

UNION BUDGET 2017-2018

HIGHLIGHTS OF THE FINANCE BILL, 2017

The Honourable Finance Minister of India, Mr. Arun Jaitley, delivered the fourth Union Budget of NDA Government to fulfil the vision of our Prime Minister Mr. Narendra Modi which is path-breaking in many ways; some of which are advancement of the date of presentation, combining the railway budget with the general budget, eliminating the distinction of planned and non-planned expenditure, keep moving the space of drive against black money, consolidating the formal economy, managing fiscal prudence and at the same time balancing equity and growth to be in the forefront amongst the leading economies of the world.

Keeping in mind the Government's commitments; to reduce the fiscal deficit to 3% next year, to ensure increase public spending to boost demand, to spur economic growth and investments, and at the same time deal with unprecedented expectations from all quarters (post demonetization), the Finance Minister had to do tight rope walking this time which is evident from the fine print of the proposals.

The Finance Minister has chosen to create long term assets and not dole away goodies to win the short-term sentiment of people, and has done a fine balancing act this time, to maintain fiscal discipline and to target his efforts to take India to the next level in the global arena. This required the Finance Minister to raise revenues and at the same time tone up the environment of business, economy and to create a vibrant atmosphere for the people.

The Finance Minister has declared the Government's agenda for the forthcoming year "Transform, Energize and Clean India", that is, TEC India.

The Budget it appears seeks to do what it promises - TEC India, Using IT Technology to increase level of tax compliance and revenues in the country with less of botherations to tax payers, increased use of digital payment infrastructure, curbing of cash economy, cleaning up funding of political parties, and many more... laying solid foundations of the economy.

The Government moves with firmness (without much of noise) in bringing in tax gathering systems in line with practices in the developed world as is evident from maintaining silence on aspects like General Anti Avoidance Rule ('GAAR'), the Place of Effective Management ('POEM') test for corporate residency, the provisions of the Income Computation and Disclosure Standards ('ICDS') all of which remain in place, would come in to effect soon, despite calls for deferral or even an outright repeal.

There apart, he brought peace to a lot of people by not-bringing in inheritance tax which was talked about much in various circles and to overcome that the structure of family trusts was canvassed to effectively deal with and manage family wealth.

As an annual event, we once again make effort in this note to elucidate and analyze the major and important amendments proposed in the Direct Tax and Service Tax Laws, with their implications; and are sure that the same would be handy to you.

As of date, these are proposals only, and if adopted by the Parliament and passed as Finance Act; will come into force for and from Assessment Year 2018-2019 relevant to Financial Year 2017-18, unless specifically provided otherwise.

The key highlights of this Budget are that the focus is towards broadening the tax base by increased reliance on digitization, removing irritants, simplicity, rationalizing tax provisions so as to reduce litigation and, bring certainty and clarity to the taxpayers as regards the tax regime, rewarding honest and penalizing the errant, all of which we have discussed with the respective proposed amendments herein below.

As evident from the Finance Minister's lengthy Budget Speech, a significant number of changes have been proposed in the Finance Bill, therefore our presentation this time is a bit lengthy, which we request you to bear with us.

I. DIRECT TAXES

Amendments proposed under the Income-tax Act, 1961 (hereafter referred to as “the Act”).

A. Rates of Tax

1. Basic Exemption Limit, Income Slabs and Education Cess unaltered; Rates of Taxes reduced and Surcharge increased for Individuals, HUF’s, AOP’s and BOI’s:

Income thresholds, basic tax rates and Education Cess

The rates of **Education Cess** and **Higher Secondary Education Cess** (Education Cess and Higher Secondary Education Cess collectively referred to as ‘Education Cess’), as well as the Basic Exemption Limits and income slabs have been kept unaltered for all Assesseees other than Company.

However, the Finance Minister has proposed to grant relief by replacing the current Tax rate of 10% in the respective income slab by 5%.

The applicable Basic Exemption and Income Slabs as well as basic tax rates, are given in the below Table for your ready reference:

Assessee	Basic exemption and Income Slabs for Financial Year 2017-18	
	Total Income	Tax Rate
All Individuals, HUF, AOP and BOI (except those stated below)	upto Rs.2,50,000/-	Nil
	Rs.2,50,001/- to Rs.5,00,000/-	5% of income above Rs.2,50,001/-
	Rs.5,00,001/- to Rs.10,00,000/-	Rs.12,500/- plus 20% of income above Rs.5,00,001/-
	Above Rs.10,00,000/-	Rs.1,12,500/- plus 30% of income above Rs.10,00,001/-

<i>Individuals, being resident, and above 60 years upto the age of 80 years</i>	upto Rs.3,00,000/-	Nil
	Rs.3,00,001/- to Rs.5,00,000/-	5% of income above Rs.3,00,001/-
	Rs.5,00,001/- to Rs.10,00,000/-	Rs.10,000/- plus 20% of income above Rs.5,00,001/-
	Above Rs.10,00,000/-	Rs.1,10,000/- plus 30% of income above Rs.10,00,001/-
<i>Individuals, being resident, and age 80 years and above</i>	upto Rs.5,00,000/-	Nil
	Rs.5,00,001/- to Rs.10,00,000/-	20% of income above Rs.5,00,001/-
	Above Rs.10,00,000/-	Rs.1,00,000/- plus 30% of income above Rs.10,00,001/-

Additional Surcharge for Individuals, HUF's, AOP's and BOI's earning Total Income between Rs.50 Lakhs to Rs.1 Crore

The Finance Minister has proposed a **Surcharge @ 10% in case of Individuals, HUF's, AOP's and BOI's having Total Income in excess of Rupees Fifty lakhs but below Rupees One Crore**. However, marginal relief would be allowed to ensure that the additional tax and surcharge payable on excess of income over Rs.50 Lakhs is limited to the amount by which the income exceeds Rs.50 Lakhs.

Further, the rate of Surcharge for all other Assesseees (including of Individuals, HUF's, AOP's and BOI's having Total Income in excess of Rupees One Crore) is kept unaltered (with marginal relief as stated in the preceding paragraph).

2. Rate of Tax reduced for Domestic Small Company, Rates of Surcharge and Education Cess unaltered:

Keeping up to the promise in the last Budget, this time the Finance Minister has proposed to **reduce the Corporate Tax from present 29% to 25%** (plus Surcharge and Cess as applicable) for domestic companies having **turnover or gross receipts less than Rs.50 Crores** in the previous financial year i.e. Financial Year 2015-16 relevant to Assessment Year 2016-17.

However, there is no change in rate of Minimum Alternate Tax i.e. 18.5% (plus Surcharge and Cess as applicable).

B. Measures impacting Individuals, HUF's and Small Businesses

3. Rebate under Section 87A reduced:

Considering the rationalization in tax rates for individuals in the income slab of Rs.2,50,000 to Rs.5,00,000, the Finance Minister has proposed to amend Section 87A of the Act so as to reduce the maximum amount of Rebate available under this section from existing Rs.5,000/- to Rs.2,500/-; and the same would only be available to resident individuals having total income upto Rs.3,50,000.

4. Benefit of payment of Advance tax in single installment extended to Profession:

In the last Budget, the benefit of presumptive taxation regime was extended to professionals also. However, the corresponding consequential amendments in Section 234C and Section 211 of the Act allowing payment of Advance tax in single installment, as provided in case of an Assessee carrying on business u/s. 44AD of the Act, were omitted to be made then.

Therefore, to maintain parity now the Finance Minister has proposed to extend the benefit of payment of Advance Tax in single installment on or before 15th March of every financial year to Assesseees carrying on profession u/s.44ADA.

Consequential amendments are also proposed in Section 234C of the Act.

5. Rationalization of tax treatment of National Pension Scheme:

In order to attract increased investment in the National Pension Scheme ('NPS') and bring to parity in tax treatment between employees and self-employed individuals, the following changes are proposed by the Finance Minister:

- a) Increase in upper limit for claiming deduction from 10% to 20% of Gross Total Income of individual other than employee.

- b) Exemption of Partial withdrawal from NPS not exceeding 25% of the contribution made by an employee. *However, this exemption is not available to self-employed individuals.*

6. Deduction of Tax at Source by certain Individuals and HUF's on renting of immovable property:

In order to widen the scope of tax deduction at source, the Finance Minister has proposed to insert a new Section 194-IB in the Act to provide that Individuals or a HUF's (other than those covered under Tax Audit), paying monthly rent to a resident exceeding Rs. Fifty Thousand shall do TDS @ 5% thereon.

Further, it is also proposed that TDS shall be done from the rent payable for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be.

In order to reduce the compliance burden, it is further proposed that the Deductor shall not be required to obtain tax deduction account number (TAN) as per section 203A of the Act.

In case TDS is required to be done at higher rate as per Section 206AA of the Act then, the TDS shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

7. Increased Threshold limit for maintenance of books of accounts in case of Individuals and HUF's:

In order to reduce the compliance burden of Individuals and HUF's carrying on business or profession, the Finance Minister has proposed to increase the monetary limits of income from Rs. 1.20 Lakh to Rs. 2.50 Lakhs and total sales or turn over or gross receipts from Rs. 10 Lakhs to Rs. 25 Lakhs as specified in Section 44AA (2) of the Act, for maintenance of books of accounts.

As the amendment is proposed in Section 44AA (2) only, in our view the persons covered under Section 44AA(1) of the Act, may not be eligible to claim benefit of the threshold limits.

8. Reduction in the rate of deemed profit on presumptive basis for promoting digital payments:

With a view to promote digital transactions and to encourage small unorganized businesses to accept digital payments, the Finance Minister has proposed to reduce the existing rate of deemed total income from 8% to 6% in respect of the total turnover or gross receipts received through banking channel during the previous year or upto due date of filing return of income for that year.

Further, it is provided that the existing rate of deemed profit of 8% would continue to apply in respect of total turnover or gross receipts received in any other mode.

This may create challenge, if sale proceeds for a transaction are received partly in cash and balance through account payee cheque, in which case separate records may have to be maintained by Assessee due to different presumptive rates.

C. Compliance, Governance and Rationalization

9. Rationalization of provisions relating to Trusts for modifications of objects and filing of return of income:

To judiciously deal with the instances where trusts duly registered u/s.12AA of the Act, have modified their objects subsequent to obtaining the registration; the Finance Minister has provided a much needed clarity as to requirement of such trust to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner.

Thus, in cases where the objects of the trust are altered subsequent to originally obtaining registration under section 12AA of the Act or under section 12A of the Act, now they simply need to make an application to the Principal Commissioner of Income Tax having jurisdiction over the trust within 30 days of adoption of the changed objects for fresh registration approving the new set of objects, to continue to enjoy the status and benefits of a charitable trust.

There apart, the Finance Minister has also clarified that charitable trusts are required to furnish the return of income within the due date prescribed under section 139 of the Act, to continue to claim benefit of Section 11 of the Act.

10. Transparency in Electoral Funding:

Another major step towards fulfilling the Modi Government's 'Transform, energize and Clean India' ('TEC') Agenda for the coming year is to discourage the cash transactions and to bring transparency in the source of funding to political parties, wherein following additional conditions are required to be complied by all political parties for availing the exemption of Section 13A:

- (i) Donations of Rs.2,000/- or more to be received only by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds; and
- (ii) Political party to furnish return of income for the previous year under Section 139(4B) of the Act on or before the due date prescribed in Section 139 of the Act.

Further, in order to address the concern of anonymity of the donors, it is proposed to amend Section 13A to provide that the political parties shall not be required to furnish the name and address of the donors who contribute by way of electoral bond.

11. Restriction on Cash Transactions:

Another bold step towards NDA Government's TEC Agenda is curbing cash transactions to reduce generation and circulation of black money; by introduction of new Section 269ST which provides that no person shall receive an amount of Rs. Three Lakhs or more:

- a) in aggregate from a person in a day;
- 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 account payee bank draft or use of electronic clearing system through a bank account

Further, there are certain exceptions in which case the above restriction would not operate, which are provided for. In case there is violation of the above provision, then the receiver would be liable for penalty equal to the amount of such receipt under new Section 271DA.

Considering the above proposal, one may conclude to avoid any receipt of money otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, to avoid any penal consequences in this regard.

12. Tax neutrality on merger of different plans in a scheme of Mutual Funds:

In order to facilitate consolidation of different plans in a scheme of Mutual Fund, it is proposed to provide tax neutrality to unit holders upon consolidation or merger of mutual fund plans in a scheme of Mutual Fund.

13. Widening the scope of Tax Deduction at Source under Income from Other Sources:

To increase the compliance of provisions relating to tax deduction at source ('TDS'), it is proposed to amend section 58 of the Act so as to provide that provisions of section 40(a)(ia) of the Act shall, so far as they may be, apply in computing income chargeable under the head "Income from Other Sources" as they apply in computing income chargeable under the head "Profit and Gains of Business or Profession".

Thus, any expenditure claimed under the head Income from Other Sources would be allowable only on the compliance with the TDS provisions of Chapter XVII-B of the Act in respect thereof.

14. Rationalization of provisions for Carry Forward of Losses under section 79 of the Act for eligible start-up company:

In order to facilitate ease of doing business and to promote start-up Companies in India an amendment is proposed in section 79 of the Act, to provide that in respect of an eligible start-up Company as referred to in section 80 -IAC of the Act, loss incurred in any prior year shall be carried forward and set off against the income of the previous year, if following conditions are satisfied:

- (i) all the shareholders of such Company who held shares carrying voting power on the last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year; and

(ii) the loss has been incurred during the period of seven years beginning from the year in which such Company is incorporated.

Further, the above requirement shall not apply in specified cases set out in the Section 79.

This is a welcome move, whereby any change in shareholding of Start-ups due to capital infusions by new investors will not affect accumulated losses.

Also, it needs to be kept in mind that relaxation applies only to losses incurred during the period of seven years from the date of incorporation.

15. Deduction under section 80G of the Act :

In order to bring in transparency and move towards a less cash economy, the limit of deduction under section 80G of the Act for donation made in cash is proposed to be reduced from current Rupees Ten Thousand to Rupees Two Thousand.

16. Extending the period for claiming deduction by Start-ups:

Given that start-ups take time to derive profit out of their business, it is proposed to provide that deduction under section 80-IAC can be claimed by an eligible start-up for any three consecutive assessment years out of seven years (hitherto five years) beginning from the year in which such eligible start-up is incorporated.

17. Reporting on Specified Domestic transactions under section 92BA relaxed:

In order to reduce the compliance burden on the Assesseees, it is proposed that the transactions between two domestic related parties which are hitherto covered under the scope of Specified Domestic Transaction provisions would be excluded there from, provided none of the parties is claiming a profit-linked deduction.

Accordingly, it is also proposed to make a consequential amendment in section 40(A)(2)(b) of the Act.

(The above amendment would take effect from Assessment Year 2017-18.)

18. Rationalization of Provisions of Section 115JB in line with Indian Accounting Standard (Ind-AS) and provision relating to tax credit for Minimum Alternate Tax ('MAT') and Alternate Minimum Tax('AMT'):

The Finance Minister has proposed to amend section 115JB of the Act so as to provide the framework for computation of Book profit for Ind-AS compliant companies in the year of adoption and thereafter. The main features of this proposed framework are as under:

- Book profits for MAT to be computed in line with Ind-AS with effect from AY 2017-18 for companies to which Ind-AS applies.
- Starting point for computation of Book profit to be Net profit before Other Comprehensive Income ('OCI').
- Items in OCI not be reclassified to P&L for items such as Revaluation of Property, Plant, Equipment, Intangible assets, Financial Instruments etc. to be included in book profits at the time of disposal / retirement / transferred.
- On first time adoption, 'transition amount' to be included in book profit over a period of 5 years.
- In case of demerger, impact of fair value accounting under Ind-AS to be ignored.

19. Rationalization of Provisions relating to tax credit for Minimum Alternate Tax ('MAT') and Alternate Minimum Tax('AMT'):

The Finance Minister has proposed to allow MAT/AMT credit to be carried forward for 15 years (from the existing 10 years).

There apart, it is also proposed that Foreign Tax Credit ('FTC') in excess of MAT/ AMT is to be ignored for MAT/ AMT carry forward purposes.

20. Time-limit for filing of Revised return reduced:

As per the current provisions of section 139(5) of the Act, the Assessee can file the revised return within one year from the end of the relevant Assessment year or completion of assessment, whichever is earlier.

As per the proposed amendment the revised return would have to be filed by the end of the relevant assessment year or completion of assessment, whichever is earlier.

Thus, the revised return, if any, for Assessment year 2018-19 would have to be filed by 31st March, 2019 or the date of completion of assessment whichever is earlier.

21. Fee for delayed filing of Return of income:

The Finance Minister has proposed a Fee for delay in filing the return of income under section 234F of the Act. As per the provisions, in case where the return of income is filed beyond the dates specified under section 139(1) of the Act but within 31st December of the Assessment year, the fee would be Rupees Five thousand and in case the return is filed beyond 31st December, then the Fee is Rupees Ten Thousand.

However, if the return is delayed and the total income of the Assessee does not exceed Rupees Five Lakhs then the fee is restricted to Rupees One Thousand.

Further amendment is also made in section 140A of the Act wherein the Assessee would have to pay the Fee along with the Tax and interest due before filing the return of income.

22. Reduction in threshold limit of expenditure /payment made in cash for expenditure or for purchase of Asset:

In order to discourage cash transaction, and encourage Assesseees to use banking channels, the Finance Minister has proposed following amendments:

- Expenditure incurred on acquisition of asset (individual or aggregate) exceeding Rs. 10,000 per day shall be ignored for the purposes of computing the actual cost-thus no depreciation would be available on this;
- Investment-linked deduction provided under section 35AD of the Act in respect of the specified capital expenditure shall not be allowed shall not be allowed;

if the payment is made otherwise than by an account payee bank cheque/ draft or other than through electronic clearing system through a bank account.

23. Exclusion of certain specified person from requirement of audit of accounts under section 44AB:

In order to rectify the anomaly created in last Budget, in respect of the audit of accounts U/s 44AB of the Income Tax Act, in case of an eligible person who opts for presumptive taxation scheme as per section 44AD(1) of the Act, it is now proposed to insert a new proviso so as to provide that if a person declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed Rupees two crore in such previous year, he shall not be required to get his accounts audited under section 44AB of the Act.

In our Note on Budget Highlights-2016-17, we had pointed out this anomaly, which is now taken care of by the Finance Minister.

24. Special provisions for computation of capital gains in case of joint development agreement:

Hitherto, the execution of Joint Development Agreement ('JDA') between the owner of immovable property and the developer triggered the capital gains tax liability in the hands of the owner in the year in which the possession of immovable property is handed over to the developer for development of a project.

Therefore, with a view to minimize the hardship in the hands of individuals and HUF's on deemed transfer of immovable property in JDAs, the Finance Minister has proposed to defer the incidence of capital gains in such cases to the year in which the certificate of completion is issued for the whole or part of the project.

Further, it is also provided that the cash consideration, if any, received along with Stamp Duty value of the share in the project (land / building) as on the date of completion shall be the full value of consideration for computing the gains.

However, in case the share in the project is transferred by the Assessee before completion, then benefit of this proposed regime shall not apply.

This is a welcome clarification from the Government on taxability of joint development agreements. However, in our view, if in a case there is undue delay in issue of Completion Certificate, then the Assessee would be saddled with higher Capital Gains tax liability due to increased Stamp Duty valuation at a later date.

Consequential amendments are also proposed in Section 49 of the Act.

25. Fair Market Value to be full value of consideration in case of unquoted Shares:

The Finance Minister has proposed that in case of transfer of unquoted shares, the gains will be calculated based on Fair Market Value ('FMV') if the consideration received is lower than the FMV.

The manner of determining FMV will be prescribed in due course.

It appears that the above provisions would apply only to unquoted equity shares, as stated in the Annexure to the FM's Budget Speech; though the fine print does not lead us to this conclusion.

26. Expanding the scope of Long term bonds under Section 54EC:

In order to widen the scope of the section for sectors which may raise fund by issue of bonds eligible for exemption under Section 54EC, it is proposed to provide that investment in any bond redeemable after three years which has been notified by the Central Government in this behalf shall also be eligible for exemption.

27. Tax neutral conversion of Preference shares to Equity shares:

The Finance Minister has proposed to provide that conversion of Preference shares into Equity shares will not trigger capital gains tax. In such cases, the cost of acquisition and the period of holding of such Equity shares shall be the same as that of the original Preference shares.

28. Transfer of rupee denominated bonds by one non-resident to another will not trigger capital gains:

The Finance Minister has proposed that the transfer of rupee denominated bonds by one non-resident to another will not trigger capital gains. The benefit of exclusion of rupee appreciation on redemption of rupee denominated bonds has been extended to secondary holders (this was earlier available only to subscribers of such bonds).

29. Shifting base year from 1981 to 2001 for computation of Capital Gains:

Currently, indexation benefit is available on cost of acquisition and cost of improvement for assets classified as long-term while computing capital gains. Further, for assets purchased before 1st April 1981, the cost of acquisition is either the fair market value of the asset as on 1st April 1981 or the actual cost, at the option of the Assessee.

With a view to reduce the difficulties faced by the Assessee with respect to availability of information for fair market value as on 1st April 1981, the Finance Minister has proposed to change the base year to 2001. The Assessee shall now have the option to consider the fair market value of the asset as on 1st April 1981 as the cost of acquisition.

Consequential amendment is also proposed in Section 48 of the Act.

30. Penalty on Professionals for furnishing incorrect information in report or certificate:

With a view to promote accountability and responsibility amongst practicing professional(s) for work done, certificate or report issued by them, it is proposed to insert a new Section 271J of the Act to provide that if an Accountant or a Merchant Banker or a Registered Valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of ten thousand rupees for each such report or certificate by way of penalty.

Consequential safeguard is also proposed in Section 273B of the Act to provide that that if the person proves that there was reasonable cause for the failure referred to in the said section, then no penalty shall be imposable.

D. Mobilization of Resources

31. Restriction of exemption in case of Corpus donation one exempt entity to other exempt entity:

In order to prevent charitable trusts registered u/s.12AA of the Act from making corpus donations to other trust or institutions registered under section 12AA of the Act the Finance Minister has proposed to not to treat such donations as application of income for purposes of objects of the trust/ institution.

32. Exemption of Long Term Capital Gains Tax u/s. 10(38) available only if acquisition of share subject to STT:

With a view to prevent abuse of the exemption u/s.10(38) of the Act to declare unaccounted money, the Finance Minister has proposed to deny benefit of the exemption if the equity share acquired or on after 1st October, 2004 is not subjected to Securities Transactions Tax ('STT'). However, to protect the exemption for genuine cases where the STT could not have been paid like acquisition of share in IPO, FPO, bonus or right issue etc., separate notification would follow where this condition would not be applicable.

33. Deduction u/s.10AA of the Act to be allowed on income of Assessee and not 'undertaking of Assessee':

In order to reverse the impact of the recent ruling of the **Apex Court** of our country in the case of **CIT v. Yokogawa India Ltd. (Civil Appeal no.8498/2013)** holding that Section 10A (similar to Section 10AA) of the Act, is a provision for deduction, and the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act, and not at the stage of computation of the total income under Chapter VI; the Finance Minister proposed to clarify that the amount of deduction referred to in section 10AA of the Act shall be allowed from the total income of the assessee computed in accordance with the provisions of the Act before giving effect to the provisions of the section 10AA of the Act and the deduction under section 10AA of the Act in no case shall exceed the said total income of the Assessee for the captioned year.

34. Enlarging the scope of Section 56(2) of the Act for all Assesseees:

Hitherto, the provisions of Section 56(2)(vii) of the Act are applicable only to receipt of any sum of money or any property (movable and immovable) by an Individual or Hindu undivided family which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs.50,000).

Thus, persons other than an Individual or Hindu undivided family are not covered by above Section.

Similarly, the current provisions of Section 56(2)(viii) of the Act are applicable only to receipt of certain shares by a Firm or a Company in which the public are not substantially interested family which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs.50,000).

Thus, persons other than a Firm or a Company in which the public are not substantially interested are not covered by above Section.

It is now proposed to expand the applicability of above provisions per Section 56 2)(x) of the Act to any person in receipt of the sum of money or any property (movable and immovable) without consideration or for inadequate consideration in excess of Rs. 50,000 which shall be chargeable to tax in the hands of the recipient under the head "Income from other sources subject to certain exceptions as provided therein.

35. Restrictions on Set off of Loss under the head Income form House Property:

Hitherto, there is no cap on allowability of set-off of loss under head House Property with income under other heads. However, now an amendment is proposed to Section 71 of the Act whereby the maximum Loss under the head Income from House property for the year that can be adjusted against any other income would be restricted to Rs 2 Lakhs. The balance loss, if any, under the head Income from House Property would be allowed to carried forward for eight years and adjusted against Income from House Property of the subsequent years.

36. Introduction of concept of Primary Adjustment and Secondary Adjustment in certain transactions with Associated Enterprises:

In order to align the transfer pricing provisions in line with OECD transfer pricing guidelines and international best practices, it is proposed to insert a new section 92CE to provide that the assessee shall be required to carry out secondary adjustment where:

- (i) the primary adjustment to transfer price has been made suo-moto by the Assessee in his return of income; or
- (ii) the adjustment made by the Assessing Officer has been accepted by the Assessee; or
- (iii) the adjustment is determined by an Advance Pricing Agreement entered into by the assessee under section 92CC of the Act; or
- (iv) Where the adjustment is made as per the Safe Harbour Rules framed under section 92CB of the Act; or
- (v) Where the adjustment is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or 90A of the Act.

It is proposed to provide that where as a result of primary adjustment to the transfer pricing transaction, there is an increase in the total income or reduction in the loss, as the case may be, of the Assessee, the excess money which is available with its Associated Enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such Associated Enterprise and the interest on such advance, shall be computed as the income of the assessee , in the manner as may be prescribed.

It is also proposed to provide that such secondary adjustment shall not be carried out if, the amount of primary adjustment made in the case of an assessee in any previous year does not exceed Rupees One Crore and the primary adjustment is made in respect of an assessment year commencing on or before 1st April 2016.

37. Restrictions on claim of Interest Expenses to Associated Enterprises:

To counter the shifting of profits under cross border transactions in regards to excessive interest being charged by the Associated Enterprises, the Finance minister has proposed to introduce thin capitalization rules in respect of interest (and other similar) payments, based on the guide lines of OECD.

The provision shall be applicable to any Indian Company or a permanent establishment of a Foreign Company being the borrower who pays interest in respect of any form of debt issued to a non-resident or to a permanent establishment of a non-resident and who is an 'associated enterprise' of the borrower.

As per the provision interest expenses claimed by an Assessee to its Associated Enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to Associated Enterprise, whichever is less.

Further, excess interest paid which is disallowed will be allowed to be carried forward for 8 years.

In order to target only large interest payments, it is proposed to provide for a threshold of interest expenditure of Rupees One Crore and above to the Associated Enterprises, for applicability of this provision.

Further, Banks and Insurance business are excluded from applicability of this provision.

38. Taxation of Dividend from Companies:

As per the existing provisions of section 115BBDA income by way of Dividend [excluding Dividend as per Section 2(22)(e)] in excess of Rupees Ten Lakhs is chargeable to tax at the rate of 10% on gross basis in case of a resident individual, Hindu undivided family or firm.

To have all Assessee deriving Dividend income be on the same page it is proposed to amend section 115BBDA so as to provide that the provisions of the section shall be applicable to all resident Assessee's except Domestic Company, Funds, Trusts, Institutions, covered under section 10(23C)/ 12AA of the Act.

39. Taxation of Income on Carbon Credits:

The matter of income received on the transfer of carbon credits has been a matter of dispute as to whether the same is revenue or a capital receipt. Courts have given divergent views on the matter.

To put to rest the controversy and bring clarity on the matter a new section 115BBG is proposed to provide that where the total income of the assessee includes any income from transfer of carbon credit, such income shall be taxable at the concessional rate of Ten per cent (plus applicable Surcharge and Cess) on the gross amount of such income.

No expenditure or allowance in respect of such income shall be allowed under the Act.

40. Notional Income for House Property held as stock in trade:

With a view to provide breathing time to real-estate developers for liquidating their inventory, it is proposed that the annual value of building and land appurtenant thereto shall be considered to be nil (i.e. no notional income under the head income from house property) if:

- The building and land appurtenant thereto is held as stock-in-trade, and
- The building and land appurtenant thereto is not let out during the whole (or any part) of the year.

The above benefit should be available for a period up to one year from the end of the financial year in which the construction completion certificate is obtained from the relevant authority.

As the above amendment is proposed by insertion of new sub-section (5) to Section 23, does it imply that from the second year onwards, the Assessee being builder and holding inventory of flat would have to pay tax on the notional Annual value thereof, even if the flat was vacant throughout the year? Would such Assessee be able to claim Annual Value as Rs.Nil as per provision of Section 23(1)(c)?

E. Easing of compliance burden and dealing with the Department

41. Rationalization of provisions related to Advance Rulings:

With a view to promote ease of doing business, it is proposed to merge the Authority for Advance Ruling ('AAR') for Income-tax, Central Excise, Customs Duty and Service Tax, for which necessary amendments are proposed.

42. Processing of refund due to the Assessee under section 143 of the Act:

As per the provisions of section 143(1D) of the Act the processing of the return of income shall not be necessary where a notice has been issued to the Assessee under section 143(2) of the Act.

As per the amendment proposed the provisions of section 143(1D) shall not apply to return of income filed for Assessment year 2017-18 and subsequent years.

The Assessee could expect to get the refunds due even if the notice under section 143(2) has been issued.

However the Finance Minister has now inserted a new section 241A ,wherein it is proposed that where the return of income is processed and a refund is determined for the returns filed for Assessment Year 2017-18 and subsequent years and the Assessing Officer is of the opinion that granting of the refund would adversely affect the recovery of revenue he may with the reasons written in writing and with the prior approval of the Principal Commissioner of Income Tax withhold the refund till the completion of the Assessment.

43. Enabling claim of credit for Foreign Tax paid in cases of dispute:

In response to the difficulties faced by the Assessee in respect of non-grant of credit for Foreign Taxes during the relevant Assessment Year by the Assessing Officer as the said Foreign Taxes were in dispute, the Finance Minister has proposed to insert new Section 155(14A) of the Act wherein the Assessing Officer shall rectify the Assessment Order or the Intimation under section 143(1) of the Act, if the Assessee, within six months from the end of the month in which the dispute is settled, furnishes proof of settlement of such dispute, submits evidence before the Assessing Officer that the Foreign Tax liability has been discharged and furnishes an undertaking that credit of such amount of Foreign Tax paid has not been directly or indirectly claimed or shall not be claimed for any other Assessment Year.

It is also provided further that the credit for tax shall be given in the Assessment Year in which the income has been offered to tax or assessed to tax in India by the Assessee.

F. Futuristic Measures-promoting investments and clarity on taxation

44. Incentive for Promoting Investment in immovable property:

In order to boost investment and lift the overall sentiment in the real-estate sector, the Finance Minister has offered goodies by proposing to reduce the holding period of immovable property, being land or building or both, to qualify as long term capital asset from the existing 36 months to 24 months.

45. Much needed clarity relating to Indirect transfer provisions:

To put at rest, the queries of various stakeholders as to multiplicity of taxation in hands of non-residents holding investment in FII's or FPI's with respect to the CBDT's Circular No.41/2016 and recent Press release dated 17th January 2017 keeping the captioned Circular on hold; the Finance Minister has clarified that Explanation 5 to Section 9 of the Act would not apply in such cases.

This is a welcome move which brings in certainty in the taxation regime of FII's or FPI's and would go a long way in boosting non-residents investment in India through this route.

(This amendment will take effect retrospectively from 1st April 2012 and will accordingly apply in relation to assessment year 2012-13 and subsequent assessment years.)

46. Modification in conditions of special taxation regime for Off Shore Funds:

To expand international investments and business, in the Finance Act, 2015 Mr. Jaitley inserted Section 9A providing that the activities of certain Off-shore Funds would not constitute business connection and hence would not be considered to be resident in India for the purpose of Section 6 of the Act merely because the eligible fund manager undertaking fund management activities on behalf of the fund is situated in India.

Considering the representations from various stakeholders regarding non-maintainability of the monthly average of the corpus of the fund exceeding Rs.One Hundred Crore in the year of winding up of the Fund, the Finance Minister has proposed to do away with this condition in that year.

This is another welcome move which would boost confidence of Off-shore Funds in the Indian tax administration, being sensitive to and acting forthwith on the challenges faced by them.

(This amendment will take effect retrospectively from 1st April 2016 and will accordingly apply in relation to assessment year 2016-17 and subsequent assessment years.)

G. Amendments in Tax Deducted at Source provisions ('TDS')

47. Existing threshold limit and/or rates of TDS rationalized on the following payments:

Sr. No.	Nature of payments	Threshold limit (Rs.)		Rate of TDS(%)	
		Existing	Proposed	Existing	Proposed
1	Interest Payable by Banks	10,000	10,000	10%	10%
2	Interest Payable by Others	5,000	5,000	10%	10%
3	Winnings from a horse race	10,000	10,000	30%	30%
4	Payment to contractors	1,00,000 Aggregate annual limit	1,00,000 Aggregate annual limit	1% for Individual and other 2%	1% for Individual and other 2%
5	Insurance commission	15,000	15,000	10% for Company and others 5%	10% for Company and others 5%
6	Rent	1,80,000	1,80,000	10%	10%

7	Rent-Plant/Machinery	1,80,000	1,80,000	2%	2%
8	Payment of Rent by Individuals or HUF (These amendments will take effect from 1 st June 2017.) Refer Sr. No.6	Nil	Exceeding Rs.50,000/- per Month	Nil	5%
9	Payment towards a life insurance policy	1,00,000	1,00,000	1%	1%
10	Commission on sale of lottery tickets	15,000	15,000	5%	5%
11	Commission or brokerage	15,000	15,000	5%	5%
12	Payment of compensation on acquisition of certain immovable property	2,50,000	2,50,000	10%	10%
13	Transfer of immovable property, other than agricultural land	50,00,000	50,00,000	1%	1%
14	Payment under Specified Agreement other than transfer of immovable property Refer Sr. No.24	Nil	Nil	Nil	10%
15	Professional/Technical Fee (other than covered below)	30,000	30,000	10%	10%
16	Professional/Technical fees paid to person engaged only in the business of operation of Call Centre	30,000	30,000	10%	2%
17	Director fees	Nil	Nil	10%	10%

Consequent to the insertion of section 269ST of the Act, TCS on cash sale of Jewellery exceeding Rupees Five Lakhs is proposed to be removed.

Further, the Finance minister has proposed new section 206CC of the Act any person paying any sum or amount, on which tax is collectable at source under Chapter XVII BB (hereafter referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (hereafter referred to as collector), failing which tax shall be collected at the twice the rate mentioned in the relevant section under Chapter XVII BB or at the rate of 5%, whichever is higher.

H. Others

48. No further deferment of provisions relating to General Anti Avoidance Rule:

Though the Finance Minister's Speech did not have any mention about implementation of the provisions relating to General Anti Avoidance Rules ("GAAR"), the Government's has made its intention loud and clear towards implementation of GAAR from 1st April 2017 in the recent Circular No.7 of 2017 issued last week; without any further deferral.

49. Amendments in provisions related to Search/ Survey:

The Finance Minister has proposed the following amendments:

- During the course of a search, Authorized Officer empowered to:
 - (i) Provisionally attach property belonging to the Assessee for a period of 6 months' subject to approval from the higher authorities; and
 - (ii) Make reference to a Valuation Officer for estimation of FMV.
- It also provides that the Valuation Officer shall furnish the valuation report within sixty days of receipt of such reference.
- Scope of initiation of assessment / reassessment proceedings pursuant to a Search extended to ten years from the existing six years' subject to prescribed conditions.
- Reason to believe / reason to suspect not to be disclosed to any person / authority or Appellate Tribunal in cases of search proceedings to ensure confidentiality of such cases.

(The above amendment will take effect retrospectively from the date of enactment of the said provisions viz. to sub-section (1) of Section 132 from 1st April, 1962 and to sub-section (1A) of section 132 and to sub-section (1) of Section 132A from 1st October, 1975).

- Considering the requirement of the work profile of the authorities working in the Investigation Directorate, it is proposed to amend the first proviso of the Section 133 of the Act and provide

that the power in respect of inquiry or proceeding under the Act, as referred to in clause (6) of the said section, may also be exercised by the Joint Director, the Deputy Director and the Assistant Director. It is further proposed to amend the second proviso of the said section to provide that the Joint Director, the Deputy Director or the Assistant Director may exercise the powers in respect of such inquiry, without seeking prior approval of higher authorities.

- The existing provisions of Section 133A of the Act empowers an income-tax authority to enter any place, at which a business or profession is carried on, or at which any books of account or other documents or any part of cash or stock or other valuable article or thing relating to the business or profession are kept, for the purposes of conducting a survey.

It is proposed to widen the scope of the said section by amending sub-section (1) to include any place, at which an activity for charitable purpose is carried on.

- In order to expedite verification and analysis of the information and documents so received, it is proposed to amend Section 133C of the Act to empower the Central Board of Direct Taxes to make a scheme for centralized issuance of notice calling for information and documents for the purpose of verification of information in its possession, processing of such documents and making the outcome thereof available to the Assessing Officer for necessary action, if any.

II. INDIRECT TAXES - SERVICE TAX:

The amendments proposed by the Finance Minister with respect to Service tax are discussed herein below.

1. Roll out of Goods and Services Tax ('GST'):

Keeping in background the Government's focus on implementing GST at the earliest, minimal legislative changes are proposed in the existing indirect tax laws. Although the Finance Minister referred to the consensus on GST on most issues and the readiness of the IT infrastructure in his Budget Speech, he did not lay down any concrete timeline in this regard. However, in the past, Government has communicated 1st July 2017 as the likely date for introduction of GST.

Further, the Finance Minister has also stated that extensive reach-out efforts to trade and industry for GST would start from 1st April 2017.

2. Rate of Service Tax:

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It is proposed to continue to tax services at the rate of 14% plus Swatch Bharat Cess of 0.5% plus Krishi Kaylan Cess of 0.5% i.e. effective rate of 15%.

Thus, the Effective Service Tax rate of 15% is proposed to be continued.

3. Legislative changes in Negative List:

Presently, services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption, are covered under Section 66D(f) of the Finance Act. These services are now proposed to be deleted from the Negative List and included in the Mega Exemption Notification No. 25/2012-ST dated June 20, 2012 ("the Mega Exemption Notification").

Consequential changes are also proposed in the Mega Exemption Notification and the definition of "process amounting to manufacture" in Clause (40) Section 65B of the Finance Act, 1994 is proposed to be omitted.

(The above changes in would come into effect from the date of enactment of Finance Bill 2017.)

4. New Exemptions/Amendments in existing Exemptions:

The Finance Minister has proposed to provide the following new exemptions/ amendments in existing exemptions:

- Services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of Life Insurance to members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government is now being exempted from service tax. (w.e.f. 2nd February, 2017). The Finance Bill also further proposes to extend this exemption benefit for the period 10th September 2004 to 1st February 2017.

If any service tax has been already paid on such amount during the said period, the same can be claimed back as refund within a period of Six months from the date of which the Finance Bill 2017 receives the assent of the President.

- Retrospective exemption has been given to one-time upfront amount (called as premium, salami, cost, price, development charges or by whatever name) in respect of taxable service by way of grant of long term lease of Thirty years or more of industrial plots. Now, this exemption has been granted for the period from 1st June 2007 (i.e. the date when renting of immovable property services first became taxable) to 21st September 2016 (i.e. the date after which such services were exempt) vide Notification no. 41/2016 dated 22nd September 2016 (both days inclusive).

Further, it is provided that if any service tax has been already paid on such amount during the said period, the same can be claimed back as refund within a period of Six months from the date of which the Finance Bill 2017 receives the assent of the President.

- Amendment in Mega exemption of notification No. 25/2012-ST of Serial No. 9B exempts services provided by Indian Institutes of Management by way of two-year full time residential Post Graduate Programs in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of the Common Admission Test, conducted by IIM.

Now, the scope of the exemption is partially increased by extending the exemption to 2 years' full time post graduate programmers-residential as well as non-residential.

(The above would come into effect from the 2nd February 2017)

- Under the Regional Connectivity Scheme, new exemption from service tax is being provided in respect of the amount of viability gap funding (VGF) payable to the selected airline operator for the services of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme (RCS) airport, for a period of one year from the date of commencement of operations of the Regional Connectivity Scheme (RCS) airport as notified by Ministry of Civil Aviation.

(The above would come into effect from the 2nd February 2017)

5. Amendment in Service Tax (Determination of Value) Rules, 2006:

Rule 2A of Service Tax (Determination of Value) Rules, 2006 is being amended with effect from 01.07.2010 so as to make it clear that value of service portion in execution of works contract involving transfer of goods and land or undivided share of land, as the case may be, shall not include value of property in such land or undivided share of land.

6. Amendments in CENVAT Credit Rules, 2004:

The Finance Minister has proposed to provide the following new exemptions/ amendments in existing exemptions:

- A proviso has been inserted to Explanation-I(e) of the Rule 6(3D) of the CENVAT Credit Rules, 2004 ('CCR') to exclude banks, financial institutions (including NBFCs). The said amendment requires value of interest or discount to be considered for the purpose of reversal of CENVAT Credit under Rule 6(3) and Rule 6(3A) of the CCR. The amendment would be effective 2nd February 2017.
- Rule 10 of the CCR has been amended requiring an assessee to make an application for transfer of credit in case of sale, merger, demerger, amalgamation etc. The said application shall be allowed within a period of 3 months from date of receipt of application. Further, an extension may be sought by Deputy/Assistant Commissioner for further period of six months from Principal Commissioner on providing sufficient cause/reasons.