"Power is gained by sharing knowledge and not hoarding it"

EMERGING THOUGHTS

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SURESH & CO.,

Chartered Accountants

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Foreword

We are happy to release the third publication series "EMERGING THOUGHTS". As the name suggests, these updates are the emerging and constructive thoughts of article assistants (Interns undergoing Chartered Accountancy course). We, at SURESH & CO., have attempted to imbibe the habit of reading and updating one's knowledge library every single morning. The organisation has successfully implemented the concept of daily updates. This has been a beautiful journey of knowledge without any breaks. Many a times we ourselves have been surprised by the new learning opportunities that we got from these daily updates

The main objective of this publication is to enable the article assitants of SURESH & CO., to think beyond their capabilities. It also helps the articles to improve their knowledge and climb the professional ladder and reach greater achievements.

Every day is a learning day at SURESH & CO., As an organisation, we encourage all the budding professionals to share their views and opinions on various technical and non-technical aspects.

The article assistants have various practical insights which help them understand the theoretical aspects in a more efficient way, and they are able to share the same with all of us in these series of updates.

The intent behind these updates is imparting the skill of technical analysis and professional decision making of any case study/situation.

We at SURESH & CO., wanted to share these gems of infant thoughts as conceived by these young minds. It is to be noted that these updates may or may not have been reviewed by any senior or a technical expert and thus these should be used only to kindle thoughts in certain positive direction. Readers are advised to do further research and analysis on the topics which they find interesting.Professional advice should be sought before acting on any of the information contained in it.

A candle loses nothing by lighting another candle.

Update – 1 | May 21, 2018

Applicable tax rates for Domestic Company:

For the AY 2018-19, a domestic company is taxable at 30%. However, tax rate would be 25% where turnover or gross receipt of the company does not exceed Rs.50 crore in the **previous year** 2015-16.

Add:

a) Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 7% of such tax, where **total income** exceeds **one crore rupees** but **not** exceeding **ten crore rupees** and at the rate of 12% of such tax, where total income exceeds ten crore rupees. However, the surcharge shall be subject to marginal relief, which shall be as under:

(i) Where income exceeds one crore rupees but not exceeding ten crore rupees, the total amount payable as income-tax and surcharge shall not exceed total amount payable as income-tax on total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(ii) Where income exceeds ten crore rupees, the total amount payable as income-tax and surcharge shall not exceed total amount payable as income-tax on total income of ten crore rupees by more than the amount of income that exceeds ten crore rupees.

b) Education Cess: The amount of income-tax and the applicable surcharge shall be further increased by education cess calculated at the rate of two per cent of such income-tax and surcharge.

c) Secondary and Higher Education Cess: The amount of income-tax and the applicable surcharge shall be further increased by secondary and higher education cess calculated at the rate of one per cent of such income-tax and surcharge.

Further to above taxation of income of certain domestic companies.

According to section 115BA of the Income Tax Act, 1961 "the act":

(1)Notwithstanding anything contained in the Act but subject to the provisions of section 111A and section 112, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, **at the option** of such person, be computed at the rate of **twenty-five per cent**, if the conditions contained in sub-section (2) are satisfied.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) The company has been **set-up** and **registered** on or after the 1st day of March, 2016;

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

(c) The total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB)

of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) Depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

- Venkat Narayana Reddy K

Update - 2| May 22, 2018

Sec 54EE - Capital gain not to be charged on investment in units of specified fund.

Assessee who transfers a long-term capital asset ("**Original Asset**") and invests the whole or part of capital gains in long-term specified asset, **within 6 months** from the date of transfer of the Original Asset shall be **exempt** from paying capital gains tax on whatever sum is invested in the **long-term specified asset** applicable from **1st day of April, 2017.**

Provided however that the amount of investment in the long-term specified asset shall not exceed **INR 50 lacs in any financial year** and the benefit shall also be available in the subsequent financial year if the period of 6 months from the date of transfer spills over to the subsequent financial year.

Assessee must hold the long-term specified asset for **at least 3 years** to avail this benefit and a transfer of the such asset before that would lead to the exemption being revoked. This also includes situations where the assessee raises a **loan or advance against the security of such long-term specified asset** within 3 years which is deemed to be the income chargeable under the head "Capital gains" relating to long-term capital asset of the previous year in which the long-term specified asset is transferred.

"Long-term specified asset" means a unit or units, issued before the 1st day of April, 2019, of such fund as may be notified by the Central Government in this behalf.

- Abhishek P A

Update – 3| May 23, 2018

Rationalisation of provision relating to conversion of stock-in-trade into Capital Asset

Section 45 of the Act, inter alia, provides that capital gains arising from a conversion of capital asset into stock-in-trade shall be chargeable to tax. However, in cases where the stock in trade is converted into, or treated as, capital asset, the existing law does not provide for its taxability.

In order to provide symmetrical treatment and discourage the practice of deferring the tax payment by converting the inventory into capital asset, it is proposed to amend section 28 so as to provide that any profit or gains arising from **conversion of inventory into capital asset** or its treatment as capital asset shall be charged to tax as **business income**. It is also proposed to provide that the fair market value of the inventory on the date of conversion or treatment determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment;

These amendments will take effect, from 1st April, 2019 and will, accordingly, apply in relation to the **assessment year 2019-20** and subsequent assessment years.

- Sidhi Chopra

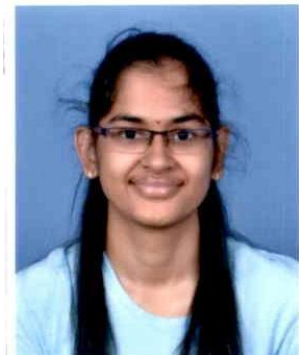
Update – 4| May 24, 2018
Amendment to Section 93 of Companies Act 2013

Companies (Amendment) Act,2017 : Section 93 of the principal Act (i.e., companies Act 2013) shall be **omitted.**

Section 93 : Return to be filed with the Registrar in case promoters' stake changes
Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

Date of notification : 09th February 2018.

The central government hereby appoints the 9th February,2018 as the date on which the above provision of the said act shall come into force.



- Neha Sanklecha

Update – 5| May 25, 2018
Incentive for employment generation

At present, under section 80-JJAA of the Act, a deduction of 30% is allowed in addition to normal deduction of 100% in respect of emoluments paid to eligible new employees who have been employed for a minimum period of 240 days during the year. However, the minimum period of employment is relaxed to 150 days in the case of apparel industry. In order to encourage creation of new employment, it is proposed to extend this relaxation to **footwear and leather industry.** Further, it is also proposed to rationalize this deduction of 30% by allowing the benefit for a new employee who is employed for less than the minimum period during the first year but continues to remain employed for the minimum period in subsequent year. This amendment will take effect, from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

- Sumedha G N

Update – 6| May 26, 2018
Doing business in India: 'Substance' over 'form' in Transfer pricing Regime.

International taxation has witnessed some major changes in recent times. one of them is new BEPS project of OECD. Project is a result of many issues alike double taxation/Non-taxation/Low taxtation in context of global firms. Accordingly, a three-tier documentation structure was recommended for transfer pricing. These include ***Country-by-country reporting (CBCR), Master file and Local file.***
The new documentation structure aims at providing access to the IT department on information pertaining to operations of multinational enterprises.Earlier,
IT Dept. used to focus on comparability of companies adopted by the taxpayer, the arm's length nature of margin earned by the taxpayer on routine information technology (IT) and IT-enabled services (ITeS) transactions, etc. Now, the availability of enhanced information as per the new documentation structure will help IT dept. focus on a more macro-level review of the MNE's business operations.

Key elements

- CBCR: Applicability of CBCR - Consolidated group revenue for filing CBCR is INR 5500 crore during the reporting year. The format of the CBCR (Form No. 3CEAD) is aligned with the BEPS Action 13 template. The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the TT buying rate of such currency on the last date of the accounting year.
- The MF provides an overview of an MNC group's global business model, specifically covering the following aspects
    - Organisational structure,
    - Description of the various businesses,
    - intangibles used in the businesses,
    - inter-company financial transactions, and
    - financial and tax positions

Details of all entities of the international group needs to be maintained in the Master File. Form 3CEAA (Part A and Part B).

- *Part A of Master file*: will be required to be filed by every constituent entity of an International group, without applicability of any threshold.
- *Part B of Master file*: Applies when, consolidated group revenue is more than Rs.500 crore and Aggregate value of international transactions is in excess of Rs.50 crore or aggregate value of international transactions relating to intangible assets in excess of Rs.10 crore.

Implications:

- For Instance, Parking of intangibles in low-tax or no-tax jurisdictions, with no economic substance in such entities, could be a potential BEPS risk area.
- Revised guidance requires that a FAR analysis or capacity re-assessment be carried out for such entities.
- This will help in evaluating whether they have the capability to perform intangible related functions (such as development, exploitation, etc.,) and bearing the associated risks (such as financial risk, obsolescence risk, failure risk, infringement risk, etc.,) or are mere shell entities to avail tax benefits.
- Another typical situation wherein similar risk may arise can be an intra-group services scenario, which is quite common in Indian context. The taxpayers would need to substantiate the capability

of service providers to render services in terms of availability of necessary resources like fixed assets, employees with relevant skill sets, etc.

The need of the hour is not only to revisit the entire supply chain from a transfer pricing perspective in isolation, but to adopt a more holistic approach with focus on substance over form.

In the long run, MNEs need to be more careful and cautious in their approach to any structuring/re-structuring exercise and take necessary corrective steps, wherever required. After all, prevention is better than cure!

- Dennis Lobo J

Update – 7 | May 27, 2018
Glimpse of section 56(2)(viib)

Glimpse of Sec 56(2)(viib) of the Income Tax Act, 1961

Clause (viib) of sub section (2) of section 56 was inserted vide finance act, 2013 w.e.f 01.04.2013 i.e. for A. Y. 2013-14 to provide that where a closely held company issues its shares at a price which is more than its fair market value then the amount received in excess of fair market value of shares will be charged to tax in the hand of the company as income from other sources.

This amendment was made keeping in view the practice of closely held companies to brought in undisclosed money of promoters/directors by issuing shares at high premium which is normally over and above the book value of share of the company, and moreover which escaped the provisions of section 68.

Moreover in case of many closely held companies and even in new companies promoters used to issue share at premium with the main purpose of keeping share capital low, yet capital base stronger so that breakup value and market value is high.

This leads to advantage of low cost of servicing share capital and also improved prospects to issue share at premium in future by way of initial issue of offering by promoters. One more practical advantage was to save on account of cost of fees payable on increase of authorized capital. When shares are issued at premium, number of shares and authorized capital increase lesser in comparison of capital raised by way of capital and premium.

Clause (viib) is read as under:-
"Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

The above provision is not applicable where the consideration for issue of shares is received—

- By a venture capital undertaking from a venture capital company or a venture capital fund;
- By a company from a class or classes of persons as may be notified by the Central Government in this behalf.

- Sathvik V

Update – 8 | May 28, 2018

Sec 56(2)(x) Deemed Gift

Sec 56(2)(x) Deemed Gift

Finance Act 2017 has inserted a new clause (x) in section 56(2) w.e.f 1st April 2017 (i.e. applicable from AY 2018-19 related to FY 2017-18) which has considerably widened the scope of provisions taxing deemed gift as income. The applicability of corresponding old deemed gift clauses being section 56(2)(vii) and 56(2)(viia) has been restricted upto AY 2017-18 only.

The new clause (x) envisages to tax the deemed gift of certain defined properties/assets in the hands of every person receiving such property/asset subject to certain exceptions as provided therein. The old provisions were only applicable to some persons & not all persons. Also, earlier in the hands of Firm and a private company, the receipt of only unquoted shares of a private company was covered by deemed gift taxing provisions whereas now it covers all the defined properties/assets.

- Sanchia Dias

Update – 9| May 29, 2018
Section 54EC

Budget 2018 has inter alia proposed an amendment to Section 54EC of the Income-Tax Act. This section currently provides for an exemption of long term capital gains("LTCG") on sale of **any** Long Term Capital Asset provided the capital gains are invested within 6 months from the date of transfer, in certain long term specified assets viz any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 or by the Rural Electrification Corporation Limited.

Vide the budget, the government has proposed to amend the above section by restricting its scope only to capital gains arising from long-term capital assets, being land or building or both. It is also proposed to provide that long-term specified asset, for making any investment under the section on or after the 1st day of April, 2018, shall mean any bond, redeemable after **five years as against the earlier three years** and issued on or after 1st day of April, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

Few Tips for 54EC

- Is it worth investing in 54EC : locking funds for 5 years , getting a taxable low interest rate , low liquidity VS the Tax amount saved ? This commercial calculation should be made and seen what is the net yield one earns post 5 years investing the same funds post payment of capital gain.
- It also depends upon the risk appetite of individuals. Aged persons will take lower risk as compared to youngsters. Older persons would prefer 54EC as compared to 54F which locks them into immovable property
- Where aged persons are investing they need to sync their will and the nominee mentioned in 54EC investment
- As limit is 50 lacs per person , and the assessed is interested in investing after commercial feasibility , re-organise assets before same in such a way between family members that multiple investments of 50 lac each can be made

- Rishab J

Update - 10| May 30, 2018
Associated Enterprises Section 92 of Income Tax Act 1961

Decoding the interpretation intricacies of 'Associated Enterprises' (AE) definition u/s 92A(1) and 92A(2)

Introduction:

When two or more enterprises situated in different countries of different tax regimes , sell goods and services between themselves either or both of which are non-residents and the transactions includes arrangement or agreements or understanding in informal or in writing, or intended to be enforceable by legal proceedings, there arises a scope of transfer pricing(TP) regulations under respective tax regimes, and in India,TP regulations applies only for the Associated enterprises.

To determine whether or not two enterprises are associated, three factors are considered; Participation in capital , Management and control.

Section 92A(1) of the Income Tax Act:
· Such enterprise participates, directly or indirectly, or through one or more intermediaries, in the management, capital, or control of the other enterprise; or [when one enterprise controls or is controlled by another, directly or indirectly]
· Same person(s) participate, directly or indirectly, or through one or more intermediaries, in the management, capital, or control of both the enterprises. [when there is a relationship of indirect ownership or of mutual interest between the two]

Section 92A(2) of Income Tax Act:
Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,

Control-
1. Manufacture or processing of goods by one enterprise is wholly dependent on use of know-how, patents, copyrights, secret formulae etc.
2. 90% or more, of the raw materials required for manufacturing is supplied by one enterprise.
3. The goods are sold to one enterprise which affects the sale price and it also specifies the company to sell to specified person.
4. Where two enterprises are controlled by common Individuals or relatives of the Individuals. Or Common HUF members and their relatives.

Management-
1. If one enterprise appoints Half of the BOD's of other enterprise or one or more executive directors.
2. If a person appoints half of the BOD's of two enterprises or one or more executive directors

Capital-
1. One enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in the other enterprise .
2. One person/enterprise holds directly or indirectly shares carrying not less than 26% of the voting power in the two enterprises.
3. Loan by one enterprise to another enterprise ; Loan is 51% or more of Total assets.

4. One enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise.
5. If enterprise is a Firm, AOP, or BOA, the other enterprise which is a firm, AOP, or BOA holds 10% or more Interest.

Practical Insights –

We take the organizational group chart of the company and understand the relations with fellow subsidiaries and holding companies, whether the fellow subsidiaries has 26% or more shareholding in each other or a Holding company holds 26% or more shareholding in the subsidiaries and first list out the AE's of the reporting entity in India.

Information regarding AE can also be taken from Clause 23 of Form 3CD - Disclosure on payments made to Relatives and other persons; Disclosures in Financials - AS18 or IndAs 24; Review of Non- Resident e-TDS Returns, Review of Register maintained as per Section 189 of the Companies Act, 2013; Understanding the supply chain (vendors/customers) and working of the company.

- Dennis Lobo J

Update – 11| May 31, 2018
Revenue from contracts with customers
Ind AS 115

This is regarding the revenue recognition criteria as per Ind AS and as per IGAAP.

Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends .

Revenue recognition as per AS 9

For goods
Revenue is recognized at the time of transfer of significant transfer of risk and rewards of ownership to the buyer.

For services
Revenue from service transactions is recorded either by proportionate completion method or completed service contract method.

Revenue recognition as per Ind AS 115

Ind AS 115 follows "five step model" instead of "transfer of risk and rewards"

Five step Model

1. Identify the contract
2. Identify performance obligations
3. Determine Transaction Price.
4. Allocate transaction price to the performance obligations
5. Recognize revenue when the entity satisfies its performance obligations.

Ind AS impacts all entities that enter into contracts with customers ,with few exceptions.

Impact of Ind AS on different sectors

1. The timing and amount of revenue recognized may not change for simple contracts for a single deliverable, but most complex arrangements will be affected to some extent.
2. Entities affected will need to reassess their revenue recognition policies and may need to revise them.
3. Ind AS 115 requires more and different disclosures.
    a. Telecom and Information Technology - Where multiple deliverable are commonplace and current practice is mixed. Cell-phone businesses that account for a 'free' handset as a marketing cost will need to change this policy and instead allocate revenue based on relative standalone selling prices.
    b. Real Estate - When to recognize revenue for real estate contracts (such as apartment sales) ,the new model will shift the boundary between percentage-of-completion and on-completion revenue recognition.

c. EPC construction contracts – Where sale of materials and installation services may be accounted separately. Under the new standard, such contracts have to be combined to determine percentage of completion.

d. Asset management, legal and professional services and other sectors where performance-based or contingent fees are commonplace - Under the new model, variable payments are accounted for on a best estimate basis subject to a constraint

Disclosures as per Ind AS

1. Information about dis-aggregation of revenue.
2. Information about reconciliation of revenue.
3. Information about contracts with customers
4. Information about performance obligations
5. Information about costs to obtain or fulfill the contract

- Srinidhi.P.Kumar

Update – 12 | June 01, 2018
Amendment in section 44AA of Income Tax Act,1961

This update is regarding the amendment in the section 44AA of Income Tax Act,1961. This particular amendment is
applicable for the financial year 2017-2018 and onwards.

1. Section 44AA of Income Tax,1961 states that, every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

2. Every person carrying on business or profession (not being a profession referred above) shall - If his **income** from business or profession exceeds **Rs.1,20,000** or his total **sales**, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds **Rs.10,00,000** in any one of the three years immediately preceding the previous year.

But these limits have now been **revised to** –

i] If the **income** from business or profession is more than **Rs.2,50,000**.
ii] If the total **sales**, turnover or gross receipts in business or profession exceeds **Rs.25,00,000** in any one of the three years immediately preceding the previous year.

- Anand.M B

Update 13|June 02, 2018
International Transaction | Section 92B Of Income Tax Act, 1961

International Transaction - A Deep Dive!

Section 92B(1)
Transaction between two or more AE's in the nature of services, or lending or borrowing money, or any other transaction having a bearing on the profits , income , losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of or any contribution to any cost or expense incurred or to be incurred in connection with a benefit , service or facility provided or to be provided to any one or more of such enterprises.

Essence:
So after detecting the AE's , the next step is to identify all the international transactions entered into by the AE (Client).
Our examination includes checking Foreign exchange account , AE's accounts, and Financials to check RPT transactions , import details , fixed asset register , Review of Financial Statements, Details of foreign currency transactions, Form 15CA and 15CB, and Agreements etc.,

Section 92B(2)

A transaction entered into by an enterprise with a person other than an AE shall, for the purposes of sub-section (1), be deemed to be a transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.

Essence:
Sub-section (2) of Section 92B creates a deeming fiction and further extends the scope of Section 92B to transactions occurring between the taxpayer and an unrelated party. Given the nature and quantum of litigation in India surrounding transfer pricing, it is natural that companies may opt to structure their arrangement in a manner that transfer pricing provisions do not get triggered; Therefore, the concept of deeming provisions were introduced.
Nothing in the act says whether the agreement will be in writing? It has to be brought on record ? Or is it subject to the AO interpretation /assumption, should the transaction be interpreted as substance over form ?

Example of deemed International Transaction:

a) There are 2 companies A and B (AE). There is an unrelated party C. A is into trading of pharmaceutical products. It purchases goods from B and C. C takes raw material from B. B has instructed A to buy from C at so and so price for such and such product. The transaction may be taken as substance over form. Therefore such determined transaction could become deemed international transaction with C. (To be reported under specific clause for deemed international transactions).

b) There are 2 companies A and B (AE). There is an unrelated party C. A is into manufacturing of chillers.It purchases goods from B . B has told A that to buy so and so product from C at already pre-determined prices. C passes the purchase discount to B. The transaction may be taken as substance over form. Therefore such determined transaction could become deemed international transaction with C. (To be reported under specific clause for deemed international transactions).

- Dennis Lobo J

Update – 14 | June 03, 2018
Amendment in Section 80CCD of Income Tax Act, 1961

Benefit for NPS Subscribers

Tax-exemption to partial withdrawal from National Pension System (NPS)

The existing provision of section 10(12A) provides that payment from National Pension System (NPS) trust to an employee on closer of his account or opting out shall be exempt up to 40% of total amount payable to him.

In order to provide further relief to an employee subscriber of NPS, it is proposed to amend the section 10 so as to provide exemption to partial withdrawal not exceeding 25% of the contribution made by an employee in accordance with the terms and conditions specified under Pension Fund Regulatory and Development Authority Act, 2013 and regulations made there under

The existing provisions of section 80CCD provides that employee or other individuals shall be allowed a deduction for amount deposited in National Pension System trusts (NPS). The deduction under section 80CCD (1) cannot exceed 10% of salary in case of an employee or 10% of gross total income in case of other individuals.

However, under the provisions of section 80CCD (2) of the Act, further deduction to an employee in respect of contribution made by his employer is allowed up to 10% of salary of the employee. Thus, in case of an employee, the deduction allowed under section 80CCD adds up to 20% of salary whereas in case of other individuals, the total deduction under section 80CCD is limited to 10% of gross total income.

In order to provide parity between an individual who is an employee and an individual who is self-employed, it is proposed to amend section 80CCD so as to increase the upper limit of ten per cent of gross total income to twenty per cent in case of individual other than employee. This amendment will take effect from 1st April ,2018 and, will accordingly , apply in relation to assessment year 2018-19 and subsequent years.

- Pragathi R Arcot

Update 15 | June 04, 2018
Applicability of Tax Rates for Domestic Company for the FY 2018-19

For Domestic Companies:

For the assessment year 2019-20, a domestic company is taxable at 30%. However, the tax rate would be **25% if** turnover or gross receipt of the company **does not exceed Rs. 250** crore in the **previous year 2016-17.**

Add:

a) Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 7% of such tax, where total income exceeds one crore rupees but not exceeding ten crore rupees and at the rate of 12% of such tax, where total income exceeds ten crore rupees.

However, the surcharge shall be subject to marginal relief, which shall be as under:

(i) Where income exceeds one crore rupees but not exceeding ten crore rupees, the total amount payable as income-tax and surcharge shall not exceed total amount payable as income-tax on total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(ii) Where income exceeds ten crore rupees, the total amount payable as income-tax and surcharge shall not exceed total amount payable as income-tax on total income of ten crore rupees by more than the amount of income that exceeds ten crore rupees.

b) *Health and Education Cess*: The amount of income-tax and the applicable surcharge, shall be further increased by **health and education cess** calculated at the rate of **four percent** of such income-tax and surcharge.

- V. Prem Sai Srinivas

Update 16|June 05, 2018
Income Tax Amendments effective from 01 April 2017

Summary of income tax amendments effective from 1st April 2017 is below, which helps in better performance of audit procedures and for tax computation.

Relating to Cash Payments/ receipts

- The limit for payment of expenses by Cash Under Section 40A(3) (for both Capital and Revenue expenditure) has been reduced from 20,000 to Rs.10,000 per day in aggregate per person. Expenditure in excess of given limit would be disallowed. Even the capital expenditure incurred would not be treated as cost incurred for depreciation purposes.
- The limit for receipt of amount in Cash has been prescribed as 2,00,000.No person shall accept amount of Rs.2,00,000 or more by Cash either in one transaction or from one person in aggregate in a day or in relation to one event or occasion from a person In case of default equivalent penalty shall be leviable U/s 271DA of Income Tax Act.
- Cash donations exceeding Rs.2,000 will not be eligible for deduction under Section 80G.
- Existing TCS provisions requiring collection of tax @ 1% on cash sales exceeding Rs.5 Lacs in case of bullion/ jewellery and Rs.2 Lacs in case of other goods/ services has been withdrawn since cash receipts exceeding Rs.2 Lacs have been made liable for equivalent penalty.

Relating to Capital Gains.

- The holding period of immovable property for being considered long term has been reduced to 2 years from earlier 3 years. Hence, Immovable property held for two years or more would attract a tax rate of 20% being long term capital gains.
- Base year for adjusting prices for inflation, has now been changed to April 1st 2001 from 1st April 1981.

Relating to Tax Rates

- The tax rate on income between Rs.2.5 lakh to Rs.5 lakh has been reduced to 5% from earlier 10%. It will reduce the tax by 50% for people having income ranging 2,50,000-5,00,000 and other taxpayers with higher income shall get benefit of Rs.12,500.
- The Tax Rebate u/s 87A is reduced to 2,500 from Rs.5,000per year for taxpayers with Income up to Rs.3.5 Lakh (Earlier Rs.5 Lakh). The taxpayers whose annual taxable income is Rs.3.5 Lakh, shall be required to pay Income tax of Rs.2,575 instead of Rs.5,150.
- Surcharge at 10% of tax is levied on persons with income ranging between Rs.50 lakh to Rs.1 crore. The rate of surcharge for the super-rich, with income above Rs.1crore, will remain 15%.

- The Rate, in case of presumptive Income, for assesses having turnover less than Rs.2 Crore under section 44AD has been revised as follows:
    - For Non Cash Sales : Net Profit will be taken at 6% of Turnover.
    - For Cash Sales : It will remain same at 8%
- The Individual and HUF (not subject to Tax Audit Requirement) shall be required to deduct TDS @5%on rental payments above Rs.50,000 per month. (to be effective from 1st June 2017)

Filing of Income Tax Returns

- Delay in filing of Income tax return for 2017-18 will attract penalty of Rs.5,000/-if filed by December 31st 2018 and Rs.10,000 if filed later.

- Adithya C V

Update 17 | June 06, 2018
Special provision for Business of Plying, Hiring or leasing goods Carriages

Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages.

44AE. (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee, who owns not more than ten goods carriages at any time during the previous year and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains, from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of sub-section (2).

(2) For the purpose of sub-section (1), the profits and gains from each goods carriage shall be an amount equal to seven thousand five hundred rupees for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from the vehicle, whichever is higher.

Following sub-section (2) shall be substituted for the existing sub-section (2) of section 44AE by the Finance Act, 2018, w.e.f. 1-4-2019 :

(2) For the purposes of sub-section (1), the profits and gains from each goods carriage,—

i) being a heavy goods vehicle, shall be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher;
ii) other than heavy goods vehicle, shall be an amount equal to seven thousand five hundred rupees for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

(3) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of subsection (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

Provided that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40.

(4) The written down value of any asset used for the purpose of the business referred to in sub-section(1) shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(5) The provisions of sections 44AA and 44AB shall not apply in so far as they relate to the business referred to in sub-section (1) and in computing the monetary limits under those sections, the gross receipts or, as the case may be, the income from the said business shall be excluded.

(6) Nothing contained in the foregoing provisions of this section shall apply, where the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or any earlier assessment year, are lower than the profits and gains specified in sub-sections (1) and (2), and thereupon the Assessing

Officer shall proceed to make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee on the basis of assessment made under sub-section (3) of section 143.

(7) Notwithstanding anything contained in the foregoing provisions of this section, an assessee may claim lower profits and gains than the profits and gains specified in sub-sections (1) and (2), if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA and gets his accounts audited and furnishes a report of such audit as required under section 44AB.

- Nandan M N

Update – 18 | June 07, 2018
An Insight on Tax
Proposal of Introduction of Section 112A

In Budget 2018, with the withdrawal of Sec 10(38), there is a proposal of a parallel introduction of Section 112A to tax LTCG on sale of

- Equity shares,
- Units of equity oriented funds or
- Units if business trusts

at a concessional rate of 10% on the gains in excess of Rs. 1 lakh without providing the benefits of indexation or the benefit of computation of capital gains in foreign currency in the case of non-residents.

Applicability
The provisions of this section will apply from the Financial Year (FY) 2018-19 i.e. AY 2019-20. This otherwise means, any transfer carried out after 1 April 2018, resulting in LTCG in excess of Rs 1 lakh will attract tax at the rate of 10 percent.

Carry forward of Long-Term Capital Losses ("LTCL") on sale of such shares
The income tax department has issued dated 4 February 2018, inter alia clarified that LTCL from a transfer made on or after 1 April 2018 will be allowed to be set-off and carried forward in accordance with existing provisions of the Act. Therefore, it can be set-off against any other LTCGs and unabsorbed LTCL can be carried forward to subsequent eight years for set-off against LTCG.

- Isha R

Update – 19 | June 08, 2018
Opinion by Expert Advisory Committee of ICAI

Amortisation of Expenses Incurred On Various Business Requirements At The Time of Formation

Facts of the Case

1) A company was incorporated under the Companies Act in July, 2015 as a Government company. As on 31st March, 2016, its authorised share capital was Rs.100 crore (10,00,000 equity shares of Rs.1000/- each); and issued, subscribed and paid-up capital was Rs. 16 crore (1,60,000 equity shares of Rs.1000 each).

2) During November 2015, the company incurred an expenditure of Rs.92.92 lakh as preliminary expenses which included the following:

- **a.** Registrar of Companies (ROC) fee (for authorised share capital of Rs. 100 Crore) Rs.76,33,920/
- **b.** Professional fee paid Rs.12,97,459/- c. Preliminary expenses paid to lawyers and accountants Rs.3,61,073/-

3) According to the company the ROC fee is variable and would have been much less if the company had proposed for a lesser authorised capital. The amount was classified under 'Preliminary Expenses' and shown under 'Current Assets' and decided to amortise the preliminary expenses over five years and show the unamortised expenses of Rs.74.33 lakh under 'Current Assets'. An amount of Rs.18.58 lakh was charged off (being one fifth) in the first accounts of the company during the financial year 2015-16. The reasons considered by the company for amortising the expenses are quoted below: "The expenditure of Rs.92.92 lakh consists mainly of fee paid to Ministry of Corporate Affairs. This huge expenditure would not have been incurred, had the company not issued shares with authorised capital of Rs.100 crore. Hence, the expenditure was solely incurred in connection with issue of shares.

4) While conducting supplementary audit under section 143(6)(b) of the Companies Act, 2013, the government auditors from Comptroller & Auditor General of India (C&AG) opined that the above mentioned expenditure is in the nature of preliminary expenses and should be charged off in the same year of incidence. The preliminary comments of the Accountant General are quoted below: "The head includes preliminary expenses of Rs.74,33,962/- being the expenses incurred prior to incorporation for the purpose of formation of the company. As per Accounting Standard (AS) 26, 'Intangible Assets' (under paragraph 56), 'preliminary expenses incurred in establishing a legal entity such as legal and secretarial cost, expenses to open a new facility or business' needs to be recognised as an expense when it is incurred. Omission to write off the preliminary expenses incurred prior to incorporation for the purpose of formation of the company resulted in overstatement of the head by Rs.74,33,962/-."

Query submitted to the Expert Advisory Committee of the ICAI

The Company approached the Expert Advisory committee to seek opinion as to whether under the given circumstances, the company can amortise the expenses, mainly relating to fee paid to the Ministry of Corporate Affairs and incidental legal fee, professional fee etc. paid at the time of formation.

Analysis by the Committee

The Committee has first analysed that which expenses can be termed as 'share issue expenses'. In this respect, the Committee notes paragraph 5 of Accounting Standard (AS) 26, 'Intangible Assets', notified under the Companies (Accounting Standards) Rules, 2006 (as reproduced in paragraph 4 above), which states that this Standard does not apply to accounting for share issue expenses. The term 'share issue expenses', however, has not been defined in AS 26. The Committee further notes that the term has been defined in the Guidance Note on Terms Used in Financial Statements which provides as under:"Costs

incurred in connection with the issue and allotment of shares. These include legal and professional fees, advertising expenses, printing costs, underwriting commission, brokerage, and also expenses in connection with the issue of prospectus and allotment of shares."

From the above, the Committee notes that although this definition is an inclusive definition but it specifically states that share issue expenses are costs incurred in connection with the issue and allotment of shares.

As regards accounting for the expenses incurred on ROC Fees, Professional fees and preliminary expenses paid to lawyers, the Committee notes the following paragraphs 56 of AS 26: An asset is a resource: (a) controlled by an enterprise as a result of past events; and (b) from which future economic benefits are expected to flow to the enterprise."

In some cases, expenditure is incurred to provide future economic benefits to an enterprise, but no intangible asset or other asset is acquired or created that can be recognised. In these cases, the expenditure is recognised as an expense when it is incurred.

From the above paragraphs of AS 26, the Committee notes that if expenditure does not result into acquisition of an asset, it should be recognised as an expense as and when incurred. The Committee also notes that the amount spent towards ROC Fees, professional fees and legal expenses paid to lawyers, does not give rise to any resource controlled by the enterprise. In fact, such expenses are in the nature of start-up costs/preliminary expenses, which are only related to incorporation of the company and set a limit for the issued/paidup capital of the company which does not ensure any flow of funds to the company. Accordingly, it does not meet the definition of an asset (either an intangible or current asset), as reproduced above. Thus, the amount aggregating to Rs. 92.92 lakhs incurred towards ROC Fees, professional fees and legal expenses should be recognised as expense in the statement of profit and loss as per the requirements of paragraph 56 of AS 26.

Opinion by Committee

On the basis of the above, the Committee is of the opinion that the expenditure incurred by the company relating to fee paid to the Ministry of Corporate Affairs and incidental legal fee, professional fee etc. paid at the time of formation cannot be considered as share issue expenses and should be treated as expense and charged off in the statement of profit and loss.

- Sowmya Shree G

Update – 20 | June 09, 2018
No Notional Income for House property held as Stock-in-trade

Section 23 of the Act provides for the manner of determination of annual value of house property.
Considering the business exigencies in case of **real estate developers**, it is proposed to amend the said section so as to provide that where the house property consisting of any building and land appurtenant thereto is held as stock-in-trade and the **property or any part of the property** is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period **upto 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, shall be taken to be nil
This amendment will take **effect from 1st April, 2018** and will, accordingly apply in relation to assessment year 2018-19 and subsequent years.

Interpretation of "for the period **upto one year** from the end of the financial year in which the certificate of completion of construction of the property is obtained"-

Date of completion Certificate	End of the year in which certificate is granted	Period of exception	Months of exception
01/04/2017	31/03/2018	01/04/2017-31/03/2019	24
01/12/2017	31/03/2018	01/12/2017-31/03/2019	16
31/03/2018	31/03/2018	31/03/2018-31/03/2019	12

Relevant Case Law-
In the case between M/s. Runwal Constructions vs. Assistant Commissioner of Income Tax, Mumbai bench of Income Tax Appellate Tribunal (ITAT) recently ruled that the Assessing Officer cannot take notional annual letting value in respect of unsold flats for the purpose of determining house property income as the same are stock-in-trade of Assessee's Business.

While completing the assessment proceedings the Assessing Officer (AO) has computed the annual letting value in respect of unsold flat by considering the same under the head income from house property.

Before the AO counsel for the Assessee advocate Rishabh Shah submitted that the Assessee engaged in the business of builder, developer and construction and the property they purchased is stock in trade and the income from sale of such developed property into flats is assessable as business income. Therefore the unsold flats which are in the stock in trade cannot be brought to tax under the head income from house property simply because the flats remain unsold at the end of the year.

However the AO refused to accept the contention of the Assessee and accordingly computed the notional annual letting value on the unsold flats and the same brought to tax under section 23 of the Income Tax Act 1961 under the head income from house property.

On appeal, the CIT(A) sustained the action of the AO in bringing to tax the notional annual letting value under the head 'income from house property' in respect of the unsold flats. Aggrieved by the order of the

authority the Assessee approached the Tribunal on further appeal. While observing the facts and perusing the available materials on record, the Tribunal bench comprising of Judicial Member C.N. Prasad and Accountant Member A.L. Saini objected the action of the AO and observed that "the Assessee has treated the unsold flats as stock in trade in the books of account and the flats sold by them were assessed under the head 'income from business".

He division bench further held that "the unsold flats which are stock in trade when they were sold and they are assessable under the head income from business when they are sold and therefore the AO is not correct in bringing to tax notional annual letting value in respect to those unsold flats under the head income from house property".

Thus the bench directed the AO to delete the addition made under section 23 of the Act while allowing the appeal filed by the Assessee.

- Deeksha A

Update- 21|June 10, 2018
Amendment in Section 115BBDA

According to the Finance Act, 2017, **"an assessee, being an individual, a Hindu undivided family or a firm" is substituted by "a specified assessee".**

As per Finance Act, 2016:

Sec 115BBDA: Tax on certain dividends received from domestic companies:

(1) Notwithstanding anything contained in Income Tax Act,1961, where the total income of **an assessee, being an individual, a Hindu undivided family or a firm, resident in India,** includes any income in aggregate exceeding **ten lakh rupees**, by way of dividends declared, distributed or paid by a domestic company or companies, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of such dividends in aggregate exceeding **ten lakh rupees**, at the rate of **ten per cent**; and

(b) The amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income by way of dividends.

(2) No deduction in respect of any expenditure or allowance or set off of loss shall be allowed to the assessee under any provision of this Act in computing the income by way of dividends referred to in clause (a) of sub-section (1).

(3) In this section, "dividends" shall have the same meaning as is given to "dividend" in clause (22) of section 2 but shall not include sub-clause (e) thereof.

As per Finance Act, 2017:

Section 115BBDA: Tax on certain dividends received from domestic companies

(1) Notwithstanding anything contained in Income Tax Act,1961, where the total income of **a specified assessee**, resident in India, includes any income in aggregate exceeding **ten lakh rupees**, by way of dividends declared, distributed or paid by a domestic company or companies, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of such dividends in aggregate exceeding **ten lakh rupees**, at the rate of ten per cent; and

(b) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income by way of dividends.

(2) No deduction in respect of any expenditure or allowance or set off of loss shall be allowed to the assessee under any provision of this Act in computing the income by way of dividends referred to in clause (a) of sub-section (1).

Explanation.—For the purposes of this section,—

(a) "dividend" shall have the meaning assigned to it in clause (22) of section 2 but shall not include sub-clause (e) thereof;

(b) **"specified assessee"** means a person other than,—

(i) a domestic company; or

(ii) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or subclause (via) of clause (23C) of section 10; or

(iii) a trust or institution registered under section 12A or section 12AA.

- Simran S Jain

Update 22 | June 11, 2018
Unexplained Cash credits

Section 68: Cash credits-
Basic provision:
Where any sum is found **credited** in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so **credited** consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
(b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (*23FB*) of section 10.

Conditions to be satisfied for applicability of section 68:

1. Assessee has maintained 'books'.
2. There has to be credit of amounts in the books maintained by the taxpayer of a sum during the year:
3. The taxpayer offers no explanation about the nature and source of such credit found in the books or the explanation offered by the taxpayer in the opinion of the Assessing Officer is not satisfactory.
4. If the taxpayer is a closely held company (Private Company) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such company shall be deemed to be not satisfactory, unless:
   a. the person, being a resident in whose name such credit is recorded in the books of such company, also offers an explanation about the nature and source of such sum so credited; and
   b. such explanation in the opinion of the Assessing Officer has been found to be satisfactory.

If all the above conditions exist, sum so credited may be charged to tax as income of the taxpayer of that year.

Apart from the provisions relating to taxing of cash credit given under section 68, similar provisions are designed under section 69, 69A, 69B, 69C and 69D in respect of certain other items. The provisions in this regard are as follows:

Section 69: Unexplained investments-

1. Applicable to all assessee (Tax payers) who is liable to pay tax under Income Tax Act i.e., even individuals, HUF, Partnership firm etc. are covered;
2. Covers Investments which are not recorded in books unlike section 68;
3. Tax payer offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory

Then, the value of the investments may be deemed to be the income of the taxpayer of such year.

Section 69A: Unexplained Money, etc.-

1. Applicable to all assessee (Tax payers) who is liable to pay tax under Income taxi.e.t i.e., even individuals, HUF, Partnership firm etc. are covered;
2. Tax payer is found to be the owner of any money, bullion, jewellery or other valuable article and such money which recorded or not recorded in the books;
3. Tax payer offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;

Then, the value of the any money, bullion, jewellery or other valuable article and such money may be deemed to be the income of the taxpayer of such year.

Section 69B: Amount of investments, etc., not fully disclosed in books of Account-

1. Section 69 (Unexplained investments) and Section 69A (Unexplained Money, etc.-) disclosed par ally in the books and no explanation is provided about the nature and source of such money invested or owner of any money, bullion, jewellery or other valuable article or if Assessing Officer not satisfactory,

Then, the excess amount may be deemed to be the income of the taxpayer for such year.

Section 69C: Unexplained expenditure-

1. Where in any year the taxpayer has incurred any expenditure.
2. Taxpayer has no explanation on the source of such expenses or part thereon or if Assessing Officer not satisfactory with the explanation provided by the taxpayer,

Then, the whole expense or excess amount of expenditure may be deemed to be the income of the taxpayer for such year and shall not be allowed as a deduction under any head of income.

Section 69D: Amount borrowed or repaid on hundi-

The taxpayer has borrowed amount from hundi or the repayment of such borrowed sum should be in way of account payee bank and drawn on a bank and not in any other modes. In case, if the borrowed amount or repayment is apart from account payee cheque then such sum will be deemed to be income along with interest in the hands of the receiver of money.

However, it should be noted that if any amount borrowed on a hundi has been treated as income of any person by virtue of section 69D, then such person shall not be liable to be assessed again in respect of the same amount on repayment thereof.

Tax rates applicable to amount charged to tax by virtue of sections 68, 69, 69A, 69B, 69C and 69D:

Section 115BBE: Income tax shall be calculated at 60% where the total income of assesse includes following income:

a) Income referred to in Section 68, Section 69, Section 69A, Section 69B, Section 69C or Section 69D and reflected in the return of income furnished under Section 139; or
b) Which is determined by the Assessing Officer and includes any income referred to in Section 68, Section 69, Section 69A, Section 69B, Section 69C or Section 69D, if such income is not covered under clause (a).

Such tax rate of 60% will be further increased by 25% surcharge, 6% penalty, i.e., the final tax rate comes out to be 83.25% (including cess). Provided that such 6% penalty shall not be levied when the income under Section 68, 69, etc., has been included in return of income and tax has been paid on or before the end of relevant previous year.

No deduction in respect of any expenditure or allowance [or set off of any loss] shall be allowed to the assessee in computing his income referred to in clause (a) of sub-section (1) of Section 115BBE.

- Deepika N P

Update 23 | June12, 2018
Section 271F and 234F

Section 234F and a proviso in section 271F was added via finance act, 2017, the interpretation of which is explained as below.

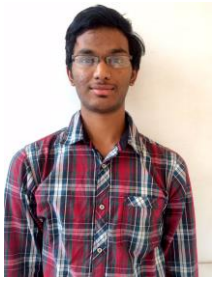
Period of return	Section That prevails	Return u/s 139 filed	Proviso
Returns filed for assessment years 2017 18 or before	271F	After end of relevant Assessment year	It is left to **discretion** of Assessing officer to impose penalty of Rs 5000
Returns to be filed for assessment year 2018 - 19 and onwards	234F	after the due date u/s 139(1) & before end of 31Decemberber of relevant AY	Compulsory fee of Rs **5,000/-**
		after 31st December of relevant AY	Compulsory fee of Rs **10,000/-**

Notes-

1) U/s section 234F - if the total income of the person **does not exceed five lakh rupees,** the fee payable under this section shall **not**
Exceed one thousand rupees.

2) The fee u/s 234F is **applicable** even when the return **assessed with refund** is filed after due date u/s 139(1).

3) The fee payable under section 234F would also be considered in the computation of **amount payable or refund due**, as the case
may be, on account of processing of the return u/s 143(1).



- Prajwal Tallam

Update 24 | June 13, 2018
Section 270 A | Penalty For under reporting and misreporting of Income

Section 270A of the Income Tax Act, 1961 – Penalty for under reporting and misreporting of Income.
The Provisions of section 270A where the Income is Assessed normally i.e. other than those under MAT/AMT provisions has been discussed in this Update.

Introductory Paragraph
The Finance Act, 2016 has inserted section 270A in the Income-tax Act, 1961 with a view to substitute the provisions of section 271(1)(c) dealing with levy of penalty for concealment of income or furnishing of inaccurate particulars. Section 270A will apply to cases pertaining to AY 2017-18 onwards and provisions of section 271(1)(c) will be applicable to cases up to AY 2016-17.

The Provisions of section 271(1)(c) dealt with levy of penalty for concealment of income or furnishing of inaccurate particulars and the penalty was 100 % to 300 % of the tax sought to be evaded. Levying penalty under section 271(1)(c) was left to the discretion of the Assessing Officer.

The Discretion regarding quantum of penalty left a scope for corruption. The scope of such provisions was always a subject matter of litigation since the tax authorities always levied the penalty whenever there was an addition or disallowance made by the Assessing Officer, may be because of pressure of higher authorities even in case where there was no prima facie case against the tax payer.

In this regard, Section 270A was inserted which **Instances of an assessee been considered to have under reported his Income.**

a) Income Assessed is greater than the **maximum amount not chargeable to tax**, where the return of Income is not furnished.

Income reassessed is greater than the income imposed **fixed %** of the amount of penalty. This is similar to the situation where section 234F was brought in for section 271F in order to remove the discretion of the Assessing Officer for levying penalty for not Furnishing the return of Income on time.

b) assessed or reassessed immediately before such reassessment.
c) Income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

Quantum of Under Reported Income

Sl No	Situations	Amount of Under Reported Income
01	The Return of Income has been furnished and the Income has been assessed for the first time.	The **difference** between the amount of **Income Assessed** and the **Income** determined **U/s 143(1)(a).** Eg. Income U/s 143(1)(a) – Rs. 6,00,000/- Income Assessed – Rs. 9,00,000/- **Under Reported Income – Rs.3,00,000/-**
02	The Return of Income has not been furnished and the Income has been assessed for the first time.	The **difference** between the amount of **Income Assessed** and **the maximum amount not chargeable to tax**. Eg. Income Assessed – Rs.8,00,000/- **Under Reported Income – Rs.5,50,000/-** [8L – 2.5L]

03	The Income has not been assessed for the first time.	The **difference** between the Amount of **Income reassessed or recomputed** and the amount of **Income assessed, reassessed or recomputed** in a preceding order.

Calculation of Tax Payable w.r.t Under Reported Income for the purpose of determination of penalty amount.

Sl No	Situations	Amount of Tax Payable on Under Reported Income
01	The Return of Income has not been furnished and the Income has been assessed for the first Time	Tax is Computed on [Under Reported Income + Basic Exemption Limit] Eg. Income Assessed – Rs.8,00,000/- for AY 2017-18. Under Reported Income – Rs.5,50,000/- [8L – 2.5L] Tax payable to be computed on Under Reported Income + Basic Exemption Limit. i.e. Rs.5.5L + Rs2.5L = Rs.8L. Tax Amount = Rs.85,000/- [Rs.25,000+Rs.60,000] [Nil to 2.5L = Nil] [2.5L to 5L @ 10% = 25,000] [5L to 8L @ 20%= 60,000]
02	The Total Income determined is a loss.	Tax is computed on Under Reported Income as if it were the total Income of the Assessee. Income U/s 143(1)(a) – Rs.5,00,000/-[Loss] Income Assessed – Rs.15,00,000/- [Loss] Under Reported Income – Rs.10,00,000/- Tax payable to be computed on Rs.10,00,000/- Tax Amount = Rs.1,25,000/- [Rs.25,000+Rs.1,00,000] [Nil to 2.5L = Nil] [2.5L to 5L @ 10% = 25,000] [5L to 10L @ 20%= 1,00,000]

Penalty Levied for Under Reporting of Income

The Amount of penalty shall be a sum equal to **50 % of the amount of tax payable on under-reported income**.

Misreporting of Income

The Cases of Misreporting of Income includes the following –

(a) Misrepresentation or suppression of facts;
(b) Failure to record investments in the books of account;
(c) Claim of expenditure not substantiated by any evidence;
(d) Recording of any false entry in the books of account;
(e) Failure to record any receipt in books of account having a bearing on total income;
(f) Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

Penalty Levied for Misreporting of Income

The Amount of penalty shall be a sum equal to **200 % of the amount of tax payable on under-reported income** in case the under – reported income is in consequence of Misreporting by the assessee.

Negative List

The Under Reported Income does not include the following –

a) Where the assessee offers an explanation and the Officer in charge is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts.
b) Where the amount of under-reported income determined on the basis of an estimate and the accounts are correct and complete to the satisfaction of the Officer in charge, but the method employed is such that the income cannot properly be deduced therefrom.
c) Where assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance.
d) Where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction.
e) The amount of undisclosed income referred to in section 271AAB.

Practical Insights

1) M/s ABC Pvt Ltd filed its return of Income for the AY 2017-18 within the statutory due date; declaring a total loss of Rs.36,17,559/-. However the case was picked up for scrutiny and the assessing officer disallowed an amount of Rs.89,14,750/- . The Assessment Order was passed and Notice of demand for **Rs.21,76,986/-** was served duly.

Particulars	Amount (in Rs)
a)Total Income as per return of Income	(-) 36,17,559
b)Add: Disallowance	89,14,750
c)Assessed Income	52,97,191
d)Tax Thereon	15,89,157
e)Add: Cess @ 3%	4,76,747
f)Total Tax Payable	16,36,832
g)Add: Interest u/s 234B	5,40,154
h)Balance Payable	21,76,986

In the above case, Penalty u/s 270A would be calculated as follows:

Particulars	Amount (in Rs)
a) Income U/s 143(1)(a)	(-) 36,17,559
b) Income Assessed	52,97,191
c) Under Reported Income (b-a)	89,14,750
d) Tax Computed on above (Under Reported Income considered as Total Income of the assessee)	**Rs.27,54,660/-** (Taxed @ 30% + Cess) Here, it is assumed that the Gross Turnover of the company for the AY 2015-16 is more than Rs.5 Crore.

e) Penalty to be levied for Under Reporting of Income @ 50% of the Tax Payable on Under Reported Income.	**Rs.13,77,330/-** (50% of Rs.27,54,660)
f) Penalty to be levied for Misreporting of Income @ 200% of the Tax Payable on Under Reported Income.	**Rs.55,09,320/-** (200% of Rs.27,54,660)

- Nagaraj Hebbar BR

Update 25 | June 14, 2018
Gist of Presumptive taxation Scheme (Sec. 44AD and Sec. 44ADA)

Meaning of Presumptive taxation Scheme

Sec 44AA of the Income-tax Act provides condition to maintain regular books of account to the person, engaged in business or profession. In order to give relief to small taxpayers from this tedious work, the new scheme called presumptive taxation is introduced under sections 44AD, 44ADA and 44AE.

Sec 44AD

The presumptive taxation scheme of section 44AD **can be adopted** by following persons:

1) Resident Individual
2) Resident Hindu Undivided Family
3) Resident Partnership Firm
4) A person whose total turnover or gross receipts for the year should be less than or equal to Rs. 2 crores

The presumptive taxation scheme of section 44AD **cannot be adopted** by following persons

1) Non residents
2) any person other than an individual, a HUF or a partnership firm (LLP is also excluded
3) To the person who has made any claim towards deductions under section 10A/10AA/10B/10BA or under sections 80HH to 80RRB
4) Business of plying, hiring or leasing of goods carriages referred to in section 44AE
5) A person who is carrying on any agency business.
6) A person who is earning income in the nature of commission or brokerage
7) An insurance agent cannot adopt the presumptive taxation scheme of section 44AD
8) A person engaged in a profession as prescribed under section 44AA(1) cannot adopt the presumptive taxation scheme of section 44AD.
9) A person whose total turnover or gross receipts for the year exceed Rs. 2 crores.

The manner of computation:

At the rate of 8% of the turnover or gross receipts of the eligible business for the year.

The rate of 8% should be replaced by 6% if the turnover/gross receipt is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date of filing of return under section 139(1) in order to promote digital transactions. In other words, the presumptive tax rate is 6% if turnover/ gross receipt is received by other than cash and bearer cheque.

The Assessee can declare the income both at the rate of 8% and 6% as the case may be for the same previous year.

Example: Turnover is 30 lakhs received through bank and 20 lakh in cash during the previous year.

Then the presumptive Income U/s 44AD is (30 lakh * 6%) + (20 lakh * 8%)= 3.4 lakhs.

Merits for opting 44AD:

- No need to maintain books of account as prescribed under section 44AA
- The presumptive income computed as per the prescribed rate on the final income and no further expenses will be allowed or disallowed
- The Assessee is liable to pay whole amount of advance tax on or before 15th March of the previous year.

Demerits of opting 44AD

- If a Assessee opts for presumptive taxation scheme then he is require to follow the same scheme for next 5 years. If he failed to do so, then presumptive taxation scheme will not be available for him for next 5 years.
    i. Example: If an assessee opts for presumptive scheme under Section 44AD for AY 2018-19. For AY 2019-20 and 2020-21 he continue to offers the income under presumptive taxation scheme. However, for AY 2021-22, he did not opt for presumptive taxation Scheme. In this case, he will not be eligible to claim benefit of presumptive taxation scheme for next five AYs, i.e. from AY 2022-23 to 2026-27.
- Assessee cannot declare the amount less than 8% or 6% as the case may be. If the declares less than the rate stated supra, then the assessee should get his books audited under sec. 44AB.
- All deductions are deemed to have been allowed under Sec 30 to 38. Depreciation shall be deemed to have been allowed. In case of firm, the salary and interest to the partners are deemed to have been allowed.

Sec. 44ADA

- This section is applicable to residents specified professionals covered U/s 44AA(1) and having total gross receipts not exceeding Rs. 50 lakhs in the previous year.
- Income to be offered = 50% of total gross receipts or such higher sum claimed to have been earned by the assessee, as the case may be. (In other words minimum 50%)
- All the deductions shall be deemed to have been allowed.
- If the assessee claims lower income than prescribed U/s 44ADA and the income exceeds the basic exemption limit, then such assessee shall be require to maintain books the books of account U/s 44AA and get such books of account audited U/s 44AB.
- The Assessee is liable to pay whole amount of advance tax on or before 15th March of the previous year U/s 44ADA

- Kiran M G

Update 26|June 15, 2018

Deductions from House property Income & Set off & Carry Forward of House Property Loss

Section 24(a) of the Income Tax Act provides a deduction of a sum equal to 30% of the net annual value, which is derived by deducting municipal from the Gross Annual Value of the house property.

Section 24(b) of the Income Tax Act provides deduction on interest payable on the housing loan.

Conditions to be fulfilled in order to claim upto Rs.2,00,000/- interest u/s 24(b) for self-occupied property or else the interest to be claimed would be restricted to Rs.30,000/-

a) Loan has been taken after 1st April 1999 for purchase or construction.
b) The acquisition or construction is completed within 5 years (3 Years till Financial Year 2015-16) from the end of the financial year in which the loan was taken.
c) There is interest certificate available for the interest payable on the loan.

Computation of Income from House Property

Particulars	Type of House Property	
	Self-occupied	**Let Out**
Gross annual Value	Nil	XXX
Less: Municipal Taxes or Taxes paid to local authorities	NA	XXX
Net Annual Value(NAV)	Nil	XXX
Less: Standard Deduction	NA	30% of NAV
Less: Interest on Housing Loan	Restricted to Rs.2,00,000	No Limit
Income from House Property	XXX	XXX

Amendment to section 71 in Finance Act, 2017

Interest on housing loan can be claimed without any limit. However, The Finance Act, 2017 has inserted sub section 3A to section 71 stating that the Loss from House Property can be set off during the relevant year only to the extent of **Rs.2,00,000/-** with effect from **AY 2018-19**.

Practical Insights

Mr.A is a resident non-senior assessee having Salary Income of Rs.15L, rental income of Rs.6,00,000/- with housing loan interest of Rs.10,00,000/-, Income from other sources of Rs.5,00,000/-.LIC payment of Rs.1,50,000/-.Compute the total income and tax payable of the assessee for the AY 2017-18 and AY 2018-19.

Computation of Income from House Property

Particulars	Assessment Years	
	AY 2017-18	**AY 2018-19**
Gross annual Value	6,00,000	6,00,000
Less: Standard Deduction @	1,80,000	1,80,000

30%		
Net Annual Value(NAV)	**4,20,000**	**4,20,000**
Less: Interest on Loan	10,00,000	10,00,000
Loss from House Property	5,80,000	5,80,000
Total Income from House Property	**(-) 5,80,000**	**(-)2,00,000**
		Balance loss of Rs.3,80,000/- can be forward for the next 8AYs and can be setoff only against Income from House Property.

Computation of Total Income

Particulars	Assessment Years	
	AY 2017-18	**AY 2018-19**
Income from Salary	15,00,000	15,00,000
Income from House Property	(5,80,000)	(2,00,000)
Income from Other Sources	5,00,000	5,00,000
Gross Total Income	14,20,000	18,00,000
Deductions	1,50,000	1,50,000
Gross Total Income	12,70,000	16,50,000
Tax on above	2,06,000 (25,000+1,00,000+81,000)	3,07,500 (12,500+1,00,000+1,95,000)
Cess	6,180	9,225
Total Tax Payable	**2,12,180**	**3,16,725**

- Manoj Kulkarni

Update 27 | June 16, 2018
A curious Case of Parachute Oil

We all must have used Parachute coconut oil, isn't it? Have you ever seen anyone use it for cooking? Most of us know it is not used for cooking at all. But, if you notice a regular Parachute Oil package, you will know that no where it is mentioned as a hair oil either[i]. Interesting right?

Let's dive in further to figure out what the case law exactly is. Shall we?
Now, let's see what The Central Excise Duty has to say. Coconut oil being an edible product is not liable for excise duty. On the other hand, hair oil being a cosmetic product is liable for excise duty. Given this information, lets think for a minute, is Parachute oil edible or cosmetic?

Of course, we all know that it is used as a cosmetic product. So was the argument of the Government. Government set a plea that it should be eligible for excise duty as the intended use is for cosmetic purpose.

Marico, the company which produces Parachute oil, claimed that the product is not marketed or branded as a hair oil whatsoever[ii]. It also banked on its argument saying the company is neither responsible, nor accountable for how the consumers are using it.

The government further raised questions asking the company to explain why the product was packed in small sachets if it were an edible oil. Practically speaking, who uses cooking oil in small sachets? (When we think about it, the nozzle of Parachute oil is such that it drops out the oil. Imagine people trying to get the oil out for cooking)

And guess what the Government's epic move was? The Government desperately wanted to prove that it is intended to be sold as hair oil. But it lacked proof.
I mean, what could it do? What would you have done when odds were stacked against you?

The Government came up with a simple idea.
Tada!!! It changed the law! As simple as that! Honestly, what else could it do?
The government changed the law saying, all the coconut oil packed less than 200ml shall be treated as cosmetic product and not an edible oil. However, it did not stay for a long time. The circular affected the company's products by a huge chunk, as most of its products were packed in small sachets and bottles.

The company decided to appeal against the circular to higher authorities. Lot of cases in the tribunal and courts observed that merely because the package is smaller, it is not fair to classify it as a hair oil. The government had to then withdrew the baseless circular.
The company played a neat trick to fool the Government in evading excise duty by covering its tracks brilliantly and carefully. Interesting! Isn't it? It is also an excellent case law to explain the accounting principle, "Substance Over Form".

- Sri Ganesh N R

Update 28 | June 17, 2018
An insight on Section 269ST

As per Section 269ST, any person who enters into a transaction of Rs 2 Lakh or above in cash, will be liable to a penalty of an amount equivalent to the amount of transaction.
No person shall receive an amount of two lakh rupees or more—

(*a*) In aggregate from a person in a day; or
(*b*) In respect of a single transaction; or
(*c*) In respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:
Provided that the provisions of this section shall not apply to—

(*i*) any receipt by—
  (*a*) Government;
  (*b*) any banking company, post office savings bank or co-operative bank;
(*ii*) transactions of the nature referred to in section 269SS;
(*iii*) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify

Example: In aggregate from a person, in a single day.

CUSTOMER	**A**	**B**	**C**	**D**
Bill 1 **Bill 2** **Bill 3**	2,50,000/- - -	50,000/- 1,50,000/- -	1,90,000/- 5,000/- -	1,00,000/- 25,000/- 85,000/-
TOTAL	**2,50,000.00**	**2,00,000.00**	**1,95,000.00**	**2,10,000.00**
PENALTY	**Yes**	**Yes**	**No**	**Yes**
PENALTY AMT	**2,50,000.00**	**2,00,000.00**	**Nil**	**2,10,000.00**

Penalty u/s 271DA will be imposed on a person who receives a sum of Rs 2 Lakh and above in cash. The extent of penalty will be a **sum equal to the amount of such receipt**.
The said penalty shall however not be levied if the person proves that there were good and sufficient reasons for such contravention.

- Sumukha K A

Update 29 | June 18, 2018

An insight in to International Commercial Terms(Incoterms).

In case of Sales,purchases,imports and exports there may be Agreement between seller and buyer or exporter and importer that who is responsible for goods during transit,who will liable to bear transportation and insurance charges etc.,
The words again have incomplete meaning especially in case of exports and imports, it will be difficult to segregate to which extent, Seller must incur transportation and other expenses and from where, buyer is responsible. Here comes need to have International commercial terms in between.

A brief explanation of incoterms is given below.
Meaning -
These terms are defined by the International Chamber of Commerce, which are known as `**Incoterms**. The **purpose of Incoterms** is to provide common interpretation for the different trade terms used in international trade.
Why Incoterms are used?
The use of **Incoterms** eliminates inconsistencies in language by giving all parties the same definition of specific terms within a trade agreement. As a result, the risk of problems during shipment is reduced since all parties clearly understand their responsibilities in performing trade under the given contract.
List of incoterms
CIP-Carriage and Insurance Paid
FCA- Free Carrier
EXW-Ex Works
DAT-Delivered At Terminal etc.,

- Rakesh K

Update 30 | June 19, 2018

Introduction of new section 194-IB of Income Tax Act,1961

This new section came into effect from 1st day of June 2017.

1. This section is applicable for Individuals and HUF (other than those covered under Section 44AB) who pay rent to a resident exceeding Rs 50,000/- per month or part of the month, TDS at the rate of 5% is to be deducted on the total rent amount paid.
2. TDS is to be deducted during the tenancy period only in the last month of the financial year or last month of the tenancy or at the time of payment of such rent, whichever is earlier

   Example

   Suppose a person pays rent of 1,00,000 per month to a landlord.

   194-IB is applicable as it is exceeding the ceiling limit.

   Annually=1,00,000*12=12,00,000

   TDS = 12,00,000*5%=60,000

   Rent paid in the last month will be 1,00,000-60,000=40,000

   (Rent paid in all other months will be 1,00,000)
3. Also PAN of the landlord is required to be furnished while making the payment of the said tax. If the PAN is not furnished to the tenant , then TDS at the rate of 20% will be deducted. Such higher TDS deducted cannot exceed the amount of rent paid in the last month.
4. Deductor is not required to file the TDS returns and also not required to obtain the Tax deduction Number (TAN).

Non Applicability

194-IB is not applicable to those rent which are covered under section 194-I.

Difference between Section 194-I and Section 194-IB.

Sl. No	SECTION 194-I	SECTION 194-IB
1	It is applicable for those business who in last year liable to tax audit Example Company/Proprietorship/Partnership having turnover > 2 cr in 2016-17	It is applicable in all other cases like Small Business not liable to tax audit Personal Rent of House for Salaried Individual
2	TDS Rate is 10%	TDS Rate is 5%

3	Cut off is 180000 Per annum	Cut off is 50000 Per Month
4	TDS is to be deducted Monthly	TDS is to be deducted Annually in last month (March) or last month of Rent Agreement.
5	TAN No. Required to Deduct TDS	No Tan No. Required, Simple Pan No. Sufficient

- Karthik Kumar P

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