues

- The proposed amendment seeks to nullify the decision of the **Hon'ble Bombay High Court** in case of **DIT(E) v. G.K.R. Charities [(2013) 214 Taxman 555]**.
- The aforesaid amendment raises following issues:
 - Can mere non-compliance of the of the other laws (which may include state laws) result in denial/cancellation of the registration of trust;
 - What is a material compliance of the requirement under the other laws in the course of achieving the objects of the trust would be very difficult to ascertain;
 - Proposed amendment may affect the genuine trust which are engaged in running schools, hospitals where there may be non-compliance in respect of

Removal of difficulties

Removal of difficulties

Sr No	Section amended	Proposed Amendment
1.	Sections 2(19AA) [FB- Cl. 3]	<p>Ind-AS – 103 – Business combination requires the resulting companies to record the assets and the liabilities of the undertaking at fair value as on the date of acquisition. The proposed amendment is to give effect to the said standard. Accordingly, in case of Ind AS compliant companies, the demerger would be considered tax neutral even if the properties and liabilities are recorded in accordance with Ind AS 103.</p> <p><i>Our Comments</i> : Amendment is made effective from April 1, 2020. It is arguable that since the said amendment is introduced to remove hardship in cases of Ind-AS compliant companies, the said amendment is curative in nature¹ and shall be treated as retrospective in nature but in order to avoid any litigation it would be better if the said amendment is specifically made retrospective.</p>
2.	Section 140A, 143, 234A, 234B and 23 [FB Cl. 42, 43, 52 to 54]	while computing the amount of tax payable, any relief allowable under the provisions of section 89 be reduced from tax payable on total income to compute the amount of interest.

1. See CIT V. Alom Extrusion 319 ITR 306 (SC), Allied Motors V. CIT 224 ITR 205 (SC)

Allied Laws

RATIONALISATION OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND ~~Existing provisions :-~~ IMPOSITION OF TAX ACT, 2015 (“THE BM ACT”)

- Under the BM Act, the term ‘assessee’ is defined to mean a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act and includes every person who is deemed to be an assessee in default under this Act. Hence, only residents are covered within the scope of said Act.



Rationale

to clarify the legislative intent behind enacting the BM Act, which was to tax such foreign income and assets, which were not charged to tax under the Income-tax Act.

RATIONALISATION OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 (“THE BM ACT”)

Applicability
w.e.f. 1 July 2015
Retrospectively

Proposed Amendment [Clause 195] :-

Proposed to retrospectively amend the definition of ‘assessee’ under the BM Act to mean person being a resident in India within the meaning of section 6 of the Income-tax Act, in the previous year, or a person being a non-resident or not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, in the previous year, who was resident in India either in the previous year to which the income referred to in section 4 relates, or in the previous year in which the undisclosed asset located outside India was acquired.

Hence, the scope of the term ‘assessee’ is proposed to be expanded to cover such persons, who even though may be non-residents or not ordinarily residents in the present, were residents in the previous year in which black money was generated or an undisclosed asset located outside India was acquired.

Further, a proviso is also proposed to be inserted to said definition to provide that the ‘previous year’ of acquisition of the undisclosed asset located outside India shall be determined without giving effect to the provisions of section 72(c) of the BM Act. Section 72(c) of the BM Act provides that where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made, such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly. Hence, for the purpose of determining the residency status of the person, the deeming provisions of section 72(c) would not apply and the actual year in which the undisclosed asset was acquired would be considered.

RATIONALISATION OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND

Particulars	Clarificatory amendment [Clause 196]	Power of Commissioner (Appeals) to enhance or reduce penalty levied by the assessing officer [Clause 197]	Power to issue directions by Joint Commissioner extended to the BM Act [Clause 198]
Existing	Section 10 of the BM Act empowers the assessing officer to either assess or reassess the undisclosed foreign income and asset and determine the sum payable by the assessee. However, the word 'reassess' was inadvertently missed at few places in the section.	under section 17 of the BM Act, in respect of an appeal filed against an order imposing penalty, the Commissioner (Appeals) is empowered either to confirm or cancel the order.	Under section 84 of the BM Act, various provisions of the Income-tax Act have been made to apply even to the BM Act, with necessary modifications.
Applicability	Retrospectively from July 1, 2015.	From September 1, 2019.	prospectively from September 1, 2019.

RATIONALISATION OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT 2015 (“THE BM ACT”)

Particulars	Clarificatory amendment [Clause 196]	Power of Commissioner (Appeals) to enhance or reduce penalty levied by the assessing officer [Clause 197]	Power to issue directions by Joint Commissioner extended to the BM Act [Clause 198]
Proposed Amendment	amendment merely rectifies said mistake and adds the word ‘reassess /reassessment’ at relevant places.	proposed to amend section 17 prospectively permitting the Commissioner (Appeals) to even vary the penalty order so as to enhance or reduce the penalty	<p>proposed amendment seeks to make one more provision, namely section 144A of the Income-tax Act, applicable to the BM Act.</p> <p>Section 144A allows the Jt Commissioner, wherever he considers necessary or expedient to do so having regard to the nature of the case or the amount involved or for any other reason, to issue such directions as he thinks fit for the guidance of the AO to enable him to complete the assessment and such directions shall be binding on the AO. However, where the directions so issued are prejudicial to the assessee, an opportunity to be heard needs to be first provided to the assessee.</p>

RATIONALISATION OF THE INCOME DECLARATION

Existing provisions

- In the year 2016, an Income Declaration Scheme, 2016 ('the Scheme') was initiated via Chapter IX of the Finance Act, 2016, providing an opportunity to persons who had not paid taxes in full in the past to come forward and declare their undisclosed income. Under said scheme, the declaration to be valid, needed be filed on or after June 1, 2016 and on or before September 30, 2016.
- Further, the taxes were allowed to be paid in installments, with 1st installment of 25% to be paid by on or before November 30, 2016. Section 187(3) of the Scheme provided that non-payment of tax, etc. on or before the notified due dates would render the declaration invalid and it shall be deemed to have never been made under the Scheme.
- Representations were made by assesseees that where they had failed to make the payment within due date, they should be allowed to make delayed payment and that the declaration should not be considered invalid.
- on January 16, 2017, an instruction (Instruction No. 2 of 2017) was issued by the CBDT, allowing to condone the delay in case of declarants who had paid their first instalment before November 31, 2016, but the same was not cleared by the bank on or before that day, provided the same was cleared by December 5, 2016.
- The existing section 191 of the Scheme provides that any amount of tax, surcharge or penalty paid in pursuance of a declaration made under the Scheme shall not be refundable.

RATIONALISATION OF THE INCOME DECLARATION SCHEME, 2016

Applicability
w.e.f. 1 June 2016
Retrospectively

Proposed Amendment [Clause 199] :-

- *it is proposed to allow notified persons to pay the taxes, surcharge and penalty payable under the Scheme along with interest on such amount, at the rate of one per cent of every month or part of a month, comprised in the period, commencing on the date immediately following the due date and ending on the date of such payment.*
- *In order to address genuine concerns of the declarants, a retrospective amendment is proposed in the section to allow refund of the amount paid in excess of the amount payable under the Scheme in case of class of persons to be notified.*

RATIONALIZING THE PROVISIONS OF THE PROHIBITION

Power of authority to conduct inquiry, etc. - [Clause 172]

- Presently, section 23 of the Benami Act provide that the Initiating Officer can conduct any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act only after obtaining prior approval of the Approving Authority.
- *It is proposed to insert an Explanation to said section to clarify that the approval of Approving Authority is not required where the Initiating Officer has already initiated proceedings by issuing notice under section 24(1) of the Benami Act. Hence, where proceedings are already in progress, the Initiating Officer can make inquiries and investigations without taking prior approval from the Approving Authority.*
- This amendment will take effect retrospectively from November 1, 2016

RATIONALIZING THE PROVISIONS OF THE PROHIBITION

Rationalisation of various time limits under the Act . - [Clause 173 & Clause 174]

Presently, under various sections of the Benami Act, the time limit is computed from the date of issue of notice.

- Section 24(3), dealing with provisional attachment of property, provides for attachment of property for a period of ninety days from the date of issue of notice under section 24(1) of the Benami Act.
- Section 24(4), dealing with passing of order, provides for passing of order within ninety days from the date of issuing notice under section 24(1).

RATIONALIZING THE PROVISIONS OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 (“THE BENAMI ACT”)

Applicability
w.e.f. 1 Sept 2019

Proposed Amendment [Clause 173 & 174] :-

- *In order to rationalize the aforesaid provisions, it is proposed to amend the foregoing provisions to provide that the period of ninety days shall be reckoned from the end of the month in which the notice under section 24(1) is issued and not the date of issue of notice.*
- *The proposed amendment would essentially increase the time limit available to the Initiating Officer. This amendment will take effect from 1st day of September, 2019.*
- *Further, while computing the period of limitation under following provisions, it is proposed to exclude the period during which the proceeding is stayed by an order or injunction of any court.*
 - *Section 24(4), dealing with passing of order by the Initiating Officer;*
 - *Section 24(5), requiring the Initiating Officer to refer the order passed to the Adjudicating Authority;*
 - *Section 26(7), dealing with passing of order by the Adjudicating Authority.*

RATIONALIZING THE PROVISIONS OF THE PROHIBITION

Insertion of new section 54A [Clause 175]

- It is proposed to insert a new provision, section 54A, to provide for levy of penalty of Rs. 25,000 for failure to comply with the summons issued under section 19(1) or to furnish information as required under section 21 of the Benami Act.
- Penalty would be separately leviable for the failures. Further, it is mandatory to provide an opportunity to be heard before levying the penalty. Also, the provision provides for respite where the person can show that there was good and sufficient reason for the failure to comply with
- The proposed amendment would discourage non-compliance with the notices issued. This amendment will take effect from September 1, 2019.

RATIONALIZING THE PROVISIONS OF THE PROHIBITION

Insertion of new section 54B [Clause 175]

It is proposed to insert new provision, section 54B, to allow admission of entries in the records or other documents in the custody of an authority as evidence in any proceedings for the prosecution of any person for an offence under the Benami Act. The entries so admitted as evidence can be proved by the authority in either of the following manner:

- by production of the records or other documents in the custody of the authority containing such entries; or
- by production of a copy of the entries certified by the authority having custody of the records or other documents under its signature stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody

This amendment will take effect from September 1, 2019.

RATIONALIZING THE PROVISIONS OF THE PROHIBITION

Amendment to section 55 [Clause 176]

- Presently, under section 55 of the Benami Act, no prosecution can be instituted against any person in respect of any offence under that Act without the previous sanction of the Central Board of Direct Taxes.
- It is proposed to amend said section so as to provide that no prosecution shall be instituted against any person in respect of any offence under the said Act without the previous sanction of the competent authority. The competent authority is not yet defined or notified.
- This amendment will take effect from September 1, 2019.

AMENDMENT TO THE UNIT TRUST OF INDIA (TRANSFER

Amendment to section 13 [Clause 186]

- Presently, under section 13, tax exemption is provided to the Administrator in relation to the specified undertaking for a period of 5 years from the appointed day. This period comes to an end on March 31, 2019.
- It is proposed to amend said section so as to extend the period of exemption till March 31, 2021.
- This amendment will take effect from April 1, 2019.

Thank - You