



## DIRECT TAX

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## Tax Rates

- ▶ Roadmap for phasing out of deductions and exemptions laid down
- ▶ To start from AY 2018-19
- ▶ Corresponding reduction in tax rates
  - ▶ But only for corporates
  - ▶ Non-corporates to bear the same rates and reduced benefits of deductions and exemptions

## Phase-out Plan

- ▶ Highlights
  - ▶ Depreciation → Highest rate of accelerated depreciation to be restricted to 40%
  - ▶ S. 35 Scientific Research → Weighted deduction to be reduced and gradually to make it only 100%
  - ▶ S. 35AD Specified Business → Only 100% deduction and no weighted deduction
  - ▶ S. 35AC Eligible Projects → To be removed
  - ▶ S. 35CCC / 35CCD → Deduction from 150% to 100%
  - ▶ Sunset clauses in Sec. 10AA / 80-IA / 80-IAB / 80-IB

## Corporate Tax Rates

Type of Company	Rate of Tax
Domestic Co. -	29%
Preferred Co.	25%
Small Co.	29%
Other Cos.	30%
Foreign Co.	40%

### Preferred Co. - Sec. 115BA

- ▶ Entire income taxable @25%
- ▶ Domestic Co
- ▶ Set-up and registered after 29-2-2016
- ▶ Business of manufacturing or production of any article or thing
  - ▶ Memo: also should not be engaged in any other business

### Preferred Co. - Sec. 115BA

- ▶ Total income to be computed without claiming
  - ▶ Deductions u/s. 10AA, 32(1)(iia), 32AC, 32AD, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii)/(2AA)/(2AB), 35AC, 35AD, 35CCC, 35CCD or Chapter VI-A (Part C) but excluding 80JJAA
  - ▶ Carried Forward Losses attributable to such deductions
- ▶ Depreciation u/s. 32 to be claimed in a prescribed manner (non-accelerated)

### Preferred Co. - Sec. 115BA

- ▶ Option to Co.
  - ▶ Either to opt for 25% tax-rate u/s. 115BA and forego certain benefits
  - ▶ Or to pay tax @30% and avail all benefits
- ▶ Option to be exercised within due date u/s. 139(1)

### Small Co.

- ▶ Domestic Co.
- ▶ Having turnover or gross receipts of PY 2014-15  $\leq$  ₹ 5 crore
- ▶ Irrespective of nature of business
- ▶ Irrespective of period of operations during PY 2014-15

## Surcharge

- ▶ Increase in surcharge by 2%
- ▶ Only for individuals, HUFs, AOP/BOI
- ▶ Not for firms or companies
- ▶ Surcharge @15% if total income exceeds ₹ 1 crore

## 87A Rebate

- ▶ Rebate u/s. 87A increased from ₹ 2,000 to ₹ 5,000
- ▶ Approx. 2 crore tax payers to get benefits
- ▶ Available only to resident individual having total income  $\leq$  ₹ 5,00,000

## Rich's Dividend Tax

- ▶ DDT @15% (after grossing up) continues
- ▶ New Sec. 115BBDA – Recipient also taxed
- ▶ Applies only to resident individual, HUF & firm
- ▶ Applies if annual dividends exceeds ₹ 10,00,000
- ▶ Exemption u/s. 10(34) restricted upto ₹ 10,00,000
- ▶ Taxability @10% (plus SC & Cess)
- ▶ On gross dividend received [no grossing up as per S. 115-O(1B)]
- ▶ No deduction of any expenditure or allowance
- ▶ No set off of losses

## Rich's Dividend Tax

- ▶ Justification is vertical inequality
- ▶ Income before exemption u/s. 10(34) should have been the base
- ▶ Basic Exemption Limit is also not allowed to be reduced
- ▶ E.g. only income is divided of ₹ 12,50,000 then tax u/s. 115BBDA is ₹ 25,000
- ▶ Non-applicability to AOP / BOI – unintended?
- ▶ Inter-corporate investments are not covered – any rational?
- ▶ MF Dividends not tinkered – still exempt u/s. 10(35)

## Rich's Dividend Tax

- ▶ S.14A controversy –
  - ▶ Becomes more complex particularly in year of receipt of dividend > ₹ 10,00,000
  - ▶ Strengthen the taxpayer's argument that it does not apply to dividend since it is not exempt in that sense
- ▶ S. 94(7) – Dividend Stripping provision continues
  - ▶ It refers exempt dividend – How to interpret? First ₹ 10,00,000 exempt and then taxable?

## Tax Audit Limits

- ▶ Professionals – increased to ₹ 50 lakh
- ▶ Business – remains unchanged

## Presumptive Taxation – Business

- ▶ Threshold limit increased from 1 crore to 2 crore
- ▶ S. 44AB limit remains unchanged
- ▶ Firms are now not entitled to claim deduction of interest and remuneration of partners
  - ▶ Partners are still be liable to be taxed on the interest and remuneration received from such firms opting for presumptive taxation?

## Presumptive Taxation – Business

- ▶ Sub-sec. (4)
- ▶ Having opted for presumptive taxation in any year, assessee should offer income on presumptive basis for next 5 years
- ▶ Non-offering of income on presumptive basis in any of next five years, shall debar the assessee from opting for presumptive taxation for next 5 years subsequent to such year
  - ▶ AY 2017-18 – offered @8%
  - ▶ AY 2018-19 & 2019-20 – offered @ 8%
  - ▶ AY 2020-21 – offered below 8%
  - ▶ AY 2021-22 to 2025-26 – Not eligible to claim benefits of Sec. 44AD

### Presumptive Taxation – Business

- ▶ Period of 5 years to be counted ignoring eligibility for Sec. 44AD (due to turnover increasing above ₹ 2 crore) or only those years in which Sec. 44AD is otherwise applicable?
- ▶ Status of offering income below 8% for any year prior to AY 2017-18 will be relevant or not?
- ▶ Sub-sec. (5) – eligible assessee to maintain books and get them audited
  - ▶ To whom sub-sec. (4) applies; and
  - ▶ Whose total income exceeds basic exemption limit

### Presumptive Taxation – Business

- ▶ Sub-sec. (5) –
  - ▶ Mandatory audit for 5 years of disqualification under sub-sec. (4)
  - ▶ Applicable even if assessee declares profits of more than 8%?
  - ▶ Turnover exceeding ₹ 1 crore – auditing u/s. 44AB is still mandatory though opted for presumptive taxation – in the absence of necessary amendment in Sec. 44AB

### Presumptive Taxation – Profession

- ▶ New Sec. 44ADA
- ▶ Only for residents
- ▶ Types of assessee covered -
  - ▶ Memorandum – only for individual, HUF or firm excluding LLP
  - ▶ However, Finance Bill does not specify the nature of persons covered
- ▶ Engaged in profession referred in Sec. 44AA(1)
  - ▶ Legal
  - ▶ Medical
  - ▶ Engineering

### Presumptive Taxation – Profession

- ▶ Accountancy
- ▶ Technical consultancy
- ▶ Interior decoration
- ▶ Other notified profession: Authorised representative & Film artist
- ▶ Total gross receipts  $\leq$  ₹ 50,00,000 [Easwar Committee recommended 1 crore]
- ▶ Presumptive income = 50% of total gross receipt on account of such profession
- ▶ Easwar Committee recommended 33⅓%

## Presumptive Taxation – Profession

- ▶ No deduction of remuneration or interest to partners in case of firm
- ▶ If lower profits claimed and total income exceeds basic exemption limit
  - ▶ Maintenance of books u/s. 44AA
  - ▶ Auditing u/s. 44AB
- ▶ Maintenance of books otherwise also is mandatory as Sec. 44AA(1) has not been amended
- ▶ “total gross receipts” – not to include service tax
  - ▶ Mitchell Drilling International (P.) Ltd. (62 taxmann.com 24 – Del) [Sec. 44BB]
  - ▶ Islamic Republic of Iran Shipping Lines vs. DCIT (Mumbai ITAT) [Sec. 44B]

## Presumptive Taxation – Profession

- ▶ A professional being a partner in a firm – whether presumptive taxation applies to his remuneration & interest on capital?
  - ▶ Is he engaged in a profession? [Firm and partners are not two distinct entities]
  - ▶ Can it be considered as gross receipts on account of such profession?
  - ▶ R M Chidambaram Pillai 106 ITR 292 (SC)  
“Salaries are profits known by a different name and must be treated as such for taxation purposes.”
  - ▶ Kolkata ITAT taking consistent view that auditing u/s. 44AB is applicable with respect of receipt of remuneration & interest [AmalGanguly (ITA No. 2135/Kol./2008), Usha A. Narayanan, SagarDutta]

## Presumptive Taxation – Profession

- ▶ A professional being a partner in a firm – whether presumptive taxation applies to his remuneration & interest on capital?
  - ▶ Mumbai ITAT also in the case of Suhail Amin Nathani
  - ▶ Having considered as “gross receipts” for Sec. 44AB, benefits u/s. 44ADA cannot be denied
- ▶ Good Luck Kinetic vs. ITO [58 taxmann.com 267 (Panaji ITAT) – disallowance u/s. 43B applies even when income is computed on presumptive basis u/s. 44AF
- ▶ If real income is higher than still presumptive income can be offered?
  - ▶ No - Shivani Builders vs. ITO 108 ITD 520 (Ahmedabad ITAT)

## Advance Tax

- ▶ Installments of advance tax of Corporates & Non-corporates aligned
- ▶ Non-corporates also required to pay advance tax in 4 quarterly installments

Due date of advance tax	% of tax payable
15 <sup>th</sup> June	15%
15 <sup>th</sup> September	45%
15 <sup>th</sup> December	75%
15 <sup>th</sup> March	100%

- ▶ Interest u/s. 234C – will not apply if 80% of advance tax is paid for 1<sup>st</sup> & 2<sup>nd</sup> installments

## Advance Tax

- ▶ Eligible assessee in respect of an eligible business referred to in Sec. 44AD - to pay 100% of tax by 15<sup>th</sup> March
- ▶ Professionals covered by new Sec. 44ADA - no such benefits and to pay advance tax as per regular schedule
- ▶ Effective from 1<sup>st</sup> June, 2016
- ▶ No interest u/s. 234C if shortfall is due to underestimate of PGBP income earned for the first time provided it is covered up in the remaining installments

## Return of Income

- ▶ Sec. 139(1) - Mandatory filing of ITR by individuals, HUFs etc.
  - ▶ At present only if GTI exceeds basic exemption limit
  - ▶ Now, LTCG exempt u/s. 10(38) also to be added
  - ▶  $[GTI + \text{Exempt LTCG u/s. 10(38)}] > BEL$
  - ▶ LTCG before indexation or after indexation?
- ▶ Sec. 139(4) - Belated Return
  - ▶ Time limit for filing reduced by one year
  - ▶ Can be filed only before the end of AY
  - ▶ Applies for returns pertaining to AY 2017-18 onwards

## Return of Income

- ▶ Sec. 139(4) - Belated Return
  - ▶ No interest u/s. 244A on refund from 1<sup>st</sup> April of AY till the date of filing belated return
- ▶ Sec. 139(5) - Revised Return
  - ▶ Now even belated return is also permitted to be revised
  - ▶ Time limit remains same
  - ▶ Applies for returns pertaining to AY 2017-18 onwards
- ▶ Sec. 139(9) - Defective Return
  - ▶ Non-payment of tax and interest on self-assessment will not render the return defective

## Processing of Returns

- ▶ Scope of adjustments while processing of returns u/s. 143(1) widened
- ▶ Apart from adjustments for arithmetical error & incorrect claim, now adjustments can be made for -
  - ▶ Disallowance of set-off of loss if return of loss was furnished beyond due date
  - ▶ Disallowance of expenditure as reported in the audit report
  - ▶ Disallowance of specified profit-linked deductions if return is filed beyond due date
  - ▶ Addition of income appearing in Form 26AS, 16 or 16A

## Processing of Returns

- ▶ Intimation of adjustments to be given either in writing or electronically
- ▶ Assessee to respond within 30 days of the issue of such intimation
- ▶ Response of the assessee to be considered before making adjustments
- ▶ Effective date –
  - ▶ Memorandum 1-6-16 / Bill 1-4-17
  - ▶ From AY 2017-18 or returns processed on or after 1-4-17?

## Processing of Returns

- ▶ Processing of return is now mandatory before completion of assessment u/s. 143(3)
- ▶ Easwar Committee – Refunds not to be withheld merely due to pending assessment and recommended deletion of Sec. 143(1D)
- ▶ Sec. 143(1D) – amended section has become self-contradictory
  - ▶ Main Sec. – processing shall not be necessary
  - ▶ New Proviso – processing shall be mandatory before issuance of an order u/s. 143(3)

## Interest on Refund of SA Tax

- ▶ Controversy over eligibility of assessee to receive interest on refund of SA Tax
- ▶ Recently Delhi HC ruled against the assessee – Engineers India Ltd.
- ▶ Majority of all other HC were in favour
- ▶ Period for which interest is payable – only from date of intimation u/s. 143(1) – Raymond Ltd. (ITAT Mumbai)

## Interest on Refund of SA Tax

- ▶ Express provision incorporated in Sec. 244A –
  - ▶ Refund out of tax paid u/s. 140A is eligible for interest
  - ▶ @1% for month or part of month
  - ▶ From date of filing of return or payment of tax whichever is later
  - ▶ Till date on which refund is granted
  - ▶ Order of adjustment
    - ▶ Prepaid taxes first to be adjusted against liability
  - ▶ Effective from 1<sup>st</sup> June, 2016



## Paperless Assessment

- ▶ "Hearing" to include communication of data and documents through electronic mode
- ▶ Apart from AO, the prescribed IT authority is empowered to issue notice u/s. 143(2)
  - ▶ In order to ensure timely service of notice
- ▶ Issuance of notice - Sec. 282A amended - notice or document shall be signed and issued in paper form or communicated in electronic form in accordance with prescribed procedure

## Paperless Assessment

- ▶ Budget Speech -
  - ▶ E-assessments of all assessees in 7 mega cities
  - ▶ No face to face contact of IT Department with assessee
  - ▶ Cases will be scrutinized in e-environment
  - ▶ Unless the assessee himself wants to be heard
  - ▶ Unless the AO wants to hear the assessee (for special reasons to be recorded)
- ▶ CBDT's Instruction dated 19-10-2015

## Widening of Reopening Net

- ▶ Database prepared by Directorate of Systems to be used for reopening u/s. 147
- ▶ Existing Sec. 133C empowers prescribed IT authority to issue a notice to any person and call for any information or documents useful for any inquiry or proceeding
- ▶ Such information or document may now be processed and made available to the AO
- ▶ AO can make use of such information or document for any assessee

## Widening of Reopening Net

- ▶ It will be deemed that income has escaped assessment of any assessee if -
  - ▶ On the basis of such information or document by Assessing Officer
  - ▶ He notices understatement of income or excessive claim of loss / deduction / allowance / relief in any assessee's case
- ▶ Amendments w.e.f. 1-6-2017

## Time Limits of Assessments

- ▶ Time limit for completion of assessment synchronizing with the FY end was reduced by 3 months by FA, 2006
- ▶ FA, 2012 restored it to original position
- ▶ Now, once again reduced by 3 months
- ▶ 31<sup>st</sup> December – time barring date for completion of all types of assessments
- ▶ Necessary amendments in Sec. 153A as well as 153B
- ▶ Applies to orders made on or after 31<sup>st</sup> May, 2016

## Time Limits of Assessments

- ▶ 2 types of assessments were not having any time limit –
  - ▶ Assessment/reassessment in consequence of or to give effect to any finding or direction contained in any appellate order under IT Act or order of any court in a proceeding under other Act
  - ▶ Assessment of a partner in consequence of reassessment of firm u/s. 147
- ▶ Time limit of 12 months provided - from the expiry of the month in which such order is received or passed by the concerned Commissioner

## Stay of Demand

- ▶ Mandatory stay of disputed demand by Assessing Officer
- ▶ Subject to payment of 15% of disputed demand
- ▶ Only while appeal is pending before CIT (A)
- ▶ Deviation below or above 15% can be made in appropriate cases
- ▶ Aggrieved by even 15% then higher-ups can be approached
- ▶ Adjustment of refunds only to the extent demand not stayed
- ▶ Office Memorandum dated 29-2-2016 issued

## ITAT Appeal

- ▶ Revenue's Appeal against DRP's Directions:
  - ▶ Revenue cannot file appeal against the order of assessment made in pursuance of directions of DRP – with effect from 1<sup>st</sup> June, 2016
  - ▶ At present, no exclusion from requirement of filing of fees for such appeals
    - ▶ ACIT vs. D.E. Shaw India Software Pvt. Ltd. (Hyd. ITAT) – Appeal is not maintainable
    - ▶ Retrospective amendment from 1-7-12 providing for exclusion from filing of fees – relevant for past appeals

## ITAT Appeal

- ▶ Rectification of mistake by ITAT u/s. 254(2) – time limit reduced from 4 years to 6 months from the date of the order – effective from 1<sup>st</sup> June, 2016
- ▶ Peterplast Synthetics P Ltd. 364 ITR 16 (Guj) – time limit to be reckoned from the date of receipt of the order and not from the date of passing of order
- ▶ Single Member Constitution – limit enhanced from ₹ 15,00,000 to ₹ 50,00,000 – effective from 1<sup>st</sup> June, 2016
- ▶ Total income as computed by the AO should not exceed such limit

## Appeal Effect Orders

- ▶ Appellate orders u/s. 250, 254, 260, 262, 263 or 264 may modify the tax liability
- ▶ At present, no express time limit for AO to give effect to such appellate orders
- ▶ Time limit provided – 3 months from the end of the month in which the concerned Commissioner received or passed that appellate order
- ▶ Commissioner may allow an extension of 6 months upon written request from the AO if it is not possible to give effect within 3 months due to reasons beyond his control

## Appeal Effect Orders

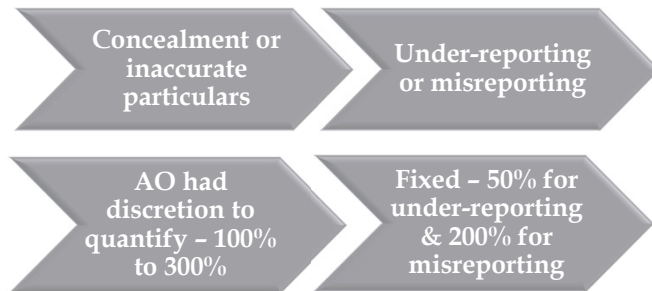
- ▶ Effective from 1<sup>st</sup> June, 2016
- ▶ Appellate orders received or passed before 1<sup>st</sup> June, 2016 – effect shall be given to such orders by 31<sup>st</sup> March, 2017
- ▶ Fresh assessment on account of setting aside or cancelling of an assessment – normal time limit as applicable [9 months]

## Appeal Effect Orders

- ▶ If no order is passed within the time provided then?
  - ▶ Adverse order – challenge on the ground of limitation
  - ▶ Favourable order – take recourse to Sec. 240 – an inherent right of refund
- ▶ Sec. 244A – Additional interest @3% p.a. for a period after expiry of time allowed to AO to give effect to appellate orders
- ▶ Budget Speech: “The officers who delay it, will be accountable for this loss to Government.”

## Old Penalty vs. New Penalty

- ▶ Sec. 271 substituted by Sec. 270A



## Penalty – When?

- ▶ Sub-sec. (1)
  - ▶ Any person
  - ▶ Who has under-reported his income
  - ▶ AO / CIT / CIT (A) may levy penalty on such under-reported income

## Under-reporting – Means?

- ▶ Due to any assessment or reassessment
- ▶ Enhancement of income or reduction in loss or conversion of loss into income
- ▶ Covers adjustments to deemed income u/s. 115JB / 115JC also
- ▶ Base income to be considered to check under-reporting –
  - ▶ Income as per intimation u/s. 143(1), if ROI is filed
  - ▶ Basic exemption limit, if ROI is not filed
  - ▶ Income already assessed, if it is reassessment

## Under-reporting – Exclusions

- ▶ Satisfactory explanation and disclosure of all material facts
- ▶ Estimated amount of under-reported income if
  - ▶ Accounts are correct and complete
  - ▶ But method employed is such that income cannot be deduced therefrom

## Under-reporting – Exclusions

- ▶ Estimated amount of under-reported income if
  - ▶ Assessee has estimated addition/disallowance on same issue but on a lower side
  - ▶ Offered to tax such lower amount
  - ▶ Disclosure of all related material facts
- ▶ TP Adjustments if information maintained, transaction reported and disclosure of facts
- ▶ Undisclosed income of Sec. 271AAB [Search]

## Under-reporting – Quantify

First Assessment –	
If ROI is filed	(Assessed Income) – (Income as per Intimation)
If ROI is not filed –	
Co./Firm	Assessed Income
Others	(Assessed Income) – (Basic Exemption Limit)
Reassessment	(Reassessed Income) – (Assessed Income as per preceding order)

## Under-reporting – Quantify

- ▶ Under-reporting arising out of determination of income u/s. 115JB / 115JC then –
  - ▶  $(A - B) + (C - D)$
  - ▶ Same as existing provisions
- ▶ Due to assessment / reassessment, loss is reduced or converted into income –
  - ▶ Difference between final loss or income and loss prior to the assessment / reassessment
- ▶ Excluded amount of under-reported income not to be added at all

## Under-reporting becomes Misreporting

- ▶ Misrepresentation or suppression of facts;
- ▶ Non-recording of investments in books of account;
- ▶ Claiming of expenditure not substantiated by evidence;
- ▶ Recording of false entry in books of account;
- ▶ Failure to record any receipt in books of account having a bearing on total income;
- ▶ Failure to report any international transaction or deemed international transaction or specified domestic transaction.

## Penalty – How much?

- ▶ Misreporting → 200%
- ▶ Mere under-reporting → 50%
- ▶ 200% / 50% of tax payable on under-reported income
- ▶ Fixed and no discretionary range

## Tax on Under-reported Income

- ▶ Co./firm → As if such under-reported income is the total taxable income
- ▶ Others → Flat @ 30% on such under-reported income
- ▶ Whether surcharge & cess to be added?
  - ▶ For others → No since flat 30%
  - ▶ For co./firm → Memorandum does not add(?)

## Unintended Result - 1

- ▶ Sec. 271 → “in the course of any proceeding under this Act, AO is satisfied that .....”
- ▶ New Sec. 270A does not refer so
- ▶ Penalty proceeding can be initiated even after conclusion of assessment proceeding?
- ▶ Not providing for provisions similar to sub-sec. (1A) & (1B) supports this interpretation
- ▶ If so, then no time limit for such initiation?
- ▶ Sec. 275 time limit is only for conclusion and not for initiation

## Unintended Result - 2

- ▶ In case of non-filing of ROI, taxes already paid (TDS, Advance & SA Tax) will not reduce the quantum of penalty
- ▶ Explanation 4(c) of existing Sec. 271(1) specifically provided for such a scenario
- ▶ Harsh consequences
- ▶ Penalty may be levied even though no tax payable merely because return is not filed

### Unintended Result - 3

- ▶ In case of other than co./firm, tax on under-reported income to be calculated always @30%
- ▶ Irrespective of tax otherwise payable on that which is sought to be evaded
  - ▶ E.g. even after adding it, total income remains below ₹ 10,00,000 and hence 30% rate does not apply
  - ▶ E.g. under-reporting is with respect to such income which is taxable at a lower rate

### Unintended Result - 4

- ▶ Tax on under-reported income to be calculated disregarding Sec. 115JB / 115JC?
- ▶ In case of co. –
  - ▶ Under-reported amount of book profit
  - ▶ To be considered as if the total income of co.
  - ▶ Tax to be calculated on above @30% or 18.5%?
- ▶ In case of others –
  - ▶ It provides always @30%
  - ▶ Penalty to be quantified on the basis of 30% of under-reporting u/s. 115JC though taxable only @18.5%?

### Immunity from Penalty / Prosecution

- ▶ New Sec. 270AA
- ▶ Providing for immunity from Penalty u/s. 270A and Prosecution u/s. 276C
- ▶ Application to be made to the AO but only if –
  - ▶ Tax & Interest as per the order is paid within the period given in notice of demand u/s. 156
  - ▶ No appeal against the order is filed
- ▶ Within 1 month from the month in which order was received

### Immunity from Penalty / Prosecution

- ▶ If the penalty is not initiated due to misreporting of income
  - ▶ AO shall grant an immunity
  - ▶ But only after expiry of time available for filing of appeal
- ▶ AO to pass an order accepting or rejecting application for granting immunity –
  - ▶ Within 1 month from end of month in which application was received

### Immunity from Penalty / Prosecution

- ▶ Opportunity of being heard should be given to assessee before rejecting application
- ▶ AO's order shall be final and non-appealable
- ▶ If application is accepted then no appeal or revision petition can be filed against the order of assessment / reassessment
- ▶ If application is rejected then period from the date of application till receipt of order of rejection will be excluded from period of 30 days for filing appeal before CIT (A)

### Immunity from Penalty / Prosecution

- ▶ Tax & Interest is acceptable but want to avoid penalty?
- ▶ Only under-reporting
  - ▶ Go for immunity (mandatory)
- ▶ Misreporting (or mixed case)
  - ▶ Try luck for immunity
  - ▶ If could not succeed then file an appeal against order
  - ▶ Ensure to file application for immunity much before 30 days so that filing of appeal thereafter is possible
- ▶ Tax & Interest is required to be paid immediately

### Search Penalty – Sec. 271AAB

- ▶ Undisclosed income admitted –
  - ▶ 10% if admitted in a statement
  - ▶ 20% if later admitted in a return
  - ▶ 30% to 90% if not admitted at all  
[of undisclosed income]
- ▶ Range of 30% to 90% amended to 60%
- ▶ To bring in line with New Sec. 270A

### Recognised Provident Fund

- ▶ Employee's contribution continues to be eligible for deduction u/s. 80C
- ▶ Employer's contribution –
  - ▶ Was not taxable – upto 12% of salary
  - ▶ Now not taxable only upto 12% of salary or ₹ 1,50,000 whichever is less
  - ▶ Contribution in excess of ₹ 1,50,000 is taxable though may be below 12% of salary
- ▶ Annual interest taxable only if it exceeds 9.5% p.a.



## Recognised Provident Fund

- ▶ Withdrawal was fully exempt u/s. 10(12) in the circumstances mentioned in Rule 8
  - ▶ After 5 years
  - ▶ Within 5 years but due to extra-ordinary reasons
  - ▶ Balance transferred to new employer's RPF
  - ▶ New category added → Entire balance is transferred to NPS A/c
- ▶ Amended to restrict exemption only to 40%

## Recognised Provident Fund

- ▶ Taxability of withdrawal
  - ▶ Non-eligible cases [other than Rule 8] → Fully taxable
  - ▶ Corpus as on 31-3-16 and interest thereon receivable thereafter → 100% exemption continues
  - ▶ Attributable to employer's contribution after 31-3-16 (principal + interest) → 100% exemption continues
  - ▶ Attributable to employee's contribution after 31-3-16 (principal + interest) → 40% is exempt and 60% is taxable

## Recognised Provident Fund

- ▶ Taxability of withdrawal
  - ▶ Proposal to tax only 60% of interest and not principal is under consideration
  - ▶ Employee having monthly salary of not more than prescribed amount [₹ 15,000 p.m.] will not be taxed at all

## Recognised Provident Fund

- ▶ Unintended consequences
  - ▶ Change in employer and RPF balance transferred to new employer → 60% of such balance (pertaining to own contribution after 31-3-16) is still taxable
  - ▶ Press Release: Withdraw without any tax if 60% is contributed in annuity product to encourage pension security
    - ▶ Rule 8 amendment requires 100% of balance to be transferred to NPS A/c in order to qualify
    - ▶ Restricting 10(12) exemption to 40% does not provide any such exclusion

### Approved Superannuation Fund

- ▶ Employer's contribution in excess of specified amount regarded as perquisite u/s. 17
  - ▶ Presently → ₹ 1,00,000 p.a.
  - ▶ Amended → ₹ 1,50,000 p.a.
- ▶ Exemption for withdrawal u/s. 10(13)
  - ▶ Extended to any amount transferred to NPS A/c [may be in part]

### Approved Superannuation Fund

- ▶ Exemption for withdrawal u/s. 10(13)
  - ▶ Payment in lieu of or in commutation of any annuity purchased out of contributions made after 31-3-2016 → Exemption is restricted to only 40% of the annuity
  - ▶ Contributions of both employer and employee? [nothing is specified like 10(12)]
  - ▶ 40% is of annuity – Is it total of annuity payable? How to calculate annuity?

### New Pension System

- ▶ Taxability of lump-sum withdrawal or pension – Sec. 80CCD(3)
  - ▶ Only that amount is taxable in respect of which deduction u/s. 80CCD has been allowed
  - ▶ Two types of receipts
  - ▶ Receipt of pension from the annuity plan purchased out of balance → Remains taxable fully whether for assessee or his nominee in case of death

### New Pension System

- ▶ Taxability of lump-sum withdrawal or pension – Sec. 80CCD(3)
  - ▶ Receipt on account of closure or opting out –
    - ▶ Presently, fully taxable for both assessee or nominee
    - ▶ Now nominee not to be taxed at all [even not on 60%]
    - ▶ If received by employee → Exemption provided to the extent of 40% u/s. 10(12A)
    - ▶ Self-employed assessee continues to be taxable fully

### TDS – Increase in Threshold Limits

Present Section	Heads	Existing Threshold Limit (₹)	Proposed Threshold Limit (₹)
192A	Payment of accumulated balance due to an employee	30,000	50,000
194BB	Winnings from Horse Race	5,000	10,000
194C	Payments to Contractors	Aggregate annual limit of 75,000	Aggregate annual limit of 1,00,000
194LA	Payment of Compensation on acquisition of certain Immovable Property	2,00,000	2,50,000
194D	Insurance commission	20,000	15,000
194G	Commission on sale of lottery tickets	1,000	15,000
194H	Commission or brokerage	5,000	15,000

### TDS – Increase in Threshold Limits

- ▶ Effective from 1<sup>st</sup> June, 2016
- ▶ Operational inconvenience in applying separate threshold limits for same year

### TDS – Reduction in Rates

Present Section	Heads	Existing Rate of TDS (%)	Proposed Rate of TDS (%)
194DA	Payment in respect of Life Insurance Policy	2%	1%
194EE	Payments in respect of NSS Deposits	20%	10%
194D	Insurance commission	Rate in force (10%)	5%
194G	Commission on sale of lottery tickets	10%	5%
194H	Commission or brokerage	10%	5%

### TDS – Reduction in Rates

- ▶ Effective from 1<sup>st</sup> June, 2016
- ▶ Sum credited or paid on or after 1<sup>st</sup> June, 2016

### 15G/15H – Available for 194-I

- ▶ Sec. 197A – no TDS against submission of Form 15G/15H
- ▶ Extended to rental payments subject to TDS u/s. 194-I
- ▶ Effective from 1<sup>st</sup> June, 2016
- ▶ Company or firm cannot avail such benefits

### Sec. 206AA & Non-residents

- ▶ Non-furnishing of PAN attracts TDS @20%
- ▶ It will not apply to payments to non-resident
  - ▶ Subject to prescribed conditions
  - ▶ Budget Speech – on furnishing of alternative documents
- ▶ Effective from 1<sup>st</sup> June, 2016
- ▶ For past – Serum Institute of India Ltd. (Pune ITAT) – DTAA to override Sec. 206AA

### TCS – Scope Expanded

- ▶ Sale of motor vehicle
  - ▶ 1% TCS on sale of motor vehicle having value exceeding ₹ 10,00,000
  - ▶ No such TCS if buyer has purchased it in retail trade for personal consumption
  - ▶ Person buying motor vehicle not for his personal use but for business use – whether TCS will apply? – Form 27C since not for trading purpose?
  - ▶ Purchase for trading purpose – surely covered

### TCS – Scope Expanded

- ▶ Cash sale of goods / services
  - ▶ 1% TCS on consideration for sale of goods or providing any service
  - ▶ Only on consideration in cash
  - ▶ If it exceeds ₹ 2,00,000
  - ▶ No TCS by the seller if payer has deducted TDS on such consideration
  - ▶ Applies to all transactions irrespective of how payer is going to utilize goods / services

## TCS – Scope Expanded

- ▶ Cash sale of goods / services
  - ▶ Whether for manufacturing, trading or personal use
  - ▶ Not to apply to such class of buyers who fulfill prescribed conditions
  - ▶ Speech – Farmers and notified class of persons to have an option of giving a form
- ▶ Effective from 1-6-2016

## Employment Generation Deduction

- ▶ Deduction u/s. 80JJAA
- ▶ Presently available only to assessee deriving income from manufacture of goods in a factory
- ▶ Extended to all assessee to whom Sec. 44AB applies
  - ▶ Even applies when profits lower than presumptive income is declared and hence subject to audit!
- ▶ But only for a business and not for a profession

## Employment Generation Deduction

- ▶ Deduction –
  - ▶ @30% of “additional employee cost”
  - ▶ For 3 AYs starting from AY in which such employment is provided
  - ▶ Sec. 44AB – does it apply in all 3 AYs or only 1st AY?
- ▶ “Additional employee cost” –
  - ▶ Total “emoluments” paid or payable to “additional employees” employed during PY
  - ▶ First year of new business – total emoluments of first year is deemed “additional employee cost”

## Employment Generation Deduction

- ▶ “Additional employee cost” = Nil for existing business if –
  - ▶ No increase in no. of employees as compared to no. of employees as on 31<sup>st</sup> March of preceding year
    - ▶ How to check whether there is an increase? No guidelines
  - ▶ Emoluments are paid not by way of a/c payee cheque/draft or by use of electronic clearing system
    - ▶ Payment of emoluments partly in cash will disentitle for entire deduction?

### Employment Generation Deduction

- ▶ “Additional employee” –
  - ▶ Those employees employed during PY which has the effect of increase in total nos. of employees already employed as on 31<sup>st</sup> March of preceding year
  - ▶ Exclusions:
    - ▶ Whose total emoluments exceed ₹ 25,000 p.m.
    - ▶ For whom the Government is paying the entire EPS contribution
    - ▶ Who were employed for less than 240 days during PY
    - ▶ Who does not participate in RPF

### Employment Generation Deduction

- ▶ “Emoluments” – any type of remuneration by whatever name called excluding –
  - ▶ Any contribution to provident / pension / other welfare fund
  - ▶ Retirement benefits paid or payable in lumpsum

### Income from House Property

- ▶ Deduction for interest on SOP u/s. 24(b)
  - ▶ Acquisition or construction was required to be completed within 3 years from the end of FY of borrowing
  - ▶ Time period extended to 5 years
  - ▶ No such extension for Sec. 54 or 54F
- ▶ Unrealized rent received subsequently
  - ▶ It was taxable fully
  - ▶ Now it is subject to 30% standard deduction

### Interest on Housing Loan

- ▶ Additional deduction u/s. 80EE
  - ▶ Only for individual and residential house property
  - ▶ Date of sanction – 1.4.16 to 31.3.17
  - ▶ On date of sanction – not owning any residential house
  - ▶ Sanctioned loan ≤ ₹ 35,00,000
  - ▶ Value of house ≤ ₹ 50,00,000
  - ▶ Loan from financial institution or housing finance company
  - ▶ Deduction – lower of interest payable or ₹ 50,000
  - ▶ No double deduction

## Interest on Housing Loan

- ▶ Additional deduction u/s. 80EE
  - ▶ Deduction can be claimed even during under-construction period
  - ▶ Not necessarily for self-use
  - ▶ No lock-in

## Deduction of Rent

- ▶ Sec. 80GG grants deduction of rent paid for self-occupied residential house
- ▶ To only those who are not getting HRA
- ▶ Maximum deduction – restricted to least of
  - ▶ Rent paid in excess of 10% of total income
  - ▶ 25% of total income
  - ▶ ₹ 2,000 p.m.
- ▶ Limit of ₹ 2,000 p.m. is enhanced to ₹ 5,000 p.m.

## Tax Holiday

- ▶ New Sec. 80-IBA
- ▶ Business of developing & building housing projects
- ▶ Deduction @ 100% of profits from such business
- ▶ Housing project – eligibility criteria
  - ▶ Approval – 1.6.2015 to 31.3.2019
  - ▶ Completion (wholly) within 3 years from date of approval
  - ▶ Commercial area not to exceed 3% of aggregate
  - ▶ Land area –
    - ▶ 4 metro cities and within 25 kms – minimum 1,000 sq. mts.
    - ▶ Others – minimum 2,000 sq. mts.

## Tax Holiday

- ▶ Housing project – eligibility criteria
  - ▶ Small sized residential unit –
    - ▶ 4 metro cities and within 25 kms – ≤ 30 sq. mts.
    - ▶ Others – ≤ 60 sq. mts.
  - ▶ Minimum utilisation of FSI –
    - ▶ 4 metro cities and within 25 kms – 90%
    - ▶ Others – 80%

### LTCG Exemption – Startup Fund

- ▶ Fund of Funds to finance start-ups
- ▶ Targeting mobilization of ₹ 2,500 crore annually for 4 years
- ▶ Sec. 54EE to incentivize the investment of LTCG into it
- ▶ Similar to Sec. 54EC
  - ▶ LTCG exempt if invested in units of notified funds
  - ▶ Within 6 months from the date of transfer
  - ▶ Upper limit of ₹ 50,00,000 (same or subsequent FY)

### Tax Holiday – Sec. 80-IAC

- ▶ Applies to “eligible start-up”
  - ▶ Co. incorporated – 1.4.16 to 31.3.19
  - ▶ Turnover should not exceed ₹ 25 crore in any PY during 2016-17 to 2020-21
  - ▶ Certificate from IMB of Certification
- ▶ Engaged in “eligible business”
  - ▶ innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property

### Tax Holiday – Sec. 80-IAC

- ▶ Deduction @ 100% of profits of eligible business
  - ▶ Only for 3 consecutive AYs
  - ▶ Assessee to select any out of first 5 years

### S. 54GB to cover Startup Investment

- ▶ Individual & HUF can claim exemption
  - ▶ Transfer of long-term residential property
  - ▶ Reinvestment of net consideration
  - ▶ In equity capital of eligible startup engaged in eligible business [same as in 80-IAC]
- ▶ Open till 31<sup>st</sup> March, 2019
- ▶ Technology driven startup may buy computers or computer software from such equity capital



### Gold Monetization Scheme, 2015

- ▶ Deposit certificates issued under the Gold Monetisation Scheme, 2015 is excluded from “capital asset”
- ▶ Interest on such deposit certificates is also exempted u/s. 10(15)
- ▶ Effective from A.Y. 2016-17

### Sovereign Gold Bond Scheme, 2015

- ▶ Redemption of Sovereign Gold Bond issued by RBI under Sovereign Gold Bond by an individual is not chargeable to Capital Gain
- ▶ Transfer of such bonds will be eligible for indexation when long-term
- ▶ Effective from A.Y. 2017-18

### Income Declaration Scheme

- ▶ Limited period Compliance Window
- ▶ Effective from 1<sup>st</sup> June, 2016
- ▶ Shall remain open upto notified date [likely to be 30<sup>th</sup> September, 2016]
- ▶ Undisclosed income upto FY 2015-16 can be declared
- ▶ Tax @ 30% + Krishi Kalyan Cess @ 7.5% + Penalty @ 7.5% = Total @ 45%
- ▶ Undisclosed assets – FMV as on 1<sup>st</sup> June, 2016 shall be considered as undisclosed income
- ▶ FMV to be determined in a prescribed manner

### Income Declaration Scheme

- ▶ No wealth-tax on the relevant assets
- ▶ Payment to be made within notified date [likely to be 2 months of declaration]
- ▶ Undisclosed income related to following AY cannot be made –
  - ▶ for which notice of assessment has been issued and proceeding is pending
  - ▶ Search or Survey cases – where notice has not been issued but time limit for its issuance has not expired
  - ▶ Information is received under an agreement with foreign countries regarding such undisclosed asset

## Dispute Resolution Scheme

- ▶ About 3 lakh cases pending before CIT (A) with disputed amount of ₹ 5.5 lakh crores
- ▶ Scope of scheme –
  - ▶ “tax arrears” – tax/interest/penalty for which the appeal is pending before CIT(A) as on 29<sup>th</sup> February, 2016
  - ▶ “specified tax” – tax due to any retrospective amendments and for which dispute is pending as on 29<sup>th</sup> February, 2016 [Vodafone case]

## Dispute Resolution Scheme

- ▶ Application for “tax arrears” –
  - ▶ Assessment order – Tax + Interest upto date of assessment + 25% of minimum penalty if disputed tax exceeds ₹ 10,00,000
  - ▶ Penalty order – 25% of minimum penalty leviable (along with tax & interest on account of assessment)

## Dispute Resolution Scheme

- ▶ Application for “specified tax” – only tax
- ▶ Balance interest and penalty to be waived
- ▶ Cases excluded –
  - ▶ Search and survey cases
  - ▶ Cases where prosecution has already been initiated as on 29<sup>th</sup> February, 2016
  - ▶ Cases relating to undisclosed foreign income and assets
  - ▶ Cases based on information received under DTAA

## Equalisation Levy

- ▶ Non-resident not having PE in India
- ▶ Consideration for specified services
  - ▶ Online advertisement
  - ▶ Provision for digital advertising space
  - ▶ Any other facility or service for the purpose of online advertisement
  - ▶ Other notified services

## Equalisation Levy

- ▶ Consideration from
  - ▶ Resident carrying on business or profession
  - ▶ Non-resident having PE in India
- ▶ Equalisation Levy @6% on such consideration
- ▶ Effective from notified date
- ▶ Corresponding exemption under IT Act – Sec. 10(50)
- ▶ Payer to deduct Equalisation Levy from the payment
- ▶ Failure to deduct or pay will result into disallowance of corresponding expenditure in the hands of payer – Sec. 40(a)(ib) [similar to 40(a)(ia)]

## Sec. 14A – Rule 8D

- ▶ Budget Speech – Rule 8D is amended
- ▶ Disallowance to be limited to lower of –
  - ▶ 1% of average monthly value of investment yielding exempt income
  - ▶ Actual expenditure claimed
- ▶ Notification is awaited
- ▶ Easwar Committee's recommendation to shift to economic taxation instead of legal taxation not accepted

## Long-Term Cap Gain

- ▶ Budget Speech – “The period for getting benefit of long term capital gain regime in case of unlisted companies is proposed to be reduced from three to two years.” – no mention anywhere else
- ▶ NR – LTCG from shares of a closely held company eligible for 10% tax rate

## Sec. 50C – aligned with Sec. 43CA

- ▶ When date of agreement and date of registration are not same
- ▶ SDV as on date of agreement may be taken if –
  - ▶ Consideration (partly or fully) has been received on or before the date of agreement
  - ▶ Mode of receipt of consideration is a/c payee cheque/draft or by use of electronic clearing system
- ▶ Effective from AY 2017-18 only
- ▶ For past – favourable cases:
  - ▶ M/s. Lahiri Promoters – (Vizag) ITA No. 12/2009 – valuation as on the date on which sale agreements were entered into and not as on the sale deed executed in conformity with earlier agreements

### Sec. 50C – aligned with Sec. 43CA

- ▶ T. Ramachandran – (Vizag) ITA No. 528/2009 – even valuation as on the date of oral agreement can be considered over the valuation as on the date of registered agreement provided advance was received
- ▶ Moole Rami Reddy – (Vizag) ITA No. 311/2010 – advance shown to have been received in cash upon execution of sale agreement

### Conversion of Co to LLP – additional hurdle

- ▶ Sec. 47(xiii b) – provides neutrality to conversion of company into LLP
- ▶ Six conditions to be complied with
- ▶ One more condition inserted
  - ▶ Total book value of assets of the company in any of 3 preceding years should not exceed ₹ 5 crore
- ▶ May be to curtail benefits to conversion of big companies but having low or no turnover

### Indian Railways to be paid

- ▶ Sec. 43B extended to any sum payable to the Indian Railways for the use of railway assets
- ▶ Freight payable – is it for use of railway assets?

### Sec. 32AC - Relaxation

- ▶ New Plant & Machinery worth more than ₹ 25 crore were required to be acquired and installed in same PY
- ▶ If only acquisition in PY 2015-16 but installation latest by 31<sup>st</sup> March, 2017 then also eligible for deduction @15%
- ▶ Available only till AY 2017-18

### Professional's Non-compete

- ▶ Sec. 28(va) extended to cover any amount received/receivable for not carrying out any activity in relation to any profession [Non-compete fees]
- ▶ Sec. 55 – also amended to cover transfer of right to carry on any profession –
  - ▶ COA = Nil
  - ▶ COI = Nil

### No set off of losses against undisclosed income

- ▶ Income from undisclosed sources as referred to in Sec. 68 to 69D is taxable @30% u/s. 115BBE
- ▶ Prohibits deduction of any expenditure or allowance
- ▶ CIT v. Shilpa Dyeing & Printing Mills (P) Ltd (2014) 100 DTR (Guj) 381 – Losses also cannot be set off
- ▶ Now express restriction in Sec. 115BBE that set off of any loss cannot be claimed against such income
- ▶ Indirectly, does it mean that set off was permissible upto AY 2016-17?

### Buy Back Tax

- ▶ Sec. 115QA amended w.e.f. 1<sup>st</sup> June, 2016
- ▶ Buy back under all relevant provisions relating companies are covered
- ▶ Issue price of shares to be determined in a prescribed manner
- ▶ To resolve the difficulty in determining where
  - ▶ Shares were issued in different lot, at different prices and at different point of time
  - ▶ Shares issued under restructuring etc.

### Patent Box Regime

- ▶ New Sec. 115BBF
- ▶ Concessional Rate of Tax @10%
- ▶ Only for Resident in India
- ▶ Royalty from patent developed & registered in India
- ▶ Should be true & first inventor and registered as patentee under the Patents Act
- ▶ Taxability on gross basis
- ▶ No MAT u/s. 115JB

## Deferral of POEM

- ▶ Residency of a foreign company – POEM:
  - ▶ Deferred by one year
  - ▶ Notification will provide for adaptation, modification and exception in the provisions of the Act for determination of income and applicability of other provisions in case a foreign company becomes resident in India for the first time.

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