



# Budget 2017 - Highlights

## Income Tax

### PERSONAL TAX

#### Tax Rates:-

The Tax rate for individuals, HUF, AOP, BOI and AJP in the slab between Rs. 2.50 Lakhs and Rs. 5.0 Lakhs is reduced from 10% to 5%.

The new Tax Slab including Education Cess and Surcharge are as follows:

Income levels	Individual/ HUF/ AOP/BOI	Senior Citizens (Age 60 – 80 years)	Very Senior Citizens (Age 80 years and above)
Up to 250,000	Nil	Nil	Nil
250,001 – 300,000	5.15%	Nil	Nil
300,001 – 500,000	5.15%	5.15%	Nil
500,001 – 1,000,000	20.60%	20.60%	20.60%
10,00,001 – 50,00,000	30.90%	30.90%	30.90%
50,00,001 – 10,00,00,000	33.99%	33.99%	33.99%
Above 10,00,00,000	35.535%	35.535%	35.535%

#### Note:

- A new Surcharge @10% will be applicable on income exceeding INR 50 Lacs but not exceeding Rs.1 Crore. For total income above INR 1 crore, surcharge @15% will continue.
- Education Cess @3% on Tax + Surcharge will also continue.
- Rebate u/s. 87A is reduced to maximum of INR 2,500 from the present limit of INR 5,000 and will be available only in case of income up to INR 3.5 lakhs instead of INR 5 lakhs.
- A simple one page tax return form is being introduced for individuals having taxable income (other than business income) up to INR 5 lakhs.
- **Exemption on withdrawal from National Pension Scheme (NPS)**

In case of partial withdrawal from the NPS, it has been proposed to exempt withdrawal up to 25% of the contribution made by the individual.

- **Deduction for NPS contribution (Sec 80CCD)**

It is proposed to increase the ceiling of deduction from 10% to 20% of the gross total income for a non-employee contributing to NPS.

- **Restriction on cash donation:**

Under the existing provisions of section 80G, donation in excess of INR 10,000 made in cash is not allowed. The aforesaid limit is now proposed to be reduced from INR 10,000 to INR 2,000.

## **CORPORATE TAX:**

Corporate Tax is proposed to be reduced to 25% for domestic Companies with total turnover or gross receipts in the previous year 2015 – 16 not more than Rs. 50 crores.

<b>Total Turnover</b>	<b>Domestic Companies</b>	<b>Foreign Companies</b>
Does not exceed 50 Crore	25%	40% (No Change)
Exceeding 50 Crore	30%	40% (No Change)

- There is no change in rate of Surcharge.
- Minimum Alternative Tax (MAT) and Alternate Minimum Tax (AMT) Credit is now allowed to be carried forward up to 15th assessment years immediately succeeding the assessment year in which such tax credit becomes allowable.

## **Basis of Charge**

### **1. Clarity relating to indirect transfer (Explanation 5A to Section 9):-**

Currently, an asset, being any share or interest in a Company/Entity registered outside India shall be deemed to be situated in India if it derives its value substantially from the assets located in India.

It is proposed to clarify that the above explanation will not apply to any asset being investment held by non-resident in FII or Category I or II FPI registered with SEBI.

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

### **2. Proviso to Section 9A certain activities not to constitute business connection in India:-**

One of the prescribed conditions for availing benefit of section 9A is that monthly average of the corpus of the fund shall not be less than INR 100 Crore was waived for First Year in which the fund is incorporated. Now this condition is proposed be waived even for the year in which the fund is wound up.

## **Charitable Trust**

### **1. Exemption on Income from property held for charitable or religious purposes.**

Any corpus donation made by one trust or institution to any other trust or institution registered under section 12AA, shall not be treated as application of income for charitable or religious purposes.

**2. Conditions for applicability of sections 11 and 12.**

**Clarificatory provision to amend registration in case there are changes in the objects for which the registration has been obtained**

It is proposed that where a registered trust or an institution has adopted or undertaken modifications of the objects which do not confirm to the conditions of registration, the said trust or institution is required to obtain fresh registration.

It is further clarified that to continue to claim benefit of sections 11 and 12, the trust or institution shall file their return of income within the due date as prescribed for filing the return of income.

**3. Special provision relating to incomes of political parties**

In respect of each voluntary contribution, other than contribution by way of electoral bond, in excess of twenty thousand rupees, political parties are required to maintain record of such contributions and the name and address of the person who has made such contribution;

**4. Special provision relating to incomes of political parties**

Political parties will be eligible to claim exemption from tax liability only if receipt of donation in cash from a person is less than INR 2,000 and it has filed its Return of Income within the prescribed time.

**House Property**

**Annual Value for House Property**

Notional Income to be considered on property held as stock in trade by a developer, after one year from the date of getting completion certificate.

**Capital Gains:**

**1. Tax neutral conversion of preference shares to equity shares**

It is proposed that the conversion of preference share into equity share will not be regarded as a taxable transfer. Consequential amendments are also proposed in respect of cost of acquisition and period of holding

**2. Cost with reference to certain modes of acquisition of capital asset:-**

Where the capital asset, being a unit or units in a consolidated plan of a mutual fund scheme, became the property of the assessee in consideration of a transfer referred to in clause (xix) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating plan of the scheme of the mutual fund.

**3. Transactions not regarded as transfer:-**

- Capital Gain on Rupee denominated bond issued outside India by an Indian Company arising out of appreciation of rupee against a foreign currency at the time of redemption by the subscriber was not taxable.

- It is proposed to extend the benefit even to those non-residents **who are not the initial subscribers and have acquired such bonds subsequently.**
- Further, with a view to facilitate transfer of Rupee Denominated Bonds issued by an Indian company outside India **from a non-resident to another non-resident**, it is also proposed that such transfer will not be regarded as a taxable transfer.

**4. Holding period in case of immovable property:**

It is proposed to reduce the holding period of immovable property to qualify as a long term capital asset from “more than thirty six months” to “more than twenty four months”.

**5. Computation of Capital Gains in case of Joint Development agreement.**

- Capital gains are chargeable in the year in which transfer takes place. This results into hardship to the owner of the immovable property in case of joint development agreements.
- It is now proposed that the income from the said transaction will arise in the hands of the owner of immovable property (being an individual or Hindu undivided family) in the previous year in which certificate of completion is issued for whole or part of the project by the competent authority.
- It is further proposed that while computing capital gains in the hands of the owner, the aggregate of the stamp duty value of the owners share as on the date of issue of such certificate of completion and monetary consideration received by him, if any, will be regarded as the full value of consideration received or accrued to him as a result of transfer of such capital asset.
- Consequentially, it is further proposed that in case the owner is liable to tax in the aforesaid manner, the full value of consideration will be available as cost in the hands of such owner.
- Further, the benefit of the proposed provision will not be available to owner of the immovable property who transfers his share in the project before date of issue of certificate of completion.
- It is also proposed that any person making payment of monetary consideration referred above will be liable to withhold tax @ 10% at the time of crediting the amount to the account or making payment to the payee, whichever is earlier.

**6. Long Term Capital Gain on sale of shares:**

- Currently, income arising from transfer of a long term capital asset, being equity shares of a company or a unit of an equity oriented fund is exempt from tax if the transaction of sale is chargeable to securities transaction tax.
- It is proposed that the aforesaid exemption will be available to equity shares acquired on or after 1<sup>st</sup> October 2004 only if on such acquisition securities transaction tax was paid.
- Certain exceptions in this regard such as acquisition of shares in IPO, FPO, bonus, right issue etc., for which condition of chargeability of securities transaction tax on acquisition is not applicable, would be notified.

## **7. Capital Gain on Transfer of shares of Private Companies:**

It is proposed to insert a new section 50CA to provide that where consideration for transfer of share of a company (other than quoted share) is less than the Fair Market Value (FMV) of such share, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "Capital gains".

## **8. Shift of Tax Base:-**

Currently, for computing capital gains in respect of assets acquired before 01.04.1981, the assessee is allowed an option of either to take the actual cost of asset as cost of acquisition or take fair market value of the asset as on 01.04.1981.

This base year of 1981 is now proposed to be shifted to 2001. The cost of improvement shall include only those capital expenses which are incurred after 01.04.2001. Consequential amendment is has also been made so as to align the provisions relating to cost inflation index to the proposed base year.

## **Profit & Gains from Business & Profession.**

### **1. Section 40A (3) – Cash Expenses not deductible in certain circumstances**

To promote less-cash economy, where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, **exceeds INR 10,000**, no deduction shall be allowed in respect of such expenditure.

Provided further that in the case of payment made for **plying, hiring or leasing goods carriages**, the limit of cash payment is INR 35,000 instead of INR 10,000.

### **2. Presumptive Income - Section 44AD**

Currently, income of the eligible assessee engaged in eligible business having turnover up to INR 2 crores, may be presumed to be 8% of the turnover. It is now proposed to reduce the deemed total income from 8% to 6% of the turnover if the receipts are by way of any digital mode.

### **3. Section 44AA – Maintenance of books of accounts**

Increase monetary limits of income and total sales or turn over or gross receipts for maintenance of books of accounts from INR 120,000 to INR 250,000 and from INR 10 lakhs to INR 25 lakhs respectively.

## **Income From Other Sources.**

### **1. Extension of anti-abuse provisions to tax receipt of sum of money or property without consideration or for inadequate consideration [Section – 56(2) (x)]**

Currently, anti-abuse provisions to tax receipt of sum of money or immovable property or specified movable property without consideration or for inadequate consideration, where the difference between Fair Market Value (FMV) and the consideration exceeds INR 50,000, as income from other sources are attracted only in instances where the recipients are individuals or Hindu undivided family.

Further, these anti-abuse provisions also provide for taxability of receipt of shares of a closely held companies by firm or a company without consideration or for inadequate consideration, where the difference between FMP and consideration exceeds INR 50,000.

It is now proposed to extend the aforesaid anti-abuse a provision to **all categories of assesses** subject to certain exceptions.

Consequentially, it is further proposed that once the recipient is liable to tax in the aforesaid manner, the value which has been subjected to tax will be **available as cost in the hands of such recipient**.

### **Set off & Carry Forward of Losses**

#### **1. Restriction on set-off of loss from House property:**

It is proposed that the set-off of losses from house property against any other income shall be **restricted upto INR 2 Lakhs** only for any assessment year.

#### **2. Carry forward and set off of losses in case of eligible start-up:**

Currently, change in shareholding of more than 49% results in denial of benefit of carry forward and set off of losses.

It is proposed to exclude a company which is an eligible start-up carrying on eligible business and which is not a company *in* which the public are substantially interested, if all the shareholders of such company which held shares carrying voting power on the last day of the year or years in which the loss was incurred:

- Continue to hold those share on the last day of such previous year; and
- Such loss has been incurred during the **period of seven years** beginning for the year in which such company was incorporated.

#### **3. Extension of claim period for start-ups:**

It is proposed to extend the period for deduction to be claimed by an **eligible start-up** for any three consecutive assessment years out of **seven years** instead of five years beginning from the year in which such eligible start-up is incorporated.

### **Other Sections**

#### **1. Taxation of dividend income:**

Under the existing provisions of section 115BBDA, income by way of dividend in excess of INR 10 Lakhs is chargeable to tax at the rate of 10% on gross basis in case of a resident individual, HUF or firm. It is proposed to extend the scope of this provision **to all resident assesses, except domestic companies and specified funds, trusts, institutions**.

### **Assessment Procedure:-**

#### **1. Inclusion of Condition in section 12A**

In order to claim exemption u/s 11 & 12, one additional condition is proposed to be added to file Return of income within the due date of furnishing return of income specified u/s 139 (1) of the IT Act.

## 2. Amendment in Section 139(5)

The time for furnishing of revised return shall be available upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

## 3. Late filing fee on filing of late return:

It is proposed to insert new section 234F in the Act to provide that a fee for delay in furnishing of return of income in a case where the return is not filed within the due dates specified for filing of return under sub section (1) of section 139.

The proposed fee structure is as follows:

Situations	Late filing Fees
If ITR is filed after due date but before 31 <sup>st</sup> December	5,000/-
After 31 <sup>st</sup> December	10,000/-
Where total income in ITR does not exceed INR 5 Lakhs	1,000/-

## TDS provisions:

1. Now persons having income in the nature of insurance commission are also eligible for filing of self-declaration in Form No.15G/15H for non deduction of TDS
2. TDS rate in case of payment to persons engaged only in the business operation of call center now reduced to 2% under section 194J.
3. Individual & HUF needs to deducted and pay TDS @ 5% on payment of rent exceeding Rs. 50,000/- per month.

For the said purpose they do not need to obtain TAN and file TDS Returns. They are allowed to deduct and pay TDS in the last month of the agreement or the financial year.

## 4. Section 206C – Tax Collection at Source

Section 206C provides that seller who receives consideration for sale of a motor vehicles exceeding ten lakh rupees, shall collect one percent of sale consideration as tax from buyer.

Now, the exemption is granted to the following class of buyers such as

- 1) Central Government
- 2) State Government
- 3) An Embassy
- 4) A High Commission
- 5) Legation
- 6) Commission
- 7) Consulate
- 8) Trade representation of foreign state
- 9) Local Authority and
- 10) Public section company which is engaged in the business of carrying passengers

Further, the provision relating to tax collection at source at the rate of one per cent on sale consideration on cash sale of jewellery exceeding 5 lakh Rupees are now omitted from the act.

## 5. Amendment in section 206CC

TCS is collectible at source at twice of the rate applicable or 5% whichever is higher, In case the buyers do not provide PAN to the seller.

### Others

#### 1. Penalty on professional for furnishing incorrect information in statutory report or any certificate

If an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate, the Assessing officer or the Commissioner (Appeals) may direct him to pay sum of INR 10,000 for each such report or certificate by way of penalty.

#### 2. Restriction on cash transactions

It is proposed to insert new section 269ST in the Act to provide that no person shall receive an amount of **INR 3 Lakh** or more, -

- a) In aggregate from a person in a day;
- b) In respect of a single transaction; or
- c) In respect of transactions relating to one event or occasion from a person otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

For contravention of this section, penalty is proposed to be a sum equal to the amount of such receipt.

#### 3. Amendment in Section 153

Now the time limit for making assessment order is as follows:-

Section	Asst. Year	Time Limit for making order
143 & 144	2018-19	Within 18 month from the end of assessment year
143 & 144	2019-20	Within 12 month from the end of assessment year

#### 4. Amendment in Section 211 & 234C

Interest u/s 234C is not applicable on differential portion of advance tax due to taxability of dividend received above INR 10 Lakhs.

### Search & Seizure:-

#### Section 132:-

"The reasons behind undertaking search" is not required to be disclosed by team and authority of provisional attachment is proposed during search & seizure proceeding for reasons to be recorded in writing for protecting the interest of revenue.

The maximum period for the provisional attachment is proposed to be 6 months. Within 60 days from the date on which the last of the authorizations for search was executed, a reference to Valuation Officer may be made who shall estimate fair market value of property.



## **TRANSFER PRICING AMENDMENTS PROPOSED BY THE BUDGET 2017**

The Finance Minister has sought to introduce new concepts in Transfer Pricing through amendments in the Budget declared on 2<sup>nd</sup> Feb., 2017. The amendments are basically in line with the recommendations given in BEPS (Base Erosion and Profit Shifting) published by the OECD.

Following are the amendments impacting Indian Transfer Pricing Provisions:

### **1. Specified Domestic Transfer Pricing:**

Section 92BA of the Income Tax Act, 1961 has been amended to exclude transactions u/s 40A(2)(b) within the ambit of Specified Domestic Transfer Pricing (SDT) from the F.Y. 2016-17. Transactions u/s 40A(2)(b) included expenditure in respect of payment made to certain related parties. Hence transactions such as payment of remuneration to director of a company, purchase/expense transactions between related parties etc. will no longer be required to be reported under the Transfer Pricing Provisions.

SDT, now, effectively would apply only to tax payers enjoying tax holiday. This is a welcome move as applying Transfer Pricing provisions to tax neutral entities was creating undue compliance and excessive burden on the assesseees.

### **2. Secondary Adjustment in certain cases:**

The Finance Bill has introduced a new Section 92CE to introduce the concept of Secondary Adjustment in the following cases where primary adjustment to transfer price has been–

- i. made suo motu by the assessee in his return of income;
- ii. made by the Assessing Officer has been accepted by the assessee;
- iii. determined by an advance pricing agreement or mutual agreement procedure;
- iv. is made as per the safe harbour rules;

Secondary adjustment would not be applicable if the amount of primary adjustment made is less than Rs 1 crore and the primary adjustment is made in respect of F.Y. 2016-17 or any year prior to F.Y. 2016-17.

The implication of secondary adjustment is that if as a result of primary adjustment, there is an increase in total income or reduction in the loss of the assessee, the difference between the arm's length price and the price at which transaction has actually been undertaken has to be remitted by the associated enterprise to the Indian entity within the time limit to be prescribed. If the excess money is not repatriated to Indian entity within the prescribed time limit, such excess shall be treated as an advance made by the Indian entity to its AE and a notional interest on such advance shall be computed in a manner to be prescribed, i.e. the notional interest shall be treated as an income of the Indian entity.

The above provision of secondary adjustment will be applicable from F.Y. 2017-18 onwards.

### **3. Limiting Interest Deduction:**

The Finance Minister has taken another major step in implementing recommendation made under BEPS Action 4 titled "Limiting Base Erosion Interest Deductions and Other Financial Payments" by introducing Section 94B.

Section 94B proposes to limit deduction of interest payment made by Indian entity to its non-resident AE to 30% of EBIDTA for that year. Balance interest payment which is not deducted in a F.Y. shall be carried forward for deduction to the next year. The balance interest amount can be carried forward till 8 subsequent years.

The above provision would not apply if the interest payment made by the Indian entity to its non-resident AE is less than Rs 1 crore.

Challenges would arise in case of loss making entities. Further the above provision would apply even if the interest payment is proved to be at arm's length.

Associated enterprise would also include a case where the debt is issued by a lender which is not associated but an AE of the Indian entity either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender. The provisions of Section 94B would also apply to such cases.

Indian companies or branches of foreign companies engaged in the business of banking or insurance have rightly been exempted from such interest deduction restrictions.

Further debt has been assigned a broad meaning to include all type of interest bearing financial instrument such as financial lease, financial derivative, debentures, convertible debentures etc. that gives rise to interest, discounts or other finance charges that are deductible in computation of income chargeable under "Profits and gains of business or profession".

The above provision of Section 94B will be applicable from F.Y. 2017-18.

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