



सत्यमेव जयते

QUARTERLY TAX BULLETIN

2018-2019

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Directorate of Income Tax (PR, P&P)

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New Delhi-110001

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F.No. 279/Misc.142/2007-ITJ (Pt), New Delhi the 11th July 2018,

Circular No. 03/2018

Subject: Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court-measures for reducing litigation.

Reference is invited to Board's circular No. 21 of 2015 dated 10.12.2015 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court were specified.

2. In **supersession** of the above circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.
3. Henceforth, appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S.No.	Appeals/SLPs in Income-tax matters	Monetary Limit (Rs.)
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided **on merits** of the case.

4. For this purpose, 'tax effect' means the difference between the tax on the total Income assessed and the tax that would have been chargeable had such total Income been reduced by the amount of Income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as 'disputed issues'). **Further, 'tax effect' shall be tax including applicable surcharge and Cess.** However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as Income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.
5. The Assessing Officer shall calculate the tax effect separately for every 'assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary

limit prescribed. In case where a composite order/ judgement involve more than one assessee, each assessee shall be dealt with separately.

6. Further, where Income is computed under the provisions of section 115JB or section 115JC, for the purposes of determination of tax effect', tax on the total Income assessed shall be computed as per the following formula-

$$(A - B) + (C - D)$$

where'

A = the total Income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions) ;

B = the total Income that would have been chargeable had the total Income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions;

C = the total Income assessed as per the provisions contained in section 115JB or section 115JC;

D = the total Income that would have been chargeable had the total Income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of disputed issues under the said provisions:

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total Income assessed while determining the amount under item D.

7. **In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the 'monetary limit specified above, the Pr. Commissioner of Income-tax/ Commissioner of Income Tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in this Circular". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues.** The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

8. In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the provisions of sub section (4) of section 268A of the Income-tax Act, 1961 which reads as under :

"(4) The Appellate Tribunal or Court, hearing such appeal or reference, shall have regard to the orders, instructions or directions issued under sub-section (1) and the circumstance under which such appeal or application for reference was filed or not filed in respect of any case."

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9. As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr.CsIT/ CsIT must be maintained in a systemic manner for easy retrieval.
10. Adverse judgments relating to the following issues should be **contested on merits** notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:
 - (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
 - (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
 - (c) Where Revenue Audit objection in the case has been accepted by the Department, or
 - (d) Where the addition relates to undisclosed foreign assets/ bank accounts.
11. The monetary limits specified in para 3 above shall not apply to writ matters and Direct tax matters other than Income tax. Filing of appeals in other Direct tax matters shall continue to be governed by relevant provisions of statute and rules. Further, in cases where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A/ 12AA of the IT Act, 1961 etc., filing of appeal shall not be governed by the limits specified in para 3 above and decision to file appeals in such cases may be taken **on merits** of a particular case.
12. It is clarified that the monetary limit of Rs. 20 Lakhs for filing appeals before the ITAT would apply equally to cross objections under section-253(4) of the Act. Cross objections below this monetary limit, already filed, should be pursued for dismissal as withdrawn/ not pressed. Filing of cross objections below the monetary limit may not be considered henceforth. Similarly, references to High Courts and SLPs/ appeals before Supreme Court below the monetary limit of Rs. 50 Lakhs and Rs. 1 Crore respectively should be pursued for dismissal as withdrawn/ not pressed. References before High Court and SLPs/ appeals below these limits may not be considered henceforth.
13. This Circular will apply to SLPs/appeals/cross objections/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/ not pressed.
14. The above may be brought to the notice of all concerned.
15. This issues under section 268A of the Income-tax Act 1961.
16. Hindi version will follow.

(Neetika Bansal)
Director (ITJ),
CBDT, New Delhi.

[Image as enclosed](#)

Subject: Computation of admissible deduction u/s 10A of the Income Tax Act, 1961.

As per the provisions of sub-section (4) of section 10A of the Income Tax Act, 1961 (the 'Act'), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

2. Further as per clause (iv) to Explanation 2 to section 10 A of the Act, "export turnover" means the consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India.
3. The issue whether freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover" and "total turnover" while working out deduction admissible under section 10A of the Act on the ground that they are attributable to delivery of articles or things or computer software outside India has been highly contentious. Similarly, the issue whether charges for providing technical services outside India are to be excluded both from "export turnover" and "total turnover" while computing deduction admissible under section 10A of the Act on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in providing technical services outside India has also been highly contentious.
4. The controversy has been finally settled by the Hon'ble Supreme Court vide its judgement dated 24.4.2018 in the case of Commissioner of Income Tax Central-III Vs. M/s HCL Technologies Ltd (CA No. 8489-8490 of 2013, NJRS Citation 2018-LL-0424-40) While deciding the issue the Apex Court has held as under:

17) The similar nature of controversy, akin to this case, arose before the Karnataka High Court in CIT vs. Tata Elxsi Ltd. (2012) 204 Taxman 321/17. The issue before the Karnataka High Court was whether the Tribunal was correct in holding that while computing relief under Section 10A of the IT Act, the amount of communication expenses should be excluded from the total turnover if the same are reduced from the export turnover? While giving the answer to the issue, the High Court, inter-alia, held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from "export turnover" must also be excluded from "total turnover", since one of the components of "total turnover" is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.

18) Accordingly, the formula for computation of the deduction under Section 10A of the Act would be as follows:

$$\text{Export Profit} = \text{total Profit of the Business} \times \frac{\text{Export turnover as defined in Explanation 2 (IV) of Section 10A of IT Act}}{\text{Export turnover as defined in Explanation 2(IV) of Section 10A of the IT Act + domestic sale proceeds}}$$

19) In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the Respondent which could have never been the intention of the legislature.

20) Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

21) On the issue of expenses on technical services provided outside, we have to follow the same principle of interpretation as followed in the case of expenses of freight, telecommunication etc., otherwise the formula of calculation would be futile. Hence, in the same way, expenses incurred in foreign exchange for providing the technical services outside shall be allowed to exclude from the total turnover”.

5. The issue has been examined by the Board and it is clarified that freight, telecommunication charges and insurance expenses are to be excluded both from “export turnover” and “total turnover”, while working out deduction admissible under section 10A of the Act to the extent they are attributable to the delivery of articles or things or computer software outside India.
6. Similarly, expenses incurred in foreign exchange for providing the technical services outside India are to be excluded from both “export turnover” and “total turnover” while computing deduction admissible under section 10A of the Act.

Thus, all charges/expenses specified in Explanation 2(iv) to section 10A of the Act, are liable to be excluded from total turnover also for the purpose of computation of deduction u/s 10A of the Act.

7. Accordingly, henceforth, appeals may not be filed by the Department on the above settled, issue, and those already filed may be withdrawn/ not pressed upon.
8. The above may be brought to the notice of all concerned.
9. Hindi version of the same will follow.

(Neetika Bansal)
Director (ITJ)
CBDT, New Delhi

[Image as enclosed](#)

Subject : Clarification on the immunity provided u/s 270AA of the Income-tax Act, 1961.

Section 270AA of the Income-tax Act, 1961 (the Act) inter alia provides that w.e.f. 1st April, 2017, the Assessing Officer, on an application made by an assessee, may grant immunity from imposition of penalty under section 270A (not being penalty for misreporting) and initiation of proceedings under section 276C or section 276CC, subject to the conditions specified therein.

2. Apprehensions have been raised that where an assessee makes an application seeking immunity under section 270AA of the Act, and in the earlier year(s) penalty under section 271(1)(c) of the Act has been initiated on the same issue, the Income-tax Authority may contend that the assessee has acquiesced on the issue in such earlier year (s), by seeking immunity under section 270AA of the Act and therefore, take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act.
3. In this matter, it is hereby clarified that where an assessee makes an application seeking immunity under section 270AA of the Act, it shall not-preclude such assessee from contesting the same issue in any earlier assessment year. Further, the Income-tax Authority, shall not take an adverse view in the proceedings for penalty under section 271(1) (c) of the Act in earlier assessment years merely on the ground that the assessee has acquiesced on the issue in any later assessment year by preferring an immunity on such issue under section 270AA of the Act.

(Sanyam Suresh Joshi)
DCIT (OSD) (TPL)-III

[Image as enclosed](#)

Subject : Order under section 119 of the Income-tax Act.1961.

Section 44AB of the Income-tax Act, 1961 ('the Act') read with rule 6G of the Income-tax Rules,

1962 ('the Rules') requires prescribed persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide Notification No, GSR 666 (E) dated 20th July, 2018 with effect from 20th August, 2018.

Representations have been received by the Board that the implementation of reporting requirements under the proposed clause 30C (pertaining to General Anti-Avoidance Rules (GAAR) and proposed clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred.

The matter has been examined and it has been decided by the Board that reporting under the proposed clause 30C and proposed clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2019. Therefore, for Tax Audit Reports to be furnished on or after 20th August, 2018 but before 1st April, 2019, the tax auditors will not be required to furnish detail called for under the said clause 30C and clause 44 of the Tax Audit Report.

(Sanyam Suresh Joshi)
DCIT (OSD) (TPL)-III

[Image as enclosed](#)

Subject: Condonation of delay under section 119(2) (b) of the Income –tax Act 1961 in filing of Form No 10A and Form No. 9A for AY 2016-17.

Under the provisions of section 11 of the Income-tax Act, 1961 (hereafter Act) the primary condition for grant of exemption to trust or institution in respect of Income derived from property held under such trust is that the Income derived from property held under trust should be applied for the charitable purposes in India. Where such Income cannot be applied during the previous year it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section

2. The Finance Act, 2015 amended section 11 and section 13 of the act with effect from 01.04.2016 (AY 2016-17) consequently Income–tax Rules 1962 (hereafter Rules) were also amended vide the Income- tax (1st Amendment) Rules, 2016, As per the amended provision of the Act read with rule 17 of the Rules, while 15% of the Income can be accumulated indefinitely by the trust or institution, 85% of Income can only be accumulated for a period not exceeding 5 years subject to the conditions inter alia that such person submits the prescribed Form No. 10 electronically to the Assessing Officer within the due date specified under section 139(1) of the Act.
3. Further where the Income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the Income derived during the previous year for the reason that the Income has not been received during that year or any other reason then on exercise of the option by submitting in Form No.9A electronically by the trust/institution on or before the due date of furnishing the return of Income, such Income shall be deemed to have been applied for charitable or religious purpose.
4. Representations have been received by the Board/field authorities stating that the Form No. 9A and Form No. 10 could not be filed in the specified time for AY 2016-17, which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No 9A and Form No. 10 for AY 2016-17 may be condoned under section 119(b) of the Act.
5. Accordingly, in supersession of earlier circular/Instruction issued in this regard with a view to expedite the disposal of applications filed by trust for condoning the delay and in exercise of the powers conferred under section 119(b) of the Act. The Central Board of Direct Taxes hereby authorizes the commissioners of Income-tax, to admit belated application in Form No. 9A and Form No. 10 in respect of AY 2016-17 where such Form No 9A and Form No. 10 are filed after the expiry of the time allowed under the relevant provisions of the Act.
6. The Commissioners will while entertaining such belated applications in Form No. 9A and Form No. 10 satisfy themselves that the assessee was prevented by reasonable cause from filing of applications in Form No.9A and Form No.10 within the stipulated time. Further, in respect of Form No. 10 the commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub section (5) of section 11 of the Act.

(Vinay Sheel Gautam)

Under secretary to the Government of India

[Image as enclosed](#)

Subject: Explanatory notes to the provisions of the Finance Act, 2018 Income – tax Act.

AMENDMENTS AT A GLANCE

Section/ schedule	Particulars/ paragraph number
	Finance Act ,2018
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9	Aligning the scope of business connection’ with modified PF Rule as per multilateral Instrument (MLI), 5.1-5.5 ; Business connection to include’ Significant Economic presence”, 6.1-6.9
10	Royalty and FTS payment by NTRO to non- resident to be tax- exempt, 7.1-7.4 ; Extending the benefit of tax –free withdrawal from NPS to non–employment subscribers, 8.1-8.3 ; tax deduction at source and manner of payment in respect of certain exempt entities, 11.1-11.5 ; New regime for taxation of long-term capital gain sale of equity shares etc. 29.1-29.13 Exemption to specified Income of class of body authority Board Trust or Commission in certain cases, 9.1-9.4 ; Ex emption of Income of foreign company from sale of leftover stock of crude oil on termination of agreement or arrangement. 10.1-10.4 ;
11	Tax deduction at source and manner of payment in respect of certain exempt entities, 11.1-11.5
16	Standard deduction on salary Income, 12.1-12.4
17	Standard deduction on salary Income, 12.1-12.4
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43AA	Amendments in relation to notified Income computation Disclosure standard, 39.1-39.3
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48	New regime for taxation of long-term capital gains on sale of equity shares etc., 29.1-29.13
49	Rationalization of provision relating to conversion of stock-in-trade into Capital Asset, 14.1-14.4
50C	Rationalization of section 43CA, section 50C and section 56, 16.1- 16.4
54EC	Rationalization of the provisions of section 54EC, 19.1-19.5.
55	New regime for taxation of long-term capital gains on sale of equity shares etc., 29.1-29.13
56	Rationalization of section 43CA, section 50C and section 56, 16.1-16.4 ; Tax neutral transfers, 20.1-20.3 ; Taxability of compensation in connection to business or employment, 13.1-13.3
79	Benefit of carry forward and set off of losses for facilitating insolvency resolution, 21.1-21.6
80AC	Deductions in respect of certain Incomes not to be allowed unless return is filed by the due date, 22.1-22.3

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80D	Deductions available to senior citizens in respect of health insurance premium and medical treatment, 23.1-23.4
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80-IAC	Measures to promote start-ups, 25.1-25.3
80JJAA	Incentive for employment generation, 26.1-26.4
80PA	Deduction in respect of Income of Producer Companies, 27.1-27.3
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115Q	Application of Dividend Distribution Tax to Deemed Dividend, 34.1-34.4
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143	Rationalisation of prima-facie adjustments during processing of return of Income, 37.1-37.4 ; New scheme for scrutiny assessment, 38.1 -38.4
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128	Rationalisation of the provisions relating to Commodity Transaction Tax, 46.1-46.9 Rationalisation
PART XVIII	THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015
46	Rationalisation of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, 47.1-47.10
55	Rationalisation of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, 47.1-47.10

1. Introduction

1.1 The Finance Act, 2018 (hereafter referred to as 'the Act') as passed by the parliament, received the assent of the President on the 29th day of March, 2018 and has been enacted as Act No. 13 of 2018. This circular explains the substance of the provisions of the Act relating to direct taxes.

2. Changes made by the Act

2.1 The Act has-

- (i) specified the rates of Income-tax for the assessment year 2019-20 and the rates of Income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2018-19;
- (ii) amended sections 2, 9, 10, 11, 16, 17, 28, 36, 40A, 43, 43CA, 44AE, 47, 48, 49, 50C, 54EC, 55, 56, 79, 80AC, 80D, 80DDB, 80IAC, 80JJAA, 80TTA, 115AD, 115BA, 115BBE, 115JB, 115JC, 115JF, 115-O, 115Q, 115R, 115T, 139A, 140, 143, 145A, 193, 194A, 245-O, 245-Q, 253, 271FA, 276CC, 286 of Income-tax Act, 1961 ('the Income-tax Act');
- (iii) inserted new sections 43AA, 43CB, 80PA, 80TTB, 112A, 145B in the Income-tax Act;

- (iv) amended section 97 of the Finance (No.2) Act, 2004;
- (v) amended sections 116, 117, 118, 128 of the Finance Act, 2013;
- (vi) amended sections 46, 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

3. Rate structure

3.1 Rates of Income-tax in respect of Income liable to tax for the assessment year 2018-19.

3.1.1 In respect of Income of all categories of assessee liable to tax for the assessment year 2018-19, the rates of Income-tax have been specified in Part I of the First Schedule to the Act. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2017 for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases during the financial year 2017-18.

The main features of the rates specified in the said Part I are as follows:

3.1.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part I of the First Schedule specifies the rates of Income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under: -

Income chargeable to tax	Rate of Income-tax		
	Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual resident in India who is of the age of eighty years or more (very senior citizen)
Up to Rs. 2,50,000	Nil	Nil	Nil
Rs.2,50,001 – Rs. 3,00,000	5%		
Rs. 3,00,001 – Rs.5,00,000		5%	
Rs.5,00,001 – Rs.10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of Income-tax so computed shall be increased by a surcharge at the rate of ten per cent of such Income-tax in case of a person having a total Income exceeding fifty lakh rupees but not exceeding one crore rupees, and fifteen per cent of such Income-tax in case of a person having a total Income exceeding one crore rupees.

However, marginal relief shall be available so the total amount payable as Income-tax and surcharge on total Income,-

- (i) exceeding fifty lakh rupees but not exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of fifty lakh rupees by more than the amount of Income that exceeds fifty lakh rupees;
- (ii) exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of one crore rupees by more than the amount of Income that exceeds one crore rupees.

Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on Income-tax at the rate of one per cent of such Income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.3 Co-operative Societies.

In the case of every co-operative society, the rates of Income-tax have been specified in Paragraph B of Part 1 of the First Schedule to the Act. The rates are as follows:-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 – Rs.20,000	20%
Exceeding Rs. 20,000	30%

The amount of Income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such Income-tax in case of a co-operative society having a total Income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as Income-tax and surcharge on total Income exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of one

crore rupees by more than the amount of Income that exceeds one crore rupees.

Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on Income-tax at the rate of one per cent of such Income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.4 Firms.

In the case of every firm, the rate of Income-tax of thirty per cent has been specified in Paragraph C of Part 1 of the First Schedule to the Act.

The amount of Income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such Income-tax in case of a firm having a total Income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as Income-tax and surcharge on total Income exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of one crore rupees by more than the amount of Income that exceeds one crore rupees.

Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on Income-tax at the rate of one per cent of such Income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.5 Local Authorities.

In the case of every local authority, the rate of Income-tax has been specified at thirty per cent in Paragraph D of Part 1 of the First schedule to the Act.

The amount of Income-tax so computed shall be increased by a surcharge at the rate of twelve per cent of such Income-tax in case of a local authority having a total Income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as Income-tax and surcharge on total Income exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of one crore rupees by more than the amount of Income that exceeds one crore rupees.

Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed inclusive of surcharge. In addition, the amount of tax computed shall be further increased by an additional surcharge called Secondary and Higher Education Cess on Income-tax at the rate of one per cent of such Income-tax inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.1.6 Companies.

In the case of a company, the rate of Income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.

In case of a domestic company, the rate of Income-tax is

- a) twenty five per cent of the total Income, if the total turnover or gross receipts of the company in the previous year 2015-16 does not exceed fifty crore rupees;
- b) twenty-five per cent of the total Income at the option of the company, If it satisfies the - conditions contained under section 115BA of the Income-tax Act;
- c) thirty per cent of the total Income, in all other cases.

The tax computed shall be enhanced by a surcharge of seven per cent where such domestic company has total Income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent shall be levied if the total Income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31.03.1961 but before 01.04.1976, shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or an Indian concern under an approved agreement made after 29.02.1964, but before 01.04.1976, shall be taxed at fifty per cent. On the balance of the total Income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two per cent where such company has total Income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall be levied if the total Income of the company other than domestic company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that,-

- (i) the total amount payable as Income-tax and surcharge on total Income exceeding one crore rupees shall not exceed

the total amount payable as Income-tax on a total Income of one crore rupees by more than the amount of Income that exceeds one crore rupees;

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

Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on Income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge.

No marginal relief shall be available in respect of Education Cess and Secondary and Higher Education Cess.

3.2 Rates for deduction of Income-tax at source from certain Incomes during the financial year 2018-19.

3.2.1 In every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 1948, 19488, 194D, 194LBA, 194LBB, 194LBC and 195 of the Income-tax Act, the rates for deduction of Income-tax at source during the financial year 2018-19 have been specified in Part 11 of the First Schedule to the Act. The rates for deduction of Income-tax at source during the financial year 2018-19 will continue to be the same as those specified in Part 11 of the First Schedule to the Finance Act, 2017. However, in case of a non-resident, not being a company, or a foreign company, tax shall be deducted at source at the rate of ten per cent on Income by way of long-term capital gain referred to in section 112A of the Income-tax Act.

3.2.2 Surcharge.

The tax deducted at source in the following cases shall be increased by a surcharge, as specified below, for purposes of the Union:

- (i) In case of an individual, Hindu undivided family, association of person, body of individual or artificial juridical person, where the Income or aggregate of such Incomes paid or likely to be paid and subject to the deduction exceeds-
 - (a) fifty lakh rupees but does not exceed one crore rupees, the rate of surcharge is ten per cent of such Income-tax;

- (b) one crore rupees, the rate of surcharge is fifteen per cent of such Income-tax.
- (ii) In case of a firm or cooperative society, where the Income or the aggregate of such Incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees, the rate of surcharge is twelve per cent of such Income-tax.
- (iii) In case of payments made to foreign companies, the rate of surcharge is two per cent of such Income-tax where the Income or the aggregate of such Incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees. In case where such Income or the aggregate of such Incomes paid or likely to be paid to a foreign company and subject to the deduction exceeds ten crore rupees, the rate of surcharge is five per cent,
- (iv) No surcharge on tax deducted at source shall be levied in the case of an individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person, co-operative society, local authority, firm, being a resident or a domestic company.

3.2.3 Health and Education Cess.

"Education Cess on Income-tax" and "Secondary and Higher Education Cess on Income-tax" shall be discontinued. However, a new Cess, by the name of "Health and Education Cess" shall be levied at the rate of four per cent of Income-tax including surcharge wherever applicable, in the cases of persons not resident in India including company other than a domestic company.

For instance, if the amount of Income of a foreign company is Rs.1,20,00,000/- and tax to be deducted from payment to such foreign company is Rs.12,00,000/- at the rate of ten per cent, then the surcharge at the rate of two per cent on such tax deducted shall be Rs. 24,000. Health and Education Cess on such amount of tax deducted and surcharge (Rs.12,00,000/- + Rs.24,000/- = Rs.12,24,000/-) shall be Rs.48,960/- (4% of Rs.12,24,000)

3.3 Rates for deduction of Income-tax at source from "Salaries", -computation of "advance tax" and charging of Income-tax in special cases during the financial year 2018-19.

3.3.1 Part III of the First Schedule to the Act specifies the rates for deducting Income-tax at source from 'Salaries' and computing advance tax during the financial year 2018-19. These rates are also applicable for charging Income-tax during the financial year 2018-19 on current Incomes in cases where accelerated assessments have to be made, e.g. provisional assessment of shipping profits arising in India to non-residents, assessment of persons

leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

3.3.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part III of the First Schedule specifies the rates of Income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). The basic exemption limits, rates of tax and slabs of Income for various categories remain the same as in financial year 2017-18.

The rates of tax during the financial year 2018-19 are as follows:-

Income chargeable to tax	Rate of Income-tax		
	Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual resident in India who is of the age of eighty years or more (very senior citizen)
Up to Rs. 2,50,000	Nil	Nil	Nil
Rs.2,50,001 – Rs. 3,00,000	5%		
Rs. 3,00,001 – Rs.5,00,000		5%	
Rs.5,00,001 – Rs.10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

The amount of Income-tax so computed shall be increased by a surcharge at the rate of ten per cent of such Income-tax in case of a person having a total Income exceeding fifty lakh rupees but not exceeding one crore rupees, and fifteen per cent of such Income-tax in case of a person having a total Income

exceeding one crore rupees. However, marginal relief shall be available so the total amount payable as Income-tax and surcharge on total Income,-

- (i) exceeding fifty lakh rupees but not exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of fifty lakh rupees by more than the amount of Income that exceeds fifty lakh rupees;
- (ii) exceeding one crore rupees shall not exceed the total amount payable as Income-tax and surcharge on a total Income of one crore rupees by more than the amount of Income that exceeds one crore rupees.

The amount of Income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called 'Health and Education Cess at the rate of four per cent of such Income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.3.3 Co-operative Societies.

In the case of every co-operative society, the rates of Income-tax have been specified in Paragraph 8 of Part III of the First Schedule to the Act. The rates are as follows:-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 – Rs.20,000	20%
Exceeding Rs. 20,000	30%

The amount of Income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such Income-tax in case of a co-operative society having a total Income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as Income-tax and surcharge on total Income exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of one crore rupees by more than the amount of Income that exceeds one crore rupees.

The amount of Income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called 'Health and Education Cess' at the rate of four per cent of such Income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.3.4 Firms.

In the case of every firm, the rate of Income-tax of thirty per cent has been specified in Paragraph C of Part III of the First Schedule to the Act.

The amount of Income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such Income-tax in case of a firm having a total Income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as Income-tax and surcharge on total Income exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of one crore rupees by more than the amount of Income that exceeds one crore rupees.

The amount of Income-tax as increased by the applicable surcharge shall be further increased by an additional surcharge called 'Health and Education Cess at the rate of four per cent of such Income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.3.5 Local Authorities.

In the case of every local authority, the rate of Income-tax has been specified at thirty per cent in Paragraph D of part III of the First Schedule to the Act.

The amount of Income-tax so computed shall continue to be increased by a surcharge at the rate of twelve per cent of such Income-tax in case of a local authority having a total Income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as Income-tax and surcharge on total Income exceeding one crore rupees shall not exceed the total amount payable as Income-tax on a total Income of one crore rupees by more than the amount of Income that exceeds one crore rupees.

The amount of Income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called 'Health and Education Cess' at the rate of four per cent of such Income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.3.6 Companies.

In the case of a company, the rate of Income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act.

In case of a domestic company,-

- (a) the rate of Income-tax is twenty five per cent of the total Income, if the total turnover or gross receipts of the company in the previous year 2016-17 does not exceed two hundred and fifty crore rupees;
- b) the rate of Income-tax is twenty-five per cent of the total Income at the option of the company, if it satisfies the conditions contained under section 115BA of the Income-tax Act;
- (c) the rate of Income-tax is thirty per cent of the total Income, in all other cases.

The tax computed shall continue to be enhanced by a surcharge of seven per cent where such domestic company has total Income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent shall be levied if the total Income of the company exceeds ten crore rupees.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31.03.1961 but before 01.04.1976, shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29.02.1964 but before 01.04.1976 shall be taxed at fifty per cent. On the balance of the total Income of such company, the tax rate shall be forty per cent. The tax computed shall continue to be enhanced by a surcharge of two per cent where such company has total Income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent shall continue to be levied if the total Income of such company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that,

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

The amount of Income-tax as increased by the applicable surcharge, shall be further increased by an additional surcharge called Health and Education Cess at the rate of four per cent of such Income-tax inclusive of surcharge. No marginal relief shall be available in respect of the Health and Education Cess.

3.4 Surcharge on Additional Income-tax.

Where additional Income-tax has to be paid under section 115-O or section 115-QA or sub-section (2) of section 115R or section 115TA or section 115TD of the Income-tax Act, that is to say, on distribution of dividend by domestic companies or distribution of Income by a company on buy-back of shares from shareholders or on distribution of Income by a mutual fund to its unit holders or on distribution of Income by a securitisation trust to its investors or on accreted Income of certain trusts and institutions, the additional tax so payable shall be increased by a surcharge of twelve per cent of such Income-tax.

4. Widening of scope of Accumulated profits for the purposes of Dividend.

4.1 Section 2 of the Income-tax Act defines various terms used in the said Act Clause (22) of the said section defines “dividend” to include 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) in the case of an unlisted company, any loan or advance given to a shareholder having shareholding of 10% or above, or to a concern in which such shareholder holds substantial (exceeding 20% of shareholding or interest) or any payment by such company on behalf of or for the individual benefit of such shareholder.

4.2 The existing provisions of Explanation 2 to the said clause define 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.

4.3 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 sub-clause (d) of clause (22) of section 2 of the Income-tax Act.

4.4 With a view to prevent such abusive arrangements and similar other abusive arrangements, a new Explanation 2A has been inserted in clause (22) of section 2 of the Income-tax Act to widen the scope of the term 'accumulated profits' so as to provide that in the case of an amalgamated company, accumulated profits, whether capitalised or not, or losses 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.

4.5 **Applicability:** This amendment takes effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent assessment years,

5. **Aligning the scope of "business connection" with modified PE Rule as per Multilateral Instrument (MLI)**

5.1 Before amendment by the Act, the provisions of Explanation 2 to clause (i) of subsection (1) of section 9 of the Income-tax Act specified that "business connection" includes business activities carried on by non-resident through dependent agents. The scope of "business connection" under the Income-tax 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 Permanent Establishment (PE) in the source country. However, in many cases, with a view to avoid establishing a PE under paragraph 5 of Article 5 of the DTAA, the person acting on the behalf of the non-resident, negotiates the contract but does not conclude the contract.

5.2 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.

5.3 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 ('MLI'), to which India is also a signatory. Consequently, these provisions had automatically modified India's bilateral tax treaties covered by MLI, where its treaty partner had also opted for Article 12. As a result, the DAPE provisions in paragraph 5 of Article 5 of India's DTAAs, as modified by MLI, have become wider in scope than the current provisions in Explanation 2 to clause (i) of sub-section (1) of section 9 of the Income-tax Act. However, sub-section (2) of section 90 of the Income-tax Act provides that the

provisions of the domestic law would prevail over corresponding provisions in the DTAAAs to the extent they are beneficial. Since, in the instant situations, the provisions of the domestic law being narrower in scope were more beneficial than the provisions in the DTAAAs, as modified by MLI, such wider provisions in the DTAAAs were ineffective.

5.4 In view of the above, the provisions of section 9 of the Income-tax Act have been amended 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 (i) of sub-section (1) of section 9 of the Income-tax Act has been amended to provide that "business connection" shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident. It is further amended that the contracts should be-

- (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 the non-resident has the right to use; or
- (iii) for the provision of services by that non-resident.

5.5 **Applicability:** This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

6. "Business connection" to include "Significant Economic presence"

"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)

6.1 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.

6.2 Ordinarily, as per the allocation of taxing rules under Article 7 of DTAAAs, 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.

- 6.3** 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 rules based on physical presence do not hold 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 are unfairly and unreasonably eroded.
- 6.4** OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy wherein it has 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 significant 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 factor may be used in combination with the aforesaid factors to determine 'significant economic presence'.
- 6.5** Before amendment by the Act, the scope of existing provisions of clause (i) of subsection (1) of section 9 of the Income-tax Act was restrictive in nature as it essentially provided for physical presence-based nexus rule for taxation of business Income of a non-resident in India. Explanation 2 to the said section, which defines 'business connection', was also narrow in its scope since it applied to certain activities or transactions of non-resident, viz. the activities carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence (whether of itself or any agent) in India, were not explicitly covered within the scope of the said section.
- 6.6** In view of the above, a new Explanation 2A has been inserted in clause (i) of subsection (1) of section 9 of the Income-tax Act to provide that 'Significant Economic Presence' in India shall also constitute 'business connection' and that "Significant Economic Presence" for this purpose shall mean-
- (i) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or

- (ii) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as maybe prescribed, in India through digital means.

6.7 It is further provided that only so much of Income as is attributable to such transactions or activities as specified in (i) or (ii) above shall be deemed to accrue or arise in India. It is also provided that the transactions or activities shall constitute significant economic presence in India, whether or not -

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

Therefore, if any transactions or activities are carried out by a non-resident in India beyond a threshold as may be prescribed, then such non-resident taxpayer would be liable to tax in India irrespective of its physical presence. In this connection, it is also clarified that unless corresponding modifications to PE rules are made in the DTAAs, the cross border business profits will continue to be taxed as per the existing treaty rules.

6.8 **Applicability:** This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

7. Royalty and FTS payment by NTRO to a non-resident to be tax-exempt

7.1 Section 195 of the Income-tax Act requires a person to deduct tax at the time of payment or credit to a non-resident.

7.2 Given the strategic nature and business exigencies of the National Technical Research Organisation (NTRO), a new clause (6D) has been inserted in section 10 of the Income-tax Act 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.

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

7.4 **Applicability:** This amendment takes effect from 1st April, 2018 and accordingly applies in relation to assessment year 2018-19 and subsequent assessment years.

8. Extending the benefit of tax-free withdrawal from NPS to non-employee subscribers

8.1 Before amendment by the Act, clause (12A) of section 10 of the Income-tax Act provided that an employee contributing to the pension scheme referred to in section 80CCD of the Income-tax Act (NPS) shall be allowed exemption in respect of

40% of the total amount payable to him on closure of his account or on his opting out. However, this exemption is not available to non-employee subscribers.

8.2 In order to provide a level playing field, clause (12A) of section 10 of the Income-tax Act has been amended to extend the said benefit to all subscribers of NPS.

8.3 **Applicability:** This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

9. Exemption to specified Income of class of body, authority, Board, Trust or Commission in certain cases.

9.1 Clause (46) of section 10 of the Income-tax 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 Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public.

9.2 Before amendment by the Act, the Central Government was required to notify each body, authority, Board, Trust or Commission separately even if they belonged to the same class of cases. Consequently, the whole process of approval was considerably delayed.

9.3 Accordingly, clause (46) of section 10 of the Income-tax Act has been amended 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).

9.4 **Applicability:** This amendment takes effect from 1st April, 2018.

10. Exemption of Income of Foreign company from sale of leftover stock of crude oil on termination of agreement or arrangement

10.1 Clause (48A) of section 10 of the Income-tax Act 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 shall 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.

10.2 Before amendment by the Act, clause (48B) of the said section provided 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. However, the benefit of exemption was not available on sale out of the leftover stock of crude in case of termination of the said agreement or arrangement.

10.3 Given the strategic nature of the project benefitting India in augmenting its strategic petroleum reserves, clause (488) of section 10 of the Income-tax Act has been amended to provide that the benefit of tax exemption in respect of Income from leftover stock will be available in cases where the agreement or arrangement is terminated in accordance with the terms mentioned therein.

10.4 **Applicability:** This amendment takes effect from 1st of April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent years.

11. Tax deduction at source and manner of payment in respect of certain exempt entities.

11.1 Section 11 of the Income-tax Act provides for exemption in respect of Income from property held for charitable or religious purposes, where the person in receipt of the Income applies or accumulates such Income during the previous year in accordance with the relevant provisions. Similarly, the third proviso to clause (23C) of section 10 of the Income-tax Act provides for exemption in respect of the Income of certain persons where such Income is applied or accumulated during the previous year for the specified purposes in accordance with the relevant provisions.

11.2 Before amendment by the Act, there were no restrictions on payments made in cash by the said persons. There were also no checks on whether such persons follow the provisions of deduction of tax at source under Chapter XVII-B of the Income-tax Act. Consequently, there was a lack of an audit trail for verification of application of Income.

11.3 In order to encourage a less cash economy and to reduce the generation and circulation of black money, a new Explanation 3 has been inserted to sub-section (1) of section 11 of the Income-tax Act so as to provide that for the purposes of determining the application of Income under the provisions of sub-section (1) of the said section, the provisions of sub-clause (a) of clause (a) of section 40, and of sub-sections (3) and (3A) of section 40A of the Income-tax Act, shall, mutatis mutandis, apply as they apply in computing the Income chargeable under the head "Profits and gains of business or profession".

11.4 A proviso has also been inserted to clause (23C) of section 10 of the Income-tax Act so as to provide similar restrictions as above on the persons exempt under sub-clauses (iv), (v), (vi) or (via) of the said clause in respect of application of Income.

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

12. Standard deduction on salary Income

- 12.1** Section 16 of the Income-tax Act inter alia provides for certain deductions in computing Income chargeable under the head "Salaries".
- 12.2** In order to provide relief to salaried taxpayers, section 16 of the Income-tax Act has been amended so as to allow a standard deduction up to Rs. 40,000 or the amount of salary received, whichever is less.
- 12.3** Consequently, section 17 of the Income-tax Act has also been amended to withdraw the exemption in respect of reimbursement of certain medical expenses. Further, the exemption in respect of Transport Allowances (except in case of differently abled persons) under the Income tax Rules, 1962 has also been withdrawn vide Notification No. 17/2018 dated 06.04.2018.
- 12.4** **Applicability:** These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

13. Taxability of compensation in connection to business or employment

- 13.1** Before amendment by the Act, the provisions of section 28 of the Income-tax Act provided that certain types of compensation receipts shall be taxable under the head "Profits and gains of business or profession". However, the scope of this section was restrictive since it did not cover a large segment of compensation receipts in connection with business and employment, leading to base erosion and revenue loss.
- 13.2** Accordingly, section 28 of the Income-tax Act has been amended to provide that any compensation received or receivable, by any person, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to his business shall also be taxable under the head "Profits and gains of business or profession". Further, section 56 of the Income-tax Act has also been amended to provide that any compensation received or receivable by any person, 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 his employment shall be taxable under the head "Income from other sources". Consequential amendment has also been made in clause (24) of section 2 of the Income-tax Act.
- 13.3** **Applicability:** These amendments takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

14. Rationalisation of provisions relating to conversion of stock-in-trade into capital Asset

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

14.2 In order to provide symmetrical treatment and discourage the practice of deferring tax payment by converting the inventory into capital asset, section 28 of the Income-tax Act has been amended to provide that any profits or gains arising from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as Income under the head "Profits and gains from business or profession". It is also provided that the fair market value of the inventory on the date of conversion or treatment, determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment.

14.3 Consequentially, the following amendments have been made in the provisions of the Income-tax Act-

- (i) clause (24) of section 2 has been amended to include said fair market value in the definition of "Income";
- (ii) clause (42A) of section 2 has been amended to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment;
- (iii) section 43 has been amended to provide that where the converted capital asset is used for the business or profession of the assessee; the said fair market value shall be deemed as its actual cost;
- (iv) section 49 has been amended to provide that for the purposes of computation of capital gains arising on transfer of such capital assets, the said fair market value shall be deemed as its cost of acquisition.

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

15. Tax treatment of transactions in respect of trading in agricultural commodity derivatives

15.1 Clause (5) of section 43 of the Income-tax Act defines "speculative transaction". Clause (e) of the proviso to clause (5) of section 43 of the Income-tax Act, however, stipulates that an eligible transaction in commodity derivatives carried out in a recognised association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013), is a non-speculative transaction.

15.2 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 was not available to transaction in respect of trading of agricultural commodity derivatives and accordingly, such transactions were held to be speculative transactions.

15.3 In order to encourage participation in trading of agricultural commodity derivatives, a new proviso has been inserted to clause (5) of section 43 of the Income-tax Act to provide that a transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to CTT, in a registered association or registered stock exchange, shall be treated as non-speculative transaction.

15.4 **Applicability:** This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

16. Rationalization of section 43CA, section 50C and section 56

16.1 Before amendment by the Act, for computing Income from business profits (section 43CA), capital gains (section 50C) and other sources (section 56) arising out of transactions in immovable property, the higher of sale consideration or stamp duty value was adopted. The difference was taxed as Income both in the hands of the purchaser and the seller.

16.2 It has been pointed out that the variation between stamp duty value and actual consideration received can occur in respect of similar properties in the same area because of a variety of factors, including shape of the plot or location.

16.3 In order to minimize hardship in case of genuine transactions in the real estate sector, section 43CA, section 50C and section 56 of the Income-tax Act have been amended to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five per cent of the sale consideration.

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

17. Presumptive Income under section 44AE in case of goods carriage

17.1 Section 44AE of the Income-tax Act provides that in respect of an assessee who owns not more than ten goods carriages at any time during the previous year and who is engaged in the business of plying, hiring or leasing such goods carriages, the Income of such business chargeable to tax under the head "Profits and gains of business or profession" shall be deemed to be the aggregate of the profits and gains from all the goods carriages owned by him in the previous year, computed in accordance with the provisions of the said section.

- 17.2** Before amendment by the Act, sub-section (2) of the said section provided that the profits and gains shall be deemed to be an amount equal to seven thousand five hundred rupees 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.
- 17.3** The presumptive Income scheme under section 44AE of the Income-tax Act 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, a transporter who owns large capacity/size goods carriages can also avail the benefit of section 44AE so long as he owns less than 10 goods carriages. 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. However, in this case, it is evident that even though the profit margins of large capacity goods carriages are higher than small capacity goods carriages, the tax consequences were similar which was against the principle of tax equity.
- 17.4** In view of the above/ section 44AE of the Income-tax Act has been amended to provide that in the case of heavy goods vehicle (more than 12MT gross vehicle), the profits and gains under this section would deemed to be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, as the case in any be, for every month or part of a month for each goods vehicle or the amount claimed to be actually earned by the assessee, whichever is higher. The vehicles other than heavy goods vehicle will continue to be taxed as per the existing rates.
- 17.5** Consequently, the Explanation to the said section has also been amended to define the expressions 'gross vehicle weight', 'unladen weight' and 'heavy goods vehicle'.
- 17.6** **Applicability:** These amendments takes effect 1st April, 2019 and will, accordingly, apply in relation to assessment year 2019-20 and subsequent assessment years.

18. Measures to promote International Financial services centre (IFSC)

- 18.1** Section 47 of the Income-tax Act provides for tax neutrality relating to certain transfers.
- 18.2** In order to promote the development of world class financial infrastructure in India, the aforesaid section has been amended so as to provide that transactions in the following assets, undertaken by a non-resident on a recognised 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:-
- (i) bond or Global Depository Receipt, as referred to in sub-section (1) of section 115AC of the Income-tax Act; or
 - (ii) rupee denominated bond of an Indian company; or
 - (iii) derivative.

- 18.3** Before amendment by the Act, section 115JC of the Income-tax Act provided for alternate minimum tax at the rate of 18.5% of adjusted total Income in the case of all non- corporate persons.
- 18.4** In order to promote the development of world class financial infrastructure in India, section 115JC of the Income-tax Act has also been amended to provide that in case of a unit located in an International Financial Service Centre, the alternate minimum tax under section 115JC shall be charged at the rate of 90%.
- 18.5** Consequential amendment has also been made to section 115JF of the Income-tax Act.
- 18.6** **Applicability:** These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

19. Rationalization of the provisions of section 54EC

- 19.1** Section 54EC of the Income-tax Act provides that capital gain, arising from the transfer of a long-term capital asset, shall not be charged to tax subject to the said gain being invested in the long-term specified asset at any time within a period of six months after the date of such transfer and to such other conditions as specified in the said section.
- 19.2** The said 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.
- 19.3** In order to rationalise the provisions of section 54EC of the Income-tax Act and to restrict the scope of the section to only capital gains arising from long-term capital assets, being land or building or both, section 54EC has been amended 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 six months after the date of such transfer, shall not be charged to tax subject to certain conditions specified in the said section.
- 19.4** Further, to make available funds at the disposal of eligible bond issuing companies for more than three years, it has also been provided that long-term specified asset, for making any investment under the said section on or after the 1st day of April, 2018, shall mean any bond, redeemable after five years and issued on or after 1st day of April, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the central Government in this behalf.

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

20. Tax neutral transfers

20.1 Section 47 of the Income-tax Act provides for certain tax neutral transfers. Clause (x) of sub-section (2) of Section 56 of the Income-tax Act also excludes Income arising out of certain tax neutral transfers from its ambit. However, before amendment by the Act, transfers referred to in clause (iv) and clause (v) of section 47 were not excluded from the scope of clause (x) of sub-section (2) of section 56.

20.2 In order to further facilitate the transaction of money or property between a wholly owned subsidiary company and its holding company, section 56 has been amended to exclude such transfer from the scope of clause (x) of sub-section (2) of section 56.

20.3 *Applicability:* This amendment will take effect, from 1st April, 2018 and shall accordingly, apply in relation to the transaction made on or after 1st April, 2018.

21. Benefit of carry forward and set off of losses for facilitating insolvency resolution

21.1 Section 79 of the Income-tax Act provides inter alia 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 fifty one per cent of the voting power, on the last day of the year or years in which the loss was incurred.

21.2 In general, the case of a company seeking insolvency resolution under the 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.

21.3 In order to address this problem, section 79 of the Income-tax Act has been amended and the rigors of the said section have been relaxed in case of such companies, whose resolution plan has been approved under the Insolvency and Bankruptcy Code, 2016 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

21.4 *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent assessment years.

21.5 Section 140 of the Income-tax Act has also been amended so as to provide that during the resolution process of a company under the Insolvency and Bankruptcy Code, 2016, its return shall be verified by an insolvency professional appointed by the Adjudicating Authority under the said Code.

21.6 *Applicability:* This amendment takes effect from 1st April, 2018 and will, accordingly apply to return filed on or after the said date.

22. Deductions in respect of certain Incomes not to be allowed unless return is filed by the due date

22.1 Before amendment by the Act, section 80AC of the Income-tax Act provided 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 sub-section (1) of section 139 of the Income-tax Act. However, this burden was not cast upon the assessee claiming deduction under other similar provisions contained in Chapter VIA of the Income-tax Act under the heading "C-Deductions in respect of certain Incomes".

22.2 In order to ensure timely filing of return by the assessee for claiming deductions under the provisions contained in Chapter VIA of the Income-tax Act under the heading "C-Deductions in respect of certain Incomes", section 80AC has been amended to provide that the benefit of deduction under the entire class of deductions under the heading "C-Deductions in respect of certain Incomes" in Chapter VIA of the Income-tax Act shall not be allowed unless the return of Income is filed on or before the due date.

22.3 **Applicability:** This amendment take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years,

23. Deductions available to senior citizens in respect of health insurance premium and medical treatment

23.1 Before amendment by the Act, section 80D of the Income-tax Act provided inter alia that a deduction up to Rs. 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 medical expenditure in respect of very senior citizen.

23.2 In order to provide relief to cover the higher cost of medical expenses, section 80D of the Income-tax act has been, amended and the monetary limit of the said deduction has been raised to Rs, 50,000 from Rs. 30,000.

23.3 The said section has been further amended to provide that 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.

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

24. Enhanced deduction to senior citizens for medical treatment of specified diseases

- 24.1** Before amendment by the Act, section 80DDB of the Income-tax Act provided for a deduction of up to Rs. 80,000 (in respect of a very senior citizen) and Rs. 60,000 (in respect of a senior citizen) to an individual and Hindu undivided family with regard to amount paid for medical treatment of specified diseases in respect Of a very senior citizen or a senior citizen, subject to certain specified conditions.
- 24.2** In order to provide relief to senior citizens for medical treatment for specified diseases, the provisions of section 80DDB of the Income-tax Act have been amended and this monetary limit of deduction has been raised to Rs. 1,00,000 for both senior citizens and very senior citizens.
- 24.3** **Applicability:** This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

25. Measures to promote start-ups

- 25.1** Before amendment by the Act, section 80-IAC of the Income-tax Act provided that the 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 twenty-five crore rupees 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.
- 25.2** In order to improve the effectiveness of the scheme for promoting start-ups in India, section 80-IAC of the Income-tax Act has been amended so as to make following changes in the taxation regime for the start-up:-
- (i) The benefit would also be available to start ups incorporated on or after the 1st day of April 2019 but before the 1st day of April, 2021;
 - (ii) The requirement of the turnover not exceeding Rs.25 Crore shall apply to the previous year relevant to the assessment year for which deduction under section 80-IAC is 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.

25.3 *Applicability:* These amendments take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

26. Incentive for employment generation

26.1 Section 80JJAA of the Income-tax Act provides for deduction of 30 per cent in addition to normal deduction of 100 per cent 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.

26.2 In order to encourage creation of new employment by assesses engaged in the manufacturing of footwear or leather products, section 80JJAA of the Income-tax Act has been amended to extend the relaxation of 150 days to the footwear and leather products industry.

26.3 Further, the deduction available under section 80JJAA has also been rationalized by allowing the benefit of deduction for a new employees who is employed for less than the minimum period during the first year but continues to remain employed for the minimum period in subsequent year.

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

27. Deduction in respect of Income of Producer Companies

27.1 Section 80P of Income-tax Act provides for 100 per cent deduction in respect of profits and gains of cooperative society which provides assistance to its members engaged in primary agricultural activities.

27.2 A new section 80PA has been inserted in the Income-tax Act to extend similar benefits to Producer Companies, having a total turnover of less than Rs. 100 crore, whose gross total Income includes any Income from –

- (i) the marketing of agricultural produce grown by its members, or
- (ii) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
- (iii) the processing of the agricultural produce of its members.

The deduction shall be available for the previous year relevant to the assessment year 2019-2020 to 2024-25.

27.3 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

28. Deduction in respect of interest Income to senior citizens

- 28.1** Section 80TTA of the Income-tax Act provides for a deduction of up to Rs. 10,000 in respect of interest Income from saving account.
- 28.2** In order to provide relief to senior citizens, a new section 80TTB has been inserted in the Income-tax Act so as to allow a deduction of up to Rs.50,000 in respect of interest Income from deposits held by senior citizens. Consequentially, it has been provided that deduction under section 80TTA shall not be allowed in these cases.
- 28.3** **Applicability** : This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.
- 28.4** Consequential amendment has also been made in section 194A of the Income-tax Act so as to raise the threshold for deduction of tax at source on interest Income for senior citizens from Rs.10,000 to Rs. 50,000.
- 28.5** **Applicability**: This amendment takes effect, from 1st April, 2018.

29. New regime for taxation of long-term capital gains on sale of equity shares etc.

- 29.1** Before amendment by the Act, long term capital gains arising from transfer of long term capital assets, being equity shares of a company or an unit of equity oriented fund or a unit of a business trust, was exempt from Income-tax under clause (38) of section 10 of the Income-tax Act. However, transactions in such long term capital assets carried out on a recognized stock exchange were liable to securities transaction tax (STT).
- 29.2** Over the years, it was felt that this regime is inherently biased against manufacturing and has encourage 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,
- 29.3** In order to minimize economic distortions and curb erosion of tax base, the provisions of clause (38) of section 10 of the Income-tax Act have been amended to withdraw the exemption available under the said section and a new section 112A has been inserted in the Income-tax Act to provide that long term capital gains arising from 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, shall be taxed at 10 per cent of such capital gains exceeding on lakh rupees. The tax on balance total Income shall be computed after reducing the total amount of the said capital gains from the total Income.
- 29.4** This concessional rate of 10 per cent will be applicable to said long term capital gains, if-

- (i) in a case where long term capital asset is in the nature of an equity share in a company, STT has been paid on both acquisition and transfer of such capital asset; and
- (ii) in a case where long term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, STT has been paid on transfer of such capital asset.

29.5 Further, sub-section (4) of section 112A empowers the Central Government to specify by notification the nature of acquisition in respect of which the requirement of payment of STT shall not apply in the case of equity share in a company. Similarly, the requirement of payment of STT shall not apply if the transfer is undertaken on a recognized stock exchange located in any International Financial Service Centre (IFSC) and the consideration of such transfer is received or receivable in foreign currency.

29.6 The provisions of section 112A also provide for the following:-

- (i) The benefit of deduction under chapter VIA shall be allowed from the gross total Income as reduced by such capital gains.
- (ii) Similarly, the rebate under section 87A shall be allowed from the Income tax on the total Income as reduced by tax payable on such capital gains.
- (iii) “equity oriented fund” has been defined to mean a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and, -
 - (a) In a case where the fund invests in the units of another fund which is traded on a recognized stock exchange, -
 - (I) A minimum of 90 per cent of the total proceeds of such funds is invested in the units of such other funds; and
 - (II) Such other fund also invests a minimum of 90 per cent of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and
 - (b) In any other case, a minimum of 65 per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognized stock exchange.

29.7 Consequential amendment has been made to section 48 of the Income-tax Act to provide that the provisions of first and second provision to section 48, relating to computation of capital gains in foreign currency in case of a non-resident and inflation indexation of cost of acquisition and cost of improvement, shall not be allowed for computation of capital gains referred to in section 112A.

29.8 Consequential amendment has also been made in section 55 of the Income-tax Act to provide that the cost of acquisitions in respect of the long term capital asset, being and equity share in a company, or a unit of an equity oriented mutual fund, or a unit of business trust referred to in section 112A, which has been acquired by the assessee before the 1st day of February, 2018, shall be deemed to be the higher of –

- (a) the cost of acquisition of such asset; and
- (b) the lower of –
 - (I) the fair market value of such asset; and
 - (II) the full value of consideration received or accruing as a result of the transfer of the capital asset.

29.9 It has been further provided that, -

- (a) in a case where the capital asset is listed on any recognised stock exchange as on the 31st day of January, 2018, the fair market value shall be the highest price of the capital asset quoted on such exchange on the said date. However, where there is no trading in such asset on such exchange on the 31st day of January, 2018, the fair market value shall be the highest price of such asset on such exchange on a date immediately preceding the 31st day of January, 2018 when such asset was traded on such exchange ;
- (b) in a case where the capital asset is a unit and is not listed on a recognized stock exchange as on the 31st day of January, 2018, the fair market value shall be the net asset value of such asset on the said date; and
- (c) the fair market value of a capital asset, being an equity share in a company, shall be determined after allowing inflation indexation of its cost of acquisition up to financial year 2017-18 in the following cases :-

Where the share is not listed on a recognized stock exchange as on the 31st day of January, 2018 but listed on such exchange as on the date of transfer;

Where the share is listed on a recognized stock exchange on the date of transfer and which became the property of the assessee in consideration of a share which is not listed on such exchange as on the 31st day of January, 2018 by way of transactions not regarded as transfer under section 47 of the Income-tax Act.

29.10 Consequential amendment has also been made in clause (42A) of section 2 of the Income-tax Act so as to define 'equity oriented fund' as the fund referred to in clause (a) of Explanation to section 112A of the Income-tax Act.

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

29.12 Further, consequential amendment has been made in section 97 of the Finance (No.2) Act, 2004 so as to define 'equity oriented fund' as the fund referred to in clause (a) of Explanation to section 112A of the Income-tax Act.

29.13 *Applicability:* This amendment takes effect from 1st April, 2018.

30. Taxation of long-term capital gains in the case of Foreign Institutional Investor

30.1 The provisions of section 115AD of the Income-tax 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 at the rate of ten per cent. However, before amendment by the Act, long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of an equity oriented fund or a unit of business trusts was exempt from Income-tax under clause (38) of section 10 of the Income-tax Act.

30.2 Consequent to the withdrawal of exemption under clause (38) of section 10 of the Act, such long term capital gain shall become taxable in the hands of FIIs also. As in the case of domestic investors, the FIIs shall also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding one lakh rupees. Accordingly, the provisions of section 115AD of the Income-tax Act have been amended.

30.3 *Applicability:* This amendment takes effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

31. Rationalisation of provision of section 115BA relating to certain domestic companies.

31.1 Section 115BA of the Income-tax 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 at the rate of twenty five per cent subject to conditions specified therein. This benefit is available from assessment year 2017-18.

31.2 However, there are certain Incomes which are subject to a scheduler tax at a rate which is lower or higher than twenty five per cent. Consequently tax payers have been subjected to unintended hardship or unwarranted relief.

31.3 Accordingly, section 115BA of the Income-tax Act has been amended so as to clarify that the provisions of section 115BA are restricted to the Income from the business of manufacturing, production, research or distribution referred to therein; and Incomes which are at present taxed at a scheduler rate will continue to be so taxed.

31.4 *Applicability:* The amendment takes effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

32. Rationalisation of the provisions of section 115BBE.

- 32.1** Section 115BBE of the Income-tax Act provides for tax on Income referred to in section 68 or section 69 or section 69A or section 69B or section 69D at a higher rate of sixty per cent.
- 32.2** Before amendment by the Act, sub-section (2) of the said section provided 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 Income-tax Act in computing his Income referred to in clause (a) of sub-section (1).
- 32.3** In order to rationalize the provisions of section 115BBE, an amendment has been made in sub-section (2) of section 115BBE so as to also include reference of Income referred to in clause (b) of sub-section (1) of section 115BBE in sub-section (2) of the said section.
- 32.4** **Applicability:** This amendment takes effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

33. Relief from liability of Minimum Alternate Tax (MAT) for certain companies

- 33.1** Section 115JB of the Income-tax Act provides for levy of a minimum alternate tax (MAT) on the “book profits” of a company. In computing the book profit, it is further provided inter alia that a deduction in respect of the amount of loss brought forward or unabsorbed depreciation as per books of account, whichever is less, shall be allowed. Consequently, where the loss brought forward or unabsorbed depreciation is Nil, no deduction is allowed.
- 33.2** in order to provide relief to companies seeking insolvency resolution, section 115JB of the Income-tax Act has been amended to provide that the aggregate amount of unabsorbed depreciation and loss brought forward (excluding unabsorbed depreciation) shall be allowed to be reduced from the book profit, if a company’s application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority.
- 33.3** Consequently, a company whose application has been admitted shall be entitled to reduce the loss brought forward (excluding unabsorbed depreciation) and unabsorbed depreciation for the purposes of computing book profit under section 115JB.
- 33.4** **Applicability:** This amendment takes effect from 1st April, 2018 and will, accordingly apply in relation to the assessment year 2018-19 and subsequent assessment years.
- 33.5** Further, section 115JB of the Income-tax Act has also been amended to clarify that the provisions of the said section 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 of the Income-tax Act and such Income has been offered to tax at the rates specified in the said sections.

- 33.6** *Applicability:* This amendment takes effect retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent assessment years.

34. Application of Dividend Distribution Tax to Deemed Dividend

- 34.1** Dividend distributed by a domestic company is subject to dividend distribution tax payable by such company. However, before amendment by the Act, deemed dividend under sub-clause (e) of clause (22) of section 2 of the Income-tax Act was 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.

- 34.2** With a view to bringing clarity and certainty in the taxation of deemed dividends, the Explanation to Chapter XII-D of the Income-tax Act, occurring after section 115Q, has been deleted so as to bring deemed dividends also under the scope of dividend distribution tax under section 115-O of the Income-tax Act.

- 34.3** Further, section 115-O of the Income-tax Act has also been amended to provide that such deemed dividend will be taxed at the rate of thirty per cent (without grossing up) in order to prevent camouflaging dividend in various ways such as loans and advances.

- 34.4** *Applicability:* This amendment relating to imposition of dividend distribution tax on deemed dividend will apply to transactions referred to in sub-clause (e) of clause (22) of section 2 of the Income-tax Act undertaken on or after 1st April, 2018.

35. Dividend distribution tax on Income distributed to unit holders by an equity oriented fund.

- 35.1** Section 115R of the Income-tax Act provides inter alia that 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, before amendment by the Act, any Income distributed to a unit holder of an equity oriented fund was not chargeable to tax under the said section.

- 35.2** With a view to providing a level playing field between growth oriented funds and dividend paying funds in the wake of new capital gains tax regime for unit holders of equity oriented funds, the provisions of section 115R of the Income-tax Act have been amended so as 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 at the rate of ten per cent on Income so distributed.

35.3 Further, section 115T of the Income-tax Act has also been amended to provide that an equity oriented fund shall have the same meaning as assigned to it in the new section 112A of the Income-tax Act.

35.4 **Applicability:** This amendment takes effect from 1st April, 2018 and shall apply to the Income distributed by an equity oriented fund to its unit holders on or after 1st April, 2018.

36. Entities to apply for Permanent Account Number in certain cases

36.1 Section 139A of the Income-tax Act provides inter alia 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).

36.2 In order to use PAN as Unique Entity Number (UEN) for non-individual entities, the provisions of section 139A of the Income-tax Act have been amended so as to provide that every resident, not being an individual, which enters into a financial transaction of an amount aggregating to two lakh and fifty thousand rupees or more in a financial year shall be required to apply to the Assessing Officer for allotment of PAN.

36.3 In order to link the financial transactions with the natural persons, it is further provided 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..

36.4 In order to enable issuance of e-PAN for ease of doing business, it is also provided that requirement of issuing PAN in a laminated card shall no longer be mandatory.

36.5 **Applicability:** This amendment takes effect from 1st April, 2018.

37. Rationalisation of prima-facie adjustments during processing of return of Income.

37.1 Sub-section (1) of the section 143 of the Income-tax Act provides for processing of return of Income made under section 139, or in response to a notice under sub-section (1) of section 142.

37.2 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.

37.3 With a view to restrict the scope of adjustments, a proviso has been inserted to the clause (a) to provide that no adjustment under sub-clause (vi) of the said clause shall be made in respect of any return furnished on or after the assessment year commencing on 1st April, 2018.

37.4 *Applicability:* This amendment takes effect from 1st April, 2018.

38. New scheme for scrutiny assessment

38.1 Section 143 of the Income-tax Act provides for the procedure for assessment. Sub-section (30) 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 on the basis of such assessment.

38.2 With a view 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, for optimal utilization of the resources, and to introduce the concept of team-based assessment, the provisions of section 143 of the Income-tax Act have been amended and new sub-sections (3A), (3B) and (3C) have been inserted in the said section.

38.3 The newly-inserted sub-section (3A) empowers the Central Government to prescribe the aforementioned new scheme for scrutiny assessments, by way of notification in the Official Gazette. Sub-section (3B) empowers the Central Government to direct, by notification in the Official Gazette that any of the provisions of Income-tax Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein. However, no such directions shall be issued after 31st March, 2020. Sub-section (3C) provides that every notification issued under the sub-section (3A) and sub-section (3B) shall be laid before each House of Parliament, as soon as may be.

38.4 *Applicability:* These amendments take effect from 1st April, 2018.

39. Amendments in relation to notified Income Computation and Disclosure Standards.

39.1 Section 145 of the Income-tax Act empowers the Central government to notify Income Computation and Disclosure Standards (ICDS). In pursuance to the above, 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 Income-tax 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".

39.2 In order to bring certainty in the wake of recent judicial pronouncements on the issue of applicability of ICDS –

- (i) Section 36 of the Income-tax Act has been amended to provide that marked-to-market loss or other expected loss, as computed in the manner provided in the ICDS notified under sub-section (2) of section 145, shall be allowed deduction.

- (ii) Section 40A of the Income-tax Act has been amended to provide that no deduction or allowance in respect of marked-to-market loss or other expected loss shall be allowed except as allowable under inserted clause (xviii) of sub-section (1) of section 36.
- (iii) A new section 43AA has been inserted in the Income-tax Act to provide that, subject to the provisions of section 43A, any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as Income or loss, which shall be computed in the manner provided in ICDS as notified under sub-section (2) of section 145 of the Income-tax Act.
- (iv) A new section 43CB has been inserted in the Income-tax Act to provide that profits arising from a construction contract or a contract or a contract for providing services shall be determined on the basis of percentage of completion method except for certain service contracts, and that the contract revenue shall include retention money, and contract cost shall not be reduced by incidental interest, dividend and capital gains.
- (v) Section 145A of the Income-tax Act has been amended to provide that, for the purpose of determining the Income chargeable under the head "Profits and gains of business or profession, -
 - (a) The valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in the ICDS notified under (2) of section 145;
 - (b) 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;
 - (c) Inventory, being securities not listed, or listed but not quoted, on recognized stock exchange, shall be valued at actual cost initially recognized in the manner provided in the ICDS notified under (2) of section 145;
 - (d) Inventory, being listed securities, shall be valued at lower of actual cost or net realizable value in the manner provided in the ICDS notified under (2) of section 145 and for this purpose the comparison of actual cost and net realizable value shall be done category-wise;
 - (e) Inventory, being securities, held by a scheduled bank or public financial institution shall be valued in accordance with the ICDS notified under sub-section (2) of section 145 after taking into account the extant guidelines of the Reserve Bank of India.

- (vi) A new section 145B has been inserted in the Income-tax Act to provide that—
- (a) 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;
 - (b) 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 realization is achieved;
 - (c) Income referred to in sub-clause (xviii) of clause (24) of section 2 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;

39.3 **Applicability:** 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 regularize the compliance with the notified ICDS by a large number of taxpayers so as to prevent any further inconvenience to them, these amendments take effect 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.

40. Tax deduction at source on 7.75% GOI Savings (Taxable) Bonds, 2018

40.1 Government of India introduced 8% Saving (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 Income-tax Act at the time of payment or credit of such interest in excess of rupees ten thousand to a resident.

40.2 Government has now decided to discontinue the existing 8% Saving (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 ones. The provisions of section 193 of the Income-tax Act have been amended to allow for deduction of tax at source at the time of making payment of interest on such bonds to residents. However, no TDS will be deducted if the amount of interest is less than or equal to ten thousand rupees during the financial year.

40.3 **Applicability:** This amendment takes effect from 1st April, 2018.

41. Amendments to the structure of Authority for Advance Rulings

41.1 Before amendment by the Act, section 245-O of the Income-tax Act provided inter alia for the constitution of an Authority for Advance Rulings, and constitution of its benches, for giving advance rulings under Chapter V of the Customs Act, 1962.

41.2 In view of the constitution of new Customs Authority for Advance Ruling under section 28EA of the Customs Act, 1962, the provisions of section 245-O have been

amended so as to provide that such 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. Consequential amendment has also been made in section 245Q of the Income-tax Act, 1962. Consequential amendment has also been made in section 245Q of the Income-tax Act.

41.3 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.

41.4 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 Income-tax Act, the Revenue member shall be the Member referred to in sub-clause (i) of clause (c) of sub-section (3) of the said section.

41.5 **Applicability** : These amendments take effect from 1st April, 2018.

42. Appeal against penalty imposed by Commissioner (Appeals) under section 271J

42.1 Section 253 of the Income-tax Act provides inter alia that any assessee aggrieved by any of the orders mentioned in sub-section (1) of the said section may appeal to the Appellate Tribunal against such order.

42.2 Clause (a) of the said sub-section has been amended so as to also make an order passed by a Commissioner (Appeals) under section 271J appealable before the Appellate Tribunal.

42.3 **Applicability**: This amendment takes effect from 1st April, 2018.

43. Penalty for failure to furnish statement of financial transaction or reportable account

43.1 Before amendment by the Act, section 271FA of the Income-tax Act provided that if a person who is required to furnish the statement of financial transaction or reportable account under sub-section (1) of section 285BA, fails to furnish such statement within the prescribed time, he shall be liable to pay penalty of one hundred rupees for every day of default.

43.2 The proviso to the said section further provided 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 sub-section (5) of section 285BA, he shall be liable to pay penalty of five hundred rupees for every day of default.

43.3 In order to ensure compliance of the reporting obligations under section 285BA, the provisions of section 271FA have been amended so as to increase the penalty leviable from one hundred rupees to five hundred rupees and from five hundred rupees to one thousand rupees for each day of continuing default.

43.4 *Applicability:* These amendments take effect from 1st April, 2018.

44. Rationalisation of section 276CC relating to prosecution for failure to furnish return.

44.1 Section 276CC of the Income-tax 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.

44.2 Before amendment by the Act, sub-clause (b) of clause (ii) of the proviso to section 276CC provided 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 any tax deducted at source, does not exceed three thousand rupees.

44.3 In order to prevent abuse of the said proviso by shell companies or by companies holding Benami properties, the provisions of sub-clause (b) of clause (ii) have been amended so as to provide that the said sub-clause shall not apply in respect of a company.

44.4 *Applicability:* This amendment takes effect from 1st April, 2018.

45. Rationalisation of provisions relating to Country-by-Country Report

45.1 Section 286 of the Income-tax Act provides for a specific reporting regime in the form of Country-by-country Report (CbCR) in respect of an international group.

45.2 Based on model legislation of Action plan 13 of Base Erosion and Profit Shifting (BEPS) project of the Organisation for Economic Co-operation and Development (OECD), and to improve the effectiveness and reduce the compliance burden of such reporting, section 286 of the Income-tax Act has been amended in the following manner:-

- (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, is extended to twelve 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 sub-section (2) in the latter's country or territory;
- (iii) the time allowed for furnishing the CbCR under sub-section (4) of the said section, in the case of constituent entity resident in India, having a non-resident parent, shall be separately 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” means a combination of all of the following agreements:-
 - (i) an agreement entered into under sub-section (1) of section 90 or sub-section (1) of section 90A; and
 - (ii) an agreement for exchange of the report referred to in sub-section (2) and 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 sub-sections (2) and (4) section 286.

45.3 These amendments are clarificatory in nature,

45.4 *Applicability* : These amendments take effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

46. Rationalisation of the provisions relating to Commodity Transaction Tax

46.1 Before amendment by the Act, clause (7) of section 116 of the Finance Act, 2013 provided that “taxable commodities transaction” shall mean a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognized association.

46.2 In order to align the definition of “taxable commodities transaction” with instruments allowed for transaction in commodity derivatives, the provisions of clause (7) of section 116 of the Finance Act, 2013 have been amended so as to include “options in commodity futures” in the definition of “taxable commodities transactions”.

46.3 Before amendment by the Act, section 117 of the Finance Act, 2013 provided the rate at which a commodities transaction tax in respect of every commodities transaction, being sale of commodity derivative, shall be chargeable and payable by the seller.

46.4 In order to provide rates for options in commodity derivative, the provisions of section 117 of the Finance Act, 2013 have been amended so as to prescribe the rate at which sale of an option on commodity derivative shall be chargeable and payable by the seller.

46.5 The provisions of section 117 of the Finance Act, 2013 have also been amended so as to prescribe the rate at which sale of an option on commodity derivative, where option is exercised, shall be chargeable and payable by the purchaser.

- 46.5** The provisions of section 117 of the Finance Act, 2013 have also been amended so as to prescribe the rate at which sale of an option on commodity derivative, where option is exercised, shall be chargeable and payable by the purchaser.
- 46.6** Before amendment by the Act, section 118 of the Finance Act, 2013 provided the value of taxable commodities transactions, being commodity derivative and chargeable under section 117 of the Finance Act, 2013.
- 46.7** The provisions of section 118 of the Finance Act, 2013 have been amended so as to include the value of taxable commodities transaction, being option on commodities, chargeable under section 117 of the Finance Act, 2013, in the said section.
- 46.8** Further, the provisions of section 128 of the Finance Act, 2013 have been amended so as to provide that the provisions of section 119 of the Income-tax Act shall apply, so far as may be, in relation to the commodities transaction tax, as they apply in relation to Income-tax.
- 46.9** *Applicability:* These amendments take effect from 1st April, 2018.

47. Rationalisation of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

- 47.1** Section 46 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('the Black Money Act') provides for the procedure for imposing penalty.
- 47.2** Before amendment by the Act, sub-section (4) of the said section provided that an order imposing a penalty shall be made with the approval of the Joint Commissioner, in the circumstances specified therein.
- 47.3** The Assistant Director or the Deputy Director, investigating a case of undisclosed foreign Income or asset, can also be assigned the concurrent jurisdiction of the Assessing Officer and, therefore, can also initiate penalty. However, the said authorities shall require `approval of the superior officers of the rank of Joint Director or Additional Director for imposition of penalty.
- 47.4** Accordingly, the provisions of sub-section (4) have been amended so as to provide that the Joint Director shall also be vested with the power to approve an order imposing a penalty.
- Clause (b) of the said sub-section has also been amended to include reference to the Assistant - Director and Deputy Director therein.
- 47.5** Further, section 55 of the Black Money Act provides for institution of proceedings for an offence under the said Act.

- 47.6** Sub-section (1) of the said section provides that a person shall not be proceeded against for an offence under section 49 to section 53 except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals).
- 47.7** Before amendment by the Act, sub-section (2) of the said section provided that the Principal Chief Commissioner or the Chief Commissioner may issue such instructions, or directions, to the tax authorities referred to in sub-section (1), as he may think fit for the institution of proceedings.
- 47.8** The provisions of sub-section (2) have been amended so as to also empower the Principal Director General or the Director General to issue instructions or directions to the tax authorities under the said sub-section.
- 47.9** Further, marginal heading of the said section has also been amended so as to include the reference of Principal Director General or Director General.
- 47.10** **Applicability** : These amendments take effect from 1st April, 2018.

(Dr. T.S.Mapwal)

Under Secretary to the Government of India

[Image as enclosed](#)

Subject: Order under section 119 of the Income-tax Act, 1961

Vide Notification in GSR 1217 (E) dated December 18, 2018 with effect from the date of its publication in the Official Gazette, i.e., December 18, 2018; amendments to the Income-tax Rules, 1962 (the Rules) have been carried out and sub-rule (4) of Rule 10DB has been substituted; to provide that the period for furnishing of the report under sub-section (4) of section 286 of the Income-tax Act, 1961 (the Act) by the constituent entity referred to in that sub-section shall be twelve months from the end of the reporting accounting year.

- 1.1** It has been further provided that in case the parent entity of the constituent entity is resident of a country or territory, where, there has been a systemic failure of the country or territory and the said failure has been intimated to such constituent entity, the period for submission of the report shall be six months from the end of the month in which said systemic failure has been intimated.
- 2.** Representations from the stakeholders have been received by the central Board of Direct Taxes (the Board) in the matter. It has been, inter alia, stated that the constituent entity of an international group, which is resident in India, having parent entity resident in jurisdictions with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2) of the Act. and where the reporting accounting year is calendar year based, i.e., ending on December 31 of the year, would need to furnish the report under sub-section (4) of section 286 of the Act in India by December 31, 2018.
 - 2.1** It has also been represented that read with the amendment to section 286 of the Act and the substituted sub-rule (4) of rule 10DB of the Rules, the constituent entity in such case for reporting accounting year ending on March 31, 2017 would have been required to furnish the CbCR by March 31, 2018 which is not plausible.
- 3.** In order to remove the genuine hardship in furnishing of the report under sub-section (4) of section 286 of the Act read with sub-rule (4) of rule 10DB of the Rules caused as above, and as a one-time measure, the Board, in exercise of powers conferred under section 119 of the Act, extend the period for furnishing of said report by the constituent entities referred to under clause (a) or (aa) of said sub-section, in respect of reporting accounting year sending upto February 28, 2018, to March 31, 2019

(Niraj Kumar)

Under Secretary to the Government of India

[Image as enclosed](#)

Subject: clarification regarding applicability of section 56(2)(viiia) of the Income-tax Act, 1961 for issue of shares by a company in which public are not substantially interested.

Section 56(2)(viiia) of the Income-tax Act, 1961 ('Act') provides for taxation of Income where a company in which public are not substantially interested ('specified company') or a firm **receives** shares of a specified company from a person for no or inadequate consideration.

2. It has been represented before the Board that the term '**receives**' used in section 56(2)(viiia) of the Act, being of wider import and might lead to taxation of Income in the cases where the shares are received by a firm or a specified company as a result of the fresh issuance of shares including by way of issue of bonus shares, rights shares and preference shares or transactions of similar nature by the specified company.
3. The matter has been examined. clause (viiia) was inserted in the section 56(2) of the Act vide Finance Act, 2010. The Memorandum explaining the provisions of Finance Bill, 2010 inter alia provided the following legislative intent for insertion of the said clause:-

" In order to prevent the practice of **transferring** unlisted shares at prices much below their fair market value, it is proposed to amend section 56 to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested) ".
4. It is apparent from the legislative intent that clause (viiia) was inserted in section 56(2) of the Act as an anti-abuse provision to prevent the practice of transferring shares of a specified company for no or inadequate consideration. Thus, the intention was never to apply these provisions of said clause (viiia) to the fresh issuance of shares as mentioned in para 2 above, by the specified company. Keeping in view the legislative intent to apply anti-abuse provision contained in section 56(2)(viiia) to transfer of shares for no or inadequate consideration, it is hereby clarified that section 56(2)(viiia) of the Act shall apply in cases where a specified company or firm receives the shares of 'the specified company through transfer for no or inadequate consideration. Hence, the provisions of section 56(2)(viiia) of the Act shall not be applicable in cases of receipt of shares by the specified company or firm as a result of fresh issuance of shares as mentioned in para 2 above, by the specified company.
5. Hindi version to follow.

(Vinay Sheel Gautam)
Under Secretary-ITA.I, CBDT

[Image as enclosed](#)

Subject - Appropriate Use of Country by Country (CbC) Reports.

Country by Country (CbC) Reports containing various financial and other information about international groups, i.e., Multinational Enterprises (MNEs), country by country in which they have business operations, would be available to certain authorities working in the field formation of the CBDT. As part of the Base Erosion and Profit Shifting (BEPS) Project of the OECD and G-20 countries, India is committed to ensuring appropriate use of the CbC Reports. The following paragraphs contain the background, philosophy, processes and mechanisms of the CbC Reports and regarding their appropriate use. The same need to be referred and adhered to so as to ensure appropriate use of CbC Reports.

1. Background

- 1.1** The emergence of globalisation has provided international groups an opportunity to lessen their tax liabilities by artificially shifting their profits to low/no-tax jurisdictions or by reducing their taxable Income using the gaps and mismatches between the tax systems of different jurisdictions. This abuse of legal instruments/arrangements, which has led to tax base erosion and profit shifting, necessitated the governments of various jurisdictions to act together in order to reinstate faith in domestic and international tax systems.
- 1.2** In order to address the issue of erosion of tax base, shifting of taxable profits and to enhance the coherence in international tax rules, which would safeguard a more transparent tax environment, the OECD, along with G-20 Countries, including India, devised a 15-point Action Plan termed as the Base Erosion and Profit Shifting Project (the "**BEPS Project**").
- 1.3** The report on Action 13 of the BEPS Project (the "**Action 13 Report**") contains revised standards for transfer pricing documentation and recommends a three-tiered standardized approach, which requires the international groups to provide (i) information of their global business operations and transfer pricing policies in a "Master File", (ii) a detailed transfer pricing documentation specific to each country in a "Local File" and (iii) a Country by Country (CbC) Report (the "CbC Report").
- 1.4** The Action 13 Report requires CbC Reporting to be adopted by all participating countries as a "minimum standard" and implemented in a consistent manner with effect from 1st January, 2016. In respect of Indian headquartered international groups, accordingly, such reporting is to be implemented with effect from the previous year 2016-17.
- 1.5** To fulfill this requirement, necessary amendments to the Income-tax Act were carried out through Finance Act, 2016 and a new section (section 286) was inserted in the Income-tax Act, 1961 (the "**Act**") with effect from 1-4-2017 (applicable for previous year 2016-17). Subsequently, amendments have been carried out in the Income-tax

Rules, 1962 (the "**Rules**") by inserting new rule (rule 10DB) and new Forms 3CEAC, 3CEAD and 3CEAE.

- 1.6** Form 3CEAC has to be filed by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in ,India, to the Director General of Income-tax (Risk Assessment) (the "**DGRA**") intimating the details of the international group and the CbC reporting entity.
- 1.7** Form 3CEAD, which relates to CbC Reporting, has to be filed by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, with the DGRA. This form provides for capturing information in the following three parts:
- Part A:** Overview of allocation of Income, taxes and business activities of the constituent entities of the international group by tax jurisdiction;
- Part B:** List of all the constituent entities of the international group included in each aggregation along with their main business activities per tax jurisdiction; and
- Part C:** Additional information.
- 1.8** Form 3CEAE has to be filed with the DGRA as intimation by the entity which has been designated by the international group to furnish the CbC Report where provisions of sub section (4) of 286 are applicable in its case.
- 1.9** While the Master file and the local file will be delivered by the international groups directly to local tax administrations, the CbC Report shall be filed in the jurisdiction of tax residence of the ultimate parent entity of the international group. This report will be shared by the parent jurisdiction with all other jurisdictions where the international group operates, through automatic exchange of information.
- 1.10** To facilitate the implementation of the exchange of CbC Reports among tax administrations on the basis of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, (the "**Convention**") the Action 13 report specified a Multilateral Competent Authority Agreement for Automatic Exchange of Country-by-Country Reports (the "**CbC MCAA**"). India has signed the CbC MCAA by signing a Declaration agreeing to comply with the provisions of the Agreement, in May 2016.
- 1.11** As per the CbC MCAA, India will exchange CbC Reports filed by a parent entity of an international group resident in India for the previous years starting from 2016-17 and will receive CbC Reports relating to international groups who have constituent entities ,resident in India.
- 1.12** Where countries have either not signed and/or ratified the Convention or having done so they have not signed the CbC MCAA, India would endeavour to enter into Bilateral Competent Authority Agreements for Automatic Exchange of CbC Reports ("CbC BCAA") with such countries on the basis of its Double Taxation Avoidance

Agreements (DTAAs) or on the basis of its Tax Information Exchange Agreements (TIEAs), respectively.

- 1.13** In accordance with such BCAAs, India will exchange CbC Reports filed by a parent entity of an international group resident in India for the previous years starting from 2016-17 and will receive CbC Reports relating to international groups who have constituent entities resident in India.

2. Access to the CbC Reports:

- 2.1** All the CbC Reports filed in India as well as exchanged by other jurisdictions shall be primarily accessed by the Competent Authority of India (Joint Secretary, FT & TR-I and Joint Secretary, FT & TR-II in CBDT) and DGRA in accordance with the provisions of the treaties and the Act, respectively.
- 2.2** Once the case of a constituent entity has been selected for scrutiny based on Risk Assessment, the jurisdictional Transfer Pricing Officer (the "**TPO**") will have access to the information relating to that constituent entity. The standard operating procedure for the TPO will be formulated by the Centralised Risk Assessment Unit (the "**CRAU**") set up in the office of DGRA.

3. Appropriate use of CbC Reports

- 3.1** The information obtained through CbC Reports shall be appropriately used by the TPOs during Transfer Pricing audit. The information shall be used for the following purposes:

- a) High level transfer pricing risk assessment;
- b) Assessment of other BEPS related risks; and
- c) Economic and statistical analysis.

- 3.2** Further, the information may also be used:

- a) for planning a tax audit; and
- b) as the basis for making further enquiries, into the group's transfer pricing arrangements and tax matters, in the course of an audit.

3.3 High Level Transfer Pricing Risk Assessment'

- 3.3.1** The evaluation of CbC Reports by the CRAU may provide perspectives of potential risks on the transfer pricing arrangements between the Indian taxpayer with its Associated Enterprises, which may necessitate further examination by the TPO. For that purpose, a tax audit may be planned through selection of the case of the Indian taxpayer for scrutiny for the relevant assessment year. Using the information as a basis, the TPO shall make further enquiries on the transfer pricing arrangements in the course of the audit. There is no restriction that these enquiries must relate only to the potential risks identified by the CRAU.

3.3.2 Further, the information contained in CbC Reports may also be used as a basis for making enquiries into tax matters identified using other data sources or arising during the course of a tax audit.

3.3.3 The information contained in CbC Reports shall not be used as the only material to propose transfer pricing adjustments. Transfer pricing adjustments shall be made in accordance with the provisions of the Act and the Rules.

3.4 Assessment of other BEPS related risks

3.4.1 BEPS is an unethical practice of international groups aiming to shift their profits arising in one jurisdiction to another jurisdiction for a favourable tax treatment in such other jurisdiction. This favourable tax treatment could result in no taxation or low taxation of such shifted profits due to a slew of methods or practices, such as, using low-taxed branch of a foreign company, hybrid entities, hybrid financial instruments, conduit companies, derivatives to avoid withholding taxes, resorting to profit shifting using the contractual allocation of risk, pricing of intangibles, interest deductions, etc.

3.4.2 CbC Reports may be used to identify indicators of possible tax risks unrelated to transfer pricing, which will lead to examination of such risks through further enquiries during assessment and for closer analysis to arrive at a conclusion on potential tax base erosion and profit shifting.

3.4.3 However, the information gathered from CbC Reports cannot constitute conclusive evidence that an international group is engaged in other forms of BEPS.

3.5 Economic and statistical analysis

3.5.1 The information obtained from CbC Reports may be used for economic and statistical analysis for the purpose of better understanding of the use of CbC Reports and to identify the features, benefits and risks of the CbC Reports and tax systems.

3.5.2 Using the information for such economic and statistical analysis shall be consistent with the provisions of the tax treaties.

3.6 The use of information contained in CbC Reports shall be considered as inappropriate under the following circumstances:

- If the information is used as a substitute for a detailed transfer pricing analysis of international transactions and determination of Arm's Length Price based on a detailed functional and comparability analysis; and
- If the information is used as the only material to propose a transfer pricing adjustment.

4. Confidentiality of the CbC Report

- 4.1** Maintaining the confidentiality of information received under the provisions of tax treaties is a legal requirement under the said tax treaties. Maintaining confidentiality is also an international obligation and any breach may seriously impact our ability to receive information in other cases.
- 4.2** All CbC Reports received from the other jurisdictions through exchange of information are subject to the requirements of confidentiality under the tax treaties with the respective jurisdictions.
- 4.3** All CbC Reports filed with the DGRA either by a reporting/alternate reporting entity under 286(2) of the Act or by a constituent entity under 286(4) of the Act are subject to the requirements of confidentiality under the provisions of the Act.
- 4.4** The CCIT/DGIT concerned must sensitize the officers in their region on the requirements of maintaining confidentiality. Detailed guidelines on maintaining confidentiality provided in Chapter-VII of Manual on Exchange of Information should be strictly followed by all the officers who handle the information contained in CbC Reports exchanged under the tax treaties.

5. Monitoring, Control and Review

- 5.1** The use of information by the TPO in transfer pricing audits shall be monitored by the jurisdictional CIT (Transfer Pricing) and breach of appropriate use, if any, may be brought to the notice of the Competent Authority of India through proper channel.
- 5.2** The competent Authority of India is committed to disclose such breaches of appropriate use to the Coordinating Body Secretariat of the OECD.
- 5.3** Concerns raised by the taxpayers on breach of appropriate use shall be reported to the jurisdictional CIT (Transfer Pricing) by the respective TPOs and in case of the issue not being resolved by the CIT, the same shall be brought to the notice of the Competent Authority of India immediately.
- 5.4** In case of adjustments made to the Income of a taxpayer based on inappropriate use of information contained in the CbC Reports, the Competent Authority is committed to promptly concede such adjustments in competent authority proceedings (Mutual Agreement Procedure -MAP).
- 5.5** The appropriate use of the CbC Reports, or otherwise, would be reviewed regularly by the Board through the Competent Authority of India. Accordingly, the Principal CCIT (International Taxation & Transfer Pricing) shall submit a quarterly report to the Board (through the Competent Authority of India, i.e., the Joint Secretary, FT & TR-I, CBDT) in the format attached as an annexure. The quarterly report would be a consolidated report of all the quarterly reports prepared and submitted to the Principal CCIT (International Taxation & Transfer Pricing) by all the CsIT (Transfer

Pricing) in the country. The quarterly report should reach the Board within 30 days from the end of each quarter. This review shall commence from the quarter beginning on 1 St January, 2019 and ending on 31St March, 2019. Thus, the first report would be due in the Board by 30th April, 2019. Thereafter, the reports have to be submitted for every succeeding quarter.

6. This issues under Section 119 of the Income-tax Act, 1961 with immediate effect subject to the specific timeline mentioned in paragraph 5.5 in respect of review of appropriate use of the CbC Reports.

(Sobhan Kar)
Director (APA), CBDT, Government of India

[Image as enclosed](#)

Subject: Conduct of assessment proceedings through 'E-Proceeding' facility during 2018-19.

It has been a constant endeavor of the Central Board of Direct Taxes (the Board) to reduce human interface in scrutiny assessment proceedings through use of Information Technology. In 2015, on a voluntary basis, a pilot project for purposes of conduct of scrutiny assessment proceedings in five metros through the 'email based assessment' was introduced, which was extended to two more metros in 2016. In addition, in 2016, while issuing notices in scrutiny cases under section 143(2) of the Income-tax Act, 1961 (Act), an option for conduct of assessment proceedings through the 'e-mail based assessment' was given to all assessees of these seven metros.

2. In a significant step, in 2017, Income-tax Department developed an integrated platform i.e. Income Tax Business Application (ITBA) for electronic conduct of various functions/proceedings including assessments. This is integrated with the 'E-filing' portal which is used by the assessee to electronically communicate with the Income-tax Department. During the course of assessment proceeding, Assessing Officer is required to send communications through the 'Assessment Module' of ITBA which is delivered in the 'E-filing' account of concerned assessee. Upon receipt of departmental communication, assessee is able to submit the response along with attachments by uploading the same through his 'E-filing' account on the 'E-filing' portal (www.Incometaxindiaefiling.gov.in). The response submitted by the assessee is viewed by the Assessing Officer electronically in ITBA. This communication of data and documents between the Income-tax Department and assessee through electronic mode is termed 'E-Proceeding'.
3. Consequently, vide Instruction No. 8/2017 dated 29.09.2017, on an optional basis for the assessees, besides the scrutiny cases at seven metro charges already under 'e-mail based assessment', scope of E-Assessment through 'E-Proceeding' was further extended to pending time-barring limited scrutiny cases at those stations where Principal Commissioner of Income-tax were headquartered. Further, in 2017, while issuing notices for scrutiny under section 143(2) of the Act, it was provided that assessment proceeding would be conducted electronically through the 'E-Proceeding' facility. Thereafter, vide Instruction No. 1/2018 dated 12.02.2018, Board has further widened scope of 'E-Proceeding' for conduct of assessment proceedings.
4. In partial modification of Instruction No. 1/2018 dated 12.02.2018 and in accordance with provision of section 2(23C) of the Act, the Board hereby directs that in all cases (subject to exceptions in para below), where assessment is required to be framed under section 143(3) of the Act during the year 2018-19, assessment proceedings shall be conducted electronically through the 'E-Proceeding' facility. Consequentially, assessee would now be required to produce/cause to produce their response/evidence to any notice/communication/show-cause issued by the Assessing Officer electronically (unless specified otherwise) through their 'E-filing' account on the 'E-filing' portal. For smooth conduct of assessment proceedings through 'E-Proceeding', it is imperative that requisition of information in cases under 'E-Proceeding' should be concise and sought with due-diligence after a careful scrutiny of case records.

5. In following cases where assessment is required to be framed during the year 2018-19, 'E-Proceeding' shall not be mandatory:
- (i) where assessment is to be framed under section(s) 153A,153C,147 and 144 of the Act;
 - (ii) in set-aside assessments;
 - (iii) assessments being framed in non-PAN cases;
 - (iv) cases where Income-tax return was filed in paper mode and the concerned assessee does not yet have an 'E-filing' account;
 - (v) in all cases at stations connected through the VSAT or with limited capacity of bandwidth (list of such stations shall be specified by the Pr.DGIT(System));
 - (vi) in cases under para 4 above, where substantial hearing had already taken place in the conventional mode prior to issue of Instruction No. 1/2018 dated 12.02.2018. Assessing Officer may complete such cases with prior administrative approval of the concerned Pr. CIT/CIT;
 - (vii) in cases covered under para 4 above where the jurisdictional Pr. CIT/CIT, in exceptional circumstances such as complexities of the case or administrative difficulties in conduct of assessment through 'E-Proceeding', has permitted conduct of assessment proceedings through the conventional mode.
However, in these cases, as far as feasible, Assessing Officer should generate all departmental communications and notices through the ITBA. Further, in these cases, the earlier existing mode of service of notice should be utilized by the Assessing Officer only when it is not possible to serve the communication electronically in the 'E-filing' account of the concerned assessee.
6. In cases where assessment proceedings being carried out through the 'E-Proceeding' as per para 4 above, personal hearing/attendance may take place in following situation(s):
- i. where books of accounts have to be examined;
 - ii. where Assessing officer invokes provisions of section 131 of the Act;
 - iii. where examination of witness is required to be made by the concerned assessee or the Department;
 - iv. where show-cause notice contemplating any adverse view is issued by the Assessing Officer and assessee requests through their 'E-filing' account for personal hearing to explain the matter.
However, details have to be uploaded on ITBA subsequently.
7. This may be brought to the notice of all concerned for immediate compliance.
8. Hindi version to follow.

(Rohit Garg)
Director (ITA.III), CBDT

[Image as enclosed](#)

Subject: Guidelines for manual selection of returns for Complete Scrutiny during the financial-year 2018-2019.

1. The parameters for manual selection of returns for complete scrutiny during financial-year 2018-19 are as under:-

- (i) Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact-
 - a. exceeding Rs. 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune, while at other charges, quantum of addition should exceed Rs.10 lakhs; .
 - b. exceeding Rs.10 crore in transfer pricing cases.

and where such an addition-

- 1. has become final as no further appeal was/has been filed; or
 - 2. has been confirmed at any stage of appellate process in favour of revenue and assessee has not filed further appeal; or
 - 3. has been confirmed at the 1st stage of appeal in favour of revenue or subsequently and further appeal of assessee is pending.
- (ii) Cases pertaining to Survey under section 133A of the Income-tax Act, 1961 ('Act') excluding those cases where books of accounts, documents etc. were not impounded and returned Income (excluding any disclosure made during the Survey) is not less than returned Income of preceding assessment year. However, where assessee has retracted from disclosure made during the Survey, such cases will not be covered by this exclusion.
 - (iii) Assessments in search and seizure cases to be made under section(s) 153A, 153C, 158B, 158BC & 158BD read with section 143(3) of the Act and also for return filed for assessment year relevant to previous year in which authorization for search and seizure were executed under section 132 or 132A of the Act.
 - (iv) Returns filed in response to notice+ under section 148 of the Act.
 - (v) Cases where registration/approval under various sections of the Act Such as 12A, 35(1)(ii)/(ii), 10(23C) etc. have not been granted or have been cancelled/withdrawn by the Competent Authority, yet the assessee has been found to be claiming tax exemption/deduction in the return. However, where such orders of withdrawal of registration/approval have been reversed/set-aside in appellate proceedings, those cases will not be selected under this clause.
 - (vi) Cases in respect of which information pointing out specific tax-evasion for the relevant year is given by any Government Department/Authority/Agency/Regulatory Body. However, before selecting a return for scrutiny under this criterion, Assessing Officer shall take prior administrative approval from concerned jurisdictional Pr. CIT/Pr.DIT/CIT/DIT.

C.B.D.T. CIRCULARS & INSTRUCTIONS

2. Through Computer Aided Scrutiny Selection (CASS), cases are being selected in two categories viz. Limited Scrutiny & Complete Scrutiny in a centralized manner under CASS-2018. CASS is a system based method for scrutiny selection which identifies the cases through data analytics and three-hundred sixty degree data pro filing of taxpayers and in a non-discretionary manner. The list of these cases is being/has been separately intimated by the Principal DGIT (Systems) to the concerned jurisdictional authorities for further necessary action.
3. This may be brought to the notice of all concerned for necessary compliance.
4. Hindi version to follow.

(Rohit Garg)
Director-ITA.II, CBDT

[Image as enclosed](#)

Subject: Processing of time-barred returns with refund claims under section 143(1) of the Income-tax Act which are not under scrutiny.

It has been reported that due to certain technical issues or other reasons not attributable to the concerned assessee, several returns for various assessment years up to the assessment year 2016-17, which were otherwise filed validly under section 139 or 142 of the Income-tax Act, 1961 (Act), could not be processed under sub-section (1) of section 143 of the Act. Consequently, intimation regarding processing of such returns could not be sent within a period of one year from the end of the financial year in which such returns were filed as prescribed in the second proviso to subsection (1) of section 143 of the Act.

2. It may be mentioned that earlier, the central Board of Direct Taxes (CBDT), vide Instruction No. 18/2013 dated 18th December, 2013 had allowed processing in those time-barred returns with refund claims where the time for sending intimation under sub-section (1) of section 143 of the Act had lapsed before 1st April, 2013. Subsequently, vide order dated 25th October, 2016, CBDT had issued directions for processing the time-barred returns with refund claim for assessment years 2012-13 to 2014-15 by 31st March, 2017. Now representations have been made before CBDT to enable processing of returns which though covered under these two orders still remained unprocessed for various reasons. Further, representations have also been made to permit processing of time-barred returns with refund claim pertaining to the subsequent two assessment years i.e. 2015-16 and 2016- 17 (for returns filed till 31st March, 2017).
3. The matter has been considered. To mitigate genuine hardship being faced by the taxpayers on this issue, CBDT, by virtue of its powers under section 119 of the Act, hereby relaxes the timeframe prescribed in second proviso to sub-section (1) of section 143 and directs that all valid unprocessed returns with refund claims upto the assessment year 2016-17 which could not be processed under sub-section (1) of section 143 of the Act and have become time-barred, subject to the exceptions mentioned in para below, can be processed now with prior administrative approval of concerned Pr. CCIT/CCIT and intimation of such processing under sub-section (1) of section 143 of the Act can be sent to the concerned assessee till 31.03.2019. All subsequent consequences under the Act including issue of refund shall also follow as per the prescribed procedures. The two earlier extant orders of the CBDT in this matter mentioned in para above are modified accordingly. To ensure adequate safeguards, it has been decided that once administrative approval is accorded by the concerned Pr. CCIT/CCIT, the concerned Pr. CIT/CIT would make a reference to the Pr. DGIT (Systems) to provide necessary enablement to the Assessing Officer on a case to case basis.
4. The relaxation accorded above shall not be applicable to those returns which are under scrutiny in view of provisions of sub-section (1D) of section 143 of the Act. This relaxation shall also not be applicable to those unprocessed returns where either demand is shown as payable in the return or is likely to so arise after processing it. Further, if the return

remained unprocessed for any reason attributable to the concerned assessee, such returns would also be excluded from the above relaxation.

5. This may be brought to the notice of all for necessary compliance.
6. Hindi version to follow.

(Rohit Garg)
Director-ITA.II, CBDT

[Image as enclosed](#)

Subject: Templates of Ruling received from other jurisdictions under BEPS Action 5.

1. India being a G20 Country is committed to implement the minimum standards laid down in the Base Erosion and Profit Shifting (BEPS) Project. One of the minimum standards that every participating jurisdiction has to achieve is to ensure a Transparency Framework for spontaneous exchange of rulings under BEPS Action
2. As a part of this Transparency Framework, India is receiving templates containing information in respect of the following taxpayer-specific rulings from other jurisdictions:
 - (i) Ruling relating to preferential regimes;
 - (ii) Unilateral APAs or other cross-border unilateral rulings in respect of transfer pricing;
 - (iii) Cross-border rulings providing for a downward adjustment of taxable profits;
 - (iv) Permanent establishment (PE) rulings;
 - (v) Related party conduit rulings;
 - (vi) Miscellaneous ruling which may be included at a later date as decided by the Forum on Harmful Tax Practices.
3. Queries have been received from the field formation with respect to the purpose and utilization of the templates received from other jurisdictions. Brief description of each type of ruling exchanged under BEPS Action 5 and the approach recommended to deal with it is as under;

3.1 Ruling relating to preferential regimes;

- 3.1.1 Ruling pertaining to Preferential Regimes, inter alia, cater to the following types of activities: Shipping, Headquarters, Financing and Leasing, Holding Company regimes, Service Centre and Distribution Centre, Banking and Insurance, Pure equity holding, Fund Management and Miscellaneous regimes.
- 3.1.2 Any geographically mobile activity that may be based in a jurisdiction must carry substantial activity in that jurisdiction and taxable profits should not be artificially shifted away from the jurisdictions where value is created. Since the aforementioned activities are geographically mobile, there is a tendency to set up business in a jurisdiction having preferential regime even though substantial activities generating Income are not actually performed in such jurisdictions.
- 3.1.3 A template pertaining to a ruling on a preferential regime in another jurisdiction wherein either.
 - a. the ultimate parent of the taxpayer receiving the ruling, or
 - b. the immediate parent of the taxpayer receiving the ruling or

- c. the related party with which the foreign resident enters into a transaction for which a preferential treatment is granted, is a resident in India, may be utilized to identify and assess the extent of economic activity actually reported in India and whether the Income offered in India is commensurate to the same.

3.2 Unilateral APAs or other cross-border unilateral rulings in respect of transfer pricing:

3.2.1. In some countries, unilateral APAs can adjust profits both upwards and downwards from the starting position. In addition, unilateral APAs can set a future transfer pricing methodology or a future pricing or profit apportionment structure. In the aforementioned circumstances, Unilateral APA Rulings, in the absence of transparency, can create distortions and may lead to erosion of tax base.

3.2.2 On receipt of a template pertaining to a unilateral APA or other cross-border unilateral rulings in respect of transfer pricing, wherein either,

- a. the ultimate parent of the taxpayer receiving the ruling, or
- b. the immediate parent of the taxpayer receiving the ruling or
- c. the related party with which the foreign resident enters into a transaction that is covered by the APA, is resident in India, care has to be taken to ensure that there are no mismatches in how two ends of a transaction are priced and no profits go untaxed resulting in base erosion or profit shifting.

3.3. Cross-border rulings providing for a downward adjustment of taxable profits;

3.3.1. A regime that provides for negative adjustments to profits has the potential to result in no or low taxation and MNEs have the incentive to shift profits. In many cases, the affected country, in the absence of such ruling being in its knowledge, will not be able to determine that such an adjustment has been made because, for example, the adjustment is made in a domestic tax computation without being reflected in an enterprise's accounts or it is made retrospectively.

3.3.2. On receipt of a template pertaining to a cross-border ruling providing for a downward adjustment of taxable profits, wherein either,

- a. the ultimate parent of the taxpayer receiving the ruling, or
- b. the immediate parent of the taxpayer receiving the ruling or
- c. the related party with which the foreign resident enters into a transaction that is covered by the cross-border ruling providing for a downward adjustment of taxable profits, is resident in India, care

has to be taken to ensure that there are no mismatches in how two ends of transaction are priced and no profits go untaxed resulting in base erosion or profit shifting.

3.4. Permanent Establishment (PE) rulings;

3.4.1. Permanent Establishment Ruling shall usually determine or decide on the existence or absence of a PE or the attribution of profit to the PE.

3.4.2. On receipt of a template pertaining to a PE Ruling, wherein either,

- a. the ultimate parent of the taxpayer receiving the ruling, or
- b. the immediate parent of the taxpayer receiving the ruling or
- c. the head office of the taxpayer,

is resident in India or the country where the PE is established is India, information of non existence or attribution of profit to a PE in the country issuing the ruling may be utilized in assessing the appropriate global profit of the Indian entity.

3.5 Related party conduit rulings:

3.5.1 Conduit rulings essentially cover arrangements involving cross-border flows of funds or Income through an entity in the jurisdiction giving the ruling, whether those funds or Income flow to another jurisdiction directly or indirectly. In the case of conduit rulings, certain arrangements/structuring are ruled upon wherein, using transparent entities, deduction on interest paid is claimed however, corresponding Income on interest received goes untaxed in resident entities or non-resident partners.

3.5.2 On receipt of a template pertaining to a conduit ruling, wherein either,

- a. the ultimate parent of the taxpayer receiving the ruling, or
- b. the immediate parent of the taxpayer receiving the ruling or
- c. any related party making payments to the conduit or
- d. the ultimate beneficial owner of the payments made to the conduit.

is resident in India, information on the arrangement/structuring including transparent entities may be utilized in assessing the appropriate profit of the India entity.

4. The information received by way of such a template may first be examined and necessary action, if required, may then be taken on a case-to-case basis. Further information, if required in relation to any of the template can be obtained from the ruling issuing

jurisdiction through Exchange of Information on request. Instructions issued by the Board with respect to EoI from time to time may be referred to in this regard.

5. Maintaining the confidentiality of information received under the provisions of tax treaties is a legal requirement under the said tax treaties and is also an international obligation. All information received from the other jurisdictions through exchange of information, either on a spontaneous basis (templates) or on request basis (subsequent information relevant to the template) are subject to the requirements of confidentiality under the tax treaties with the respective jurisdictions. Detailed guidelines on maintaining confidentiality provided in Chapter-VII of Manual of Exchange of Information should be strictly followed by all the officers who handle the information contained in these templates that are received under BEPS Action 5.
6. This issues under Section 119 of the Income-tax Act, 1961 with immediate effect.
7. The above may be brought to the notice of all Assessing Officers in your charge.

(Subhash Jangala)
Under Secretary (FT&TR-V)

[Image as enclosed](#)

F.No. 173/616/2018-ITA-I, New Delhi the 4th January, 2019,

Circular No. 02/2019

Subject: Withdrawal of Circular No. 10/2018 dated 31.12.2018 on applicability of section 56(2)(viiia) of the Income-tax Act, 1961 for issue of shares by a company in which public are not substantially interested.

Reference is invited to the Circular No.10/2018 dated 31.12.2018 on the captioned subject.

- 1.** It has been brought to the notice of the Board that the matter relating to interpretation of the term "receives" used in section 56(2)(viiia) of the Income-tax Act, 1961 (the Act) is subjudice in certain higher judicial forums. Further, representations have been received from stakeholders seeking clarification on other similar provisions in section 56 of the Act.
- 2.** Accordingly, the matter has been reconsidered by the Board. Given the fact that the matter relating to interpretation of the term 'receives' used in section 56(2)(viiia) of the Act is pending before judicial forums and stakeholders have sought clarifications on similar provisions in section 56 of the Act, the Board is of the view that the matter is required to be examined afresh so that a comprehensive circular on the matter can be issued.
- 3.** In view of the above, the circular No.10/2018 dated 31st December, 2018 issued from file No.173/616/2018-ITA-I is hereby withdrawn and the said circular shall be considered to have been never issued.
- 4.** A fresh comprehensive circular on the subject shall be issued in due course.

(Rajarajeswari R)

Under Secretary to the Government of India

[Image as enclosed](#)

F.No. 173/616/2018-ITA-I, New Delhi the 21st January, 2019,***Circular No. 03/2019*****Subject: Applicability of section 56(2)(viiia) of the Income-tax Act, 1961 or similar provisions under section 56(2) of the Income-tax Act,1961 for issue of shares by a company.**

As mentioned in Circular 02/2019, a comprehensive review of the subject matter relating to interpretation of the term "receives" as used in, inter alia, section 56(2)(viiia) of the Income-tax Act,1961(the Act) and similar provisions contained in section 56(2) of the Act has been made by the Board in view of pendency of this issue in various judicial forums and clarifications sought by stakeholders. Based on the above, the following position is hereby clarified.

2. Keeping in view the plain reading as well as the legislative intent of section 56(2)(viiia) and similar provisions contained in section 56(2) of the Act, being anti-abuse in nature, it has been decided that the view, as was taken in circular no. 10/2018 [subsequently withdrawn by circular no. 02/2019] that section 56(2)(viiia) of the Act would not apply to fresh issuance of shares, would .not be a correct approach, as it could be subject to abuse and would be contrary to the express provisions and the legislative intent of section 56(2)(viiia) or similar provisions contained in section 56(2) of the Act.
3. Therefore, any view expressed by the Board in circular No.10/2018 shall be considered to have never been expressed and accordingly, the said circular shall not be taken into account by any Income-tax authority in any proceedings under the Act.

(Rajarajeswari R)**Under Secretary to the Government of India**[Image as enclosed](#)

Subject: Clarification regarding liability and status of Official Assignees under the Income-tax Act.

Under provisions of the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, where an order of Insolvency is passed against a debtor by the concerned Court, property of the debtor gets vested with the Court appointed Official Assignee. The Official Assignee then realizes property of the insolvent and allocates it amongst the creditors of the insolvent. Consequentially, Official Assignee has the responsibility to handle Income-tax matters of the estate assigned to him. In this regard, a clarification has been sought regarding applicability of clause (iii) of section 160(1) of the Income-tax Act, 1961 (Act) which applies on a 'Representative Assessee' in the case of an Official Assignee. Further, clarity regarding status of the Official Assignee's i.e. their fallibility in the appropriate category of 'persons', as defined in section 2(31) of the Act, has also been sought.

2. As per provisions of section-1-60(1)(iii) of the Act, a 'Representative Assessee' amongst other situations specified therein, becomes liable in respect of any Income which the Assignee receives or is entitled to receive while managing the property for benefit of any person. As per the two insolvency Acts, Official Assignee manages the property of the debtor for the benefit of the creditors. Further, the Insolvency Act, 1909, in unambiguous terms, provides that an insolvent ceases to have an ownership interest in the estate once an order of adjudication is made under section 17 of the Insolvency Act. Thus, it is hereby clarified that since Official Assignee does not receive the Income or manage the property on behalf of the debtor, they cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate of the debtor.
3. As property of the insolvent is vested with the Official Assignee as per specific provisions of the Act/Law regulating functioning of the Official Assignee's, they have to be treated as a 'juristic entity' for purposes of the Income-tax Act. Hence, it is clarified that for purpose of discharge of tax-liability under the Act, the status of Official Assignees is that of an 'artificial
4. Juridical person as prescribed in section 2(31)(vii) of the Act, not being one of the 'persons' falling in sub-clauses (i) to (vi) of section 2(31) of the Act.
5. Therefore, Official Assignee is required to file Income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent and the Income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.
6. In view of the above position, Official Assignees would have to obtain a separate PAN for each of the estate of the insolvent.
7. Hindi version to follow.

(Rajarajeswari R)**Under Secretary to the Government of India**[Image as enclosed](#)

F.No. 279/Misc/M-84/2018-ITJ, New Delhi the 5th February, 2019,

Circular No. 05/2019

Subject: Monetary limits for filing/withdrawal of wealth Tax appeals by the Department before ITAT, HCs and SLPs/appeals before SC through extending the scope of Circular 3 of 2018 -Measures for reducing litigation.

Reference is invited to Board's Circular No. 3 of 2018 dated 11.07.2018 (hereinafter, referred to as "the Circular") vide which monetary limits for filing of Income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court were specified. Para 11 of the Circular states that the monetary limits specified in para 3 shall not apply to writ matters and Direct tax matters other than Income tax and filing of appeals in such cases shall continue to be governed by relevant provisions of statute and rules.

2. There is no charge under Wealth Tax Act, 1957 w.e.f 1st April, 2016. Therefore, as a step towards litigation management, it has been decided by the Board that monetary limits for filing of appeals in Income tax cases as prescribed in Para 3 of the Circular shall also apply to Wealth Tax appeals through extension of the Circular to Wealth tax matters in a *mutatis mutandis* manner and with modifications as prescribed hereunder.

3. For the purpose of Wealth Tax appeals:

A. Para 4 of the Circular shall be read as follows:

"For this purpose, 'tax effect' means the difference between the on Net Wealth assessed and the tax that would have been chargeable had such Net Wealth been reduced by the amount of wealth in respect of the issues against which appeals is intended to be filed. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against."

B. Para 11 of the circular shall read as follows.

"The monetary limits specified in para 3 above shall not apply to writ matters."

4. The said extension of the Circular to wealth tax appeals shall come into effect from the date of issue of this Circular.

5. The same may be brought to the notice of all concerned.

6. Hindi version will follow.

(Abhishek Gautam)
DCIT(OSD)-ITJ, CBDT

[Image as enclosed](#)

F.No. 225/75/2019-ITA.II, New Delhi the 31st March, 2019,

Circular No. 06/2019

Subject: Giving effect to the judgement(s)/order(s) of Hon'ble Supreme Court on Aadhaar-PAN for filing return of Income.

As per clause (ii) of sub-section (1) of section 139AA of the Income-tax Act, 1961, with effect from 01.07.2017, every person who is eligible to obtain Aadhaar number has to quote the Aadhaar number in return of Income.

2. In a series of judgments i.e. (i) Binoy Viswam Vs. Union of India reported in (2017) 396 ITR 66 (ii) Final Judgment and order of the Constitution Bench of Hon'ble Supreme Court dated 26.09.18 in Justice K. S. Puttaswamy (Retd.) and another {Writ Petition (Civil) No. 494 of 2012}; & (iii) Shreya Sen & Anr, In SLP (Civil) Diary No(s) 34292/2018 dated 04.02.2019, Hon'ble Supreme Court has upheld validity of Section 139AA.
3. In light of the aforesaid judgement(s)/order(s) of Hon'ble Supreme Court, from 01.04.2019 onwards, to give effect to the above judgements/orders, it has been decided by the Board that provision of clause (ii) of sub-section (1) of section 139AA of the Act would be implemented and it is mandatory to quote Aadhaar while filing the return of Income unless specifically exempted as per any notification issued under sub-section (3) of section 139AA of the Act. Thus, returns being filed either electronically or manually cannot be filed without quoting the Aadhaar number.
4. Returns which were filed prior to 01.04.2019 without quoting of Aadhaar number as an outcome of any decision of different High Courts in a specific case or returns which were filed during the period when the online functionality for filing the return without quoting of Aadhaar number was so available in the aftermath of decision of Delhi High Court dated 24.07.18 in W.P. C.M 7444/2018 & C.M. Application No. 28499/2018 in case of Shreya Sen vs. Union of India & Ors., till it was withdrawn post decision of Constitution Bench of the Hon'ble Supreme Court dated 26.09.18, would also be taken up for processing without causing any adverse consequence for non-quoting of Aadhaar as per provision of section 139AA of the Act.
5. Hindi version to follow.

(Rajarajeswari R.)
Under Secretary (ITA.II), CBDT

[Image as enclosed](#)

F.No. 197/55/2018-ITA-I, New Delhi the 20th December, 2018,

Circular No. 07/2018

Subject : Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing pf Form No. 10 and Form No. 9A for AY 2016-17.

Under the provisions of section 11 of the Income-tax Act, 1961 (hereafter Act) the primary condition for grant of exemption to trust or institution in respect of Income derived from property held under such trust is that the Income derived from property held under trust should be applied for the charitable purposes in India. Where such Income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section.

2. The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 01.04.2016 (AY 2016-17. Consequently, Income-tax Rules, 1962 (hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the Income can be accumulated indefinitely by the trust or institution, 85% Of Income can only be accumulated for a period not exceeding 5 years subject to the conditions, *inter alia*, that such person submits the prescribed Form No. 10 electronically to the Assessing Officer within the due date specified under section 139(1) of the Act.
3. Further, where the Income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the Income derived during the previous year for the reason that the Income has not been received during that year or any other reason, then on exercise of the option by submitting in Form No.9A electronically by the trust/institution on or before the due date of furnishing the return of Income, such Income shall be deemed to have been applied for charitable or religious purpose.
4. Representations have been received by the Board/ field authorities stating that the Form No. 9A and Form No.10 could not be filed in the specified time for AY 2016-17, which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No. 9A and Form No.10 for AY 201-6-17 may be condoned under section 119(2)(b) of the Act.
5. Accordingly, in supersession of earlier circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No.10 in respect of AY 2016-17 where such Form No. 9A and Form No.10 are filed after the expiry of the time allowed under the relevant provisions of the Act.
6. The commissioners win, while entertaining such belated applications in Form No. 9A and Form No.10, satisfy themselves that the assessee was prevented by reasonable cause from filing of applications in Form No. 9A and Form No.10 within the stipulated time. Further, in respect of Form No. 10 the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in subsection (5) of section 11 of the Act.

(Vinay Sheel Gautam)
Under Secretary to the Government of India

[Image as enclosed](#)

F.No. 500/182/2018-FT&TR-V, New Delhi the 10th May, 2019,

Circular No. 08/2019

Subject: Clarification regarding definition of "Fund Manager" under Section 9A(4)(b) of the Income-tax Act, 1961.

Representations have been received in the Board for inclusion of an Asset Management Company (AMC) approved in accordance with Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 for the purpose of Section 9A(4)(b) of the Income-tax Act, 1961.

2. The matter has been examined in the Board in consultation with SEBI. SEBI has stated that an AMC is engaged in the activity of fund management of Mutual Funds and hence is in substance, a Fund Manager, and entitled for benefits u/s 9A of the Income-tax Act. Therefore, it is hereby clarified that the phrase "fund manager" in Section 9A(4)(b) of the Income-tax Act includes an AMC as approved by SEBI under the SEBI (Mutual Funds) Regulations, 1996. A Notification (No. 27/2019 dated 20th March 2019) has already been issued to include the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 in the definition of "specified regulations" in section 9A(9)(e) of the Income-tax Act.

(Subhash Jangala)
Under secretary (FT&TR-V)

[Image as enclosed](#)

F.No. 370142/9/2018-TPL, New Delhi the 14th May, 2019,

Circular No. 09/2019

Subject: Order under section 119 of the Income-tax Act. 1961.

Section 44AB of the Income-tax Act, 1961 ('the Act') read with rule 6G of the Income-tax Rules, 1962 ('the Rules') requires specified persons to furnish the Tax Audit Report along with the prescribed particulars in Form No. 3CD. The existing Form No. 3CD was amended vide Notification No. GSR 666(E) dated 20th July, 2018 with effect from 20th August, 2018. However, the reporting under clause 30C and clause 44 of the Tax Audit Report was kept in abeyance till 31st March, 2019 vide Circular No. 6/2018 dated 17.08.2018.

Representations were received by the Board that the implementation of reporting requirements under clause 30C (pertaining to General Anti-Avoidance Rules (GAAR) and clause 44 (pertaining to Goods and Services Tax (GST) compliance) of the Form No. 3CD may be deferred further.

The matter has been examined and it has been decided by the Board that the reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2020.

(Saurabh Gupta)
Under Secretary (TPL)-III

[Image as enclosed](#)

F.No. 197/55/2018-ITA-I, New Delhi the 22nd May, 2019,**Circular No. 10/2019****Subject: Condonation of delay in filing of Form No. 10B for years prior to AY 2018-19.**

Under the provisions of section 12A of Income-tax Act, 1961 (hereafter 'Act') where the total Income of a trust or institution as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to Income-tax in any previous year, the accounts of the trust or institution for that year have to be audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the Income is required to furnish along with the return of Income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

2. As per Rule 178 of the Income-tax Rules, 1962 (hereafter 'Rules') the audit report of the accounts of such a trust or institution is to be furnished in Form No. 10B. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return of Income results in disentitlement of the trust from claiming exemption under sections 11 and 12 of the Act.
3. Representations have been received by the Board/field authorities stating that Form No. 10B could not be filed along with the return of Income for AY 2016-17 and AY 2017-18. It has been requested that the delay in filing of Form No. 10B may be condoned. Previously, vide instruction in Form No. 267/482/77-IT(part) dated 09.02.1978, the CBDT had authorized the ITO to accept a belated audit report after recording reasons in cases where some delay has occurred for reasons beyond the control of the assessee.
4. Accordingly, in supersession of earlier Circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trusts or institutions for condoning the delay in filing Form No.10B and in exercise of the powers conferred under section 119(2) of the Act, the Central board of Direct Taxes hereby directs that:
 - (i) The delay in filing of Form No.10B for AY 2016-17 and AY 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of Income and has been furnished subsequent to the filing of the return of Income but before the date specified under section 139 of the Act is condoned.
 - (ii) In all other cases of belated applications in filing Form No.10B for years prior to AY 2018-19, the Commissioners of Income-tax are authorized to admit such applications for condonation of delay u/s 119(2)(b) of the Act. The Commissioners will while entertaining such belated applications in filing Form No. 10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed off by 30.09.2019.

(Rajarajeswari R.)**Under Secretary to the Government of India**[Image as enclosed](#)

*F.No. 225/45/2019-ITA.II, New Delhi the 19th June, 2019,**Circular No. 11/2019*

Subject: Clarification regarding non-allowability of set-off of losses against the deemed Income under section 115BBE of the Income-tax Act, 1961 prior to assessment-year 2017-18.

With effect from 01.04.2017, sub-section (2) of section 115BBE of the Income-tax Act, 1961 (Act) provides that where total Income of an assessee includes any Income referred to in section(s) 68/69/69A/69B/69C/69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the Income referred to in section 115BBE(1) of the Act.

2. In this regard, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that in assessments prior to assessment year 2017-18, while some of the Assessing Officers have allowed set off of losses against the additions made by them under Section(s) 68/69/69A/69B/69C/69D, in some cases, set off of losses against the additions made under Section 115BBE(1) of the Act have not been allowed. As the amendment inserting the words 'or set off of any loss' is applicable with effect from 1st of April, 2017 and applies from assessment year 2017-18 onwards, conflicting views have been taken by the Assessing Officers in assessments for years prior to assessment year 2017-18. The matter has been referred to the Board so that a consistent approach is adopted by the Assessing Officers while applying provision of section 115BBE in assessments for period prior to the assessment year 2017-18.
3. The Board has examined the matter. The Circular No. 3/2017 of the Board dated 20th January, 2017 which contains Explanatory notes to the provisions of the Finance Act, 2016, at para 46.2, regarding amendment made in section 115BBE(2) of the Act mentions that currently there is uncertainty on the issue of set-off of losses against Income referred to in section 115BBE. It also further mentions that the pre-amended provision of section 115BBE of the Act did not convey the intention that losses shall not be allowed to be set-off against Income referred to in section 115BBE of the Act and hence, the amendment was made vide the Finance Act, 2016.
4. Thus keeping the legislative intent behind amendment in section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since the term 'or set off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 01.04.2017, an assessee is entitled to claim set-off of loss against Income determined under section 115BBE of the Act till the assessment year 2016-17.
5. The contents of this Circular may be circulated widely for information of all stakeholders and departmental officers. The pending assessments and litigations on this issue may be handled accordingly.
6. Hindi version to follow.

(Rajarajeswari R.)
Under Secretary (ITA.II), CBDT
[Image as enclosed](#)

Subject: 'Assessment of Firms'-some of the important issues to be kept under consideration by the Assessing Officers while framing assessment.

C&AG had carried out a Performance Audit regarding 'Assessment of Firms' under the Income-tax Act, 1961 ('Act') and in its Report No. 7 of 2014, has made certain suggestions so that in future, assessments in these cases are handled in a more effective manner by the Assessing Officers (AOs). Various recommendations made by the C&AG in its Report have been duly considered by the Board. In order to improve the quality of assessments being framed in these cases and also to reduce the scope for committing errors, the Board desires that Assessing Officers should duly take into consideration the following issues while making assessments in case of firms:

- (i) Expenses in the hands of the firm such as interest on capital paid to the partners, remuneration payable to the working partners etc. are taxable in the hands of respective partners. Therefore, while framing assessment in case of firms, a cross-verification of such amounts with Income-tax return of firm's partner will be desirable and any discrepancy between the tax return of a firm and its partners should be dealt with as per provisions of the Act. Further, AOs should invariably call for a copy of the partnership deed during the course of assessment proceedings and examine it carefully so that instances of payment of remuneration to any non-working partner or remuneration payment for period prior to the date of partnership deed but claimed as deductible are identified and cognizance of these are duly taken in assessment.
- (ii) Section 40(b)(iv) stipulates following three conditions for allowability of interest to the partners of a firm:
 - a) the payment should be in accordance with the terms of the partnership deed; and
 - b) it should relate to any period falling after the date of such partnership deed; and
 - c) it should not exceed the amount calculated at the rate of twelve percent simple interest per annum.

Instances have been noticed where the interest in the partnership deed was stated to be below twelve percent, yet, the same was allowed at the rate of twelve percent by the AO. Such mistakes should be avoided. Further, in case the rate prescribed in the partnership deed is in excess of twelve percent, the excess should be disallowed in assessment. The AO is also required to ascertain whether payment of interest is duly authorized by the partnership deed or not. Further, while calculating interest payable to the partners for purposes of section 40(b)(iv), of the Act, AOs are taking different yardsticks for calculating interest viz. opening balance of capital, closing balance of capital, fixed capital or current capital etc. In this regard, section 40(b)(iv) of the Act prescribes that payment of interest to partners should be authorized

by and be in accordance with the partnership deed. Therefore, while framing assessment, AOs should refer to the terms of the partnership deed for purpose of computation of interest on capital payable to a partner.

- (iii) Clause (ii) and (v) of section 40(b) of the Act lays down that payment of remuneration to a working partner should be authorized by the partnership deed, be in accordance with the terms of the partnership deed, should relate to a period after the partnership deed and should also not exceed the maximum amounts prescribed therein. However, it has been noticed that in some assessments, AOs had allowed expenditure on remuneration to the working partners though the same was either not authorized by the partnership deed or was in excess of the amount specified therein. In order to prevent recurrence of mistakes and allowing the expenditure strictly as per provisions of the Act, the AOs should ensure that claim under section 40(b)(v) of the Act is allowed only after a thorough verification of the partnership deed. Further, while computing remuneration which is allowable to a working partner under section 40(b)(v) of the Act, the term 'in accordance with the terms of the partnership deed' in clauses (ii) and (v) of section 40(b) of the Act implies that remuneration should not be undetermined or undecided. Hence, in all situations, partnership deed should form the basis for determination of remuneration payable to the working partners. Furthermore, in situations where the remuneration either so specified in the partnership deed or computed as per the method indicated therein falls short of the amount allowable under section 40(b)(v) of the Act, it would be restricted to the figure computed on the basis of the partnership deed.
- (iv) While computing remuneration payable to the working partners under section 40(b)(v) of the Act, the remuneration should not exceed a particular aggregate amount which is based upon the figure of 'book profit'. The Explanation 3 to section 40(b) of the Act contains definition of 'book profit' for the purposes of determination of remuneration of the partners and provides that 'book profit' shall mean the net profit, as shown in the profit & loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while calculating the net profit. Therefore, while computing 'book profit' for purposes of section 40(b)(v) of the Act, all Incomes such as capital gain, interest, rental Income, Income from other sources etc. which do not fall under the head 'profit or gain of business or profession', should be excluded.
- (v) AOs are advised to apply the provisions of chapter XVI of the Act in assessment of firms whenever required. It should be taken into consideration that under section 185 of the Act, any non-compliance by the firm or its partners with provisions of section 184 of the Act may result in denial of expenses such as remuneration, interest etc. payable to the partners which are otherwise allowable under the provisions of the Act.

- (vi) It has also come to notice that some firms try to inflate the profits eligible for deduction under section 80IA of the Act by not claiming expenditure towards remuneration, salary, interest etc. which are payable to the partners. In such situations, Assessing Officers may examine these transactions in light of provisions of sub-section (10) of section 80IA of the Act which empower Assessing Officer to re-compute profit of the eligible business after excluding the profits of the related activity/business which produced the excessive profit.
- (vii) While framing assessments in case of firms claiming carry forward and set off of losses, Assessing Officers are requested to verify such claims taking into consideration provisions of section 78 of the Act which disallow such a carry forward and set off in case of change in constitution of the firm or on succession.
- (viii) Regarding the issue concerning possible action against the tax auditor for furnishing incomplete information in the Tax-Audit Report and effective utilization of information in the Tax Audit Report by the Assessing Officers, it is reiterated that directions given earlier viz. Instruction No. 09/2008 dated 31.07.2008 of CBDT should be followed scrupulously by the field authorities.
2. It is hereby clarified that this circular would also be applicable to limited scrutiny cases if the assessee is a registered firm.
3. This circular may be brought to the notice of all concerned.
4. Hindi version to follow.

(Rajarajeswari R.)
Under-Secretary (ITA.II), CBDT

[Image as enclosed](#)

F.No. 173/250/2019-ITA-I, New Delhi the 24th June, 2019,**Circular No. 13/2019**

Subject: Exemption of service element and disability element of disability pension granted to disabled personnel of armed forces who have been invalided on account of disability attributable to or aggravated by such service.

Under the existing provisions of clause (1) of sub-section 2 of section 297 of the Income-tax Act, 1961 ('Act') any notification issued under sub-section (1) of section 60 or section 60A of the Indian Income-tax Act, 1922 (now repealed) and in force immediately before the commencement of the Act shall continue to be in force to the extent to which no provision has been made under the Act. Previously, in exercise of powers conferred under section 60 of the Indian Income-Tax Act, 1922, vide Notification No. 878-F dated 21.03.1922, it was ordered at para 19 that *"pensions granted to members of His Majesty's naval, military or air forces who have been invalided for naval, military or air force service on account of bodily disability attributable to or aggravated by such service would be exempt from tax under the India Income-tax Act, 1922"*.

2. In furtherance to the above, Instruction No. 136/1970 dated 14.01.1970 in F.No. 34/3/68-IT.(AI) and Instruction No. 2/2001 dated 02.07.2001 in F.No. 200/51/99-ITA-I have been issued to clarify that the entire disability pension, i.e. "disability element" and "service element" of a disabled officer of the Indian Armed Forces continues to be exempt from Income tax under the Income-tax Act, 1961.
3. Representations have been received, requesting to clarify whether the exemption is applicable only to the disabled officers of Armed Forces or all disabled Armed Forces Personnel (i.e. including officers and Jawans). Representations have also been received to clarify as to whether the Income-tax exemption would be limited to only such disabled Armed Forces Personnel who are invalided out of service due to disability attributable to or aggravated by military service condition or to even those who retire after full service with some disability.
4. The matter has been examined in the Board. The Notification No. 878-F dated 21.03.1922, provides Income tax exemption to all members of Armed Forces who have been invalided for naval, military or air force service on account of bodily disability attributable to or aggravated by such service. Thus, Income-tax exemption under above clause would be available to all armed forces personnel (irrespective of rank) who have been invalided for such service on account of bodily disability attributable to or aggravated by such service.
5. Further, such tax exemption will be available only to armed forces personnel who have been invalided from service on account of bodily disability attributable to or aggravated by such service and not to personnel who have been retired on superannuation or otherwise.

(Rajarajeswari R.)**Under Secretary to the Government of India**[Image as enclosed](#)

Subject: Clarification regarding taxability of Income earned by a now-resident investor from off-shore investments routed through an Alternate Investment Fund.

In the context of Alternate Investment Funds (AIFs), references have been made to the Central Board of Direct Taxes (the Board) seeking clarity regarding taxability of Income from investments made by the non-resident investor through these AIFs, **outside India (off-shore investment).**

2. The incidence of tax arising from off-shore investment made by a non-resident investor through the AIFs would depend on determination of status of Income of non-resident investor as per provisions of section 5(2) of the Income-tax Act, 1961 (Act). As per section 5(2) of the Act, the Income of a person who is non-resident, is liable to be taxed in India if it is **received or is deemed to be received in India** in such year by or on behalf of such person; **or accrues or arises or is deemed to accrue or arise to him in India.**
3. Chapter XII-FB contains special provisions relating to tax on Income of investment funds and Income received from such funds. Under Chapter XII-FB, section 115UB of the Act ('Tax on Income of investment fund and its unit holder') is the applicable provision to determine the Income and tax-liability of investment funds & their investors. In this context, "investment funds" defined in Explanation 1 of Chapter XII-FB to mean any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992). Thus, provisions of section 115UB apply only to Category I or Category II AIFs, as defined in SEBI's regulations.
4. By an overriding effect over other provisions of the Act, sub-section (1) of section 115UB of the Act provides that any Income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund, shall be, chargeable to Income-tax in the same manner as if it were the Income accruing or arising to, or received by, such person had the investments made by the investment fund been made directly by him and not through the AIF.
5. The matter has been considered by the Board. As section 115UB(1) of the Act provides that the investments made by Category I or Category II AIFs are deemed to have been made by the investor directly, it is hereby clarified that any Income in the hands of the non-resident investor from off-shore investments routed through the Category I or Category II AIF, being a deemed direct investment outside India by the non-resident investor, is not taxable in India under section 5(2) of the Act.

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6. It is further clarified that loss arising from the off-shore investment relating to non-resident investor, being an exempt loss, shall not be allowed to be set-off or carried-forward and set off against the Income of the Category I or Category II AIF.
7. The contents of this Circular may be circulated widely for information of all stakeholders and departmental officers.
8. Hindi version to follow.

(Rajarajeswari R.)
Under Secretary (ITA.II), CBDT

[Image as enclosed](#)

Subject: Issues in respect of payment of third installment under the Income Declaration Scheme, 2016- clarification on certain procedural issues under section 195 of the Income Disclosure Scheme, 2016 read with section 119 of the Income-tax Act, 1961.

Under the Income Declaration Scheme, 2016 (IDS), declarants were required to pay their determined liability towards tax, surcharge and penalty pertaining to the third installment as per the Form-2 issued by the Pr. CIT/CIT, by 30th September, 2017. In this regard, several references have been filed by the stakeholders with the Central Board of Direct Taxes (the Board) regarding difficulties faced by the declarants while effecting payment of third installment of IDS around 30th September, 2017 due to closure of banks on account of holidays due to which they couldn't effect payment of third installment within the stipulated time. Hence, a request has been made to the Board under section 119 of the Income-tax Act, 1961 (Act) read with section 195 of the IDS to grant appropriate relief in such cases.

- 2. Bank Holidays towards the due-date for the third installment:** A clarification has been sought by the stakeholders regarding the third installment stating that since 30th September, 2017 was a closed national holiday, whether the payments effected or completed on next working day of the banks would be treated as an on-time payment of the statutory liability towards the third installment. It is seen that 1st October, 2017 & 2nd October, 2017 were also closed bank holidays, therefore, regular banking transactions could take place only on 3rd October, 2017 after 30th September, 2017. Therefore, in accordance with provisions of **section 10 of the General Clauses Act, 1897**, the Board hereby directs that all payments made/effected by the declarants on 3rd October, 2017 shall also be deemed to have been paid by the due date for the third installment i.e. 30th September, 2017.
- 3. Delayed credit by the Bank while payment was tendered by the declarant in a timely manner:** In some of the references, it is stated that payment through cheque, RTGS, electronic transfer etc. towards payment of liability was tendered in the bank on or before 30th September, 2017. However, on bank's endorsement, the date is mentioned after 30th September, 2017, which could render these declarations void. The genuine hardship of the declarants on account of procedural/technical issues with the banks has been considered. It has been decided that payments effected through cheque/RTGS/electronic transfer 'by the declarant by 3rd of October, 2017 (the deemed extended date for the third installment as per para 2 above) which were credited by the banks till 5th October, 2017 shall be deemed to have been paid by 30th September, 2017. In this regard, the concerned Pr. CIT/CIT shall furnish a report to the Pr. DGIT (Systems) after necessary verification; to treat such payments to have been paid by the due date for the third installment i.e. 30th September, 2017.

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4. All actions which are to be completed as a consequence of this order either by the declarants or the departmental authorities are to be completed, by 31st August, 2019.
5. Hindi version to follow.

(Rajarajeswari R.)
Under Secretary to Government of India

[Image as enclosed](#)

F.No. 173/149/2019-ITA-I, New Delhi the 07th August, 2019,**Circular No. 16/2019****Subject : Clarification with respect to assessment of Startup Companies involving application of section 56(2) (viib) of the Income-tax Act, 1961.**

Instances have come to the notice of the Board that notices u/s 143(2)/147 have been issued by the Assessing Officers in respect of Startup Companies, before the issue of notification of the Department for Promotion of Industry and Internal Trade (henceforth referred to as 'DPIIT') dated 19.02.2019 or even afterwards which are presently pending for disposal. These companies have been recognized by the DPIIT after the issue of their Notification dated 19.02.2019.

2. The DPIIT vide Notification No. G.S.R.127 (E) dated 19.02.2019, has laid down that the provisions of section 56(2)(viib) of the I.T. Act, 1961 shall not apply to any consideration received by a Startup Company, if the Startup Company fulfils the conditions mentioned in para 4(i) and 4(ii) of the said notification and is recognized by the DPIIT.
3. In pursuance to the above, the Central Board of Direct Taxes (CBDT) had issued Notification No. 13/2019/F.No. 370142/5/2018-TPL (Pt.) dated 05th March, 2019 reiterating that the provisions of clause (viib) 6f sub-section (2) of section 56 of the said Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration has been received from a person, being a resident, by a company which fulfils the conditions specified in para 4 of the Notification dated 19.02.2019 issued by DPIIT.
4. In the light of the above, the following procedure is laid down with regard to the assessment of such startup entities involving the issue of section 56(2)(viib).
 - (i) Where the startup company has been recognised by the DPIIT but the case is selected under "limited scrutiny" on the single issue of applicability of section 56 (2)(viib), no verification on such issues will be done by the AOs during the proceedings u/s 143 (3)/147 of the I.T. Act, 1961 and the contention of such recognized Startup Companies on the issue will be summarily accepted.
 - (ii) Where the startup company has been recognized by the DPIIT but the case is selected under "limited scrutiny" with multiple issues or under "complete scrutiny" including the issue u/s 56(2)(viib), the issue of applicability of section 56 (2)(viib) will not be pursued during the assessment proceedings and inquiry or verification with regard to other issues in such cases shall be carried out by the Assessing Officer, only after obtaining approval of his/her supervisory officer. Due procedure as per I.T. Act Shall be followed with regard to other issues for which the case has been selected.
 - (iii) Where the startup company has not got DPIIT approval and the case is selected for scrutiny, inter alia on the grounds of applicability of section 56(2)(viib) or any other issue/s, then also inquiry or verification in such cases shall be carried out by the Assessing Officer, as per due procedure, only after obtaining approval of his/her supervisory officer.
5. Hindi version to follow.

(Praina Paramita)
Addl.CIT-OS (ITA-I), CBDT

[Image as enclosed](#)

Subject: - Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court -Amendment to Circular 3 of '2018 - Measures for reducing litigation.

Reference is invited to the Circular No. 3 of 2018 dated 11.07.2018 (the Circular) of Central Board of Direct Taxes (the Board) and its amendment dated 20th August, 2018 vide which monetary limits for filing of Income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been specified. Representation has also been received that an anomaly in the said circular at para 5 may be removed.

2. As a step towards further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in Income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

S.No.	Appeals/SLPs in Income-tax matters	Monetary Limits (Rs.)
1.	Before Appellate Tribunal	50,00,000
2.	Before high Court	1,00,00,000
3.	Before Supreme Court	2,00,00,000

3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order for more than one assessment years is passed, para 5 of the circular is substituted by the following para:

"5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year. or years in which the tax effect is less than the monetary limit specified in para 3. Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In case where a composite order/ judgement involves more than one -assessee, each assessee shall be dealt with separately."

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4. The said modification shall come into effect from the date of issue of this letter.
5. The same may be brought to the notice of all concerned.
6. This issues under section 268A of the Income-tax Act, 1961.
7. Hindi version will follow.

(Neetika Bansal)
Director, (ITJ)
CBDT, New Delhi

[Image as enclosed](#)

Subject: Clarification in respect of filling-up of the ITR forms for the Income-tax return Assessment Year 2019-20.

The Income-tax return (ITR) forms for the Assessment Year (AY) 2019-20 were notified vide notification bearing G.S.R. 279(E), dated the 1st day April, 2019. Subsequently, the instructions for filing ITR forms were issued and the software utility for e-filing of all the ITR forms were also released. After notification of the ITR forms various queries have been raised by the stakeholders in respect of filling-up of the ITR forms. In order to address such queries, following clarifications are issues, -

Question 1: *I am a non-resident. The Taxpayer Identification Number (TIN) is not allotted in my jurisdiction of residence. How do I report the same in the column on “residential status”?*

Answer: *Incase TIN has not been allotted in the jurisdiction of residence, the passport number should be mentioned instead of TIN. Name of the country in which the passport was issued should be mentioned in the column “jurisdiction of residence”.*

Question 2: *I am a director in a foreign company which does not have PAN. How do I report the same against the column. “Whether you were Director in a company at any time during the previous year?”*

Answer: *You should choose “foreign company” in the drop-down provided for “type of company”. In such case, PAN is not mandatory. However, PAN should be mentioned, if such foreign company has been allotted a PAN.*

Question 3: *Whether an individual who is a non-resident, or resident but not ordinary resident (RoNR) is also required to disclose details of his directorship in a foreign company which does not have any Income accruing or arising in India?*

Answer: Yes

Question 4: *I have held shares of a company during the previous year, which are listed in a recognized stock exchange outside India. Whether I am required to report the requisite details against the column “Whether you have held unlisted equity shares at any time during the previous year?”*

Answer: No.

Question 5: *I have held equity shares of a company which were previously listed in a recognized stock exchange, but delisted subsequently, and became unlisted. How do I report PAN of company in the column “whether you have held unlisted equity shares at any time during the previous year”?*

Answer: *In such cases, PAN of the company may be furnished if it is available, In case PAN of delisted company cannot be obtained, you may enter a default value in place of PAN, as “NNNNNOOOON”.*

Question 6: *In case unlisted equity shares are acquired or transferred by way of gift, will, amalgamation, merger, demerger, or bonus issue etc., how to report the “cost of acquisition” and “sale consideration” in the relevant column?*

Answer: *You may enter zero or the appropriate value against “cost of acquisition” or “sale consideration” in such cases. Please note that the details of unlisted equity shares held during the year are required only for the purpose of reporting. The quantitative details entered in this column are not relevant for the purpose of computation of total Income or tax liability.*

Question 7: *I hold shares in an unlisted foreign company which has been duly required in the Schedule FA. Whether I am required to report the same again in the column “Whether you have held unlisted equity shares at any time during the previous year?”*

Answer: *Yes*

Question 8: *I have held unlisted equity shares as stock-in-trade of business during the previous year. Whether I have to report the same in the column “Whether you have held unlisted equity shares at any time during the previous year?”*

Answer: *Yes*

Question 9: *Please clarify whether holding of equity shares of a Co-operative Bank or Credit Societies, which are unlisted, are required to be reported?*

Answer: *The details of equity shareholding in any entity which is registered under the Companies Act, and is not listed on any recognized stock exchange, is only required to be reported.*

Question 10: *I have sold land and building to a non-resident. Whether I need to report the PAN of buyer in the table A1/B1 in Schedule CG?*

Answer: *As mentioned in ITR form, quoting of PAN of buyer is mandatory only if tax is deducted under section 194-IA or is mentioned in the documents.*

Question 11: *I am resident and have sold land and building situated outside India. Whether I need to report the details of property and identity of buyer in Schedule CG?*

Answer: *The details of property and name of buyer should invariably be mentioned. However, quoting of PAN of buyer is mandatory only if tax is deducted under sector 194-IA or is mentioned in the documents.*

Question 12: *Whether it is mandatory to provide ISIN details and scrip-wise computation of Long Term Capital Gains (LTCG) arising on sale of Shares/Mutual Funds units on which STT has been paid?*

Answer: *The tools for computation of LTCG under sections 112A and 115AD have been provided in the departmental utility for the convenience of taxpayers. These are optional tools designed for computation of the final figures of LTCG, which is then populated in the respective items in Schedule CG. Alternatively, the taxpayers can themselves compute the aggregate long term gain or loss manually, and input the same directly in the respective items in Schedule CG.*

Question 13: *An unlisted company is required to furnish details of asset and liabilities in the Schedule AL-1 of ITR 6? Please clarify whether details of assets held as stock-in-trade of business are also required to be reported therein.*

Answer: *In case jewellery/motor vehicle etc. is held as stock-in-trade of business, the drop-down value "stock-in-trade" should be selected against the field "purpose for which used", while filling up details in the relevant table (table 'I' or table 'H'). In such case, only the aggregate values are required to be filled up, and the particular details of each asset held as stock-in-trade is not required to be reported.*

Question 14: *I hold foreign assets during the previous year which have been duly reported in the Schedule FA. Whether I am required to report such foreign asset again in the Schedule AL (if applicable)?*

Answer: *Yes*

Question 15: *An unlisted company is required to furnish details of shareholding as at the end of previous year in the Schedule SH-1 of ITR-6. Please clarify whether these details are required to be furnished in case of an unlisted foreign company.*

Answer: *Not required.*

Question 17: *Please clarify whether a farmer producer company as defined in section 581A of Companies Act, 1956 is required to furnish details of shareholding in the Schedule SH-1 of ITR-6?*

Answer: *No, However, please ensure to tick the option 'Yes' against the item "whether the company is a producer company as defined in section 581A of Companies Act, 1956?" in Part-A General.*

Question 18: *A company is required to disclose break-up of all payments and receipts during the year, in foreign currency, as per Schedule FD of ITR-6 (if it is not required to get the accounts audited u/s 44AB). Please clarify whether only the receipts/payments related to business operations in India are required to be reported in Schedule FD?*

Answer: *Yes. In Schedule FD, the break-up of receipts and payments in foreign currency is required to be reported only in respect of business operations in India.*

Question 19: *In schedule TDS, one is required to enter the head under which corresponding receipt has been offered. In some cases, TDS is deducted by the payer in current year, but corresponding Income is to be offered in future years. How to fill up Schedule TDS in such cases?*

Answer: *In such cases, no TDS credit should be claimed under the column "in own hands" for the current year. If this is done, the column "Corresponding receipt offered" is greyed-off and is not required to be filled up.*

(Salil Mishra)
Director (TPL-IV)

[Image as enclosed](#)

*F.No. 225/95/2019-ITA.II, New Delhi the 14th August, 2019,**Circular No. 19/2019*

Subject: Generation/Allotment/Quoting of Document Identification Number in Notice/ Order/ Summons/ letter/ correspondence issued by the Income-tax Department.

With the launch of various e-governance initiatives, Income-tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as ("communication")) were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any Income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.
3. In exceptional circumstances such as, -
 - (i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance of communication electronically; or
 - (ii) when communication regarding enquiry, verification etc. is required to be issued by an Income-tax authority, who is outside the office, for discharging his official duties; or
 - (iii) when due to delay in PAN migration, PAN is lying with non-jurisdictional Assessing Officer; or
 - (iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or
 - (v) When the functionality to issue communication is not available in the system,

the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief commissioner / Director General of Income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN

migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner / Director General of Income-tax for issue of manual communication in the following format –

“.. This communication issues manually without a DIN on account of reason/reasons given in para 3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No ... dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income-tax vide number dated “

4. Any communication which is not in conformity with Para-2 and Para-3 above shall be treated as invalid and shall be deemed to have never been issued.
5. The communication issued manually in the three situations specified in Para-3 (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by -
 - i. uploading the manual communication on the system.
 - ii. compulsorily generating the DIN on the system;
 - iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.
6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.
7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the Income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31st October, 2019.
8. Hindi version to follow.

(Sarita Kumari)
Director (ITA.II), CBDT

[Image as enclosed](#)

Subject: Clarification regarding treatment of Farm-in expenditure incurred by the Oil Exploration and Production (E&P) Companies.

Over the life cycle of an Oil & Gas block, E&P companies generally buy ('Farm in') and sell ('Farm out') their participating interests (PI) in the 'Production Sharing Agreement' (PSC). 'Farm-in' expenditure is incurred when an entity in this line of business acquires a PI from another entity(s) in oil/gas block(s) and becomes part of the PSC entered into with the Central Government. A request has been made to clarify whether 'Farm in' expenditure being in nature of rights should be allowed to be treated an 'intangible asset' under clause (ii) of section 32(1) of the Income-tax Act, 1961('Act').

2. The Government of India (Gol) offers exploration and development rights through global bidding for specified blocks in various rounds under the New Exploration and Licensing Policy (NELP), Hydrocarbon Exploration & Licensing Policy (HELP), Open Acreage Licensing Policy (OALP) etc. by signing the Production Sharing Contracts (PSC's) with the Oil & Gas companies, The successful Oil & Gas Companies are granted license to explore, develop and carry out production operations in Oil & Gas blocks and in India under a PSC with the Gol. Typically, owing to the large investments required and the risks involved, multiple E&P companies execute the PSC with the Gol in which each member has its agreed and defined PI.
3. Section 42(2) of the Act provides that in the event of a farm out, the unamortized expenditure is allowed as a deduction and the surplus is taxed in the hands of the seller while in the hands of the buyer no specific provision has been made in the Income-tax Act. Thus while taxability of farm out is clearly laid, no specific provision has been made regarding treatment of farm in payment which gives to conflict between E&P entities and the tax department.
4. It is common international practice for the upstream companies to buy (farm-in) and sale (farm-out) their PI in the PSC or similar contracts with the Government and thereby to share risk, bring new and niche expertise and technologies. In such transactions, PI are treated as interests in rights, licences and obligation under the PSC. Such farm-in purchase price is accounted as an asset as per guidance note issued by the Institute of Chartered Accountants of India. International accounting rules for Oil & Gas followed in Australia, Indonesia, UK etc. also require that such acquisition cost to be capitalized and depreciated. A perusal of the Model PSC's {as per the website of the Director General of Hydrocarbon (DGH)} indicates that participating interests are share in rights and obligation to explore, exploit and sell petroleum under the PSC along with related licences, permits etc. A few of the case-laws on this issue also support treatment of acquisition rights in a PSC as intangible asset.
5. The matter has been examined in the context of the above. In this regard, it is relevant to mention that earlier vide Notification No. G.S.R. 117(E) dated 08.03.1996, in exercise of its powers under section 293A of the Act, Central Government had laid down that the persons with whom it enters into agreement for the association or participation in any business

consisting of the prospecting for or extraction or production of mineral oils on or after the 1st day of April, 1992, -

- a) shall not be assessed on the Income as association of persons or body of individuals consisting of such persons; but
 - b) each of the persons referred to above be assessed in respect of his or its share of Income, as the case may be, in the same status in which the person enters into the agreement with the Central Government.
- 6.** Thus, as persons participating in an E&P contract are assessed individually in respect of their share of Income, the sum expended on acquisition of whole or part of such 'Participating Interest' in an E&P contract where such acquisition is approved by the Government of India, represents the amount paid to acquire the underlying share (expressed as a percentage) being interests in rights, licences and obligations under the E&P contract.
- 7.** In view of the above legal position, it is hereby clarified as under: -
- i. amount paid for acquiring the 'Participating Interest' shall not be treated either as cost for acquiring the share in partnership or investment for acquisition of a member's interest in an association of persons or body of individuals, rather it would be treated as an amount paid to acquire the underlying assets; and
 - ii. the amount paid for acquiring the 'Participating Interest', after reducing component of cost attributable to tangible assets for purposes of clause (i) of sub-section (1) of section 32, would be treated as an 'intangible asset' (being a business or commercial right akin to a licence), eligible for claim of depreciation for purposes of clause (ii) of sub-section (1) of section 32 of the Act.
- 9.** This circular being clarificatory in nature shall be applicable from the date of applicability of clause (ii) of sub-section (1) of section 32 in the Income-tax Act, 1961.
- 10.** Hindi version to follow.

(Rajarajeswari R.)
Under Secretary (ITA.II), CBDT
[Image as enclosed](#)

Subject: Clarifications in respect of filling-up of the ITR forms for the Assessment Year 2019-20.

The Income-tax Return (ITR) forms for the Assessment Year (AY) 2019-20 were notified vide notification bearing G.S.R. 279(E) dated the 01st day of April, 2019. Subsequently, instructions for filing ITR forms were issued and the software utility for e-filing of all the ITR forms were also released. After notification of the ITR forms, various queries were raised by the stakeholders in respect of filling-up of the ITR forms. The queries were examined in the Board and a clarification was issued vide Circular No. 18 of 2019 dated 08.08.2019 to address the concerns raised.

2. Subsequently, further representations have been received on certain issues relating to filing of ITR forms. Accordingly, following clarifications are issued in partial modification of Circular No.18 of 2019.
3. In ITR Form-2 and ITR Form-3, in part-A General, at column (h), the taxpayer is required to state whether he was Director in a company at any time during the previous year. In case of an affirmative answer, the taxpayer is further required to disclose following information relating to each company in which he was a Director:-

- (a) Name of Company
- (b) PAN
- (c) Whether its shares are listed or unlisted
- (d) Director Identification Number (DIN)

3.2 Representation has been received stating that non-residents are required to pay tax only in respect of Income received in India or Income accruing or arising in India. Nonresidents are not required to disclose their assets outside India. Therefore, non-residents should not be required to disclose details of directorship in foreign companies. The disclosure requirement in ITR forms should be limited only to assets and Incomes which have a nexus with India.

3.3 In this regard, it is stated that the disclosure requirement in ITR forms in respect of - directorship in a company is meant only for the purpose of reporting. The details entered in this column are, in general, not relevant for computation of total Income or tax liability of the assessee. As such, the requirement to disclose directorship in a foreign company by a non-resident taxpayer, does not tantamount to disclosure of any foreign source Income or foreign asset held by such taxpayer.

3.4 However, to allay the apprehensions in the minds of non-resident taxpayers, it is hereby clarified that a non-resident shall not be required to disclose details of his directorship in a foreign company, which does not have any Income received in India, or accruing or arising in India. In other words, a non-resident taxpayer who is Director only in a foreign company, which does not have any Income received in India, or accruing or arising in India, should answer the relevant question in the negative, whereupon he would not be required to disclose details of such foreign

company. It is further clarified that a non-resident taxpayer, who is Director in a domestic company and also in a foreign company, which does not have any Income received in India, or accruing or arising in India, should answer the relevant question in the affirmative, and provide details of directorship in the domestic company only. It is also clarified that a resident taxpayer would continue to be required to disclose details of his directorship in any company, including foreign company, in the relevant column.

4. Further, in ITR Form-2, ITR Form-3, ITR Form-5, ITR Form-6 and ITR Form-7, in Part-B-TTI, before the verification part, a taxpayer, who is resident in India, is required to state whether he had any time during the previous year:-
- (a) held, as beneficial owner, beneficiary or otherwise, any asset (including financial interest in any entity) located outside India; or
 - (b) had signing authority in any account located outside India; or
 - (c) had Income from any source outside India?

In case of an affirmative answer, the taxpayer is required to fill up the Schedule FA. In Schedule FA, the taxpayer is required to disclose the details of foreign assets etc. held at any time during the relevant accounting period.

- 4.1 Representation has been received citing example of cases where the foreign assets have been acquired after the end of "relevant accounting period" (in foreign jurisdiction) but before the end of "previous year" (in India). In such cases, the taxpayer would have to answer the question in Part-B-TTI in the affirmative, and consequently, would be required to fill up the details of foreign assets etc. in Schedule FA, Since the assets were acquired after the end of relevant accounting period, no amounts would be required to be reported in Schedule FA. However, if the taxpayer reports Nil amount in all tables of Schedule FA, the ITR form does not get validated.
- 4.2 In this regard, it is hereby clarified that a taxpayer shall be required to answer the relevant question in the affirmative, only if he has held the foreign assets etc. at any time during the "previous year" (in India) as also at any time during the "relevant accounting period" (in the foreign tax jurisdiction), and fill up Schedule FA accordingly.

(Salil Mishra)
Director (TPL-IV)

[Image as enclosed](#)

Subject: Consolidated circular for assessment of Startups.

In order to provide hassle-free tax environment to the Startups, a series of announcements have been made by the Hon'ble Finance Minister in her Budget Speech of 2019 and also on 23rd August, 2019. To give effect to these announcements, the Central Board of Direct Taxes (CBDT) has issued various circulars/clarifications in the matter. This circular consolidates all these circulars and further clarifies as under:-

2. Assessment of Startups

The circular No. 16/2019 dated 7th of August, 2019 provided for the following procedure for pending assessment of the Startups:-

- i. In case of Startup companies recognized by Department for Promotion of Industry and Internal Trade DPIIT) which have filed Form No. 2 and whose cases are under "limited scrutiny" on the single issue of applicability of section 56(2)(viib) of the Income-tax Act, 1961 (the Act), the contention of the assessee will be summarily accepted.
- ii. In case of Startup companies recognized by DPIIT which have filed Form No. 2 and whose cases have been selected under scrutiny to examine multiple issues including the issue of section 56(2)(viib) of the Act, this issue will not be pursued during the assessment proceedings and inquiry on other issues will be carried out by the Assessing Officer only after obtaining approval of the supervisory authority.
- iii. In case of Startup Companies recognized by the DPIIT, which have not filed Form No. 2, but have been selected for scrutiny, the inquiry in such cases also will be carried out by the Assessing Officer only after obtaining approval of the supervisory authorities.

3. Time limit for Completion of pending assessments of the Startups

All assessment referred to in 2(i) should preferably be completed by the AOs by 30th September, 2019. The assessments referred to in 2(ii) & 2(iii) should be taken up on priority and should be preferably completed by 31st October, 2019.

4. Procedure for addition made assessment

The clarification issued on 9th August, 2019 provided that the provisions of the section 56(2)(viib) of the Act shall also not be applicable in respect of assessment made before 19th February, 2019 if a recognised Startups has filed declaration in Form No. 2. The following procedure is laid down with regard to addition made under section 56(2)(viib) of the Act in assessment order passed before 19th February, 2019:-

- i. In case the appeal against the assessment is pending before the Commissioner of Income-tax (Appeal)[CIT(A)], the appellate order should be passed by CIT(A) on or before 31st December,

2019 after taking into account the fact that the Startup has filed declaration in Form No. 2 and hence the provisions of section 56(2)(viib) of the Act are not applicable for the addition made under section 56(2)(viib) of the Act before 19th February, 2019. The Department shall not file further appeal on the issue of addition made under section 56(2)(viib) of the Act;

- ii. In case the case is pending before the ITAT, the Department shall not press the ground relating to addition under section 56(2)(viib) of the Act in these cases.

5. Income-tax demand

It is reiterated that the outstanding Income-tax demand relating to additions made under section 56(2)(viib) shall not be pursued and no communication with the assessee in respect of outstanding demand shall be made for this purpose. In respect of other Income-tax demand, it is decided that the Income-tax demand shall not be pursued unless the demand is confirmed by the ITAT.

6. Constitution of Startup cell

In order to redress grievances and to address various tax related issues in the cases of Startups, a Startup Cell is constituted on 30th August, 2019 with the following ex-officio members:-

S.No.	Portfolio	Designation	Contact Number
1.	Member (IT&C)	Chairman	011-230982831
2.	JS (TPL-II)	Member	011-23092859
3.	CIT (ITA)	Member	011-23092837
4.	Director (ITA-I)	Member Secretary	011-23092107
5.	Under Secretary (ITA-I)	Member	011-23095479

7. The cell, for any grievances/communications relating to startups may be approached at O/o Under Secretary, ITA-I, Room No. 245A, North Block, New Delhi-110001. Ph. No. 011-23095479/23093070 (F). The Cell will also be accessible at startupcell.cbdtd@gov.in.
8. Hindi version to follow.

(Praina Paramita)
Director (ITA-1)

[Image as enclosed](#)

F.No. 279/Misc./M-93/2018-ITJ(Pt.), New Delhi the 06th September, 2019, Circular No. 23/2019

Subject: Exception to monetary limits for filing appeals specified in any Circular issued under Section 268A of the Income-tax Act, 1961.

Reference is invited to the Circulars issued from time to time by Central Board of Direct Taxes (the Board) under section 268A of the Income-tax Act, 1961 (the Act), for laying down monetary limits and other conditions for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court.

2. Several references have been received by the Board that in large number of cases where organised tax-evasion scam is noticed through bogus Long-Term Capital Gain (LTCG)/Short Term Capital Loss (STCL) on penny stocks and department is unable to pursue the cases in higher judicial for a on account of enhanced monetary limits it has been reported that in large number of cases, ITATs and High Court have recognized the unique modus operandi involved in such scam and have passed judgements in favour of the revenue. However, in cases where some appellate for a have not given due consideration to position of law or facts investigated by the department, there is no remedy available with the department for filing further appeal in view of the prescribed monetary limits.
3. In this context, Board has decided that notwithstanding anything contained in any circular issued u/s 268A specifying monetary limits for filing of department appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special order direct filing of appeal on merit in cases involved organised tax evasion activity.
4. Hindi version follows

(Neetika Bansal)
Director, (IT3)
CBDT, New Delhi

[Image as enclosed](#)

Subject: Procedure for identification and processing of cases for prosecution under Direct Tax Laws.

The Central Board of Direct Taxes has been issuing guidelines from time to time for streamlining the procedure of identifying and examining the cases for initiating prosecution for offences under Direct Tax Laws. With a view to achieve the objective behind enactment of Chapter XXII of the Income-tax Act, 1961 (the Act), and to remove any doubts on the intent to address serious cases effectively, this circular is issued.

2. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the offence has to be proved beyond reasonable doubt. To ensure that only deserving cases get prosecuted the Central Board of Direct Taxes in exercise of powers under section 119 of the Act lays down the following criteria for launching prosecution in respect of the following categories of offences.

i. **Offences u/s 276B: Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.**

Cases where non-payment of tax deducted at source is Rs. 25 Lakhs or below, and the delay in deposit is less than 60 days from the due date, shall not be processed for prosecution in normal circumstances. In case of exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

ii. **Offences u/s 276BB: Failure to pay the tax collected at source.**

Same approach as in Para 2.i above.

iii. **Offences u/s 276C(I): Wilful attempt to evade tax, etc.**

Cases where the amount sought to be evaded or tax on under-reported Income is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3. Further, prosecution under this sections shall be launched only after the confirmation of the order imposing penalty by the Income Tax Appellate Tribunal.

iv. **Offences u/s 276CC: Failure to furnish returns of Income.**

Cases where the amount of tax, which would have been evaded if the failure had not been discovered, is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

3. For the purposes of this Circular, the constitution of the Collegium of two CCIT/DGIT rank officers would mean the following-

As per section 279(1) of the Act the sanctioning authority for offences under Chapter XXII is the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority. For proper examination of facts and circumstances of a case, and to ensure that only deserving cases below the threshold limit as prescribed in Annexure get selected for filing of prosecution complaint, such sanctioning authority shall seek the prior administrative approval of a collegium of two CCIT/DGIT rank officers, including the CCIT/DGIT in whose jurisdiction the case lies. The Principal CCIT(CCA) concerned may issue directions for pairing of CCsIT/DGIT for this purpose. In case of disagreement between the two CCIT/DGIT rank officers of the collegium, the matter will be referred to the Principal CCIT(CCA) whose decision will be final. In the event that the Pr.CCIT(CCA) is one of the two officers of the collegium, in case of a disagreement the decision of the Pr.CCIT(CCA) will be final.

4. The list of prosecutable offences under the Act specifying the approving authority is annexed herewith.
5. This circular shall come into effect immediately and shall apply to all the pending cases where complaint is yet to be filed.
6. Hind version shall follow.

(Mamta Bansal)
Director to the Government of India

[Image as enclosed](#)

ANNEXURE

Section	Nature of default	Approving Authority
275A	Contravention of order made under section 132(1) (Second Proviso) or 132(3) in case of search and seizure	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
275B	Failure to afford necessary facility to authorized officer to inspect books of account or other documents as required under section 132(1)(iib)	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276	Removal, concealment, transfer or delivery of property to thwart tax recovery	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276A	Failure to comply with provisions of section 178(1) and (3) – reg. company in liquidation	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276AB	Failure to comply with provisions of sections 269UC, 269UE and 269UL reg. purchase of properties by Government	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276B	Failure to pay to credit of Central Government (i) tax deducted at source under Chapter XVII-B, or (ii) tax payable u/s 115-O(2) or second proviso to section 194B -	-
	(a) Where non-payment of TDS exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) In other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276BB	Failure to pay to the credit of Central Government the tax collected a source under section 206C-	-
	(a) Where non-payment of TCS exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) In other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276C (1)	Wilful attempt to evade tax, penalty or interest or under-reporting of Income -	-
	(a) Where tax which would have been evaded exceeds Rs. 25 lakh	Sanctioning Authority
	(b) In other case	Sanctioning Authority with the previous administrative approval of the Collegium of tow CCIT/DGIT rank officers
276C(2)	Wilful attempt to evade payment of any tax,	-

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	penalty or interest -	
276CC	Wilful failure to furnish returns of fringe benefits under section 115WD/115WH or return of Income under section 139(l) or in response to notice under section 142(1)(i) or section 148 or section 153A-	-
	(a) Where tax sought to be evaded exceeds Rs.25 lakhs	Sanctioning Authority
	(b) In other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276CCC	Wilful failure to furnish in due time return of total Income required to be furnished by notice u/s 158BC(a)	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276D	Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
277	False statement in verification or delivery of false account or statement etc-	-
	(a) Where tax which would have been evaded exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) In other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
277A	Falsification of books of account or document, etc, to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act.	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
278	Abetment of false return, account, statement or declaration relating to any Income or fringe benefits chargeable to tax -	-
	(a) Where tax, penalty or interest which would have evaded exceeds Rs.25 lakhs	Sanctioning Authority
	(b) In other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers.