

# **BUDGET 2018**

## **ANALYSIS OF DIRECT TAX PROPOSALS**

**K.VAITHEESWARAN**  
**ADVOCATE & TAX CONSULTANT**

***Mobile: 98400-96876***

**E-mail: vaithilegal@gmail.com, vaithilegal@yahoo.co.in**  
**www.vaithilegal.com**

**‘VENKATAGIRI’**  
**Flat No.8/3 & 8/4, Ground Floor,**  
**No.8 (Old No.9), Sivaprakasam Street,**  
**T. Nagar, Chennai - 600 017, India**  
**Tel.: 044 + 2433 1029 / 4048**

**402, Front Wing,**  
**House of Lords,**  
**15/16, St. Marks Road,**  
**Bangalore – 560 001, India**  
**Tel : 080 22244854/ 41120804**

# RATE OF TAX

- No change in tax slabs
  - *Big disappointment since a substantial increase was expected*
  - *No major relief through Chapter VIA deductions*
  - *Does the Finance Minister has any other choice given the pressure to keep fiscal and revenue deficit under control?*
- Domestic companies - where its total turnover or the gross receipt in the previous year 2016-2017 does not exceed Rs. 250 crores, tax rate is 25%
  - *Likely to have multiple spin offs for a number of Companies*
  - *Funds available on account of reduction could be re-invested*
  - *Competition amongst countries to cut direct tax rates*
- Financial Year 2018-19 – Additional surcharge called the 'health and education cess' on income tax at the rate of 4% on the amount of tax computed, inclusive of surcharge

# SALARIED SECTOR

- Standard deduction of Rs. 40,000 or the amount of salary introduced with effect from 01.04.2019 by amending Section 16
- As a consequence of this deduction,
  - Exclusion from perquisites the amount of actual expenditure incurred on medical treatment, subject to a limit of Rs. 15,000 is no longer available – deletion of clause (v) to proviso to Section 17(2)(viii)
  - Transport allowance deduction is no longer available – *No express provision in the Finance Bill, 2018 and possibly Rule 2BB of the IT Rules would be amended*

# SECTION 10

- New Section 10(6D) - income arising to a non-resident not being a company or a foreign company by way of *royalty or FTS, rendered in or outside India to the National Technical Research Organisation*
- Section 10(12A) provides for an exclusion in respect of payment from the National Pension System Trust to an employee on closure on his account, subject to limits. *The term 'employee' is now substituted with the term 'assessee'*
- Section 10(48B) amended to provide that the benefit of tax exemption in respect of income from left over stock will be available even if the agreement or the arrangement is terminated in accordance with the terms mentioned therein.
  - Originally the exemption was not available if there is sale of stock when the agreement was terminated

# SENIOR CITIZENS

- Section 80D amended to raise the limit of deduction from Rs. 30,000 to Rs. 50,000
- Single premium health insurance covering more than 1 year, deduction on proportionate basis
- Section 80DDB – medical treatment of specified diseases – increased to Rs. 1 lakh for both senior and very senior citizens
- Section 80 TTB – reduction upto Rs. 10000 on interest income from deposits held by senior citizens. (no deduction under Section 80TTA which covers interest deduction on savings account)
- Amendment to Section 194A – Threshold for TDS for senior citizens increased from Rs. 10000 to Rs. 50000
  - *Most welcome amendment.*

# PRESUMPTIVE TAXATION

- Currently, the presumptive scheme is available to all assesses in the business of plying, hiring or leasing of goods carriage, irrespective of their tonnage capacity. Only condition is that they must have less than 10 goods carriage at anytime during the PY.
- Changes in the scheme
- Profits and Gains shall be Rs. 1000 per ton of gross vehicle weight or unladen weight for every month or part thereof during which the vehicle is owned by the assessee in the PY or amount actually earned, whichever is higher. This is applicable for HGV that is more than 12MT.
- Other than HGV, Rs. 7,500 for every month or part of the month or part thereof during which the vehicle is owned by the assessee in the PY or amount actually earned, whichever is higher
- The expressions “goods carriage”, “gross vehicle weight” and “unladen weight” shall have the respective meanings assigned to them in section 2 of the Motor Vehicles Act, 1988

# CHARITABLE INSTITUTIONS & INSTITUTIONS CLAIMING SECTION 10(23C)

- Section 40a(ia); Section 40A(3) and Section 40A(3A) shall apply *mutatis mutandis* to institutions claiming benefits under Section 11 and Section 12
- Certain entities claiming the benefit of Section 10(23C) will now have to comply with Section 40(a)(ia) as well as 40A(3) and Section 40A(3A)
  - *This is to discourage cash payments beyond the limits prescribed*
  - *Introduce disallowance to the extent of 30% of the sum payable for failure to deduct tax at source*

# DIVIDEND DISTRIBUTION TAX

- Section 2(22)(e)
- Deemed dividend taxed in the hands of the recipient
- Deemed dividend brought within the scope of DDT under Section 115O by deleting the explanation occurring after Section 115Q.
- **Proposed to be taxed at the rate of 30%**
- Further, explanation 2A introduced to Section 2(22) to widen the scope of 'accumulated profits' whereby in the case of an amalgamated company, accumulated profits whether capitalized or not or losses as the case may be shall be increased by the accumulated profits whether capitalized or not of the amalgamating company on the date of amalgamation
  - Tribunal decision in *Gautham Sarabhai* nullified
  - What happens to the accumulated profits if the same transaction involves a demerger apart from a merger?
  - What happens if there are accumulated losses?
  - What happens if the accumulated profits have already been accounted under the 'pooling of interest method'?
- Section 115R amended to provide for DDT of 10% on the income distributed to any person by an equity oriented fund



# COMPENSATION

- Section 2(24) amended to include any compensation or other payment referred to in Section 56(2)(xi).
- Section 56(2)(xi) inserted to cover any compensation or other payment, due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto.
  - Decisions of Delhi High Court in *Pritam Das Narang* and *Ravindra Bahl* nullified
- Section 28(ii)(e) inserted to cover any person, by whatever name called, at or in connection with the termination or the modification of the terms and conditions of any contract relating to his business.
  - A number of decisions holding nature of receipt as capital where there is a loss of an income generating asset is nullified
  - The Government considers existing Section 28(ii) dealing with taxation of compensation as restrictive and not covering compensation in connection with business and employment.
  - If it is employment it will be taxed under Section 56

# CONVERSION OF STOCK IN TRADE TO CAPITAL ASSET

- Section 28 amended to include the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner
  - Decisions of the Bombay High Court in *Yatish Trading* and Delhi High Court in *Express Securities* nullified
- Definition of income under Section 2(24) amended to include FMV of inventory referred to in Section 28(via)
- Section 49 amended to provide that for the purposes of computation of capital gains arising on transfer of such capital assets, the fair market value on the date of conversion shall be the cost of acquisition;
- Period of holding such capital asset to be calculated from the date of conversion or treatment – Amendment to Section 2(42A)
  - What happens if the inventory which is converted as capital asset is used for the purpose of business?
  - What would be the actual cost if depreciation is eligible?

# LTCG – EQUITY SHARES, UNITS OF EQF – UNITS OF BUSINESS TRUST

- The benefit of Section 10(38) is not applicable to any income arising from transfer of long term capital asset being an equity share in a Company or a unit of an equity oriented fund or a unit of a business trust made on or after 01.04.2018
- Section 112A(2) provides for 10% tax on LTCG exceeding Rs. 1 lakh
- Amount of tax payable on the balance amount of total income would be as if the balance income were the total income
- No indexation
- Cost shall be actual cost or lower of the FMV of the asset and the full value of consideration as a result of the transfer of the asset
- FMV in respect of listed securities would be the highest price quoted on the exchange on 31.01.2018
- If not listed, FMV shall be the net value of such asset on 31.01.2018

# LTCG – EQUITY SHARES, UNITS OF EQF – UNITS OF BUSINESS TRUST

- Continuation of STT along with this levy
  - Either STT should have been abolished along with tax on LTCG or STT could have been increased instead of taxing LTCG
  - Assuming, the cost of the share is Rs. 1000 and FMV as on 31.01.2018 is Rs. 1100 and the shares are sold at Rs. 2000, the cost of acquisition would be taken as Rs. 1100 (without indexation)
  - Assuming, the cost of share is Rs. 1000 and the FMV as on 31.01.2018 is Rs. 900 and the shares are sold at Rs. 700, cost of acquisition would be taken as Rs. 1000
  - *Whether all transactions of gains and losses will have to be netted to determine the Rs. 1 lakh limit?*
  - *Whether Rs. 1 lakh operates as a threshold or a trigger point?*

# SECTION 50C

- Proviso inserted w.e.f. 01.04.2019
- Where the value adopted or assessed or assessable by the stamp valuation authority does not exceed consideration received or accruing as a result of the transfer by more than 5%, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.
- Similar amendments to Section 43CA and Section 56
- *The bandwidth of 5% is on the lesser side but a welcome step*

# SECTION 54EC

- Scope of Section 54EC is restricted to transfer of long term capital asset being land or building or both.
- Accordingly, where the assessee has invested the whole or part of capital gains arising therefrom within a period of 6 months after the date of such transfer in long terms specified asset the capital gain shall be dealt with as follows
  - if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;
  - if the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the long-term specified asset bears to the whole of the capital gain, shall not be charged under section 45.
- Long term specified asset for making any investment under this section,—
  - On or after the 01.04.2007 but before the 01.04.2018, means any bond, redeemable after 3 years and issued on or after the 01.04.2007 but before the 01.04.2018;
  - on or after the 01.04.2018, means any bond, **redeemable after 5 years** and issued on or after the 01.04.2018,  
by the NHAI or Rural Electrification Corporation Limited or any other bond notified.

# IFSC

- Section 47 of the Income Tax Act, 1961 deals with transactions not regarded as 'transfer'. Clause (viiab) is proposed to be inserted w.e.f. 01.04.2019 accordingly, any transfer of a capital asset, being—
  - bond or Global Depository Receipt referred to in Section 115AC(1); or
  - rupee denominated bond of an Indian company; or
  - derivative,
- Made by a non-resident on a recognised stock exchange located in any **International Financial Services Centre** and where the consideration for such transaction is paid or payable in foreign currency shall not be regarded as transfer

# BUSINESS CONNECTION

- Provisions of domestic law prevail over provisions of the DTAA by virtue of Section 90(2). Scope of Business Connection under Section 9 proposed to be widened to align them with DTAA and make provisions of the treaty effective
- Treaties will be amended soon to reflect various agreements in the context of BEPS
- Business Connection to include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident . It is further proposed that the contracts should be-
  - in the name of the non-resident; or
  - for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use; or
  - for the provision of services by that non-resident
- Scope of source based taxation widened
  - *When a business connection creates a taxable presence in India, whether it can be considered as creating a fixed establishment for the purpose of GST?*



# SIGNIFICANT ECONOMIC PRESENCE

- Explanation 2A is proposed to be inserted to Section 9(1) to clarify that the significant economic presence of a non-resident in India shall constitute “business connection” in India
- “significant economic presence” for this purpose, shall mean—
  - transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
  - systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means:
- Transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India:
- Only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.
- Widening of ‘business connection’
  - Whether taxable presence through these provisions can trigger GST registration?
  - What would be the impact on OIDAR services?
  - Is the transaction an import of service attracting RCM under GST or GST is payable on forward charge by the foreign company having business connection in India?

# START UPS

- Section 80-IAC proposed to be amended to provide the better benefits to start-ups in India.
- Deduction available to start-ups incorporated on or after 01.04.2016 but before 31.03.2021 (earlier this was 31.03.2019)
- The total turnover should not exceed Rs. 25 crores in any of the seven previous years commencing from the date of incorporation
- The definition of eligible business has been expanded to provide that the benefit would be available if it is engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation

# ICDS

- The Delhi High Court in the case of ***Chamber of Tax Consultants Vs. UoI*** struck down various ICDS standards as ultra vires.
- The provisions of the ICDS is sought to be given life once again through amendments to the statute.

# ICDS

Marked to Market Losses	Section 36(1)(xviii) provides that only those computed in accordance with ICDS notified under Section 145(2) shall be allowed. Amendment also to Section 40A(13)
Foreign currency gains or losses	Section 43AA provides that gain or loss arising out of any change in foreign exchange rates shall be treated as income or loss. <i>Scope further expanded to cover foreign currency translation reserves even though ICDS VI does not cover this item</i>
Construction Contracts	Section 43CB – Profits and gains arising from construction contracts to be determined in accordance with ICDS under Section 145(2)
Export Incentives	Section 145(2) facilitates taxation of export incentives as income in the previous year in which reasonable certainty of realisation is achieved
Valuation of Inventory	Valuation shall be in accordance with ICDS as notified under Section 145(2)

# ICDS

- ICDS has nullified a number of settled judicial precedents
- ICDS was frowned upon by the Delhi High Court as the appropriate route is through legislative changes
- **Amendment in the nature of retrospective amendment effective from the AY 2017-18 onwards**
- Wherever returns have been filed without taking into account ICDS, based on the Delhi High Court judgement, revised returns?

# SECTION 80AC

- Deduction under Section 80-IA, Section 80-IAB, Section 80-IC, Section 80-ID and Section 80-IE available only if return is furnished on or before the due date.
- W.e.f. 01.04.2018, no deduction is admissible under any provision of this Chapter under the heading “C.—Deductions in respect of certain incomes” unless return of income is furnished by the due date
- *Section 80C to Section 80GGC fall within 'B' deductions and are not affected by this amendment*

# SECTION 80JJAA

- Section 80-JJAA provides for a deduction of 30% 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.
- The minimum period of employment is relaxed to 150 days in the case of manufacture of apparel
- This relaxation is now extended to manufacture of footwear and leather products
- Benefit allowed even 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.

# AMENDMENT TO 139A

- Every person not being an individual which enters into a financial transaction of an amount aggregating to Rs. 2.5 lakhs or more in the Financial year shall apply for PAN
- MD, Director, partner, trustee, author, founder, karta, CEO, principal officer or office bearer of the person referred to above or any person competent to act on behalf of the person referred to above shall also apply for PAN



# ASSESSMENT

- Prima facie adjustment of income under Section 143(1)(a)
- Proviso introduced to provide that no adjustment shall be made in respect of additional income appearing in Form 26AS or Form 16A or Form 16 which has not been included in the total income in the return
- Applicable to returns furnished on or after AY 01.04.2018
  - *Big relief since number of 143(1)(a) adjustments were on account of Form 26AS difference and lot of time was spent on reconciliation*
  - *Section 143(2) is however still available*
- New scheme for scrutiny assessment to be notified with the object of eliminating interface between assessing officer and the assessee—Section 143(3A)
- Under new Section 143(3B), Government can notify non-applicability or modified applicability of provisions of the Act for the assessments under Section 143(3A)

# INSOLVENCY AND BANKRUPTCY CODE RELATED AMENDMENTS

- Amendment to Section 115JB to provide that the aggregate amount of unabsorbed depreciation and loss brought forward (excluding unabsorbed depreciation) shall be allowed to be reduced from the book profit, if a company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority.
- Amendment to Section 79 to provide that this provision shall not be applicable to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
  - *This is because of the fact that change in voting power beyond the limit prescribed under Section 79 may take place in case of insolvency resolution under the Insolvency and Bankruptcy Code, 2016 and such companies should not suffer as a consequence.*
- Amendment to Section 140 of the Act so as to provide that during the resolution process under the Insolvency and Bankruptcy Code, 2016, the return shall be verified by an insolvency professional appointed by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.

**K.VAITHEESWARAN**  
**ADVOCATE & TAX CONSULTANT**

**Mobile: 98400-96876**

**E-mail: vaithilegal@gmail.com, vaithilegal@yahoo.co.in**

**www.vaithilegal.com**

**'VENKATAGIRI'**  
**Flat No.8/3 & 8/4, Ground Floor,**  
**No.8 (Old No.9), Sivaprakasam Street,**  
**T. Nagar, Chennai - 600 017, India**  
**Tel.: 044 + 2433 1029 / 4048**

**402, Front Wing,**  
**House of Lords,**  
**15/16, St. Marks Road,**  
**Bangalore – 560 001, India**  
**Tel : 080 22244854/ 41120804**