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Amendments to Income Tax Act, 1961

Section 2(19AA) - Demerger

1. Section 47(vib) and (vic) deals with transactions pertaining to 'demerger' not to be treated as transfer for the purposes of computation of capital gains. However, such transaction is treated not as transfer only if the said transaction satisfies the definition of 'demerger' as per Section 2(19AA).

2. Section 2(19AA) has multiple conditions to be satisfied, so that the demerger does not attract any capital gains tax in the hands of demerged company. One of the conditions is that *the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of accounts immediately before the demerger.*

3. However, this created certain challenges specifically after introduction of Indian Accounting Standards. Based on said Accounting Standards, the resulting company is forced to account values in the resulting company different from the demerged company.

4. In situations, where the resulting company accounts at different value in compliance with Indian Accounting Standards, the demerged company stands to lose the benefit of Section 47 because the said transaction failed to satisfy conditions mentioned in Section 2(19AA).

5. To overcome this situation, a proviso has been introduced to condition (iii) of Section 2(19AA), wherein if the resulting company accounts for different value in compliance with Indian Accounting Standards, such condition which mandates the recording the same value requires no further satisfaction.

Section 9(viii) – Income deemed to accrue or arise in India vis-à-vis Section 56(2)(x)

6. A new sub-section has been introduced in Section 9 to deem specified income to accrue or arise in India for a person resident outside India arising from any sum of money paid, or any property situate in India is transferred on or after July 5th 19 by a person resident in India. The specified income is the income referred in Section 2(24)(xviia) which speaks about income in the nature mentioned in Section 56(2)(x).

7. This amendment puts and end the ambiguity prevailing in interplay of Section 56(2)(x), Section 9 and Section 5. The current Section 56(2)(x) creates a liability in the hands of recipient of property or any sum of money when it is actually 'received', whereas, Section 5(2) states that total income includes only incomes of non-resident which are received in India or deemed to accrue or arise in India. The receipt in India and absence of any sub-section in Section 9 to deal about such instances led to confusion.

8. In other words, even though non-resident has received a property (example shares of India Company) less than fair market value or as gift, the non-resident was not obliged to pay tax under Section 56(2)(x), since the shares are not received in India or there is no deeming provision to state such income has deemed to accrue or arise in India.

9. In order to remove such ambiguity, any income which is in the nature of income referred in Section 56(2)(x), is deemed to accrue or arise in India to a non-resident from any sum of money paid or property situated in India by a resident.

Section 9A – Extended time to achieve monthly average corpus by specified funds – FIIs

10. Section 9A deals with certain activities which do not constitute business connection in India so that there does not arise any liability under Section 5(2) read with Section 9 pertaining to such transactions. Generally, Foreign Institutional Investors (FII) are safeguarded vide Section 9A to state that no income is deemed to accrue or arise in India for FIIs from their activity in India subject to certain conditions.

11. One of the conditions attached is that, the fund managed by such FII shall maintain an average corpus of fund of minimum of Rs 100 Crores. However, if the fund is established or incorporated in the previous year, the corpus of fund shall not be less than Rs 100 Crores at the end of such previous year. In other words, the fund is given an exception to maintain the monthly average in its first-year subject to a condition that if it manages Rs 100 Crores by end of the first- year of establishment or incorporation.

12. The subject condition has been amended to extend such exception to a period of 6 months from the last day of month of its establishment or incorporation or at the end of such previous year, whichever is later. This would give additional time to funds which have been incorporated or established in the month of Feb or March to achieve the Rs 100 Crore threshold.

Section 10–Certain Incomes not to be included in Total Income – Certain Interest Payable to NRs

13. Section 10 deals with incomes which do not form part of total income. There are certain amendments to said section which are dealt as under.

14. Interest payable to a non-resident, not being a company or to a foreign company by an India company or business trust in respect of monies borrowed from a source outside India by way of issue of rupee denominated bonds for the period during 17th Sept 18 and ending 31st March 19 is not to be included in total income.

15. Any income by way of interest payable to a non-resident by a unit located in an International Financial Services Centre in respect of monies borrowed by it on or after 1st September 19 is not to be included in total income.

Section 12AA – Amendments in Procedure for Registration of Trust or Institution

16. Section 12AA deals with procedure for registration of trust or institution mentioned in Section 12A. There were judgements where in the Courts (Punjab and Haryana High Court in the matter of Shri Shirdi Sai Darbar Charitable Trust[1] and various other judgments) held that the Commissioner is not empowered to ask detailed list of documents and compliances under other law to examine the genuineness of trust or institution seeking registration. Such a list of documents and compliances can be asked only at the time of assessment and not at the time of registration.

17. The current amendment empowers the Commissioner to ask such documents and compliances under other laws at the time of granting of registration itself, putting rest to ambiguity over the said issue.

Section 40 – Payer not be treated as Assesse in Default in case of payments to NRs

18. Section 40 deals with certain amounts which are not deductible while computing profits and gains from business or profession.

19. Section 40(ia) states that 30% of any sum payable to resident is not allowed as deduction on which tax is deductible and such tax has not been deducted or after deduction tax has not paid on or before the due date for filing the return under section 139(1) and payer will be treated as assesse in default under Section 201. However, if the payee files return of income under Section 139, takes into account such sum (which the payer is obliged to deduct tax in first place) has for computing the income in such return of income and has paid the tax due and the person furnishes a certificate to this effect from an accountant in a prescribed manner, then the payer is not treated as assesse in default and deemed that payer has deducted the tax on such sum on the date of furnishing of return of income by payee.

20. However, the above benefit is not available to an assessee who is making payment of interest, royalty, fee for technical services or any other sum chargeable to tax under the act when paid outside India or in India to a non-resident, not being a company or foreign company. Now, a proviso is inserted for Section 40(a), wherein the similar benefit as stated above is also provided. In other words, if the non-resident files his return under Section 139(1), takes in to account such sum (which the payer is obliged to deduct tax in first place) for computing the income in such return of income and has paid the tax due, then the payer would not be treated as assessee in default.

Section 43B–Deduction of Interest on payment basis to loans extended by specified NBFCs

21. Section 43B deals with allowance of certain deductions on actual payment. One of such payments which are allowed on payment basis rather than accrual basis are the amounts which are in the nature of interest on any loan or borrowing from any public financial institution or a state financial corporation or state industrial investment corporation.

[1] 2017 (4) TMI 123 – Punjab and Haryana High Court

22. To provide stimulus to the specified non-banking financial companies (NBFC), an amendment is proposed to allow interest on loan borrowed from a deposit taking NBFC or SI non-deposit taking NBFC[2] only on payment basis and not on accrual basis. Further, conversion of interest payable into loan or borrowing is not deemed to be payment for the purposes of allowance under this section.

23. Further, an explanation has been inserted to clarify that where interest payable to specified NBFCs is claimed as deduction in previous years, the same shall not be allowed as deduction on actual payment basis.

Section 43D – Payment of Tax on Interest on receipt basis by specified NBFCs

24. Section 43D deals with special provisions in case of income of public financial institutions, schedule bank, co-operative bank or others (specified entities) with respect to treatment of interest income in relation to such categories of bad or doubtful debts as prescribed by guidelines issued by RBI. The said section states that such interest income shall be chargeable to tax in previous year in which it is credited by such specified entities to its profit and loss account for that year or as the case may be, in which it is actually received by the specified entities, whichever is earlier.

25. Now, the above benefit is extended to deposit taking NBFC or SI non-deposit taking NBFC. This is required specially when the guidelines for provisioning are also made applicable to such NBFCs by RBI. Hence, going forward, such NBFCs will be paying tax on interest in the previous year in which it gives credit to profit and loss account or receipt whichever is earlier and not on accrual basis as it stands today.

Section 47 – Securities dealt by Category III AIFs – Not to be treated as Transfer

26. As stated earlier, Section 47 deals with certain transactions which are not to be treated as transfer for computation of capital gains. Sub-clause (viiab) deals with transfer of certain capital assets which are held by non-resident on a stock exchange located in International Financial Services Centre (IFSC) and where the consideration for such transaction is paid or payable in foreign currency as transactions not amounting to transfer.

27. The current amendment seeks to add prescribed securities as may be notified by Government also as capital assets which are immune to capital gains provisions. However, such securities are to be held by specified fund. The specified fund should be Category III Alternative Investment Fund registered with SEBI, where such fund is located in IFSC and deriving income solely in convertible foreign exchange and all units of such fund are held by non-residents.

[2]NBFC which is not accepting or holding public deposits and having total assets of not less than Rs 500 Crore as per the last audited balance sheet

Section 50CA–Relaxation for Notified Persons from provisions of FVC – Other than Quoted Share

28. Section 50CA deals with special provision for full value of consideration for transfer of share other than quoted share. The said section deems that where consideration received or accruing as result of transfer of share other than quoted share (listed) is less than the fair market value determined as per Rule 11UAA of Income Tax Rules, then the value as per Rule 11UAA is deemed to be the full value of consideration for the purposes of computation of capital gains.
29. The said section has been amended by inserting a proviso to state that the above shall not be applicable for class of person subject to certain conditions. The class of persons shall be notified.

Section 54GB – Extension for Investment in Eligible Start-Up on transfer of Residential Property

30. The said section deals with capital gain on transfer of residential property not to be charged in certain cases, where the assessee invests such net gain for subscription of equity shares in eligible company and such company uses the net gain for purchase of new asset within one year from the date of acquisition of shares by assessee (individual or HUF).

31. The definition of 'eligible company' has a condition that it is a company in which the assessee has more than 50% share capital or more than 50% voting rights after subscription in shares by assessee. The said limit of 50% has been reduced to 25% (both for share capital and voting rights) by way of an amendment.

32. Further, the provisions of Section 54GB will not apply to transfer of any residential property made after 31st March 17, which has been extended to 31st March 19, if the investment is in eligible start-up and now has been extended to 31st March 2021.

Section 56(2)(viib) – Extension of Non-Applicability to Category II AIFs &Other notified Companies

33. The said section deals with consideration received by a resident company in which public are not substantially interested, by way of issuance of shares that exceeds face value, the aggregate consideration received for such shares as exceeds Fair Market Value as determined in accordance with Rule 11UA, as income from other sources.

34. The said section has created chaos particularly in start-up community, where the tax authorities have discarded the valuation reports and tried to bring premiums into tax net. There were notifications[3] issued by Central Board of Direct Taxes trying to control the chaos but the same did not yield expected results.

35. Hence, an amendment is made to exempt the above provision for such companies which may satisfy the conditions as notified and failure of satisfaction of such conditions would trigger the taxability.

36. Further, the provisions of the above section are not currently applicable to venture capital fund. Now, the same benefit is being extended to specified fund, which is Category II Alternative Investment Fund registered with SEBI.

[3] https://www.sbsandco.com/wiki/document/sbs-wiki-e-journal-mar-2019

Section 56(2)(x)– Class of Persons to which such section is not applicable

37. The said section deals with taxation of referred items in the hands of recipient under income from other sources, when such items are received at a value lower than fair market value. The said section has a proviso which deals with instances where the taxability does not arise. An amendment is made to notify such class of person satisfying such conditions as may be prescribed to be insulated from the provisions of the said section.

Section 79 – Relaxation for Eligible Start-ups to carry forward and set off loss – Shareholding

38. The current section deals with carry forward and set off of losses in case of certain companies namely eligible start-ups and companies in which public are substantially interested. The current section states that eligible start-up is allowed to carry forward and set off the losses only if all the shareholders of such company who held shares carrying voting power on last day of the year or years in which the loss was incurred continue to hold shares on the last day of previous year in which income is available for set off and such loss has been incurred during the period of seven years beginning from the year of incorporation.

39. The proposed section allows the eligible start-ups to carry forward and set off the losses even the change in shareholding of such start up is less than 100% but not less than 51%. This allows eligible start-ups to carry forward the losses and set it off, even if there is change in shareholding, not more than 49%.

40. Further, the provisions of Section 79 were not made applicable to company, subsidiary and the subsidiary of subsidiary, where the Central Government has moved to National Company Law Tribunal (NCLT)by filing application under Section 241 of Companies Act, 13 to suspend the board of directors and has appointed new director and change in shareholding of such company, subsidiary and the subsidiary of subsidiary has taken place in a previous year in pursuance to a resolution plan approved by NCLT in terms of Section 242 of Companies Act, 13. Similar amendments are proposed to Section 115JB.

Section 80C – Contribution to Pension Scheme by Employee of Central Government

41. The said section deals with deductions in respect of certain payments from the total income of the assessee subject to a maximum cap of Rs 1,50,000/-. A new payment is proposed to be added to the existing list to claim deduction from total income. The said payment is to be made by employee of Central Government as a contribution to a specified account (additional account referred to Section 20(3) of Pension Fund Regulatory and Development Authority Act, 2013) of the pension scheme referred in Section 80CCD for a fixed period of not less than 3 years and which is in accordance with scheme as may notified.

Section 80CCD – Increase of Deduction – Contribution to Pension Scheme – By Central Government

42. The said section deals with deduction from total income in respect of contributions to pension scheme of Central Government. The assessee is eligible for deduction in respect of his contribution and contribution by Central Government or any other employer subject to a ceiling based on his salary in respect of previous year, which is currently 10%.

43. The proposed amendment enhances the claim of deduction from 10% to 14% of his salary in previous year, where the contribution is made by Central Government.

Section 80EEA – Deduction of Interest – Rs 1.5 Lakhs – New Affordable Residential Apartment

44. A new section has been proposed to allow a deduction of interest payable on loan taken from financial institution for purpose of acquisition of residential house property whose stamp duty value does not exceed Rs 45 lakhs. The assessee is eligible for deduction only if the individual is not eligible to claim deduction under Section 80EE.

45. The maximum deduction (from 1st April 20 to subsequent years) allowed under this section is Rs 1,50,000/- and such loan has to be sanctioned from 1st April 19 to 31st March 20 and the assessee does not own any other residential house property on the date of sanction of such loan.

Section 80EEB – Deduction of Interest – Rs 1.5 lakhs – Purchase of Electric Vehicle

46. A new section has been proposed to allow deduction of interest payable to a financial institution for the purpose of purchase of electric vehicle[4] .

47. The maximum deduction (from 1st April 20 to subsequent years) allowed under this section is Rs 1,50,000/- and such loan has to be sanctioned from 1st April 19 to 31st March 23.

Section 80IBA – Affordable Residential Housing – Aligned with GST laws – Hyderabad as Metro

48. The said section deals with deductions in respect of 100% of profits and gains from business of developing and building housing projects subject to certain conditions. The project is to be approved by competent authority between 1st June 16 to 31st March 20 to be eligible for such deductions.

[4] means a vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in vehicle and has such electric regenerative braking system, which during braking provides for conversion of vehicle kinetic energy into electrical energy

49. For the projects which are approved after 1st Sept 19, there are certain amendments proposed to the conditions which are to be satisfied for claiming the deductions, detailed as under:
    a. Current ambit of metropolitan cities has been extended to cover Hyderabad& Bangalore
    b. Current ambit of metropolitan cities has been restricted to few cities of Delhi
    c. Current restriction of carpet area of 30[5] is extended to 60 sq mts in case of metropolitan cities
    d. Current restriction of carpet area of 60 is extended to 90 sq mts in case of other cities
    e. Stamp duty value of residential unit in the housing project does not exceed Rs 45 lakhs

Section 80LA- Deduction for Unit in IFSC – Any 10 Years out of 15 Years – 100%

50. The current section deals with deductions in respect of certain incomes of Offshore Banking Units and unit in IFSC, wherein 100% of income is allowed as deduction for first 5 consecutive years beginning with assessment year relevant to previous year in which permission was obtained under relevant law and 50% for next 5 consecutive years.

51. The proposed amendment carves out a separate treatment for a unit in IFSC, where in 100% deduction is allowed for any 10 consecutive years at the option of assessee, out of 15 years, beginning with assessment year relevant to previous year in which permission was obtained under relevant law.

Section 92CE – Clarification in Secondary Adjustments & Additional Tax @ 18% - Option of Assessee

52. The said section deals with secondary adjustments in certain cases. An amendment is made to state that if a primary adjustment is determined by advance pricing arrangement entered into by the assessee only after 1st April 17[6] , there raises an occasion for secondary adjustment.

53. An amendment with retro effect from 01.04.18, is proposed to clear the ambiguity that the provisions of Section 92CE does not apply if the primary adjustment is not more than Rs 1 Crore. The phrase 'and' in the proviso has been replaced with 'or'.

54. Further, an amendment with retro effect from 01.04.18has been proposed that the excess money or part thereof as a result of primary adjustment may be repatriated from any of associated enterprise which is not a resident in India.

55. New sub-sections (2A) to (2D) has been introduced with effect from 01.09.19, where in it was proposed, the assessee has not repatriated excess money or part thereof within prescribed time, the assesse may at this option pay additional income tax @ 18% on such excess money or part. The tax paid on such excess money or part is a final tax and no credit can be claimed either by assessee or by any other person. Further, there shall not be allowed any deduction under the provisions of Income Tax Act in respect of the amount on which tax has been paid under (2A). On payment of such additional tax, assesse shall not be required to make secondary adjustment and compute interest.

[5] Per residential unit

[6] Retrospective amendment with effect from 01.04.18

Section 115O – Relaxation from Payment of DDT of Unit in IFSC out of Accumulated Income

56. The said section deals with additional income tax payable on amounts which are distributed as dividends by the company, colloquially known as Dividend Distribution Tax (DDT). An amendment is proposed to state that the provisions of Section 115O does not apply to a unit in IFSC which declares dividend out of its accumulated income. As on date, the provisions were made not applicable only to if dividends are paid out of current income. By the amendment, which is effective from 01.09.19, the unit in IFSC can declare dividend from its accumulated income without payment of DDT.

Section 115QA – BBT for Listed Companies too

57. The current section only mandates the domestic company (not being a listed company) to pay tax on distributed income to shareholders when such company is buying its shares from its shareholders, colloquially referred as buy-back tax (BBT). Because of such an exception is carved out for listed companies, the list companies are exempted from paying tax on buy back of shares from their shareholders.

58. The current amendment leaves such exception from said section. Hence, post 5th July 19, listed companies are also required to pay BBT (in addition to the normal tax payable by them). This amendment would lead additional revenue to the tax authorities since recently, there are many listed companies which are adopting this route instead of declaring dividend. It is important to note that definition of 'dividend' excludes any payment made by company to its shareholders in pursuance of buy-back of its own shares.

Section 115R – Exemption for unit in IFSC from payment of tax on distributed income

59. The current section deals with tax payable on income distributed by specified company or a mutual fund to its unit holders. An amendment is made to Section 115R(2), stating that no additional tax is chargeable in respect of any amount of income distributed on or after 01.04.19 by a specified mutual fund, out of its income derived from transactions made on stock exchange located in IFSC.

60. Such specified mutual fund should be a fund specified under Section 10(23D) and to be located in IFSC, deriving income solely in convertible foreign exchange and which all units are held by non-residents.

Section 139 – Certain Transactions – Mandatory Filing of Return

61. The said section deals with furnishing of return of income. An amendment is proposed making the assessee (individual, HUF, AOP, BOI, whether incorporated or not or an AJP) if his total income without giving effect to provisions of Section 54/54B/54D/54EC/54F/54G/54GA/54GB exceeds the maximum amount which is not chargeable to tax has to file returns.

62. Further, another amendment is proposed for persons (other than company or firm) to file a return of income even though the total income during the previous year does not exceed maximum amount not chargeable to tax, if, during the previous year, he:
    a. has deposited an amount or aggregate of amounts exceeding Rs 1 Crore in one or more current accounts maintained with a banking company or co-operative bank
    b. has incurred expenditure of an amount or aggregate of amounts exceeding Rs 2 lakhs for himself or any other person for travel to foreign country
    c. has incurred expenditure of an amount or aggregate of amounts exceeds Rs 1 lakhs towards consumption of electricity
    d. fulfils any other conditions

Section 139A – PAN or Aadhar, anything is fine

63. The said section deals with Permanent Account Number (PAN). Vide sub-section (1), any person engaged in certain transactions and has not been allotted PAN, may apply to the assessing officer for allotment of PAN. An amendment is made to include certain transactions which may be notified by Central Board of Income Tax in the interest of revenue as mandatory transaction for which PAN is required.
64. Further, an amendment is proposed to state that a person who is required to furnish or intimate or quote PAN and who has not been allotted PAN but has Aadhaar, may furnish or intimate or quote his Aadhaar in lieu of PAN and such person shall be allotted PAN in the manner as may be prescribed. Further, a person who has already has PAN and intimated his Aadhar, he may use his Aadhaar in lieu of PAN.

65. It is also proposed to prescribe such transaction (which are entered or received) where PAN and Aadhar has to be quoted and authenticated in such manner. Failure to do so invites a penalty of Rs 10,000/- for each such default.

Section 194IA – Consideration for Immovable Property for 1% deduction of tax

66. The said section deals with deduction of tax in respect of payment on transfer of certain immovable property other than agricultural land at the rate of 1%, if the consideration for immovable property is more than Rs 50 lakhs.

67. An amendment is proposed with effect from 01.09.19, to define the expression 'consideration for immovable property', which shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property'.

Section 194M – Personal Use – 5% tax deduction at source – If exceeds Rs 50 lakhs

68. A new section has been introduced to oblige an individual or HUF (other than those who are required to deduct tax under Section 194C or 194J) responsible for paying any sum to any resident for carrying out any work including supply of labour for carrying out any work) in pursuance of contract or by way of fee for professional services shall deduct tax at the rate of 5% if the sum or aggregate of sums credited or paid to a resident during a financial year exceeds Rs 50 lakhs.

Section 194N - Cash Withdrawals – 2% tax deduction at source – If exceeds Rs 1 Crore

69. A new section has been introduced obliging a banking company, co-operative society engaged in business of banking or post office to deduct tax at the rate of 2% when making payment of sum or aggregate of sums exceeding Rs 1 Crore in cash during the previous year. The amendment has certain exceptions to which this section is not made applicable.

Section 269SU – Provision for prescribed mode for accepting payment in electronic modes

70. A new section has been introduced to mandate every person who is carrying business to provide facility for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes, of payment, if his total sales, turnover or gross receipts in business exceeds Rs 50 Crore during the immediately preceding previous year.

71. If such person fails to provide such prescribed facility, he may be subjected to a penalty of Rs 5,000/- per day during such period where the default continues. Penalty is proposed by insertion of new Section 271DB which is effective from 01.11.19.

Rates of Taxes – Surcharge & Domestic Companies

72. The surcharge payable by individual/HUF/AOP/BOI or any AJP has been proposed to be increased in the following manner:
    a. Total Income exceeding Rs 50 lakhs but not exceeding Rs 1 Crore – 10% of such income tax
    b. Total Income exceeding Rs 1 Crore but not exceeding Rs 2 Crore – 15% of such income tax
    c. Total Income exceeding Rs 2 Crore but not exceeding Rs 5 Crore – 25% of such income tax
    d. Total Income exceeding Rs 5 Crores – 37% of such income tax

73. The rate of tax applicable for domestic companies where the turnover or gross receipts during the previous financial year does not exceed Rs 400 Crores is fixed at 25%.

Amendments to Prohibition of Benami Property Transactions Act, 1988

Section 23 – Insertion of Explanation – No Investigation by IO after issuance of SCN

74. Section 23 deals with power of Initiating Officer (IO) after obtaining approval from Approving Authority (AA), to conduct or cause to be conducted any investigation in respect of any person, place, property, assets, documents, books of accounts or other documents, in respect of relevant matters under this act.

75. An explanation has been inserted with retrospective effect from 01.11.16, to clarify that nothing contained in Section 23 shall be applicable once notice has been issued under Section 24(1) by Initiating Officer. In other words, there cannot be any investigation after a show cause notice has been issued by IO.

Section 24 –SCN and Attachment of Property in Benami Transaction – IO

76. The said section deals with issuance of notice by IO, on the basis of materials in his possession, if he has reasons to believe that any person is a benamidar in respect of a property. Where the IO is of the opinion that person in possession of property held benami may alienate the property during the period specified in notice, he may with previous approval of AA, can make an order attaching provisionally the property for a period not exceeding 90 days from the date of issue of notice.

77. An amendment is proposed to reckon the 90-day limit from the last day of the month in which notice is issued instead of date of issue of notice. This would increase the time period under which the property is attached on provisional basis and comes into effect from 01.09.19. Similar amendment was carried pertaining to provisions dealing with confirmation or annulment of provisional attachment.

78. Further an explanation has been inserted to exclude the period during which the proceeding is stayed in order or injunction of any court in computing the period of limitation of 90 days. Further, after exclusion of above time period, if period of limitation for passing order of attachment is less than 30 days, a further extension of 30 days is granted. Further, after excluding such period, if the time available for IO to draw the statement and refer to Adjudicating Authority is less than 7 days, further period of 7 days is granted.

Section 26 – Adjudication of Benami Property – Adjudicating Authority

79. The said section deals with adjudication of benami property by adjudicating authority. The Adjudicating authority has to pass an order within one year from end of the month in which reference is made by IO in terms of Section 24(5).

80. An explanation is added to exclude the period during which the proceeding is stayed in order or injunction of any court in computing the period of limitation of one year. If after excluding such period, the period is less than 60 days, the adjudicating authority would have additional 60 days to pass the order holding either the property is a benami or not a benami.

Section 54A – Penalty for non-compliance with summons and furnishing of information

81. A new section has been introduced to levy penalty of Rs 25,000/- if any person fails to comply with the summons notice or fails to furnish any information called for by appropriate officer.

Section 55 –Prosecution to be sanctioned by Competent Authority – Not Board anymore

82. The said section deals with previous sanction of Central Board of Direct Taxes to institute prosecution against any person in respect of any offence under Section 3 or Section 53 or Section 54. An amendment is proposed with effective from 01.09.19, that such previous sanction has to be taken from Competent Authority (Commissioner/Director/Principal Commissioner of Income Tax/Principal Director of Income Tax).

Amendment to Reserve Bank of India Act, 1934

Section 45IA– Enhancement of NOF – NBFC

83. The said section states that no NBFC shall commence or carry on the business of a non-banking financial institution without obtaining a certificate of registration and having the net owned fund (NOF) Rs 25 lakh rupees or such other amount not exceeding Rs 2 Crores. The limit of Rs 2 Crore has been proposed to extend to Rs 100 Crore with power to Reserve Bank (RBI) to notify different amount of NOF for different class of NBFCs.

Section 45ID –Power to Remove Directors from Office of NBFC

84. A new section has been introduced with effect from a date to be notified which gives power to RBI to remove the directors from office of a NBFC (other than government company), if it is satisfied that in public interest or to prevent affairs of NBFC being conducted in a manner detrimental to interest of depositors or creditors, or financial stability or for securing proper management of such NBFC with effect from such date as may be specified in the order.

85. Once an order is passed by RBI, the director shall cease to be a director of such NBFC and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of any NBFC for such period not exceeding five years at a time as may be specified in the order. Such removed director is not entitled to compensation for loss or termination of office, notwithstanding to anything contained in any law, memorandum or article of association.

86. The bank has power to appoint any other person as director in place of director who has been removed to hold office for a period of 3 years or such further period not exceeding 3 years at a time.

Section 45IE – Power to Supersession of Board of Directors of NBFC

87. A new section has been introduced with effect from a date to be notified which gives power to RBI to supersede the Board of Directors of a NBFC (other than government company) for a period not exceeding 5 years, if it is satisfied that in public interest or to prevent affairs of NBFC being conducted in a manner detrimental to interest of depositors or creditors, or financial stability or for securing proper management of such NBFC with effect from such date as may be specified in the order.

88. The bank on suppression of the Board of Directors of NBFC, appoint a suitable person as the Administrator for such period as it may determine. The bank may constitute a committee consisting three or more members who have experience in law, finance, banking, administration or accountancy to assist the Administrator.

Section 45MAA – Action against Auditors – Debar from Audit of Banks – 3 Years at a time

89. A new section has been introduced to take action against auditors of bank who fails to follow the direction given or order made by RBI under Section 45MA. The Bank if satisfied, remove or debar the auditor from exercising the duties of an auditor of bank regulated entities for a maximum period of three years, at a time.

Section 45MBA – Resolution of NBFC

90. A new section has been introduced, without prejudice to any other provisions of RBI Act or any other law to give power to RBI, if it is satisfied that upon on inspection of books of accounts of NBFC that it is in public interest or in interest of financial stability so to do for enabling the continuance of activities critical for functioning of financial system, frame schemes to:
    a. amalgamation with any other non-banking financial institution
    b. reconstruction of NBFC
    c. splitting the NBFC into different units or institutions and vesting viable and non-viable business in separate units to preserve the continuity of the activities of that NBFC that are critical to the functioning of financial institutions and for such purpose establish institutions called 'bridge institutions'.

Section 45NAA – Power in respect of Group Companies

91. A new section has been introduced giving power to RBI at any time, direct NBFC to annex to its financial statements or furnish separately, within such time intervals, such statements and information relating to business or affairs of any group company of NBFC as the bank may consider fit.

92. The bank may also cause an inspection or audit to be made of any group company of NBFC and its books of accounts, notwithstanding anything contrary contained in Companies Act, 13. 'Group Company' shall mean an arrangement involving two or more entities related to each other through any of the following relationships:
    a. Subsidiary – parent (as may be notified by Bank in accordance with Accounting Standards)
    b. Joint Venture (as may be notified by Bank in accordance with Accounting Standards)
    c. Associate (as may be notified by Bank in accordance with Accounting Standards)
    d. Promoter – Promotee (under SEBI Act or regulations)
    e. Related party
    f. Common brand nameand
    g. Investment in equity shares of 20% and above in the entity

Amendments to Central Goods & Services Tax Laws

Section 10 –Composition Scheme – Supplier of Services

93. The said section deals with composition scheme majorly for manufacturer and supplier of goods. It does not specially provide for any separate scheme for suppliers of services (except for restaurant services). Further, there is an ambiguity whether pre-registration turnover and turnover relating to the value of services by way of interest or discount received towards extending loans, deposits or advances shall be considered for determining the eligibility to composition scheme and for payment of tax under the scheme.

94. It is proposed that with retro effect from 01-02-2019, a supplier of goods is permitted to opt for composition scheme if the value of services supplied by him in the preceding financial year does not exceed 10% of the turnover in a state or union territory or five lakh rupees whichever is higher.

95. Further, it is proposed to insert an explanation to provide that the value of services does not include the value of consideration by way of interest or discount towards received services provided by way of extending loans, deposits or advances.

96. A new sub-section is inserted to provide composition scheme for supplier of services whose aggregate turnover in the preceding financial year does not exceed Rs 50 lakhs to pay tax at the rate of 6%. The said scheme is being operated currently by virtue of notification and by this amendment, it became part of the law.

97. Another explanation has been inserted to clarify that for determining eligibility under composition scheme, the aggregate turnover shall not include the value of supplies made by such person from 01st day of financial year till the date on which he is required to obtain registration. In other words, pre-registration turnover is excluded from aggregate turnover to determine eligibility under composition scheme.

98. Further, it is also clarified that composition dealer has to pay tax on turnover excluding pre-registration turnover and exempt supplies by way of interest or discount on extension of loans, deposits or advances.

Section 44 – Inter-se transfer in Electronic Cash Ledger

99. An amendment is proposed to allow the registered person to transfer any amount of tax, interest, penalty, fee or such other amount available in electronic cash ledger to the electronic cash ledger for integrated tax, central tax, state tax, union territory tax or cess.

Section 50 – Interest to be paid on net basis

100. An amendment is proposed to provide that except in cases where proceedings are initiated under Section 73 or 74, interest is payable for delay in payment of tax only on that part of the tax amount which is paid by debiting electronic cash ledger. This implies that no interest is payable on that part of the tax offset with input tax credit in electronic credit ledger.

101. This is need of the hour especially after the recent decision of High Court in the matter of Megha Engineering and Infrastructures Limited [7], wherein the High Court has held that interest is to be paid on the entire amount and not only on the tax which is payable on cash. We have written detailed articles[8] on this matter stating that interest is required to be paid only on liability which is to be paid in cash.

Section 54 – Refund – Power to CG to refund State Tax too

102. An amendment is made to empower the Central Government to allow the refund of State Tax also apart from the Central Tax. Currently, the Central Government is empowered to refund only Central Tax, which is creating a huge problem for assessee, as he is required to visit the State authorities to claim the refund of State Taxes. The current amendment helps the assessee to liquidate his refund within less timelines.

Section 101A & Others – National Appellate Authority for Advance Rulings

103. At present, the appellate authorities for Advance Rulings are only at the State level. In view of the conflicting rulings issued by these authorities on identical issues, there was an urge from industry to set-up a National Appellate Authority.

104. An amendment is proposed which provides for constitution of National Appellate Authority for Advance Ruling for hearing appeals against conflicting advance rulings pronounced on the same question by Appellate Authorities of two or more States or Union Territories.

105. Further, provides that the advance ruling pronounced by the National Appellate Authority shall be binding on the applicants, being distinct persons and all registered persons having the same Permanent Account Number and on the corresponding jurisdictional offices unless there is a change in law or facts

[7] 2019 (4) TMI 139 – Telangana & Andhra Pradesh High Court
[8] https://www.sbsandco.com/wiki/document/sbs-wiki-e-journal-mar-2019

Amendments to Customs Act

Section 110 – Provisional Attachment of Bank Accounts

106. An amendment is made to provide that the proper officer may during the pendency of proceedings attach a bank account to protect the interests of revenue or prevent smuggling. Such attachment of bank account can be undertaken with the approval of Principal Commissioner/Commissionerand it should not exceed beyond six months. The Principal Commissioner/Commissioner may extend the attachment of bank account for further period not exceeding six months.

Section 140 – Power of Arrest – Offences Outside India

107. The current section empowers the officer of Customs to arrest any person who has committed a punishable offence in India or within Indian Customs waters. An amendment is proposed empowering such officer to arrest for offences outside India.

108. It is also provided that the offences by way of fraudulently claiming duty draw back or exemption in excess of Rs 50 lakhs or utilized instruments that are obtained frequently for payment of customs duty in excess of Rs 50 lakhs as cognizable and non-bailable offence.

Amendments to Service Tax Laws

Retrospective Exemption – Liquor License Fee

109. An amendment is made to Finance Act, 1994 to provide that no service tax shall be levied or collected on license fee or application fee collected by State Government in respect of the service provided by way of grant of liquor license during the period beginning from 01.04.2016 to 30.06.2017. We have written articles arguing that no service tax is required to be paid since it is covered under exemption notification. However, this amendment makes life easier for assessees.

110. Pursuant to this retrospective exemption, it is also provided that those business entities which have already paid tax on such fee under reverse charge, can claim refund of such tax. Refund can be claimed as per the procedure laid down under Finance Act, 1994 and the rules made thereunder by making application within six months from the date on which the Finance Bill receives the assent of President.

111. The amendment is welcoming as it has put an end to the litigation on this issue. It is important to note that a decision has already been taken on 26th GST Council meeting that there will not be any GST on liquor license fee.

Retrospective – Exemption – Premium/Salami – Long Term Lease

112. Services by way of renting immovable property is subject to service tax. However, dispute arose with respect to applicability of service tax on one time upfront premium or salami paid for obtaining properties on lease. The tax applicability was contended for the reason that such premium or salami is a capital payment for foregoing interest in the property by way of leasing it for longer term and as such the nature of receipt is not towards renting of immovable property services. Levy was struck down by Honourable CESTAT[9] .

113. Further, under GST regime, exemption has been granted from payment of GST on such premium or salami for the services provided by of long-term lease of plots for industrial or financial business.

114. An amendment is proposed that no service tax shall be levied or collected on upfront premium, salami or development charges payable in respect of a service by way of granting long term lease of plots for thirty years or more by State Industrial Development Corporations and other Government entities for development of infrastructure for financial business provided.

115. Pursuant to this retrospective exemption from 01st October 2013 to 30th June 2017, it is also provided that refund shall be granted of service tax if any paid during the said period. Refund can be claimed as per the procedure laid down under Finance Act, 1994 and the rules made thereunder by making application within six months from the date on which the Finance Bill receives the assent of President.

[9] Kagal Nagar Parishad Vs CCE, 2018(5)TMI1363-CESTAT Mumbai & M/s Greater Noida Industrial Development Authority vs CCE, 2014(9)TMI306CESTAT New Delhi

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

Section 121 – Indirect Tax Enactments – Applicability of Scheme

117. The scheme applies 29 enactments including Central Excise Act, 1944, Central Excise Tariff Act, 1985 or Chapter V of Finance Act, 1944 or any other enactments which the Central Government notifies.

Section 123 – Relief available under LDR

118. A declarant is eligible for relief under the said scheme as follows:

Instance	Tax Dues	Relief
Tax dues related to notice or one or more appeals pending as on 30th June 19	50 lakhs or less	70% of tax dues
	Greater than 50 lakhs	50% of tax dues
Tax dues related to a notice for late fee or penalty and amount of duty has been paid or is nil	Any amount	100%
Tax dues are relatable to an amount in arrears [10]	50 lakhs or less	60% of tax dues
	Greater than 50 lakhs	40% of tax dues
Tax dues are relatable to an amount in arrears and indicated in a return under indirect tax enactments as payable but not paid	50 lakhs or less	60% of tax dues
	Greater than 50 lakhs	40% of tax dues
Tax dues are linked to enquiry, investigation or audit against declarant and the amount is quantified[11] on or before 30th June 19	50 lakhs or less	70% of tax dues
	Greater than 50 lakhs	50% of tax dues
Tax dues are payable on voluntary disclosure by declarant	Any amount	No Relief

119. The relief calculated above shall be subject to the condition that any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax enactment or as a deposit during enquiry, investigation or audit, shall be deducted when issuing a statement indicating the amount payable by the declarant. However, if the amount of pre-deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued, the declarant shall not be eligible for refund.

[10] Means the amount of duty which is recoverable as arrears of duty under indirect tax enactment, on account of – no appeal having been filed by declarant against an order or an OIO or OIA before expiry of period of time for filing appeal or an OIA relating to declarant attaining finality or declarant having filed a return on or before 30th June 19, wherein he has admitted liability but has not paid it

[11] With its cognate expression, means a written communication of the amount of duty payable under indirect tax enactment

119. The relief calculated above shall be subject to the condition that any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax enactment or as a deposit during enquiry, investigation or audit, shall be deducted when issuing a statement indicating the amount payable by the declarant. However, if the amount of pre-deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued, the declarant shall not be eligible for refund.

Section 124 – Persons Ineligible for making declaration

120. All persons shall be eligible for making declaration except the following namely:
    a. who have filed appeal before appellate forum and such appeal has been heard finally on or before 30th June 19;
    b. who have been convicted of any offence punishable under indirect tax enactment for matter for which he intends to file a declaration;
    c. who have been issued notice under indirect tax enactment and final hearing has taken place on or before 30th June 19;
    d. who have been issued notice under indirect tax enactment for an erroneous refund or refund;
    e. who have been subjected to an enquiry or investigation or audit and amount of duty has not been quantified on or before 30th June 19;
    f. a person making voluntary disclosure after being subjected to any enquiry or investigation or audit or having filed a return under indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it ;
    g. who have filed an application under settlement commission for settlement of case;
    h. person seeking to make declarations with respect to excisable goods mentioned in Fourth Schedule to Central Excise Act, 1944

Modus Operandi

121. The declarant has to make a declaration in electronic form as may be prescribed. Where the amount estimated to be payable by declarant equals to as estimated by designated committee (DC), the DC shall issue in electronic form, indicating the amount payable by declarant, within a period of 60 days from the date of receipt of the said declaration.

122. Where the amount estimated to be payable by declarant exceeds the amount estimated by the DC, then DC shall issue a statement in electronic form, an estimate of amount payable by declarant within 30 days from the date of receipt of the said declaration. The DC shall give an opportunity of hearing after issuance of estimate before issuing the statement to the declarant. Post such hearing, the DC shall issue a statement within 60 days from the date of receipt of the said declaration.

123. The declarant shall pay electronically through internet banking, the amount payable as indicated in statement issued by DC within 30 days from the date of issue of such statement.

124. Where declarant has filed an appeal or reference or reply to notice against any order before the appeal forum other than High Court or Supreme Court, then notwithstanding anything contained in any provisions of law, such appeal or reference or reply shall be deemed to have been withdrawn. In case of writ petition filed before Supreme Court or High Court against tax dues, the declarant shall take leave of court and furnish such proof of withdrawal to DC.

125. On receipt of payment of amount indicated in the statement and proof of withdrawal, wherever applicable, the DC shall issue a discharge certificate, within 30 days of the said payment.

Section 128 – Discharge Certificate –Conclusive Proof

126. Every discharge certificate issued under Section 126 with respect to amount payable under the scheme shall be conclusive as to the matter and time period stated therein and
    a. declarant shall not be liable to pay any further duty, interest or penalty with respect to the matter and time period covered in the declaration
    b. declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration
    c. no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment

Section 129 –Restrictions of Scheme

127. Any amount paid under this scheme-
    a. shall not be paid through input tax credit account under the indirect tax enactment/any act
    b. shall not be refundable under any circumstances
    c. shall not under indirect tax enactment/any act be taken as input tax credit or entitle any person to take input tax credit as recipient

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