Highlights of Amendments made by the Finance Act, 2018

Rates of advance tax for Financial Year 2018-19 (The same shall be rates of income-tax for Assessment Year 2019-20)

Rates of Income Tax

(A)

I. In the case of every Individual (other than those covered in part (II) or (III) below) or Hindu undivided family or AOP/BOI (other than a co-operative society) whether incorporated or not, or every artificial judicial person

Upto ₹2,50,000	Nil
₹ 2,50,010 to ₹ 5,00,000	5%
₹ 5,00,010 to ₹10,00,000	20%
Above ₹10,00,000	30%

II. In the case of every individual, being a resident in India, who is of the age of 60 years or more but less than 80 years at any time during the previous year.

Upto ₹3,00,000	Nil
₹ 3,00,010 to ₹ 5,00,000	5%
₹ 5,00,010 to ₹10,00,000	20%
Above ₹10,00,000	30%

III. In the case of every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year.

Upto ₹ 5,00,000	Nil
₹ 5,00,010 to ₹10,00,000	20%
Above ₹10,00,000	30%

Surcharge: The amount of income-tax computed in accordance with the above rates shall be increased by a surcharge at the rate of 10% of such income tax in case of a person having a total income exceeding ₹50 lakhs but not exceeding ₹ 1 crore and 15% of such income-tax in case of a person having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 50 lakhs and ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 50 lakhs and ₹ 1 crore by more than the amount of income that exceeds ₹ 50 lakhs and ₹ 1 crore respectively.

Health and Education Cess: 'Health and Education Cess (H&EC) on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

(B) In the case of every co-operative society

(1)	Where the total income does not exceed ₹10,000	10% of the total income;
(2)	Where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by which the total income exceeds ₹10,000;
(3)	Where the total income exceeds ₹	₹ 3,000 plus 30% of the amount by which

20,000	the total income exceeds ₹20,000.

Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 12% of such income-tax in case of a co-operative society having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Health and Education Cess: 'Health and Education Cess (H&EC) on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

(C) ***In case of any firm (including limited liability partnership)*** - 30%.

Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 12% of such income-tax in case of a firm having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Health and Education Cess: 'Health and Education Cess (H&EC) on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

(D) In the case of a company

(i) For domestic companies:

(a)	Where the total turnover or gross receipts in the previous year 2016-17 does not exceed ₹ 250 crore	25%
(b)	In all other cases	30%

Surcharge: The surcharge of 7% in case of a domestic company shall be levied if the total income of the domestic company exceeds ₹ 1 crore but does not exceed ₹ 10 crore. The surcharge at the rate of 12% shall be levied if the total income of the domestic company exceeds ₹10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore but not exceeding ₹ 10 crore, shall not exceed the total amount payable as income- tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹ 1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹ 10 crore, by more than the amount of income that exceeds ₹ 10 crore.

Health and Education Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

(ii) ***For foreign company:*** 40%.

Surcharge: In case of companies other than domestic companies, the surcharge of 2% shall be levied if the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore.
The surcharge at the rate of 5% shall be levied if the total income of the company other than domestic company exceeds ₹ 10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹1 crore but not exceeding ₹10 crore, shall not exceed the total amount payable as income- tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹ 1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹ 10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹ 10 crore, by more than the amount of income that exceeds ₹ 10 crore.

Health and Education Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

Amendments relating to Definitions

1. **Explanation 2A inserted in definition of dividend [Section 2(22)] [w.r.e.f. A.Y. 2018-19]**
   See para 29 below.

2. **Definition of 'income' amended (Section 2(24)] [w.e.f. A.Y. 2019-20]**
   See paras 14 & 32 below.

3.
   (i) Explanation 1 given under definition of short-term capital asset amended [Section 2(42A)] [w.e.f. A.Y. 2019-20]
   See para 14 below.

   (ii) Meaning of "equity oriented fund" amended [Explanation 4 to section 2(42A) amended]

   The existing Explanation 4 to section 2(42A) provides as under:

   Explanation 4.-For the purposes of this clause, the expression "equity oriented fund" shall have the meaning assigned to it in the Explanation to clause (38) of section 10.
   In view of the insertion of section 112A relating to tax on long-term capital gain on equity shares and unit of equity oriented fund, the new definition shall be as under:

   Explanation 4.-For the purposes of this clause, the expression "equity oriented fund" shall have the meaning assigned to it in clause (a) of the Explanation to section l12A.
   For details see box below para 26(B).

Amendments relating to income deemed to accrue or arise in India

4. Aligning the scope of "Business Connection" with modified Permanent Establishment Rule (PE Rule) as per Multilateral Instrument (MLI) [Explanation 2 under section 9(1)(i) amended] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendment

Under the existing provisions of clause (a) of Explanation 2 to section 9(1)(i), "business connection" includes business activities carried on by non-resident through dependent agents. The scope of "business connection" under the Act is similar to the provisions relating to Dependent Agent Permanent Establishment (DAPE) in India's Double Taxation Avoidance Agreements (DTAAs). In terms of the DAPE rules in tax treaties, if any person acting on behalf of the non-resident, is habitually authorised to conclude contracts for the non-resident, then such agent would constitute a PE in the source country. However, in many cases, with a view to avoid establishing a permanent establishment (hereafter referred to as 'PE') under Article 5(5) of the DT AA, the person acting on the behalf of the non-resident, negotiates the contract but does not conclude the contract. Further, under paragraph 4 of Article 5 of the DT AAs, a PE is deemed not to exist when a place of business is engaged solely in certain activities such as

maintenance of stocks of goods for storage, display, delivery or processing, purchasing of goods or merchandise, collection of information. This exclusion applies only when these activities are preparatory or auxiliary in relation to the business as a whole.

The OECD under BEPS Action Plan 7 reviewed the definition of 'PE' with a view to preventing avoidance of payment of tax by circumventing the existing PE definition by way of commissionaire arrangements or fragmentation of business activities. In order to tackle such tax avoidance scheme, the BEPS Action plan 7 recommended modifications to paragraph (5) of Article 5 to provide that an agent would include not only a person who habitually concludes contracts on behalf of the non-resident, but also a person who habitually plays a principal role leading to the conclusion of contracts. Similarly Action Plan 7 also recommends the introduction of an anti fragmentation rule as per paragraph 4.1 of

Article 5 of OECD Model tax conventions, 2017 so as to prevent the tax payer from resorting to fragmentation of functions which are otherwise a whole activity in order to avail the benefit of exemption under paragraph 4 of Article 5 of DTAAs.

Further, with a view to preventing base erosion and profit shifting, the recommendations under BEPS Action Plan 7 have now been included in Article 12 of Multilateral Convention to Implement Tax Treaty Related Measures (herein referred to as 'MLI') , to which India is also a signatory.

Consequently, these provisions will automatically modify India's bilateral tax treaties covered by MLI, where treaty partner has also opted for Article 12. As a result, the DAPE provisions in Article 5(5) of India's tax treaties, as modified by MLI, shall become wider in scope than the current provisions in Explanation 2 to section 9(1)(i). Similarly, the anti-fragmentation rule introduced as per paragraph 4.1 of Article 5 of the OECD Model Tax Conventions, 2017 has narrowed the scope of the exception under Article 5(4), thereby expanding the scope of PE in DTAA vis-a-vis domestic provisions contained in Explanation 2 to section 9(1). In effect, the relevant provisions in the DTAAs are wider in scope than the domestic law. However, section 90(2) of the Act provides that the provisions of the domestic law would prevail over corresponding provisions in the DTAAs, to the extent they are beneficial. Since, in the instant situations, the provisions of the domestic law being narrower in scope are more beneficial than the provisions in the DTAAs, as modified by MLI, such wider provisions in the DT AAs are ineffective.

(B) Amendment made

In view of the above, the Act has amended the provision of section 9 of the Act so as to align them with the provisions in the DTAA as modified by MLI so as to make the provisions in the treaty effective.

Accordingly, clause (a) of Explanation 2 to section 9(1)(i) has been substituted by a new clause (a) to provide that "business connection" shall include any business activities carried through a person who, acting on behalf of the non-resident,-

- Has and habitually exercises in India, an authority to conclude contracts on behalf of the non- resident or
- Habitually concludes contracts or
- Habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are-
  - **(i)** In the name of the non-resident; or
  - **(ii)** For the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or
  - **(iii)** For the provision of services by the non-resident.

5. "Business connection" to include "Significant Economic presence" also [Explanation 2A inserted under section 9(1)(i)] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

"The oranges upon the trees in California are not acquired wealth until they are picked, not even at that stage until they are packed, and not even at that stage until they are transported to the place where demand exists and until they are put where the consumer can use them. These stages, upto the point where wealth reached fruition, may be shared in by different territorial authorities." (excerpts from a report on double taxation submitted to League of Nations in early 1920s)

Accordingly, both the residence and source countries claim the right to taxation.
Taxation of business profits on the basis of economic allegiance has always been the underlying basis of existing international taxation rules. Economists gave primacy to the economic allegiance rather than physical location and made it clear that physical presence was important only to the extent it represented the economic location.

Ordinarily, as per the allocation of taxing rules under Article 7 of DT AAs, business profit of an enterprise is taxable in the country in which the taxpayer is a resident. If an enterprise carries on its business in another country through a 'Permanent Establishment' situated therein, such other country may also tax the business profits attributable to the 'Permanent Establishment'. For this purpose, 'Permanent Establishment' means a 'fixed place of business' through which the business of an enterprise is wholly or partly carried out provided that the business activities are not of preparatory or auxiliary in nature and such business activities are not carried out by a dependent agent.

For a long time, nexus based on physical presence was used as a proxy to regular economic allegiance of a non-resident. However, with the advancement in information and communication technology in the last few decades, new business models operating remotely through digital medium have emerged. Under these new business models, the non-resident enterprises interact with customers in another country without having any physical presence in that country resulting in avoidance of taxation in the source country. Therefore, the existing nexus rule based on physical presence do not bold good anymore for taxation of business profits in source country. As a result, the rights of the source country to tax business profits that are derived from its economy is unfairly and unreasonably eroded.

OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy wherein it bas discussed several options to tackle the direct tax challenges arising in digital businesses. One such option is a new nexus rule based on "significant economic presence". As per the Action Plan 1 Report, a non-resident enterprise would create a taxable presence in a country if it has a significance economic presence in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools. It further recommended that revenue facto may be used in combination with the aforesaid factors to determine 'significance economic presence'.·

The scope of existing provisions of section 9(1)(i) is restrictive as it essentially provides for physical presence based nexus rule for taxation of business income of the non-resident in India. Explanation 2 to the said section which defines 'business connection' is also narrow in its scope since it limit the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of section 9(1)(i) of the Act.

(B) Amendments made

In view of the above, to the Act has amended section 9(1)(i) of the Act by inserting Explanation 2A to provide that 'significant economic presence' of a non-resident in India shall constitute 'business connection' in India.

Further, "significant economic presence" for this purpose, shall mean-

(a) 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 the amount as may be prescribed; or

(b) 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.

Provided that the transactions or activities shall constitute significant economic presence in India, **whether or not,**

(i) The agreement for such transactions or activities is entered in India; or
(ii) The non-resident has a residence or place of business in India; or
(iii) The non-resident renders services in India.

The Act has further provided that only so much of income as is attributable to such transactions or activities referred to in clause (a) and (b) above shall be deemed to accrue or arise in India.

The above amendment in the domestic law will enable India to negotiate for inclusion of the new nexus rule in the form of 'significant economic presence' in the Double Taxation Avoidance Agreements. It may be clarified that the aforesaid conditions stated above are mutually exclusive. The threshold of "revenue" and the "users" in India will be decided after consultation with the stakeholders. Further, it is also clarified that unless corresponding modification to PE rule are made in the DTAAs, the cross border business profits will continue to be taxed as per the existing treaty rules.

Amendments relating to income exempt from tax

6. Royalty and fees for technical services (FTS) payment by NTRO to a non-resident to be tax- exempt [Section 10(6D) inserted] [w.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendment

The National Technical Research Organisation (NTRO) is a technical intelligence agency under the National Security Advisor in the Prime Minister's Office, India. The organization some times pay royalty and fees for technical services to non-residents for accessing the data and other technical inputs.

Section 195 requires a person (i.e. NTRO in this case) to deduct tax at the time of payment or credit to a non-resident.

Given the business exigencies of the National Technical Research Organisation (NTRO), it is intended to exempt the income of non-resident.

(B) Amendment made

The Act has inserted clause (6D) under section 10 so as to provide that the income arising to non- resident, not being a company, or a foreign company, by way of royalty from, or fees for technical services rendered in or outside India to, the NTRO will be exempt from income tax.

Consequently, NTRO will not be required to deduct tax at source on such payments.

7. Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers also [Section 10(12A) amended] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendment

Under the existing provisions of the section 10(12A) of the Act, an employee contributing to the National Pension Scheme (NPS) is allowed an exemption in respect of 40% of the total amount payable to him on closure of his account or on his opting out of such scheme. This exemption is not available to non-employee subscribers. In order to provide a level playing field, the Act has amended section 10(12A).

(B) Amendment made

In Section 10(12A), for the word "employee", the word "assessee" shall be substituted w.e.f. A.Y. 2019-20.

Thus, the Act has extended the above benefit to all subscribers.

8. Exemption of long-term capital gain on transfer of long-term capital asset being an equity e share in a company or units of equity oriented fund withdrawn [Section 10(38)] [w.e.f. A.Y. a 2019-20]

See para 26 below.

9. Exemption of specified income of class of body, authority, Board, Trust or Commission in certain cases [Section 10(46)] [w.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendment

Section 10(46) of the Act empowers the Central Government to exempt, by notification, specified income arising to a body or authority or Board or Trust or Commission, if-

(a) They are not engaged in any commercial activity;

(b) They are established or constituted by or under a central, state or provincial act or constituted by the Cent al Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public.

Under the existing provisions, the Central Government is required to notify each case separately even if they belong to the same class of cases. Consequently, the whole process of approval is considerably delayed.

(B) Amendment made

In view of the above, the Act has amended the above section 10(46) so as to enable the Central Government to also exempt, by notification, a class of such body or authority or Board or Trust or Commission (by whatever name called).

10. Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement or arrangement [Section 10(48B)J [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendment

Section 10(48A) provides that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil there from to any person resident in India hall be exempt if-

(i) Storage and sale is pursuant to an agreement or an arrangement entered into or approved, by the Central Government; and

(ii) Having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government.

Further section 10(48B) provides that any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil after the expiry of the

agreement or arrangement shall be exempt subject to such conditions as may be notified by the Central Government.

The benefit of exemption is presently not available on sale out of the leftover stock of crude in case of termination of the said agreement or the arrangement.

(B) Amendment made

Given the strategic nature of the project benefitting India to augment its strategic petroleum reserves, to the Act has amended section 10(48B) 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.

Amendments relating to Charitable Trusts

11. Provisions of section 40(a)(ia) and section 40A(3) & (3A) to apply mutatis mutandis to certain exempt entities covered under section 10(23C) or Section 11 [Section 10(23C) & Section 11 amended] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

The third proviso to section 10(23C) of the Act provides for exemption in respect of income of the entities referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of section 10(23C) in a case where such income is applied or accumulated during the previous year for certain purposes in accordance with the relevant provisions. Section 11 of the Act also contains provisions relating to exemption of income from property held for charitable or religious purposes.

At present, there are no restrictions on payments made in cash by charitable or religious trusts or institutions. There are also no checks on whether such trusts or institutions follow the provisions of deduction of tax at source under Chapter XVII-B of the Act. This has led to lack of an audit trail for verification of application of income.

(B) Amendments made

In order to encourage a less cash economy and to reduce the generation and circulation of black money, the Act has inserted Explanation 3 to the section 11 to provide that for the purposes of determining the application of income under the provisions of section 11(1)(a) or (b), the provisions of section 40(a)(ia) (relating to 30% disallowance for non-deduction of TDS), and section 40A(3) and (3A) (relating to payment exceeding ~ 10,000), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

The Act has also inserted a proviso on similar lines after the Twelfth Proviso under section 10(23C) so as to provide as under:

Provided also that for the purposes of determining the amount of application under item (a) of the third proviso, the provisions of section 40(a)(ia) and section 40A(3) & (3A), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession". [Thirteenth Proviso]

Amendments relating to income under the head "Salaries"

12. Standard deduction on salary income re-introduced but benefit of transport allowance and of medical reimbursement withdrawn [Clause (ia) inserted in section 16 and proviso to section 17(2) amended] [w.e.f. A.Y. 2019-20]

(A) Reason for making amendment

Upto assessment year 2005-06, the employee was entitled to standard deduction from his gross salary under section 16(i). The same was withdrawn w.e.f. assessment year 2006-07 by the Finance Act, 2005.

There is a general perception in the society that individual business persons have better income as compared to salaried class. However, income tax data analysis suggests that major portion of personal income-tax collection comes from the salaried class. For assessment year 2016-17, 1.89 crore salaried individuals have filed their returns and have paid total tax of ₹ 1.44 lakh crores which works out to average tax payment of ₹ 76,306 per individual salaried taxpayer. As against this 1.88 crore individual business taxpayers including professionals, who filed their returns for the same assessment year paid total tax of ₹ 48,000 crores which works out to an average tax payment of ₹ 25,753 per individual business taxpayer.

(B) Amendment made

In order to provide relief to salaried taxpayers, standard deduction has been reintroduced w.e.f assessment year 2019-20 by inserting clause (ia) in section 16. Thus while computing the income chargeable under the head "salary" besides other deductions provided in section 16(ii) and (iii), the following deduction shall also be provided:

(ia) A deduction of ₹ 40,000 or the amount of the salary, whichever is less.

Consequently, the following exemptions have been withdrawn:

(i) Transport allowance of ₹ 1,600 p.m. for the purpose of commuting between the place of residence and the place of duty.

However, transport allowance of ₹ 3,200 p.m. granted to an employee who is blind or deaf and dumb or orthopaedically handicapped with disability of lower extremities shall continue to be exempt.

(ii) Any sum paid by employer in respect of any amount actually incurred by the employee for obtaining his or his family member's medical treatment either in any hospital, nursing home, clinic or otherwise upto a maximum of ₹ 15,000 in the previous year.

Amendments relating to income under the head "Profits and Gains of Business or Profession"

13. Taxability of compensation in connection with business contract [Sub-clause (e) inserted in section 28(ii)] [w.e.f. A.Y. 2019-20]

(A) Reason for amendment

Under the existing provisions of the Act, certain types of compensation receipts are taxable as business income under section 28. However, the existing provisions of section 28(ii) is restrictive in its cope as far as taxation of compensation is concerned; a large segment of compensation receipts in connection with business is out of the purview of taxation leading to base erosion and revenue loss.

(B) Amendment made

The Act has inserted sub-clause (e) in section 28(ii) of the Act to provide that any compensation received or receivable by 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 shall be taxable as business income.

In other words, compensation received or receivable by any person, whether revenue or capital, in connection with the above, shall be taxable as business income.

14. Rationalisation of provision relating to conversion of inventory into Capital Asset [Section 28(via)] [w.e.f A.Y. 2019-20]

(A) Reason or making amendments

Section 45 of the Act, inter alia, provides that capital gains arising from a conversion of capital asset into stock-in- de of the business shall be chargeable to tax in the previous year in which such converted a set is old or otherwise transferred. 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, the Act has made the amendments by inserting clause (via) under section 28.

(B) Amendments made

Clause (via) inserted under section 28

It provides that 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 shall be chargeable to tax as business income.

Consequential amendments

(i) Clause (xiia) has been inserted in section 2(24) so as to include such fair market value in the definition of income.

(ii) Explanation 1A inserted in section 43 to provide that the actual cost of the inventory of converted into a capital asset, if used for business, shall be the fair market value.

The following Explanation 1A has been inserted:

Where a capital asset referred to in clause (via) of section 28 is used for the purposes of business or profession, the actual cost of such asset to the assessee shall be the fair market value which has been taken into account for the purposes of the said clause.

(iii) Sub-section (9) has been inserted in section 49 so as to provide that where the capital gain arises from the transfer of a capital asset referred to in section 28(via), the cost of acquisition of such asset shall be deemed to be the fair market value which has been taken into account for the purposes of the said clause.

(iv) Sub-clause (ba) has been inserted in Explanation 1 to section 2(42A) so as to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment of such inventory into capital asset.

15. Tax treatment of transactions in respect of trading in agricultural commodity derivatives [Section 43(5)] [w.e.f. A.Y. 2019-20]

(A) Reason for amendment

Clause (5) of section 43 defines speculative transaction. The proviso to the said clause, however, stipulates certain transactions to be non-speculative nature even though the contracts are settled otherwise than by the actual delivery or transfer of the commodity or scraps. The clause (e) to the said proviso provides that trading in commodity derivatives carried out in a recognised association, which is chargeable to commodity transaction tax is a non-speculative transaction.

Commodity transaction tax (CTT) was introduced vide Finance Act, 2013 to bring transactions relating to non-agricultural commodity derivatives under the tax net while keeping the agricultural commodity derivatives exempt from CTT. Since no CTT is paid, the benefit of clause (e) of the proviso to clause (5) of the section 43 is not available to transaction in respect of trading of agricultural commodity derivatives and accordingly, such transactions are held to be speculative transactions.

In order to encourage participation in trading of agricultural commodity derivatives, the Act has made the amendment in the proviso to section 43(5) by inserting second proviso.

(B) Amendment made

Provided further that in case of a transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to CTT, in a registered stock exchange or registered association will be treated as non-speculative transaction as per clause (e) of the proviso to section 43(5).

16. Rationalization of section 43CA(1) relating to sale consideration of immovable property

See para 23 below.

17. Sub-section (4) of section 43CA amended [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendment

Sub-section (3) of section 43CA provides that where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in section 43CA(1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

Sub-section (4) of section 43CA provides that, the provisions of section 43CA(3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.

To align the above sub-section with section 50C and 56(2)(x), sub-section (4) has been amended.

(B) Amendment made

The amended sub-section (4) will provide as under:

The provisions of section 43CA(3) shall apply only in a case where the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account on or before the date of agreement for transfer of the asset.

18. Presumptive income under section 44AE in case of goods carriage (Section 44AE] (w.e.f. A.Y.2019-20]

(A) Reasons for making amendment

Section 44AE, inter alia provides that, the profits and gains shall be deemed to be an amount equal to ₹ 7,500 per month or part of a month for each goods carriage or the amount claimed to be actually earned by the assessee, whichever is higher. The current presumptive income scheme is applicable uniformly to all classes of goods carriages irrespective of their tonnage capacity. The only condition which needs to be fulfilled is that the assessee should not have owned more than 10 goods carriages at any time during the previous year. Accordingly, the transporters who owns (less than 10) large capacity/size goods carriages are also availing the benefit of section 44AE. It is necessary to mention here that the legislative intent of introducing this provision was to give benefit to small transporters in order to reduce their compliance burden. Even though the profit margins of large capacity goods carriages are higher than small capacity goods carriages, the tax consequences are similar which is against the principle of tax equity. In view of the above amendment in section 44AE has been made.

(B) Amendment made

In the case of heavy goods vehicle (more than 12MT gross vehicle weight), the presumptive income would deemed to be an amount equal to ₹ 1,000 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.

The vehicles other than heavy goods vehicle will continue to be taxed as per the existing rates of ₹ 7,500 per month or part of a month for each goods carriage or the amount claimed to be actually earned by the assessee, whichever is higher.

19. Amendments in relation to notified Income Computation and Disclosure Standards. (Section 145 [w.e.f. A.Y. 2017-18]

(A) Reasons for making amendments

At present, section 145 of the Act empowers the Central government to notify Income Computation and Disclosure Standards (ICDS). In pursuance the central government has notified ten such standards effective from 1st April 2017 relating to Assessment year 2017-18.These are applicable to all assesses (other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the said Act) for the purposes of computation of income chargeable to income- tax under the head "Profits and gains of business or profession" or "Income from other sources".

Recent judicial pronouncements have raised doubts on the legitimacy of the notified ICDS. However, a large number of taxpayers have already complied with the provisions of ICDS for computing income for assessment year 2017-18. In order to regularise the compliance with the notified ICDS by a large number taxpayers so as to prevent any further inconvenience to them, the Act has brought amendments by inserting many sections retrospectively with effect from 1st April, 2017 i.e. the date on which the ICDS was made effective and will, accordingly, apply in relation to assessment year 2017-18 and subsequent assessment years.

(B) Amendments made [w.r.e.f. A.Y. 2017-18]

The following amendments have been made in view of the incorporation of ICDS in the Income Tax Act:

(i) Marked to market loss or other expected loss to be allowed (Clause (xviii) inserted in section 36(1)]

Clause (xviii) to section 36(1) provides that marked to market loss or other expected loss as computed in the manner provided in income computation and disclosure standards notified under section 145(2), shall be allowed deduction.

(ii) Marked to market loss or other expected loss not to be allowed except provided in section 36(1)(xviii) [Section 40A(13) inserted]

Section 40A(13) provides that no deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss, except as allowable under section 36(1)(xviii).

(iii) Taxation of foreign exchange fluctuation [Section 43AA inserted]

(1) Subject to the provisions of section 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be, and such gain or loss shall be computed in accordance with the income computation and disclosure standards notified under section 145(2).

(2) For the purposes of section 43AA(1), gain or loss arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions, including those relating to-

(i) Monetary items and non-monetary items;
(ii) Translation of financial statements of foreign operations;
(iii) Forward exchange contracts;
(iv) Foreign currency translation reserves.

(iv) Computation of income from construction and service contracts [section 43CB inserted]

The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under section 145(2).

However, the profit and gain arising from the following services shall be determined as under:

(i) Contract for providing services with duration of not more than 90 days shall be determined on the basis of project completion method;
(ii) Contract for providing services involving indeterminate number of acts over a specific period of time shall be determined on the basis of straight line method.

Further, for the purposes of percentage of completion method, project completion method or straight line method referred to above-

(i) The contract revenue shall include retention money;
(ii) The contract costs shall not be reduced by any incidental income in the nature of interest dividends or capital gains.

(v) Substitution of new sections 145A and 145B for section 145A [w.r.e.f. A.Y. 2017-18]

For section 145A of the Income-tax Act, the following sections shall be substituted and shall be deemed to have been substituted w.r.e.f. A.Y. 2017-18, namely:

(A) Method of accounting in certain cases [New section 145A]

For the purpose of determining the income chargeable under the head "Profits and gains of an business or profession" -

(i) The valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in income computation and disclosure standards notified under section 145(2).

(ii) The valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.

(iii) Inventory being securities not listed, or listed but not quoted, on a recognised stock exchange, shall be valued at actual cost initially recognised in the manner provided in income computation and disclosure standards notified under section 145(2).

(iv) Inventory being listed securities, shall be valued at lower of actual cost or net realisable value in the manner provided in income computation and disclosure standards notified under section 145(2).

Provided that the inventory being securities held by a scheduled bank or public financial institution shall be valued in accordance with the income computation

and disclosure standards notified under sub-section (2) of section 145 after taking into account the extant guidelines issued by the Reserve Bank of India in this regard:

Provided further, that the comparison of actual cost and net realisable value of securities shall be done category-wise.

Explanation 1.- For the purposes of this section, any tax, duty, cess or fee (by whatever name. called) under any law for the time being in force, shall Include all such payment notwithstanding any right arising as a consequence to such payment

Explanation 2.- For the purposes of this section.-

(a) "Public financial institution" shall have the meaning assigned to it in section 2(72) of the Companies Act. 2013.

(b) "Recognised stock exchange" shall have the meaning assigned to it in era use (ii) of Explanation 1 of section 43(5)

(c) "Scheduled bank" shall have the meaning assigned to it in clause (ii) of the Explanation to section 36(1)(viia),

(B) Taxability of certain income [Section 145B inserted]

(1) Notwithstanding anything to the contrary contained in section 145, interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received.

(2) The claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

(3) Income referred to section 2(24)(xviii) (relating to subsidy or grant or cash incentive, etc. from Government) shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

Amendments relating to income under the head "Capital Gains"

20. Certain transactions done on a stock exchange located in International Financial Services Centre (IFSC) not to be regarded as transfer [Section 47(viiab) inserted] [W.e.f. A.Y. 2019-20)

(A) Reasons for making amendments

In order to promote the development of world class financial infrastructure in India, the Act has amended section 47 of the Act so as to provide that transactions of certain assets, by a non-resident on a recognized stock exchange located in any International Financial Services Centre shall not be regarded as transfer, if the consideration is paid or payable in foreign currency.

(B) Amendments made

The Act has inserted clause (viiab) in section 47 which provides that-

Any transfer of a capital asset, being-

(i) Bond or Global Depository Receipt, as referred to in section 115AC(1); or

(ii) Rupee denominated bond of an Indian company; or

(iii) Derivative

Made by a non-resident on a recognised stock exchange located in any International Financial Services Centre shall not be regarded as a transfer where the consideration for such transaction is paid or payable in foreign currency.

21. The First and Second proviso to section 48 not to apply for the purpose of computing capital gains under section 112A [Third proviso to section 48 inserted] [w.e.f. A.Y. 2019-20]

The following proviso has been inserted in section 48:

Provided also that nothing contained in the first and second provisos shall apply to the capital gains arising from the transfer of a 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 referred to in section 112A.

First and second proviso to section 48

(i) First proviso to section 48: The first proviso provides that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company (only shares for the purpose of section 112A) shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company.

Thus, in the case of non-resident, while computing long-term capital gain, on transfer of shares, the benefit of computation of capital gains in foreign currency, will not be allowed.

(ii) Second proviso to section 48: The second proviso provides that where long-term capital gain arises from the transfer of a long-term capital asset (i.e. shares for section 112A), other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted.

Thus, in case of a resident, while computing such long-term capital gain, inflation indexation in respect of cost of acquisitions and cost of improvement, will not be allowed.

22. Rationalisation of provision relating to conversion of inventory into Capital Asset [Section 49(9)] [w.e.f. A.Y. 2019-20]

(A) Reason for making amendments

As per para 14 discussed above, where the inventory is converted into, or treated as, capital asset, the fair market value of the stock-in-trade of the date of conversion or treatment shall be treated as business income. The following consequential amendments have been made in section 49 relating to cost of acquisition and section 2(42A) relating to period of holding of a capital asset.

(B) Amendments made

(i) Sub-section (9) has been inserted in section 49 so as to provide that where the capital gain arises from the transfer of a capital asset referred to in section 28(via), the cost of

acquisition of such asset shall be deemed to be the fair market value which has been taken into account for the purposes of the said clause.

(ii) Sub-clause (ba) has been inserted in Explanation 1 to section 2(42A) so as to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment of inventory capital asset.

23. Rationalization of section 43CA, section 50C and section 56(2)(x) [w.e.f. A.Y. 2019-20J

(A) Reasons for making amendments

At present, while taxing income from capital gains, business profits and other sources arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher is adopted. The difference is taxed as income both in the hands of the seller and the purchaser.

It has been pointed out that this variation can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location. In order to minimize hardship in case of genuine transactions in the real estate sector, the Act has made certain amendments in section 43CA, section SOC and section 56(2)(x).

(B) Amendments made

(1) Proviso inserted under section 43CA(1)

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed 105%, of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

(2) Third proviso inserted under section 50C(1)

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105%, of the consideration received or accruing as a result of the transfer, 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.

In other words, if there is any variation between the Stamp duty price and actual consideration both for the purpose of section 43CA and section 50C which is not more than 5% of the actual consideration, such variation shall be ignored and consideration price in this case shall be taken as actual consideration.

(3) Item (B) under clause (b) of section 56(2)(x) substituted by a new item (B)

W.e.f. A.Y. 2019-20, item (B) shall now provide as under:
As per section 56(2)(x)(b), where any person receives, in any previous year, from any person or persons any immovable property-

For a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely-

(i) The amount of fifty thousand rupees; and
(ii) The amount equal to five percent, of the consideration

Then such excess shall be chargeable to income tax under the head "income from other sources".

24. Exemption under section 54EC to be allowed only on capital gain arising from the transfer of a long-term capital asset being land or building or both [Section 54EC] [w.e.f. A.Y. 2019-20]

(A) Existing provision

Existing section 54EC of the Act provides that capital gain, arising from the transfer of any long- term capital asset, invested in the long-term specified asset at any time within a period of 6 months after the date of such transfer, shall not be charged to tax subject to certain conditions specified in the said section.

The section also provides that "long-term specified asset" for making any investment under the section on or after the 1st day of April, 2007 means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 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

(B) Amendments made

In order to rationalise the provisions of section 54EC of the Act and to restrict the scope of the section only to capital gains arising from long-term capital assets, being land or building or both and to make available funds at the disposal of eligible bond issuing company for more than three years, the Act has amended section 54EC(1) so as to provide that capital gain arising from the transfer of a long- term capital asset, being land or building or both, invested in the long-term specified asset at any time within a period of 6 months after the date of such transfer, the capital gain shall not be charged to tax subject to certain conditions specified in this section.

The Act has also provided that long-term specified asset, for making any investment under the section on or after 1.4.2018, shall mean any bond, redeemable after 5 years and issued on or after 1.4.2018 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.

Further, as per proviso to section 54EC(2), if bonds issued on or after 1.4.2018 are transferred or converted into money or any loan or advance is taken on the security of such specified asset within a period of 5 years, the whole or part of the capital gain which was exempt earlier shall be deemed to be the capital gain of the previous year in which the asset is so transferred or converted.

25. Cost of acquisition of equity shares, unit of a equity oriented fund or unit of business trust for purpose of computing long-term capital gain under section 112A [Section 55(2)(ac)]

For details see para 26 below.

26. New regime for taxation of long-term capital gains on sale of equity shares etc. [Section 10(38) and section 112A] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

Under the existing regime, long term capital gains arising from transfer of long term capita assets, being

- Equity shares of a company or
- An unit of equity oriented fund or
- An unit of business trusts,

Is exempt from income-tax as per the provisions of section 10(38).

However, transactions in such long term capital assets carried out on a recognized stock exchange are liable to securities transaction tax (STT). Consequently, this regime is

inherently biased against manufacturing and has encouraged diversion of investment in financial assets. It has also led to significant erosion in the tax base resulting in revenue loss. The problem has been further compounded by abusive use of tax arbitrage opportunities created by these exemptions.

In order to minimize economic distortions and curb erosion of tax base, the Act has made certain amendments.

(B) Amendments made

(1) The Act has withdrawn the exemption under section 10(38), w.e.f. A.Y. 2019-20. Thus, long- term capital gain on transfer of above shares and unit effected before 1.4.2018 shall still be exempt under section 10(38).

(2) The Act has inserted the following section in the Act:

Tax on long-term capital gains in certain cases [Section 112A]

(1) Conditions to be satisfied for applicability of section 112A [Section 112A(1)]:
Notwithstanding anything contained III section 112, the tax payable by an assessee on his total income shall be determined in accordance with the provisions of section I 12A(2), if the following conditions are satisfied:

(i) The total income includes any income chargeable under the head "Capital gains";

(ii) The capital gains arise from the transfer of a 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;

(iii) Securities transaction tax has,-

(a) In a case where the long-term capital asset is in the nature of an equity share in a company, been paid on acquisition and transfer of such capital asset; or

(b) In a case where the long-term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, been paid on transfer of such capital asset.

(2) Tax payable on total income if it includes such long-term capital gain [Section 112A(2):
The tax payable by the assessee on the total income referred to in section 112A(1) shall be the aggregate of-

(i) The amount of income-tax calculated on such long-term capital gains exceeding ₹ 1,00,000 @ 10%; and

(ii) The amount of income-tax payable on the total income as reduced by the amount of long-term capital gains referred to in section 112A(l) as if the total income so reduced were the total income of the assessee.

However, in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, the long-term capital gains, for the purposes of clause (i), shall be educed by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax.

Important Notes:

Where the total income of the resident individual and resident HUF, as reduced long- term capital gains, is below the maximum amount which is not chargeable to tax,

then such long – term capital gains shall be reduced by the amount by which such total income (exclusive of long – term capital gains) falls short of the exemption limit and tax on the balance capital gains shall be computed at the rate of 10%. For example, the income of X for the previous year 2018-19, without such long-term capital gain is ₹1,45,000 and long term capital gain is ₹1,20,000. In this case, the total income (excluding long-term capital gain) is ₹ 1,45,000 whereas the maximum exemption limit on which no tax is payable is ₹ 2,50,000 (₹ 3,00,000 in case of a residential individual of the age of 60 years more and ₹ 5,00,000 for a resident individual of the age of 80 years or more) for assessment year 2019-20. Therefore, ₹1,05,000 will be reduced from the long –term capital gain i.e. ₹15,000 (₹ 1,20,000 – ₹ 1,05,000).

For computing tax on long term capital gain, non- resident individual / HUF Are not eligible for the benefit of slab of ₹ 2,50,000 as is available for resident individual / HUF as per Note 1.

Example: If in case of a non-resident, the long term capital gain during the year is ₹ 1,20,000 and income from all other sources is ₹ 1,13,000, then entire ₹ 1,20,000 ie long –term capital gain, shall be charged to tax @ 20% + surcharge)(if applicable) + education cess + SHEC and the tax on balance income shall be nil as it is less than ₹ 2,50,000

(3) Condition of payment of STT not applicable in case of transaction undertaken on a recognised stock exchange located in any International Financial Services Centre [Section 112A(3)]: The condition relating to the payment of STT specified in 112A(l)(iii) above shall not apply to a transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency.

Similarly, the requirement of payment of SIT at the time of transfer of long term capital asset, being a unit of equity oriented fund or a unit of business trust, shall not apply if the transfer is undertaken on recognized stock exchange located in any International Financial Services Centre (IFSC) and the consideration of such transfer is received or receivable in foreign currency.

(4) The Government may issue a Notification exempting the requirement of payment of STT at the time of acquisition of equity shares [Section 112A(4): The Central Government may, by notification in the Official Gazette, specify the nature of acquisition in respect of which the provisions of section 112A(1)(iii)(a) above shall not apply.

Thus, section 112A(4) empowers the Central Government to specify by notification the nature of acquisitions in respect of which the requirement of payment of securities transaction tax shall not apply in the case of equity share in a company.

(5) Deduction under Chapter VI-A (Section 80C to 80U) not to be allowed from such long- term capital gain [Section 112A(5)]: Where the gross total income of an assessee includes any long- term capital gains referred to in section 112A(l), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

In other words, deduction under Chapter VI-A (Section 80C to 80U) shall not be allowed from such long-term capital gain.

(6) Rebate of tax under section 87A not to be allowed from the tax payable on such long- term capital gain [Section 112A(6)]: Where the total income of an assessee includes any long-term capital gains referred to in section 112A(1), the rebate under

section 87 A (of ₹ 3,500) shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.
In other words, rebate of tax shall not be allowed from the tax payable on such long-term capital gain.

Consequential amendments

(1) The First and Second proviso to section 48 not to apply for the purpose of computing capital gains under section 112A [Third proviso to section 48 inserted] [w.e.f. A.Y. 2019-20]

The following proviso has been inserted in section 48:
Provided also that nothing contained in the first and second provisos shall apply to the capital gains arising from the transfer of a 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 referred to in section 112A.

First and second proviso to section 48

(i) First proviso to section 48: The first proviso provides that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company (only shares for the purpose of section 112A) shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company.

Thus, in the case of non-resident, while computing long-term capital gain, on transfer of shares, the benefit of computation of capital gains in foreign currency, will not be allowed.

(ii) Second proviso to section 48: The second proviso provides that where long-term capital gain arises from the transfer of a long-term capital asset (i.e. shares for section 112A), other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted.

Thus, in case of a resident, while computing such long-term capital gain, inflation indexation in respect of cost of acquisitions and cost of improvement, will not be allowed.

(2) Cost of acquisition for purpose of computing long-term capital gain under section 112A [Section 55(2)(ac)]: The cost of acquisition for the purposes of computing capital gains referred to in section 112A(I) in respect of the long-term capital asset acquired by the assessee before 1.2.2018, shall be deemed to be as under:

(A) *Cost of acquisition of equity shares in a company or unit of an equity oriented fund or a unit of a business trust, listed on a recognized stock exchange*

The cost of acquisition shall be the higher of-

(i) The Actual Cost Of Acquisition Of Such Asset; And

(ii) The Lower of-

(a) The fair market value of such asset; and

(b) The full value of consideration received or accruing as a result of the transfer of the capital asset.

Where the above capital asset has been acquired before 1.4.2001, the cost of acquisition shall be the cost of acquisition of the asset to the assessee or the fair market value of the asset as on 1.4.2001, Whichever is higher.

(B) *Cost of acquisition of a capital asset being unit of equity oriented fond which is not listed on a recognized stock exchange as on 31.1.2018*

The cost of acquisition shall be the net asset value of such unit as on 31.1.2018.

(C) *Cost of acquisition of a capital asset being an equity share in a company which is-*

(A) Not listed on a recognised stock exchange as on 31.1.2018 but listed on such exchange on the date of transfer;

(B) Listed on a recognised stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on 31.1.2018 by way of transaction not regarded as transfer under section 47,

Shall be an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the financial year 2017-2018 bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on 1.4.2001, whichever is later.

In other words, it shall be the indexed cost of acquisition. However, indexation shall be done only ill financial year 2017 -18.

Explanation -For the purposes of this section,-

"Equity fund" means a fund set up under a scheme of a mutual fund specified under section 10(23D) and-

(i) In a case where the fund invests in the units of another fund Which is traded on a recognised stock exchange-

(A) A minimum of 90%, of the total proceeds of such fund is invested in the units of such other fund; and

(B) Such other fund also invests a minimum of 90%, of Its total proceeds In the equity shares of domestic companies listed on a recognised stock exchange; and

(ii) In any other case, a minimum of 65%, of the total proceeds of such fund Is invested in the equity shares of domestic companies listed on a recognised stock exchange:

Provided that the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

27. Taxation of long-term capital gains in the case of Foreign Institutional Investor (Section 115AD] (w.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

The existing provisions of section 115AD of the Act inter alia, provide that where the total income of a Foreign Institutional Investor (FII) includes income by way of long-term capital

gains arising from the transfer of certain securities, such capital gains shall be chargeable to tax @ 10%.

However, long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of equity oriented fund or a unit of business trusts, is exempt from income-tax under section 10(38) of the Act. Since, section 10(38) has been withdrawn w.e.f A.Y. 2019-20, the amendment has been made in section 115AD.

(B) Amendment made

A proviso has been inserted under section 115AD(1)(iii) to provide that in case of income arising from the transfer of a long-term capital asset referred to in section 112A, income-tax @ 10%, shall be calculated on such income exceeding ₹ 1,00,000.

Thus, the FIIs will also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding ₹ 1,00,000.

Amendments relating to income under the head "Income from Other Sources"

28. Item (B) under clause (b) of section 56(2)(x) substituted by a new item (B)

See para 23 above.

29. Widening of scope of "accumulated profits" for the purposes of deemed dividend [Explanation 2A under section 2(22) inserted] [w.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendment

According to section 2(22) "dividend" includes any distribution of accumulated profits (whether capitalized or not) to its shareholders by a company, whether it is in the nature of,-

(a) Release of all or any of its assets,
(b) Issue of debentures in any form (with or without interest) or distribution of bonus to its preference shareholders,
(c) Distribution of proceeds on liquidation,
(d) On the reduction of capital, or
(e) Not relevant for this amendment.

Explanation 2 to the said clause provides the definition of the term 'accumulated profits' for the purposes of the said clause, as all profits of the company up to the date of distribution or payment or liquidation, subject to certain conditions.

Instances have come to light whereby companies are resorting to abusive arrangements in order to escape liability of paying tax on distributed profits. Under such arrangements, companies with large accumulated profits adopt the amalgamation route to reduce capital and circumvent the provisions of section 2(22)(d) of the Act. With a view to preventing such abusive arrangements and similar other abusive arrangements, the Act has made the requisite amendment:

(B) Amendment made

The following Explanation 2A in section 2(22) of the Act has been inserted to widen the scope of the term 'accumulated profits'.

Explanation 2A.-In the case of an amalgamated company, the accumulated profits, whether capitalised or not, or loss, as the case may be, shall be increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.

30. Tax neutral transfers [Section 56(2)(x)] [w.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendment

Section 47 provides for certain tax neutral transfers. Proviso to section 56(2)(x) also excludes income arising out of certain tax neutral transfers from its ambit. However, the transfers referred to in clause (iv) (relating to transfer of a capital asset by a holding company to its a subsidiary) and clause (v) (relating to transfer of a capital asset by a subsidiary company to its holding company) of section 47 have not been excluded from the scope of section 56(2)(x).

(B) Amendment made

In order to further facilitate the transaction of money or property between a wholly owned subsidiary company and its holding company, the Act has amended item (ix) of proviso to section 56(2)(x) so as to exclude such transfer from the scope of section 56(2)(x).

31. Rationalization of section 56(2)(x) (w.e.f. A.Y. 2019-20]

Item (B) of section 56(2)(x)(b) substituted.

See para 23 Above.

32. Taxability of compensation in connection with termination of employment [Section 56(2)(xi)] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendment

The Finance Act, 2018 has inserted sub-clause (e) in section 28(ii) so as provide that Compensation in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income. On the similar lines, the Act has inserted clause (xi) in section 56(2) to tax the compensation in connection with the termination or the modification of the terms and conditions of any employment.

(B) Amendment made

As per clause (xi) inserted in section 56(2), any compensation received or receivable, whether in the nature of revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to its employment shall be taxable under section 56 of the Act.

Consequential amendment

Clause (xviib) has been inserted in section 2(24) so as to include any compensation or other payment referred to in section 56(2)(xi) in the definition of income.

Amendments in provisions relating to carry forward and set off of losses

33. Benefit of carry forward and set off of losses to a closely held company seeking insolvency resolution under Insolvency and Bankruptcy Code, 2016 even if there is change in the shareholding [Section 79] [w.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendment

Section 79 of Act provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51 % of the voting power, on the last day of the year or years in which the loss was incurred and on the last day of the previous year in which such loss is set off.

In general, the case of a company seeking insolvency resolution under Insolvency and Bankruptcy Code, 2016, involves change in the beneficial owners of shares beyond the permissible limit under section 79. This acts as a hurdle for restructuring and rehabilitation of such companies.

In order to address this problem, to the Act has relaxed the rigors of section 79 in case of such companies by inserting the following third proviso under section 79.

(B) Amendment made

Third proviso to section 79 inserted

Provided also that nothing contained in this section shall apply 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.

Amendments relating to deductions to be made in computing total income

34. Deductions in respect of certain incomes not to be allowed unless return is furnished by the due date specified under section 139(1) [Section 80AC] [w.r.e.f. A.Y. 2018-19)

(A) Reasons for making amendment

The existing provisions contained in the section 80AC of the Act provide that no deduction would be admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80- ID or section 80-IE, unless the return of income by the assessee is furnished on or before the due date specified under section 139(1) of the Act. This burden is not cast upon assesses claiming deductions under several other similar provisions.

In view of the above, the Act has extended the scope of section 80AC.

(B) Amendment made

Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after-

(i) 1.4.2006 but before 1.4.2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;

(ii) 1.4.2018, any deduction is admissible under any provision of this Chapter under the heading "C.-Deductions in respect of certain incomes" (i.e. sections 80-IA to 80RRB),

Then such deduction shall not be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under section 139(1).

35. Deductions available to senior citizens in respect of health insurance premium or actual expenditure incurred on medical treatment [Section 80D] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

Section 80D, inter-alia, provides that a deduction upto ₹ 30,000 shall be allowed to an assessee, being an individual or a Hindu undivided family,-

- In respect of payments towards annual premium on health insurance policy, or preventive health check-up, of a senior citizen, or
- On account of medical expenditure incurred by very senior citizen (i.e. who is of the age of 80 years or more).

There are cases, where senior citizens, who are less than 80 year old, are not insured but they have to incur expenditure on their medical treatment. In order to give the benefit to all senior citizens, the following amendments have been made.

(B) Amendments made

(1) The word "very" along with senior citizen has been omitted so as to give the following benefit to all senior citizens for:

- Payments made towards annual premium on health insurance policy, or preventive health check-up, or

- Payment made towards medical expenditure incurred by him on his medical treatment.

(2) The monetary limit of deduction has been raised from ₹ 30,000 to ₹ 50,000.

An individual will also be allowed deduction of ₹ 50.000. if he makes the payment towards annual premium on health insurance policy of any of his parents who are senior citizens including ₹ 5,000 for preventive health check up. Similarly, HUF will also be entitled to above deduction of ₹ 50,000 if it makes a payment towards the health insurance of its member who is a senior citizen.

(3) Further, in case of single premium health insurance policies having cover of more than one year, the deduction shall be allowed on proportionate basis for the number of years for which health insurance cover is provided, subject to the specified monetary limit.

Thus, if the amount is paid in lump sum in the previous year to effect or to keep in force an insurance on the health of any person specified therein for more than a year, then, subject to the provisions of this section, there shall be allowed for each of the relevant previous year, a deduction equal to the appropriate fraction of the amount.

Explanation:- For the purpose of this sub- section:-

(i) **"Appropriate fraction"** means the fraction, the numerator of which is one and the denominator of which is the total number of relevant previous years:

(ii) **"Relevant previous year"** means the previous year beginning with the previous year in which such amount is paid and the subsequent previous year or years during which the insurance shall have effect or be in force.

36. Enhanced deduction to senior citizens for medical treatment of specified disease or ailment [Section 80DDB] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

Section 80DDB of the Act, inter-alia, provide that a deduction is available to an individual and Hindu undivided family with regard to amount paid for medical treatment of specified disease or ailment in respect of very senior citizen upto ₹ 80,000 and in case of senior citizens upto ₹ 60,000 subject to specified conditions. The benefit of this section is intended to be given to all senior citizens irrespective of their age.

(B) Amendments made

(1) The term "very senior citizen" has been omitted.

(2) The monetary limit of ₹ 60,000 has been raised to ₹ 1,00,000 for a senior citizen.

37. Measures to promote start-ups [Section 80-IAC] [w.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendments

Section 80-IAC of the Act, inter alia, provides that deduction under this section shall be available to an eligible start-up for three consecutive assessment years out of seven years at the option of the assessee, if-

(i) It is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2019;

(ii) The total turnover of its business does not exceed ₹ 25 crore in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021; and

(iii) It is engaged in the eligible business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

In order to improve the effectiveness of the scheme for promoting start ups in India, the Act has made the following amendments in the taxation regime for the start ups.

(B) Amendments made

(i) The benefit would also be available to start ups incorporated on or after the 1 st day of April 2019 but before the 1st day of April, 2021;

(ii) The requirement of the turnover not exceeding ₹ 25 Crore would apply to seven previous years commencing from the previous year in which the deduction under section 80-IAC is first claimed;

(iii) 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.

38. Incentive for employment generation [Section 80JJAA] [w.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

At present, under section 80JJAA 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, the Act has made the following amendments.

(B) Amendments made

(1) The Act has extended the relaxation of 150 days which was available in the case of apparel industry to footwear and leather industry also.

(2) Further, it has inserted the following second proviso under Explanation to section 80JJAA(2)

Provided further that where an employee is employed during the previous year for a period of less than 240 days or 150 days, as the case may be, but is employed for a period of 240 days or 150, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly.

The above proviso has rationalized this deduction of 30% by allowing the benefit for a new employee who is employed for less than the minimum period of 240 days or 150 days, as the case may be, during the first year but continues to remain employed for the minimum period of 240 days or 150 days, as the case may be, in the subsequent year.

39. Deduction in respect of income of Farm Producer Companies [Section 80PA][w.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

Section 80P provides for 100% deduction in respect of profit of cooperative society which provide assistance to its members engaged in primary agricultural activities. It is indented to give similar benefit to form producer companies also.

(B) Amendments made

(1) 100% deduction of profits from eligible business to be allowed to Producer Company having a turnover of less than ₹ 100 crore [Section 80PA(1)]: Where

the gross total income of an assessee, being a Producer Company having a total turnover of less than ₹ 100 crore in any previous year, includes:
– Any profits and gains derived from eligible business,

There shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to 100%, of the profits and gains attributable to such business for the previous year relevant to an assessment year commencing on or after 1.4.2019, but before 1.4.2025.
Thus the benefit shall be available for a period of 5 previous years commencing from the previous year 2018-19.

(2) Deduction of net income only to be allowed under this section [Section 80PA(2)]: In a case where the assessee is entitled to deduction under any other provision of this Chapter also, the a deduction under this section shall be allowed with reference to the income, if any, as referred to in this section included in the gross total income as reduced by the deductions under such other provision of this Chapter.

Explanation.-For the purposes of this section,-

(i) **"Eligible business"** means-
- **(a)** The marketing of agricultural produce grown by the members; or
- **(b)** The purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or
- **(c)** The processing of the agricultural produce of the members;

(ii) **"Member"** shall have the meaning assigned to it in clause (d) of section 581A of the Companies 45 Act, 1956;

As per section 581A(d), "member" means a person or Producer institution (whether incorporated or not) admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as such;

(iii) **"Producer Company"** shall have the meaning assigned to it in clause (I) of section 581A of the Companies Act, 1956.

As per section 581A(I), "Producer Company" means a body corporate having objects or activities specified in section 581B and registered as Producer Company under this Act

Objects of Producer Company (Section 581B]

(1) The objects of the Producer Company shall relate to all or any of the following matters, namely:
- **(a)** Production, harvesting, procurement, grading, pooling, handling, marketing, selling export of primary produce of the members or import of goods or services for their benefit:

  Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution:

- **(b)** Processing including preserving, drying, distilling, brewing , vinting, canning and packaging of produce of its Members;

- **(c)** Manufacture, sale or supply of machinery, equipment or consumables mainly to its members:

(d) Providing education on the mutual assistance principles to its Members and others:

(e) Rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;

(f) Generation, transmission and distribution of power, revitalisation of land and land and water resources, their use, conservation and communications relatable to primary produce;

(g) Insurance of producers or their primary produce;

(h) Promoting techniques of mutuality and mutual assistance;

(i) Welfare measures or facilities for the benefit of members as may be decided by the Board;

(j) Any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (j) or other activities which may promote the principles of mutual assistance amongst the Members in any other manner;

(k) Financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

(2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section

40. Section 80TTA amended and section 80TTB inserted [W.e.f. A.Y. 2019-20]

(A) Reasons for making amendments

At present, a deduction upto ₹ 10,000 is allowed under section 80TTA to an assessee being an individual or a HUF in respect of interest income from savings account. It is intended to give more benefit to a senior citizen.

(B) Amendments made

1. **Amendment in section 80TTA:** W.e.f. A.Y. 2019-20, the benefit of ₹ 10,000 of interest income from saving account under section 80IT A shall be allowed to an assessee (other than the assessee referred to in section 80TTB) being an individual or HUF.

2. **Deduction in respect of interest on deposits in case of senior citizens [Section 80TTB]**

   (1) Senior citizen to be allowed a deduction of ₹ 50,000 on account of interest on deposits [Section 80TTB(1)]: Where the gross total income of an assessee, being a senior citizen, includes any income by way of interest on deposits with-

   (a) A banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act);

   (b) A co-operative society engaged in carrying on the business of banking (including a co- operative land mortgage bank or a co-operative land development bank); or

   (c) A Post Office as defined in clause (A) of section 2 of the Indian Post Office Act, 1898, there shall, in accordance with and subject to the provisions of this

section, be allowed, in computing the total income of the assessee, a deduction-

(i) In a case where the amount of such income does not exceed in the aggregate ₹ 50,000, the whole of such amount; and

(ii) In any other case, ₹ 50,000.

(2) No deduction to be allowed if deposit held in the name of partner/member by the firm/AOP (Section 80TTB(2)]: Where the income referred to in section 80TTB(1) is derived from any deposit held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed under this section in respect of such income in computing the total income of any partner of the firm or any member of the association or any individual of the body.

Explanation.-For the purposes of this section, "senior citizen" means an individual resident in India who is of the ace of sixty year or more at anytime during the relevant previous year.

3. Consequential amendment

Section 194A amended

The Act has amended section 194A so as to raise the threshold for deduction of tax at source on interest income for senior citizens from ₹ 10,000 to ₹ 50,000. This amendment will take effect, for interest paid or credited on or after 1.4.2018.

Amendments relating to tax on distributed profits

41. Closely held company to pay Dividend Distribution Tax on Deemed Dividend specified under section 2(22)(e) [Section 115Q/115-0] [W.e.f. 1.4.2018 i.e. from previous year 2018-19]

(A) Reasons for making amendments

At present dividend distributed by a domestic company is subject to dividend distribution tax payable by such company. However, deemed dividend under section of2(22)(e) the Act is taxed in the hands of the recipient at the applicable marginal rate. The taxability of deemed dividend in the hands of recipient has posed serious problem of the collection of the tax liability and has also been the subject matter of extensive litigation. With a view to bringing clarity and certainty in the taxation of deemed dividends, the Act has amended sections I 15-0 and 115Q.

(B) Amendments made

(1) Explanation under section 115Q omitted [W.e.f. 1.4.2018]

The following Explanation given under section 115Q has been omitted-

Explanation.-For the purposes of this Chapter, the expression "dividends" shall have the same meaning as is given to "dividend" in clause (22) of section 2 but shall not include sub-clause € thereof.

Thus, w.e.f. 1.4.2018, the deemed dividend specified under section 2(22)(e) shall also be taxed in the hands of the company.

(2) Proviso inserted under section 115-0(1) [W.e.f. 1.4.2018]

The following proviso has been inserted under section 115-0(1):

Provided that in respect of dividend referred to in section 2(22)(e), this sub-section shall have effect as if for the words "fifteen per cent", the words "thirty per cent" had been substituted.

In other words, any payment by a closely held company, of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan, to the extent of accumulated profits (excluding capitalised profits) to:-

(i) A equity shareholder, who is beneficial owner of shares holding not less than 10% of the voting power; or

(ii) Any concern in which such shareholder (holding not less than 10% voting power) is a member or a partner and in which he has a substantial interest; or

(iii) Any person, on behalf, or for the individual benefit, of any such shareholder. Such shareholder here means a shareholder who is beneficial owner of share holding not less than 10% voting power

Shall now be taxable in the hands of the company instead of the recipient. Further, the company shall have to pay dividend distribution tax @ 30% (gross) within 14 days from the date when such advance or loan is given by the closely held company to the aforesaid persons.

(3) Consequential amendment has been made in section 115-0(IB) to provide that section 115-0(IB) shall not apply in respect of dividend referred to in section 2(22)(e).

42. Mutual fund to pay income distribution tax on income payouts to unit holders of an equity oriented fund [Section 115R] [W.e.f. 1.4.2018 (i.e. from previous year 2018-19)]

(A) Reasons for making amendment

The existing provisions of section 115R, inter alia, provide any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income at the rate specified in the section. However, any income distributed to a unit holder of equity oriented funds is not chargeable to tax under the said section.

With a view to providing a level playing field between growth oriented funds and income paying funds, in the wake of new capital gains tax regime for unit holders of equity oriented funds, the Act has made the following amendment in section 115R(2)

(B) Amendment made

Section 115R(2) has been amended to provide that where any income is distributed by a Mutual Fund being, an equity oriented fund, the mutual fund shall be liable to pay additional income-tax @ 10% on income so distributed.
However, in this case, the grossing up of 10% will have to be done as under.

Example

Where the amount of income paid or distributed by a mutual fund is ₹ 90, then Income Distributed Tax (IDT) under the amended provision would be calculated as follows:

Income amount distributed	₹ 90
Increase by no [i.e. (90 x 0.10)/(1-0.10)]	
Increased amount	₹ 100
IDT@ 10% of 100	₹ 10
Tax payable under section 115-R is	₹ 10
Income distributed to unit holder	₹ 10
Effective rate of income distribution tax	
The effective rate of income distribution tax payable shall be as under:	

Tax payable under section 115-0 on ₹90 distributed	₹ 10
Therefore IDT rate on 100 distributed shall be 10/90 x 100	11.111%
Add: Surcharge @ 12% of 11.111	12.444%
Total	12.444%
Add: H & EC4%	0.497%
Total effective IDT rate applicable	12.941%

Hence, the effective rate of IDT has been increased to 12.941 % approximately.

Alternatively the net amount of income paid on distributed should first be grossed up and IDT should be paid @ 11.111% + 12% SC + 4% H&EC.

Consequential amendment under section 115T

The definition of equity oriented fund given under clause (b) of Explanation under section 115T has been substituted by the following definition.

"Equity oriented fund" means a fund referred to in clause (a) of the Explanation to section 112A and the Unit Scheme, 1964 made by the Unit Trust of India. For details see box under para 26.

Amendments relating to Minimum Alternate Tax

43. Amendments made in section 115JB

(1) Book profit for the purpose of Minimum Alternate Tax of a company whose application has A. been admitted under the Insolvency and Bankruptcy Code, 2016 to be computed after deduction (A of brought forwarded business loss and unabsorbed depreciation [Section 115JB] [W.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendment

Section 115JB of the Act, provides for levy of a minimum alternate tax (MAT) on the "book profits" of a company. In computing the book profit, it provides, inter alia, for a deduction in respect of the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account. Consequently, where the loss brought forward or unabsorbed depreciation is Nil, no deduction is allowed. This non-deduction is a barrier to rehabilitating companies seeking insolvency resolution.

(B) Amendment made

In view of the above, the Act has inserted clause (iih) in Explanation 1 to section 115JB to in 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.

Consequently, a company whose application has been admitted would henceforth be entitled to reduce the loss brought forward (excluding unabsorbed depreciation) and unabsorbed depreciation for the purposes of computing book profit under section 115JB.

(2) MAT provisions not to apply to certain foreign companies [Explanation 4A inserted under section 115JB] [W.r.e.f.2001-02]

(A) Reason for making amendment

A foreign company covered under section 44B or section 44BB or section 44BBA or section 44BBB has to pay tax at the rate lower than the MAT rate but section 115JB is also applicable to such company.

(B) Amendment made

A clarificatory amendment has been inserted in section 115JB of the Act to provide that the provisions of section 115JB of the Act shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if its total income comprises solely of profits and gains from business referred to in section 44B or section 44BB or section 44BBA or section 44BBB and such income has been offered to tax at the rates specified in the said sections.

Amendments relating to Alternate Minimum Tax (AMT)

44. AMT to be reduced in case of a unit located in an International Financial Services Centre [Section 115JC & 115JF amended] [W.e.f. A.Y. 2019-20]

Section 115JC of the Act provides for alternate minimum tax @ 18.50% of adjusted total income in the case of a non-corporate person.

In order to promote the development of world class financial infrastructure in India, the Act has amended section 115JC so as to provide that in case of a unit located in an International Financial Service Center, the alternate minimum tax under section 115JC shall be charged @ 9% instead of 18.5%.

Consequential amendment in section 115JF has also been made.

Amendments relating to assessment, reassessment and recomputation

45. Entities to apply for Permanent Account Number in certain cases [Section 139A(1)] [W.r.e.f. A.Y.2018-19]

(A) Reasons for making amendment

Section 139A(1) inter-alia provides that every person specified therein and who has not been allotted a permanent account number shall apply to the Assessing Officer for allotment of a Permanent Account Number (PAN). In order to use PAN as Unique Entity Number (UEN) for non-individual entities, the Act has made the following amendment.

(B) Amendments made

(i) Clause (v) has been inserted in section 139A(I) to provide that every person, being a resident other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year shall be required to apply to the Assessing Officer for allotment of PAN .

(ii) Further, in order to link the financial transactions with the natural persons, clause (vi) has been inserted, to provide that the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities shall also apply to the Assessing Officer for allotment of PAN.

(iii) Clause (c) of Explanation to section 139A amended

The existing clause (c) reads as under:

"permanent account number under the new series" means a permanent account number having ten alphanumeric characters and issued in the form of a laminated card

The words "and issued in the form of a laminated card" in above clause have been deleted.

46. Insolvency professional to verify return of income where application for corporate insolvency resolution has been admitted [Clause (c) inserted under second proviso to section 140J [W.r.e.f. A.Y.2018-19]

The following clause (c) has been inserted under second proviso to section 140 relating to verification of return of income:

Where in respect of a company, an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016, the return shall be verified by the insolvency professional appointed by such Adjudicating Authority.

Explanation:- For the purpose of this clause the expressions " insolvency professional" and Adjudicating Authority" shall have the respective meaning assigned to them in clause (18) of section 3 and clause (1) of section 5 of the insolvency and Bankruptcy Code, 2016.

47. Rationalisation of prima-facie adjustments during processing of return of income [Section 143(1) [W.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendment

Section 143(1) provides for processing of return of income made under section 139, or in response to a notice under section 142(1).

Clause (a) of the said sub-section provides that at the time of processing of return, the total income or loss shall be computed after making the adjustments specified in sub-clauses (i) to (vi) thereof.

Sub-clause (vi) of the said clause provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return. With a view to restrict the scope of adjustments, the following amendment has been made:

(B) Amendment made

Third proviso inserted under section 143(1)(a)

Provided also that no adjustment shall be made under section 143(1)(a)(vi) (see above) in relation to a return furnished for the assessment year commencing on or after 1.4.2018.

48. New scheme for scrutiny assessment [Section 143(3A)/(3B)/(3C)] [W.e.f. 1.4.2018]

(A) Reasons for making amendment

Section 143 of the Act provides for the procedure for assessment. Sub-section (3) of the said section empowers the Assessing Officer to make, by an order in writing, an assessment of total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him or the basis of such assessment.

The Act has proposed to prescribe a new scheme for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources, and introduction of team-based assessment.

(B) Amendment made

The following sub-sections (3A), (3B) and (3C) have been inserted in section 143:

(1) Central Government to make a scheme for making assessment [Section 143(3A)]: The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under section 143(3) so as to impart greater efficiency, transparency and accountability by-

(a) Eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;

(b) Optimising utilisation of the resources through economies of scale and function" specialisation;

(c) Introducing a team-based assessment with dynamic jurisdiction.

(2) Provisions of section 143(3A) may not apply or apply with modification in certain case [Section 143(3B)]: The Central Government may, for the purpose of giving effect to the scheme made under section 143(3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.
Provided that no direction shall be issued after 31.3.2020.

(3) Notification issued under section 143(3A) and (3B) to be laid before each House of Parliament [Section 143(3C)]: Every notification issued under section 143(3A) and section 143(3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Amendments relating to TDS and TCS

49. Tax deduction at source from interest on 7.75% GOI Savings (Taxable) Bonds, 2018 (Section 193] (W.e.f. 1.4.2018 (A.Y. 2019-20)]

(A) Reasons for making amendment

Government of India introduced 8% Savings (Taxable) Bonds, 2003 in 2003. Under the existing law, the interest received by the investor is taxable. Further the payer is liable to deduct tax at source under section 193 of the Act at the time of payment or credit of such interest in excess of ₹ 10,000 to a resident.

Government has now decided to discontinue the existing 8% Savings (Taxable) Bonds, 2003 with a new 7.75% GOI Savings (Taxable) Bonds, 2018. The interest received under the new bonds will continue to be taxed as in the case of the earlier once. The necessary amendment has been done in clause (iv) of the proviso to section 193.

(B) Amendment made

Clause (iv) of the proviso to section 193 has been amended to allow for deduction of tax at source at the time of interest payable on 7.75% GOI Savings (Taxable) Bonds, 2018 to residents. However, no TDS will be deducted if the amount of interest is less than or equal to ₹ 10,000 during the financial year.

50. No TDS on payment of interest to a senior citizen upto ₹ 50,000 (Section 194AJ (W.e.f. 1.4.2018 i.e. previous year 2018-19]

See para 39 above.

Amendments relating to appeals

51. Appeal against penalty imposed by Commissioner (Appeals) under section 271J [Clause (a) of section 253(1) amended] (W.e.f. 1.4.2018]

(A) Reasons for making amendment

As per section 271J, the Assessing Officer or the Commissioner (Appeals) may levy a penalty of ₹ 10,000, where an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of this Act or the rules made thereunder.

The person, aggrieved by any of the above order of Assessing Officer, can file an appeal to the commissioner (Appeal) against such order but there is no provision in the Act to file an appeal to the Appellate Tribunal where the penalty under section 2711 is imposed by Commissioner (Appeal).

(B) Amendment made

The Act has amended clause (a) of section 253(1), so as to also make an order passed by a Commissioner (Appeals) under section 2711 appealable before the Appellate Tribunal.

Amendments relating to penalties and prosecution

52. Penalty for failure to furnish statement of financial transaction or reportable account 1 [Section 271F A increased] [W.e.f. 1.4.2018]

(A) Reasons for making amendment

Section 271FA of the Act provides that if a person who is required to furnish the statement of financial transaction or reportable account under section 285BA(1), fails to furnish such statement within the prescribed time, he shall be liable to pay penalty of ~ 100 for every day of default.

The proviso to the said section further provides that in case such person fails to furnish the statement of financial transaction or reportable account within the period specified in the notice issued under section 285BA(5), he shall be liable to pay penalty of ₹ 500 for every day of default.

In order to ensure compliance of the reporting obligations under section 285BA, the amendment has been made in the penalty section 271 FA.

(B) Amendment made

The Act has amended to section 271FA so as to increase the penalty leviable from ₹ 100 to ₹500 and from ₹ 500 to ₹ 1,000, for each day of continuing default.

53. Rationalisation of section 276CC relating to prosecution for failure to furnish return [Section 276CC (W.r.e.f. A.Y. 2018-19]

(A) Reasons for making amendment

Section 276CC of the Act provides that if a person willfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine.

The sub-clause (b) of clause (ii) of proviso to the section 276CC further provides that a person shall not be proceeded against under the said section for failure to furnish return for any assessment year commencing on or after the 1st day of April, 1975, if the tax payable

by him on the total income determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed ₹ 3,000.

In order to prevent abuse of the said proviso by shell companies or by companies holding Benami properties, the Act has amended section 276EC.

(B) Amendment made

The sub-clause (b) of clause (ii) of proviso to the section 276CC has been amended so as to provide that the benefit of said sub-clause shall apply to a person other than a company.

In other words, w.e.f. 1.4.2018, every company shall have to file the return of income even if no tax is payable by it. Failure to file return of income by a company shall now be punishable:

(i) In a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds ₹ 25,00,000, with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 7 years and with fine;

(ii) In any other case, with imprisonment for a term which shall not be less than 3 months but which may extend to 2 years and with fine.

Amendments relating to determination of tax in certain special cases

54. Rationalisation of provision of section 115BA relating to certain domestic companies (Section 115BA] (W.r.e.f.2017-18]

(A) Reasons for making amendment

Section 115BA of the Act provides that the total income of a newly set up domestic company engaged in business of manufacture or production of any article or thing and research in relation thereto, or distribution of such article or thing manufactured or produced by it, shall, at its option, be taxed @ 25% subject to conditions specified therein. This benefit is available from assessment year 2017-18.

However, there are certain incomes which are subject to a scheduler tax at a rate which is lower higher than 25%. Consequently tax payers have been subjected to unintended hardship or unwarranted relief.

(B) Amendment made

The Act has amended section 115BA so as to clarify that the provisions of section 115BA is restricted to the income from the business of manufacturing, production, research or distribution referred to therein; and income which are at present taxed at a scheduler rate will continue to be so taxed.

55. Rationalisation of the provisions of section 115BBE [Section 115BBE] [W.r.e.f. A.Y. 2017.18)

(A) Reasons for making amendment

Section 115BBE provides for tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D at a higher rate of sixty percent.

Section 115BBE(1) provides as under:

"Where the total income of an assessee,-

(a) Includes any 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) Determined by the Assessing Officer 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),

The income-tax payable shall be the aggregate of-

(i) The amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent.; and

(ii) The amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

Sub- section (2) of said section provides that no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision of the Act in computing his income referred to in clause (a) of sub-section (1).

Clause (b) of sub-section (1) of section 115BBE has been missed in sub-section (2).

(B) Amendment made

In order to rationalize the provisions of section 115BBE, the Act has amended the said sub-section (2) so as to also include income referred to in clause (b) of sub-section (1).

Other Amendments

56. Rationalisation of provisions relating to Country-by-Country Report [Section 286J [W.r.e.f. A.Y.2017-18]

(A) Reasons for making amendments

Section 286 of the Act contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect of an international group. Based on model legislation of Action Plan 13 of Base Erosion and Profit Shifting (BEPS) of the Organisation for Economic Co- operation and Development (OECD) and others. To improve the effectiveness and reduce the compliance burden of such reporting certain amendments have been made in section 286.

(B) Amendments made in section 286

(i) The time allowed for furnishing the Country-by-Country Report (CbCR), in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, has been extended to 12 months from the end of reporting accounting year;

(ii) Constituent entity resident in India, having a non-resident parent, shall also furnish CbCR in case its parent entity outside India has no obligation to file the report of the nature referred to in section 286(2) in the latter's country or territory;

(iii) The time allowed for furnishing the CbCR, in the case of constituent entity resident in India, having a non-resident parent, shall be within the period as may be prescribed;

(iv) The due date for furnishing of CbCR by the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory;

(v) Agreement would mean an agreement referred to in section 90(1) or section 90A(1), and also an agreement for exchange of the report referred to in section 286(2) as may be notified by the Central Government;

(vi) **"Reporting accounting year"** has been defined to mean the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in section 286(2) and section 286(4).

The above amendments are clarificatory in nature.

57. Amendments to the structure of Authority for Advance Rulings [Section 245-0) [W.e.f. 1.4.2018]

Section 245-0 provides for the constitution of an Authority for Advance Rulings, and constitution of its benches, for giving advance rulings under Chapter XIX-B of the Act or under Chapter V of the Customs Act, 1962 or under Chapter IIIA of the Central Excise Act, 1944 or under Chapter VA of the Finance Act, 1994.

In view of the proposed constitution of new Customs Authority for Advance Ruling under section 28EA of the Customs Act, the Act has inserted proviso under section 245-0(1) so as to provide that such Authority shall cease to act as an Authority for Advance Rulings, and shall act as an Appellate Authority for the purpose of Chapter V of the Customs Act, 1962 from the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act, 1962.

It is further provided that such Authority shall not admit any appeal against any ruling or order passed earlier by it in the capacity of Authority for Advance ruling after the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act, 1962.

In order to avoid overlapping, it is also provided that where the Authority is dealing with an application seeking advance ruling in the matters of the Act, the Revenue Member shall be the Member referred to in sub-clause (I) of clause (c) of section 245-0(3).