



## **A DISCUSSION PAPER ON CHAPTER III - DIRECT TAXES OF FINANCE BILL, 2017 - FEBRUARY 2017.**

**By CA. V. Vivek Rajan, B. Com, ACA**



### **Introduction- Thanking everyone for the response to our Discussion Paper of 2016**

The Finance Bill, 2017 was presented in Lok Sabha on 01<sup>st</sup> February 2017. In Chapter III of Finance Bill, 2017, there has been 87 amendments to the Income-tax Act, 1961 (in comparison to 112 in the Finance Bill of 2016 in addition to 3 Chapters that formed part of the Finance Bill and eventually the Finance Act, 2016).

### **Coverage**

This discussion paper attempts to cover only certain sections of the Finance Bill, 2017 relating only to Direct Taxation. The lines *italicized* in each clause represents the author's views and not an opinion. The readers are requested to contact the author, in case of errors (which are unintentional) and also in case of divergent views.

### **Disclaimer**

This discussion paper attempts to cover the amendments broadly and **not in detail**. The sections selected for discussion are selected with the sole objective to have a detailed discussion for knowledge sharing with an incidental objective of average coverage of the amendments. It does not provide legal opinions, nor does it contain or purport to contain any specific legal, compliance, accounting, tax or any other advice under any other law for the time being in force in and outside India on the topics covered. It is further understood that recipients

**V.Vivek Rajan**  
**Chartered Accountant**



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

of these series of articles will obtain their own legal and other relevant professional advice, in accordance with their specific interests, needs, and circumstances.

Further unless otherwise specifically mentioned, sections discussed in this paper, relates to Incometax Act, 1961 and the Finance Bill 2017. Please refer to Finance Bill 2017 and the relevant pronouncements before taking any decision.

### Acronym and Description

S.No	Acronym	Description
1	PY	Previous Year
2	AY	Assessment Year
3	ROI	Return of Income
4	CG	Central Government
5	BEPS	Base Erosion and Profit Shifting
6	POEM	Place of Effective Management
7	PGBP	Profit and Gains from Business or Profession
8	LTCG	Long Term Capital Gain
9	MAT	Minimum Alternate Tax
10	IAS	Indian Accounting Standards
11	AO	Assessing Officer

**Points for discussion- with reference to Explanatory Memorandum wherever required**

**V.Vivek Rajan**  
Chartered Accountant



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

### **1. Reduced Rate of Corporate Income -tax**

- a. In continuation with the announcement made in previous budgets, the Finance Bill proposes to reduce the income tax rate for corporates under normal route **from existing 30% to 25%**.
- b. This is applicable from FY 2017-18 to Medium and Small Entreprises companies with an **annual turnover of upto Rs.50 Crore**.
- c. This amendment is to make the Medium and Small Entreprises more viable and to encourage firms to migrate to company format ( given the rate of taxation of Partnership Firms and LLP's is 30%).
- d. Coming at a cost of Rs.7200 Crore per annum to the government , this move is expected to benefit 96% of companies.

### **2. GAAR and POEM**

- a. In the absence of any reference to implementation of **General Anti-Avoidance Rules (GAAR) or deferment of the same** , in the Budget Speech or in the Finance Bill , 2017, we can infer that **GAAR would come into force from 01<sup>st</sup> April 2017**.
- b. In Finance Act, 2016, Section 6 was amended to defer the implementation of provisions of **Place of Effective Management[POEM]** by one year. In the absence of any reference to POEM in the Finance Bill, 2017, we can infer that the POEM **would come into force from 01<sup>st</sup> April 2017 and** we can also expect a notification about the implementation of POEM from the CG.

### **3. Amendment of Section 9- Impact of amendment by FA 2012 consequent to decision of Apex Court in Vodafone case in 2012, partly reduced by excluding FII's / FPI's from the tax provisions governing indirect transfers.**

With retrospective effect from 01<sup>st</sup> April 2012 and will apply for AY 2012-13 and subsequent years

Present Scenario and reference to Explanatory Memorandum

- a. Section 9 taxes all income accruing or arising in India through property, capital asset situated in India or through business connection.

**V.Vivek Rajan**  
Chartered Accountant



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

- b. Vide Explanation 5, share or interest in a company or entity outside India which derives its value directly or indirectly from assets located in India was deemed to be situated in India and any transfer relating to those was chargeable to tax in India.
- c. Stakeholders have raised concerns that the said provisions result in multiple taxation and to address this a clarificatory amendment in the form of Explanation 5A is brought in.

### **Amendment- Explanation 5A inserted**

- a. For removal of doubts, it is hereby clarified that nothing contained in Explanation 5 shall apply to an asset or capital asset,
- b. *Held by a non -resident by way of investment, directly or indirectly, in a Foreign Institutional Investor as referred to in Section 115AD and registered as Category I or Category II Foreign Portfolio Investor under SEBI regulations*  
The amendment gives partial relief by excluding FPI's from tax provisions governing indirect transfers. However, Private Equity Investors , Venture Capital Funds would eagerly await for clarifications as given in the budget speech.

### **4. Amendment of Section 10(38)- Taxation of Long Term Capital Gains on sale of unlisted shares**

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years

#### **Reference to Explanatory Memorandum with emphasis**

- a. Under the existing provisions of the Act, the income arising from transfer of long term capital asset, being equity share of a company or a unit of equity oriented fund, is exempt from tax, if the transaction of sale is undertaken on or after 01<sup>st</sup> October 2004 and is chargeable to STT.
- b. It has been noticed that exemption above is misused by certain persons for declaring their unaccounted income as long-term capital gains by entering into sham transactions ( similar to "Jama Kharchi" trades that was prevalent in Kolkata).
- c. This amendment is aimed to prevent this abuse.

### **Amendment**

**Exemption of Long Term Capital Gain on transfer of equity shares acquired on or after 01<sup>st</sup> October 2004 shall be available only if the acquisition of the share is chargeable to Securities Transaction Tax, (STT).**

*To protect the exemption for genuine cases , where the STT could not have been paid like acquisition of shares in IPO, FPO , bonus or rights issue by a listed company , acquisition by non-resident in accordance with the FDI policy, it is*

**V.Vivek Rajan**  
**Chartered Accountant**



proposed that the CG will notify transfers on which STT would not be applicable and which would be eventually exempt from tax.

However, based on the present scenario, it appears that private equity funds that bought shares in unlisted companies after October 1, 2004 would be the most affected by this law, as it would impact most of the private equity investors at time of exit. This aspect would definitely be up for discussion and the proposed notification by the CG is expected to give more clarity on the same.

#### **5. Amendment of Section 13A- Transparency in Electoral Funding**

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years

Present Scenario and reference to Explanatory Memorandum

- a. Under the existing provisions of the Act, there is no restriction of receipt of any amount of donation in cash by a political party.
- b. Further political parties registered with Election Commission of India , are exempt from paying income-tax.
- c. Political parties are also required to file return of income. However filing of returns was not a precedent for availing exemption under the Act.

Amendment

- a. Political parties cannot receive more **than Rs. 2000 in cash , as donation.**
- b. The political parties are required to file return of income u/s 139 (4B) within the time limit u/s 139.

**If either of these conditions are not complied with , then the political parties cannot claim exemption from Income-tax.**

#### **6. Insertion of Section 50CA**

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years

Present Scenario and reference to Explanatory Memorandum

- a. With respect to "Capital Gains" in order to ensure that the full value of consideration received or accrued is not understated , the Act contains deeming fictions , for example deeming of stamp duty value as full value of consideration in case of transfer of immovable property.

**V.Vivek Rajan**  
**Chartered Accountant**



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

- b. This is now being extended to consideration in case of transfer of shares of company (other than quoted shares) , by insertion of Section 50CA.

### Amendment

- a. Consideration received or accrued consequent to transfer of a capital asset being a share other than quoted shares.
- b. The consideration so received is less than FMV (Fair Market Value) determined in such manner.
- c. The FMV so determined shall for the purposes of Section 48 be **deemed to be the full value of consideration.**

### Illustration

- a. Each company has its own dynamics especially when it comes to determination of Fair Market Value of unquoted shares.
- b. Given this background let us analyse the impact of the section with the help of an example  
X Private Limited's 1000 shares are purchased by Y Private Limited at Rs. 1000 each. The Fair Market Value is determined to be Rs.1250 per share.
- X Private Limited will be taxable with a sum of Rs. 12,50,000 as its Fair Market Value- By Section 50CA.
  - Y Private Limited will be taxable with a sum of Rs. 2,50,000 ( Rs. 12,50,000- Rs. 10,00,000) – By virtue of Section 56(2)(viii)

*As can be seen from the example a sum of Rs. 2,50,000 has the potential of being taxed twice at both the hands of transferor and transferee.*

## 7. Amendment of Section 56 (2)- Widening scope of Income from other sources- Insertion of New clause (10) with consequential amendment to Section 49

With effect from 01<sup>st</sup> April 2017 and will apply in relation to AY 2017-18 and subsequent years

### Reference to the Explanatory Memorandum

1. Under the existing provisions of Section 56(2)(vii) and (viii), any sum of money or any property or shares which is received without consideration or for inadequate consideration in excess of Rs.50,000 by
- a. An Individual ( Cash or Property)
- b. HUF ( Cash or Property)

V.Vivek Rajan  
Chartered Accountant





**THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)**

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

**c. Firm or Company in which public are not substantially interested**

**Is chargeable to income-tax.**

2. **These anti-abuse provisions are currently not applicable to other class of assesseees like Private Trusts, AOP etc**
3. **In order to prevent these anti abuse provisions , these amendments are proposed including consequential amendment to Section 49 for determination of cost of acquisition.**

Amendment

- a. Section 56(2)(vii) and (viia) have been given sunset **clauses till 31<sup>st</sup> March 2017**. Post the amendments, the sections would read as under

Section 56(2)(vii)

*“Where an individual or Hindu Undivided family receives, in any previous year, from any person or persons on or after 1<sup>st</sup> day of October 2009 **but before the 1<sup>st</sup> day of April 2017 -***  
*.....”*

Section 56(2)(viia)

*“Where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1<sup>st</sup> day of June, 2010 **but before 1<sup>st</sup> day of April 2017,** any property, being shares of a company not being a company in which the public are substantially interested-  
.....”*

- b. **New clause , clause (x) is proposed to be introduced , so as to provide the receipt of sum of money or property (tangible and intangible) by any person without consideration or for inadequate consideration in excess of Rs.50,000 shall be chargeable to tax subject to certain exceptions like ( a few of them are given below )**

- Received from a relative
- Received on the occasion of the marriage

**V.Vivek Rajan**  
**Chartered Accountant**



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

- Receipt by certain Trusts or Institutions
- Receipts by way of transfer not regarded as Transfer u/s 47

### 8. Amendment of Section 92BA

With effect from 01<sup>st</sup> April 2017 and will apply in relation to AY 2017-18 and subsequent years

Present Scenario and reference to Explanatory Memorandum

- a. Expenditure in respect of which payment is made to persons covered under Section 40A(2)(b) are covered in the ambit of specified domestic transactions.
- b. The Arm's length price and the connected matters were provided in the Form 3CEB, as a result of which the compliance burden has increased.
- c. To reduce the compliance burden, it is proposed to exclude the above expenditure from the scope of Section 92BA.
- d. As a consequence, amendment is made to Section 40A(2)(b).

#### Amendment

Section 92BA (i) omitted. **Payment is made to persons covered under Section 40A(2)(b) will no longer be covered in the ambit of specified domestic transactions. Consequently, Form 3CEB is not required to be furnished for these transactions.**

### 9. Amendment of Section 40A

#### a. Disallowance of Expenditure on account of it being excessive or unreasonable

##### Present Scenario

As per Section 40A(2) , where the assessee incurs any expenditure in respect of person specified in Section 40A(2) and if the AO is of the opinion that it is excessive or unreasonable having regard to Fair Market Value, the excessive portion was not allowed as deduction. However, the disallowance was not made, if the **specified domestic transactions** was at arm's length as per Section 92F, by **virtue of proviso**.

#### Amendment

The proviso to Section 40A(2) has been **amended to enable disallowance from AY 2016-17**.

**V.Vivek Rajan**  
Chartered Accountant





**In other words , the disallowance cannot be made, upto AY 2015-16.**

**b. Section 40A(3) and Section 40A(3A) limit reduced to Rs. 10,000 and ECS included in scope of Banking Transactions.**

Reference to the Explanatory Memorandum

In order to disincentivise cash transactions, it is proposed to amend Section 40A(3) and Section 40A(3A) by reducing the existing threshold of cash payment from Rs.20,000 to Rs. 10,000.

To include ECS as part of specified mode of payment.

Present Scenario

- a. Expenditure incurred and paid in the same PY in excess of Rs. 20,000 in cash in a single day , was disallowed to the total extent
- b. Expenditure incurred in prior PY's and payments made in current PY in in excess of Rs. 20,000 in cash in a single day , was deemed as PGBP.
- c. Modes of payments under Section 40A was account payee cheque and bank draft.

Amendment

The threshold limit said above has been reduced from Rs. 20,000 to Rs.10,000 and ECS is made part of specified modes of payment under Section 40A(3A).

**10. Amendment of Section 80G**

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years

Reference to the Explanatory Memorandum

Presently, deduction is not allowed in respect of donation of any sum exceeding **Rs. 10,000 if the same is by cash.**

Amendment

In order to provide cash less economy and transparency, it is proposed to provide that no deduction shall be allowed in respect of donation of **any sum exceeding Rs.2,000 if the same is by cash.**

**V.Vivek Rajan**  
**Chartered Accountant**



**11. Amendment of Section 80-IAC- Extension of period for claiming deductions by start-ups** With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years Reference to the Explanatory Memorandum

- a. This section was inserted by FA 2016.
- b. Assessee being an eligible start-up and doing eligible business is eligible for deduction of 100% of profits and gains from such business for **3 consecutive AYs out of first 5 AYs at the option of the assessee.**
- c. The start-ups may take time to derive profit out of their business and hence this amendment is proposed.

**Amendment**

Assessee being an eligible start-up and doing eligible business is eligible for deduction of 100% of profits and gains from such business **for 3 consecutive AYs out of first 7 AYs at the option of the assessee.**

**12. Amendment of Section 90 and Section 90A**

With effect from 01<sup>st</sup> April 2018 and will apply for AY 2018-19 and subsequent AY's

Reference to the Explanatory Memorandum

In the context of Section 90 and 90A of the Act, any "term" used but not defined in the Act or in the respective agreements, shall have the meaning assigned to it in the notification issued by the CG, unless context otherwise requires and is not inconsistent with the Act.

The Income-tax simplification committee in its final report has suggested to bring in more clarity in the Act in respect of interpretation of 'terms' used in an agreement entered under section 90 or 90A for the purposes of its application in order to reduce the avoidable litigation related to taxation of non- residents.

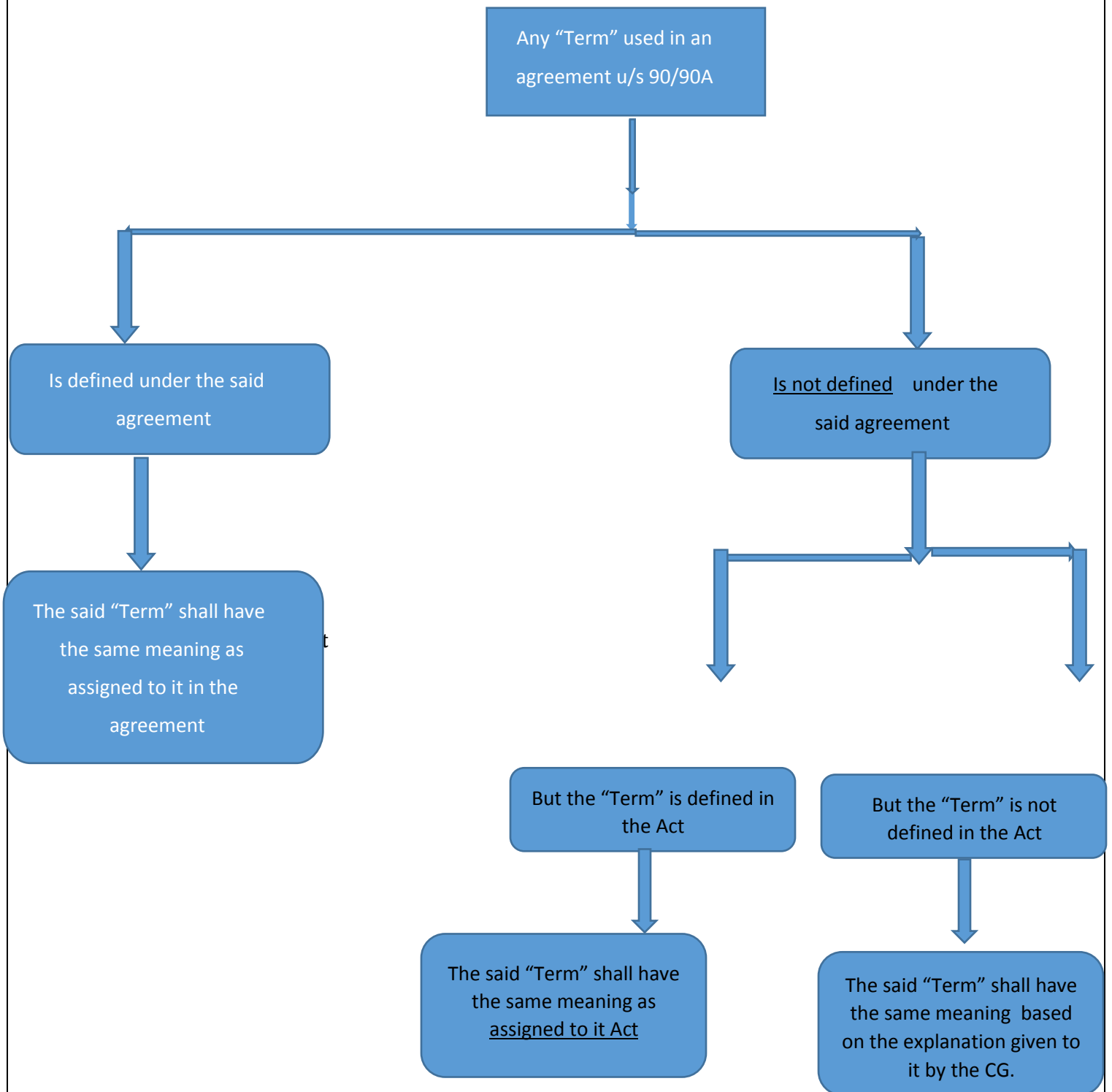
**Amendment**

The amendment is explained with the help of the following chart



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org





### **13. Insertion of Section 92CE- Secondary adjustments in Transfer Pricing**

With effect from 01<sup>st</sup> April 2018 and will apply for AY 2018-19 and subsequent AY's

#### Reference to the Explanatory Memorandum

- a. "Secondary adjustment" means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.
- b. As per the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD transfer pricing guidelines), secondary adjustment may take the form of constructive dividends, constructive equity contributions, or constructive loans.
- c. The provisions of secondary adjustment are internationally recognised and are already part of the transfer pricing rules of many leading economies in the world. Whilst the approaches to secondary adjustments by individual countries vary, they represent an internationally recognised method to align the economic benefit of the transaction with the arm's length position.

#### Amendment

##### a. Firstly, primary adjustment

- Has been made *Suo motu* by the assessee
- Has been made by the AO and has been accepted by assessee
- Is determined by an APA ( Advance Pricing Agreement) u/s 92CC
- Is made as per the Safe Harbour Rules u/s 92CB
- Is arising as a result of agreements u/s 90 /90A

##### b. The amount of primary adjustment made in the PY **exceeds Rs. 1 Crore**

##### c. The primary adjustment is made in respect of an AY commencing after 01<sup>st</sup> April 2016.

**V.Vivek Rajan**  
**Chartered Accountant**



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

- d. As a result of primary adjustment there is a increase in total income or reduction in the loss as the case may be of the assessee.
- e. As a result of the above, there is a benefit in the form of excess money that would get vested with the Associated Enterprise.
- f. This excess money has to be repatriated in India within the time as may be prescribed.
- g. If the money is not so repatriated to India , it shall be deemed to be an advance made by the assessee to such Associated Enterprise and **interest on such advance shall be computed in such manner as may be prescribed.**

### Illustration

- a. Company X, is a company registered in India and has paid Rs. 15 Crores for products supplied to it by its associated enterprise, Company Y.
- b. Arm's length price is determined to be Rs. 12 Crores. Company X's profit is determined based on Rs. 12 Crores
- c. This Rs.3 Crores increase in Company X's profit ( primary adjustment) does not address the benefit obtained by Company Y , by retention of this Rs. 3 Crores
- d. Secondary adjustment seeks to remove the cash benefit obtained by this Rs. 3 Crore retention and also remove the imbalance between cash account and actual profit.
- e. This secondary adjustment is in addition to the tax paid/payable by Company X consequent to the adjustment of Rs. 3 Crores.

## **14. Insertion of Section 94B- Significant move- Taking us closer to OECD's Base Erosion and Profit**

### **Shifting (BEPS) Project**

With effect from 01<sup>st</sup> April 2018 and will apply for AY 2018-19 and subsequent AY's

### **Reference to the Explanatory Memorandum**

- a. Debt is often a more tax efficient method of finance than equity

**V.Vivek Rajan**  
**Chartered Accountant**



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

- b. Multinational groups are often able to structure their financing arrangements to maximize these benefits.
- c. Under the initiative of G-20 Countries, the Organization for Economic Co-operation and Development (OECD) in its BEPS Project had taken up the issue of base erosion and profit shifting by way of **excess interest deductions by the Multinational entities in Action Plan**

4.

- d. In view of the above, this amendment is proposed, **to restrict the interest expenditure claimed.**

### Amendment

<b>Borrower</b>	a. Indian company or  b. Permanent Establishment of a foreign company
<b>Expenditure restricted</b>	Interest or similar consideration exceeding Rs. 1 Crore.
<b>Lender</b>	a. Non -resident who has directly lent money ,being an associated enterprise of such borrower.  b. An associated enterprise which has not lent money but provides an <ul style="list-style-type: none"><li>• Implicit Guarantee to such lender or</li><li>• Explicit Guarantee to such lender or</li><li>• Deposits a corresponding and matching amount of funds with the lender.</li></ul> In this case, the interest paid/ payable to the lender which is not an associated enterprise will be considered for restriction.

**V.Vivek Rajan**  
Chartered Accountant





## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

<b>Maximum interest that can be claimed and Restriction of Interest</b>	Excess Interest (Interest Expenditure <i>less "the lower of the following"</i> ). Excess interest is lower of the following <ol style="list-style-type: none"><li>Amount of total interest exceeding 30% of EBITDA or</li><li>Interest paid or</li><li>Interest payable</li></ol> <p><i>The interest claimed shall be restricted based on the above</i></p>
<b>Section Not applicable</b>	To an Indian company or a permanent establishment of a foreign company engaged in the business of banking or insurance.
<b>Interest restricted can</b>	Interest restricted can be carried forward to the following AY and shall be allowed as a deduction to the extent of maximum allowable interest.
	The interest so restricted cannot be carried forward for <b>more than 8 AY's immediately succeeding the AY in which it was first computed.</b>

*This provision would apply even when the EBITDA is Nil. Further, restriction of interest to 30% for every year coupled with the restriction of carry forward for more than 8 years, would lead to perpetual restriction of interest and some year's interest claim getting lapsed. Illustration*

**V.Vivek Rajan**  
Chartered Accountant



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

<i>Rupees in Crores</i>		
	Without Considering provisions of Section 94B	After considering provisions of Section 94B
Particulars	Financial year 20172018	Financial year 20172018
EBITDA	100.00	100.00
Interest Expense	40.00	40.00
Depreciation	2.00	2.00
EBT	58.00	58.00
Provision for Tax	17.40 (58*30%)	20.40(Please refer Note)
PAT	40.60	37.60
Reduction in PAT	Rs.3 Crores	

### Note

S.No	Particulars	<i>Rupees in Crores</i>
1	30% of EBITDA	30.00
2	Interest Paid	30.00
3	Interest Payable	10.00
4	Excess Interest (Lower of 1, 2, 3)	10.00
5	Interest Allowable ( Interest Expense, 40- Excess Interest as above , 10)	30.00
6	Taxable Income [ EBITDA-Depreciation-Interest allowable as above][100-2-30]	68.00

### 15. Amendment of Section 115JAA and Section 115JD

With effect from 01<sup>st</sup> April 2018 and will apply for AY 2018-19 and subsequent AY's

V.Vivek Rajan  
Chartered Accountant



Reference to the Explanatory Memorandum

- a. Section 115JAA contains provisions regarding carrying forward and set off of tax credit in respect of Minimum Alternate Tax (MAT) paid by companies under section 115JB.
- b. Similar provisions are there for non corporate assessee with respect to Alternate Minimum Tax under section 115JD.
- c. Currently, the tax credit can be carried forward for up to **tenth successive AY**. With a view to provide relief the amendment is proposed.

Amendment

Section 115JAA and 115JD are amended to provide that tax credit determined under these sections can be carried forward **up to fifteenth AY immediately succeeding the AY in which such tax credit becomes allowable.**

**16. Amendment of Section 115JB- Rationalisation of provisions in line with the Indian Accounting Standard (Ind-AS)**

With effect from AY 2017-18 ( as Ind-AS is required to be adopted by certain companies for FY 2016-17 ) and subsequent AY

With certain class of companies bracing up for adoption of Ind-AS for FY 2016-17 and keeping in mind the balance class of companies that would adopt Ind-AS in the due course, it is proposed to amend Section 115JB so as to provide framework for computation of book profit for Ind-AS complaint companies in the year of adoption and thereafter.

**17. Amendment of Section 115BBDA**

With effect from 01<sup>st</sup> April 2018 and will apply for AY 2018-19 and subsequent AY's Present Scenario and reference to Explanatory Memorandum

- a. The FA 2016 introduced Section 115BBDA

**V.Vivek Rajan**  
Chartered Accountant



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

- b. Income by way of dividend in excess of Rs.10 Lakhs was chargeable to tax at the rate of 10% on gross basis in case of Individual / HUF/ Firm
- c. *In many cases, share holders are not individuals, HUF, or firm but a trust through which the beneficial interest in shares is held by individuals or group of individuals ( this point was highlighted in our discussion paper for Finance Bill ,2016). In view of this horizontal equity among all categories of tax payers was not ensured.*
- d. This amendment is proposed to ensure horizontal equity among all categories of tax payers.

### **Amendment**

Dividend in excess of Rs.10 Lakhs received by **any person except the following class of persons is taxable at the rate of 10%**,

- a. Domestic company or
- b. Charitable / Educational/ Medical Trust/Institution/Fund and other trusts/ institutions registered u/s 12AA

*All the private trusts having shareholding in companies would be exigible to this tax on Dividend Income ( there are trusts that received almost Rs. 250 Crores dividend in FY 2016). As a consequence of this amendment, most companies ( rather most private trusts) would consider receiving interim dividend by the end of FY 2016-17 to negate this tax.*

## **18. Amendment of Section 153 – Time limit for completion of assessments reduced**

### **Reference to the Explanatory Memorandum**

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years

- a. In the effort to minimise human interface and move towards technology, massive computerisation has been carried out in the Department, which has translated into overall enhanced efficiency in the functioning of the Department.
- b. In view of the above, rationalization of time limit for completion of assessment, reassessment and re-computation is proposed to be done.

**V.Vivek Rajan**  
Chartered Accountant



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

### Amendment

The time for completion of scrutiny assessments is proposed to be reduced from 21 months from the end of the AY to 18 months from the end of the AY and further to 12 months from AY 201920 and thereafter.

### **19. Amendment of Section 194J-**

With effect from 01<sup>st</sup> June 2017 and accordingly for AY 2018-19

#### Reference to the Explanatory Memorandum

- a. Under section 194J , rate of TDS was 10% if sum payable to resident exceeds Rs. 30,000 in a PY in case of professional fees or fees for technical services.
- b. In order to promote ease of doing business, it is proposed to reduce the rate of TDS from **10% to 2%** in case the payee is person engaged in the business of operation of call center.

### Amendment

The rate of TDS under section 194J will be **2% in case of payee who is engaged only in the business of operation of call centre.**

### **20. Insertion of Section 194-IB- TDS on Rent by Individuals and HUF**

With effect from 01<sup>st</sup> June 2017 and accordingly for AY 2018-19

#### Reference to the Explanatory Memorandum

- a. Under the existing provisions of Section 194-I (TDS on Rent), Individuals and HUF's being a assessee (other than those liable for tax audit) were not required to deduct tax at source on rental payments.
- b. To widen the scope of tax deduction at source, it is proposed to insert a new section 194-IB in the Act to provide that Individuals or a HUF (other than those covered under 44AB of the Act), responsible for paying to a resident any income by way of rent exceeding **Rs. 50000 for a month or part of month during the previous year**, shall deduct an amount equal to **5% of** such income as income-tax thereon.

#### Amendment - Section 194- IB- Salient Features

<b>Person- Deductor</b>	Any person being an individual or HUF ( other than those subject to tax audit in PY)
-------------------------	--

**V.Vivek Rajan**  
Chartered Accountant



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

<b>Payee-Deductee</b>	Resident payee to whom rent is paid
<b>Amount</b>	Amount exceeding Rs.50,000 for a month of part of a month during the PY.
<b>Rate of TDS</b>	5%
<b>Time of Deduction</b>	Earlier of the following a. At the time of credit of rent for the last month of PY or last month of tenancy ( in case of vacating the property) or b. At the time of payment <i>Deduction of tax only once in the PY</i>
<b>Whether the Deductor required to get TAN or to file e-TDS return</b>	No. The provisions of Section 203A is not applicable.
<b>In case the recipient does not have PAN</b>	Amount of deduction shall not exceed the rent payable for last month of year or tenancy

**21. Insertion of Section 234F- Fee for default in furnishing return of income-** *This fee is in addition to interest under Section 234A*

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years

Reference to the Explanatory Memorandum

- For improving tax compliance and enabling timely completion of assessments, it is essential that returns of income are filed on time.
- In order to ensure that returns are filed on time it is proposed to levy a fee for delay in furnishing return of income.
- Consequential amendments are proposed to be made in Sections 140A, Section 143 and Section 271F

**V.Vivek Rajan**  
Chartered Accountant





## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

### Amendment

- a. Without prejudice to other provisions, a person required to furnish return of income under section 139,  
b. fails to do so within 139(1)-time limit, the person shall pay by way of fee, a sum of  Rs. 5000 if the return is furnished on or before 31<sup>st</sup> December of AY  Rs. 10,000 in any other case  
c. If the total income of the person does not exceed Rs. 5,00,000 , the fee payable shall not exceed Rs.1,000

*This fee is in addition to the Interest under Section 234A. Ideally this section would cover cases where the tax liability is taken care of by the TDS , loss return.*

### **22. Amendment of Section 140A- To include fee under Section 234F**

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years Section 140A is amended to include within the ambit of "Self-assessment tax", the fee proposed to be levied under section 234F.

### **23. Amendment of Section 143**

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years **a. To include fee under Section 234F**

Section 143(1) has been amended to provide that in computation of amount payable/ refund due , on account of processing of return, the fee payable under Section 234F shall be taken into account.

#### **b. Processing of return after issue of notice under section 143(2) Present Scenario**

Intimation under section 143(1) was served even after issue of notice u/s 143(2) but before issuance of order u/s 143(3)

#### Amendment For AY upto AY 2016-17

Processing of return u/s 143(1) not necessary if notice u/s 143(2) has been issued.

#### For AY from AY 2017-18

Processing of return u/s 143(1) is necessary, irrespective of whether notice u/s 143(2) has been issued or not.

**V.Vivek Rajan**  
**Chartered Accountant**



**24. Insertion of Section 269ST With effect from 01<sup>st</sup> April 2017**

Reference to the Explanatory Memorandum

To achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money.

**Amendment**

No person shall receive an amount of **Rs. 3 Lakhs or more**

- a. In aggregate from a person in a day or
- b. In respect of a single transaction or
- c. In respect of transactions relating to one event or occasion from a person.

Otherwise that by account payee cheque or account payee bank draft or use of ECS system of bank

**Not applicable**

This section is not applicable to

- a. Government
- b. Any banking company or post office savings bank or co-operative bank
- c. Transactions referred to in Section 269SS
- d. Such other transactions as may be prescribed by the CG.

**25. Insertion of Section 271DA- Penalty equal to receipt**

**With effect from 01<sup>st</sup> April 2017**

Reference to the Explanatory Memorandum

To achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money.

**Amendment**

If any person receives any sum in contravention of Section 269ST, he shall be liable to pay by **way of penalty , a sum equal to amount of such receipt**. The penalty shall be imposed by Joint Commissioner.

Penalty not imposable if there are good and sufficient reasons for contravention.

**V.Vivek Rajan**  
**Chartered Accountant**



## **26. Amendment of Section 271F**

With effect from 01<sup>st</sup> April 2018 and will apply in relation to AY 2018-19 and subsequent years

### Present Scenario

If the return of income u/s 139 is not furnished before the end of the relevant AY, the AO may levy a penalty of upto Rs. 5000

### Amendment

Penalty u/s 271F cannot be levied for returns filed for AY 2018-19 and subsequent years.

## **27. Other Amendments**

- a. Threshold limit for audit of business entities opting for presumptive income scheme is proposed to be increased from **Rs. 1 Crore to Rs.2 Crore.**
- b. Threshold limit for books of account maintenance by individuals and HUF changed as under
  - Turnover limit increase from **Rs. 10 Lakhs to Rs. 25 Lakhs**
  - Income limit from **Rs.1.2 Lakhs to Rs. 2.5 Lakhs**
- c. In order to promote digital transactions and to encourage small business organizations to accept digital payments , Section 44AD is amended to reduce the percentage of deeming fiction from **8% of Total Turnover or Gross Receipts to 6% Total Turnover or Gross Receipts**, in respect of such amount of **Total Turnover or Gross Receipts received by an account payee cheque or account payee bank draft.**
- d. Capital Expenditure incurred in cash in excess of **Rs.10,000** shall be ignored for the determination of actual cost u/s 43 and also for deduction u/s 35AD.
- e. With a view to promote ease of doing business , it has been decided to merge the Authority for Advance Ruling for Income-tax, Central Excise, Customs Duty and Service Tax. Necessary amendments have been made to Chapter XIX of the Act.

- ## **28. Changes in rates of taxation of individuals and HUF- Amendment of Section 87A** With effect from 01<sup>st</sup> April 2018 and will apply for AY 2018-19 and subsequent AY's The rates of taxation for individuals and HUF has been detailed below.

**V.Vivek Rajan**  
Chartered Accountant



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

### Reference to the Explanatory Memorandum

Consequent to the rationalization of the tax rates for individuals in the income slab of Rs. 2,50,000 to Rs. 5,00,000 , it is proposed to amend Section 87A to reduce the maximum rebate.

### Amendment

- a. The rebate shall be available to only resident individuals whose total income does not exceed **Rs. 3,50,000 ( reduced from Rs. 5,00,000)**
- b. The maximum amount of rebate available is reduced from **Rs.5,000 to Rs.2,500**

The Income-tax Slab Rates based on the Finance Bill 2017 are

- a. In case of individual less than 60 years of age, HUF or Association of persons or Body of Individuals or any other artificial juridical person

Taxable Income	Tax Rate
Up to Rs.2,50,000	Nil
Rs. 2,50,000 to Rs.5,00,000	5%
Rs. 5,00,000 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

- b. In case of resident senior citizen age of 60 years or more at any time during the PY but less than 80 years

Taxable Income	Tax Rate
Up to Rs 3,00,000	Nil
Rs. 3,00,000 to Rs.5,00,000	5%
Rs. 5,00,000 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

**V.Vivek Rajan**  
Chartered Accountant



## THE CHARTERED ACCOUNTANTS STUDY CIRCLE (Regd)

Prince Arcade, 2-L, Rear Block, Second Floor, 22-A, Cathedral Road,  
(Next to Stella Maris College), Chennai - 600 086. Phone : 28114283  
E-mail : admin@casconline.org Website : www.casconline.org

- c. In case of resident senior citizen age of 80 years or more at any time during the PY

Taxable Income	Tax Rate
Up to Rs 5,00,000	Nil
Rs. 5,00,000 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

### Common Points

- Education Cess and Secondary and Higher Education Cess to be added.
- If the total income exceeds **Rs. 50 Lakhs to but does not exceed Rs. 1 Crore**, surcharge at the rate of **10% of income tax to be applied.**
- If the total income exceeds **Rs. 1 Crore**, surcharge at the rate of **15% of income tax to be applied.**

The author can be reached through mail at [vvr@vvrcas.com](mailto:vvr@vvrcas.com) or through mobile at 09940528035

=====The End=====

*Thank  
you*



a

V.Vivek Rajan  
Chartered Accountant