



Repair. Reform. Reap.

Union Budget 2019

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Foreword

Union Budget 2019

As the Modi Government 2.0 sets foot into its new term against the backdrop of a massive public mandate, it was expected to address the baggage of promises that remained unfulfilled in the last term. With expectations such as bailing NBFCs out of their present crisis, reforms in angel taxation provisions, measures to boost infrastructure development, redressal of the concerns of the farming sector, etc. - the anticipation has been at its peak.

Driving the wagon towards a USD 5 Trillion economy, Finance Minister Nirmala Sitharaman, in her maiden Budget focused on bringing about several transformational economic reforms. Reiterating the ten points of the 'Vision for the Decade' as envisaged in the Interim Budget, the tax reforms announced were primarily aimed at stimulating growth and promoting digitization and transparency, while simultaneously simplifying tax administration.

To attain the vision, investment in infrastructure development, digital economy, and employment generation in medium and small enterprises were necessary. Keeping Gaon, Gareeb, and Kisan as the core agenda, a series of measures have been proposed to focus on rural development.

In sharp contrast to the fall in the Global Foreign Direct Investment (FDI), India's FDI inflows have continued to remain strong. With the aim of further consolidation, various measures have been proposed.

Numerous tax reforms have been proposed for promoting the entrepreneurial category investing in start-ups, tax proposals will aim to stimulate growth, incentivize affordable housing, and encourage start-ups by releasing entrepreneurial spirits. It will also be geared towards promoting a digital economy.

As far as the tax rates are concerned, the turnover limit for the applicability of reduced Corporate Tax Rate of 25% has been proposed to be increased to INR 4 billion to cover 99.3% of companies. However, in a move which could dampen the spirit of the super-rich category, surcharges of 25% and 37% have been proposed for individuals earning above INR 20 million and INR 50 million respectively.

Overall, the Budget looks positive with the government balancing fiscal discipline, infrastructural development, and rural upliftment while setting India on the path towards holistic growth.

Economic Review

Union Budget 2019

GDP Growth

- The GDP growth rate of the Indian economy is estimated to be 6.8% in FY18-19, as compared to 7.2% in FY17-18. However, the GDP growth rate is projected to pick up to 7.2% in FY19-20, according to the Reserve Bank of India (RBI) and the Asian Development Bank (ADB)
- The moderation in GDP growth momentum is attributed to both domestic and global causes. At a domestic level, it is mainly attributed to the lower growth in the Agriculture and the services sector (except financial, real estate, and professional services).

Index of Industrial Production (IIP)

- FY18-19 witnessed a slowdown in production in the manufacturing sector as measured by IIP, slowed down to 3.5% in FY18-19 compared to 4.6% in FY17-18. This is also attributed to the slow growth of the automobile sector, with car sales at a five-year low growth rate as well as the slow growth of the eight core industries.

Inflation

- Overall, India has contained inflation within 4%, which enabled macroeconomic stability over FY18-19.
- Headline inflation, based on Consumer Price Index – Combined (CPI) declined to 3.4% in FY18-19 from 3.6% in FY17-18, indicating lower price volatility in food and energy products over a 5-year trend.
- The Wholesale Price Index (WPI), which indicates the average inflation stood at 4.3% in FY18-19, down from 3.0% in FY17-18, with Inflation estimated at 2.5% in May'19.
- WPI food inflation is estimated at 0.6% in FY18-19, down from 1.9% in FY17-18, with the last estimate for May'19 at 5.1%.

Trade

- The value of India's merchandise exports (customs basis) stood at USD 329.5 billion in FY18-19, up by 8.6% from USD 303.5 billion in the previous year.

- Imports stood at USD 513.1 billion in FY18-19 compared to USD 465.6 billion in the previous year, marking an increase of 10.2%, driven by an increase in international crude oil prices.
- The growth both – merchandise exports and imports slowed down in FY18-19, but the decline in growth in imports was steeper than that of exports.

Fiscal Deficit

- The fiscal deficit saw a slight decline to 3.4% (targeted 3.3%) in FY18-19 from 3.5% (targeted 3.2%) in FY17-18, showing better fiscal discipline.
- India's current account deficit (CAD) increased from USD 35.7 billion (1.8% of GDP) in Q1-Q3 FY17-18 to USD 51.9 billion (2.6% of GDP) in Q1-Q3 FY18-19. The trade deficit, however, increased by ~22.7% from USD 118.4 billion to USD 145.3 billion at the same time.
- Capital expenditure of Central Government grew by 15.1% in FY18-19 showing heavy investment in infrastructure to accelerate future growth.

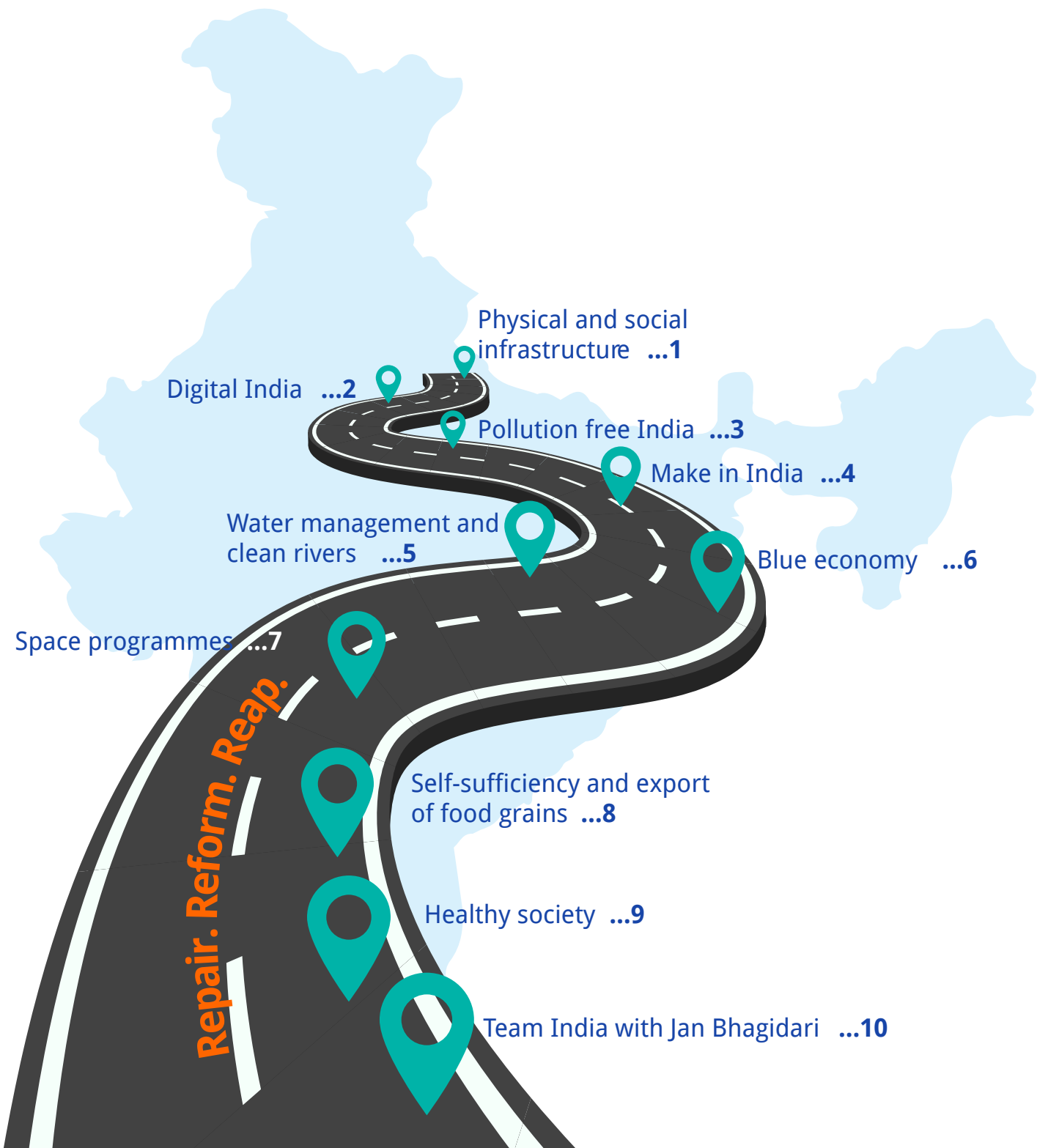
Foreign Investments

- Growth in investment, which had slowed down, has gained momentum since FY17-18. Growth in fixed investment increased from 8.3% in FY16-17 to 9.3% in FY17-18, and further to 10% in FY18-19. FDI inflows amounted to USD 64.4 billion in FY18-19.
- The government is aptly introducing additional measures, including easing of FDI norms, to accelerate FDI growth.

Foreign Exchange Reserves and External Debt

- As of December 2018, foreign exchange reserves stood at approximately USD 395.6 billion.
- The Central Government debt is estimated to be at 48.4% of the GDP in FY18-19, as compared to the reported 49.5% in FY17-18. The government targets to further reduce it to 48% in FY19-20.

Vision 2030



Key Direct Tax Proposals

Union Budget 2019

The amendments mentioned below are applicable for AY 2020 – 21, unless otherwise specified.

Rate of Income Tax

For Individuals

- No change in personal income tax slab rates.
- A surcharge of 25% is leviable in case the income exceeds INR 20 million but does not exceed INR 50 million. Similarly, surcharge of 37% shall be leviable in case the income exceeds INR 5 million.
 - Surcharge of 10% and 15% for incomes above INR 5 million and INR 10 million respectively continues to exist.

Income	Existing Surcharge	Revised Surcharge	Effective Revised Tax Rates (including surcharge and cess)
Above INR 5 million and upto INR 10 million	10%	10%	34.32%
Above INR 10 million and upto INR 20 million	15%	15%	35.88%
Above INR 20 million and upto INR 50 million	15%	25%	39.00%
Above INR 50 million	15%	37%	42.74%

- Marginal relief is provided wherever surcharge is leviable.

For Companies

- The tax rate has been reduced from 30% to 25% for companies with turnover/gross receipts of INR 4,000 million or less in the Financial Year (FY) 2017-18. Earlier the threshold was INR 2,500 million.
- No reduction in the rate of Minimum Alternate Tax (MAT).

Widening and Deepening of Tax Base

TDS on payment by Individual/HUF to contractors and professionals

- Currently, payments in respect of contractual work or for professional service, made by individuals or HUFs who are not liable to tax audit, are not required to withholding tax.
- It is proposed to insert a new provision, to levy TDS at the rate of 5% on the amount paid for the said services by such individual or HUFs if such sum, or aggregate of such sums, exceeds INR 5 million during the year.
- Further, to ease the compliance burden, it is proposed that such individuals or HUFs could deposit the tax deducted using their Permanent Account Number (PAN) and they would not be required to obtain a Tax Deduction number (TAN).

This amendment is proposed to be effective from 1 September 2019.

TDS at the time of purchase of immovable property

- Under the current regime, tax is required to be deducted at the rate of 1% on the amount of consideration paid for the transfer of certain immovable property other than agricultural land. The law, however, does not define 'consideration for immovable property'.
- It is now proposed to insert a new explanation and provide that the term 'consideration for immovable property' would include all charges in the nature of club membership fee, car parking fee, electricity and water facility, maintenance fee, advance fee or any other charges of similar nature, which are incidental to the transfer of the immovable property.

This amendment is proposed to be effective from 1 September 2019.

Deemed accrual of gift made to a person outside India

- Under the existing provisions of law, a gift of money or property received by a resident donee is taxed in his hands, except for certain specified exemptions.
- It is now proposed that similar provisions would be made applicable to the non-resident donees with respect to any sum of money paid or any property situated in India transferred on or after 5 July 2019. The specified exemptions provided for resident donees would be applicable to non-residents as well.

The amendment is proposed to be effective from AY 2020-21.

Mandatory furnishing of return of income by person other than a company or a firm

- Currently, persons other than companies and firms are required to file their return of income only if their total income exceeds the maximum amount not chargeable to tax.
- It is, however, proposed to expand the tax base by including the following categories of persons in the mandatory return filing list:
 - Persons claiming capital gains tax exemption i.e. rollover benefit by investing in specified assets such as residential houses, bonds, etc.
 - Persons depositing an amount or aggregate of amounts exceeding INR 10 million in one or more current accounts maintained with a banking company or a co-operative bank; or
 - Foreign travel expense exceeding INR 0.2 million lakhs for himself or any other person; or
 - Electricity expense of an amount or aggregate of amounts exceeding INR 0.1 million; or
 - A person fulfilling other such conditions, as may be prescribed.

PAN and Aadhaar Interchangeability

- Currently, PAN is required not only for purposes of filing of return of income but also for certain specified financial transactions.
- It is proposed to widen the tax base by requiring persons who intend to enter into certain prescribed transactions to obtain PAN.
- It is proposed that a person, whether or not he has a PAN, may quote his Aadhaar number.
- It is also proposed to have a detailed procedure for quoting and authentication of PAN/Aadhaar by both the parties entering into a prescribed transaction.

- It is proposed that a penalty of INR 10,000 be levied in case of non-compliance of provisions of quoting of PAN/Aadhaar.
- It is further proposed that the requirement of linking of PAN and Aadhaar needs to be carried out to avoid inactivation of PAN.

The aforesaid amendments are proposed to be made effective from 1 September 2019.

Widening the scope of Statement of Financial Transactions

- The law obligates furnishing of statement of financial transaction (SFT) or reportable account by specified person.
- It is proposed to enhance the list of such persons to enable the pre-filing of return of income of other assesseees.
- Currently the filing requirement is for transactions in excess of INR 50,000. It is now proposed to do away with this threshold limit.
- Penalty provisions currently applicable only to financial institutions are now proposed to cover all the reporting entities.

This amendment is proposed to be effective from 1 September 2019.

Measures for promoting less cash economy

Prescription electronic mode of payments

- The law prohibits cash transactions and promotes payment or receipt through account payee check, account payee draft or electronic clearing system through a bank account including for the purposes of various deductions and exemptions.
- In order to encourage other electronic modes of payment, it is proposed to amend the various provisions in law so as to include such electronic modes as may be prescribed, in addition to the above existing permissible modes.
- Further, to discourage cash transactions, it is proposed to insert a new provision for TDS at the rate of 2% on cash withdrawal from banks exceeding INR 10 million.

These amendments are proposed to be effective from 1 September 2019.

Mandating acceptance of payments through prescribed electronic modes

- In order to move towards a cashless economy so as to reduce the generation and circulation of black money and to promote digital economy, it is proposed to insert a new provision.
- As per the new provision, every person doing business, wherein the sales/turnover/gross receipts in the immediately preceding year exceeds INR 500 million, is required to provide a facility for accepting payment through the prescribed electronic modes, in addition to the facilities for other electronic modes that are already provided.
- It is proposed that non-compliance with the above provision would attract a penalty of INR 5,000 per day for the duration for which the default continues.

The amendment is proposed to take effect from 1 November 2019.

Tax Incentives

Tax Incentives to International Financial Services Centers

To foster the growth and development of International Financial Services Centers (IFSC), following additional incentives are proposed in the Finance Bill, 2019:

- No tax on the dividend distributed by a domestic company out of the accumulated income derived from operations in IFSC.

This amendment is proposed to be effective from 1 September 2019.

- No additional income tax would be chargeable on the amount of income distributed by a Mutual Fund located in an IFSC of which all unit holders are non-residents, deriving income solely in convertible foreign exchange and which fulfils certain other conditions.

This amendment is proposed to be effective from 1 September 2019.

- Currently, transfers made by a non-resident of a capital asset, being derivatives or bonds or Global Depository Receipts or Rupee Denominated Bonds of an Indian company, through a recognized stock exchange located in any IFSC and where consideration for such transaction is paid in foreign currency is not taxable.
- With a view to provide tax neutral transfer of certain securities by Category III Alternative Investment Fund (AIF) in IFSC, it is proposed to provide that any transfer of a capital asset, as specified above by such AIF, of which all the unit holders are non residents shall not be regarded as transfer subject to fulfilment of specified conditions.
- The existing provisions of section 80LA of the Act provides profit-linked deduction of an amount equal to 100% of income for first five consecutive years and 50% of the income for the next five consecutive assessment years, to units of IFSC.
- In order to further incentivize the operation of units of IFSC, it has been proposed to provide a deduction of 100% for any ten consecutive years. This deduction is available in any ten consecutive years out of fifteen years beginning with the year in which the necessary permission was obtained.
- To boost investment in IFSC, it is proposed that the interest income earned by a non-resident in respect of monies borrowed by unit located in IFSC after 1 September 2019 shall be exempt from tax.

Incentive to Non-Banking Finance Companies (NBFC)

- Currently, interest income on bad or doubtful debts in cases of scheduled banks, public financial institutions, State financial corporations, State industrial investment corporations, Cooperative banks and certain public companies is taxable on receipt basis. This benefit is not available to NBFC's.
- In order to provide a level playing field, it is now proposed to extend the said benefit to deposit taking NBFC and systematically important NBFC.
- It is also proposed that deduction of such interest shall be allowed to the payer on actual payment basis.

Relaxation in conditions of special taxation regime for offshore funds

- Under the existing provision of Section 9A certain conditions are prescribed wherein the fund manager situated in India for offshore fund is not considered as business connection in India.
- It has been proposed to provide relaxation in the condition of corpus for newly incorporated fund where the existing requirement of INR 1,000 million at the end of previous year is changed to at the end of six months from the last day of the month in which the fund is established or at the end of previous year, whichever is later.
- It is further proposed, that the remuneration paid to the fund manager shall now be calculated in the manner prescribed by the Act vis-s-vis arm's length price as mentioned earlier.

The amendment is proposed to be effective retrospectively from AY 2019-20.

Tax incentive for electric vehicles

- A tax deduction of INR 150,000 is proposed on the interest on the loan taken by the individual tax payer for the purchase of an electric vehicle. The same is subject to satisfaction of certain conditions.

Exemption on interest income earned by non-resident arising out of Rupee Denominated Bond (RDB)

- A new section 10(4C) is proposed to be inserted wherein income earned by non-resident by way of interest on loan advanced to the Indian company or business trust shall be exempted if such loan is borrowed from a source outside India during 17 September, 2018 to 31 March, 2019 in RDB. Such exemption was announced via press release dated 17 September, 2018. However, the same is now proposed to be incorporated in the Act.

The amendment is proposed to be effective retrospectively from AY 2019-20.

Tax Incentives for Affordable Housing

- To boost the investment in affordable housing, a tax incentive is proposed for the Individual taxpayer. A tax deduction upto INR 150,000 is proposed on the interest on the loan taken from financial institution for acquiring residential house property, whose stamp duty value does not exceed INR 4.5 million. The tax deduction shall be subject to the conditions stated therein.
- To align the definition of affordable housing under the current law with the definition provided in the GST law, certain modifications to the conditions regarding the housing project are proposed with effect from 1 September 2019.

Incentive to Start-ups

- Under the existing provisions, capital gain arising from transfer of a residential property is not taxable if the same is invested in an eligible start up company. This benefit was available upto 31 March 2019.
- To incentivize investment in eligible start-ups, it is proposed to extend the period upto 31 March 2021.
- It is also proposed to relax the existing conditions of shareholding and the voting power for availing the benefit. For this purpose, the shareholding is reduced to 25% from 50% and the lock in period in respect to transfer of new asset, being computer or software is reduced from five years to three years.
- Under the existing provision, an eligible start up company can claim carry forward and set off of losses provided that all the shareholders of the company in the year in which the loss is incurred continue to be the shareholders of the Company in the year of set off. Further, such loss should have been incurred within seven years from the date of incorporation.
- To facilitate ease of doing business it has been proposed that the set off of the losses shall be available on satisfying either of the above condition or the condition that in the year of loss and in the year of set off, the shareholders holding 51% of the voting power continues to be same.
- It is further proposed that the carry forward and set off losses shall be available where the National Company Law Tribunal (NCLT) has suspended the Board of Directors of such company and has appointed new directors and a change in shareholding has taken place pursuant to a resolution plan approved by NCLT.

Incentive for Category II Alternative Investment Fund (AIF)

- The exemption in respect of sale consideration in excess of Fair Market Value available to Venture Capital undertaking and Category I AIF is now proposed to be extended to Category II AIF.

Rationalization of tax provisions for distressed companies

Calculation of book profits for distressed companies

- Under the existing provisions, in case of companies against whom the corporate insolvency proceedings have been initiated, deduction of unabsorbed depreciation and loss brought forward is allowed in computing the book profits.
- In order to provide further relief, it is now proposed that the said provisions be made applicable to the companies whose application for has been accepted by National Company Law Tribunal for relief against oppression or mismanagement and its subsidiaries and also the subsidiaries of such subsidiary.

Exemption from deeming of fair market value of shares for certain transactions

- Currently, the law provides for taxability of income in case of quoted shares at fair market value (FMV). The FMV sections is determined based on the method prescribed. The determination of such FMV could cause hardship.
- To avoid genuine hardship in certain cases, it has been proposed that the said provisions shall not be applicable to certain class of persons and subject to such conditions as may be prescribed.

Improving Effectiveness of Tax Administration

Online application filing for determination of TDS on non-resident payment

- Under the current law, a person making payment to a non-resident, can make an application to the Assessing Officer (AO) to obtain lower or nil withholding tax certificate/ order.
- The said process of obtaining lower withholding certificate in case of payments to residents has been made online.

- In order to use technology to streamline the process in respect of payments to non residents and to reduce the processing time of such applications, it is proposed to amend the current provision to allow for prescribing the form and manner of application to the AO and also the manner of determination of appropriate portion of sum chargeable to tax by the AO.

This amendment is proposed to be effective from 1 September 2019.

Electronic filing of statement of transactions on which tax has not been deducted

- Under the existing provisions, furnishing of statement in respect of interest payment to residents where no tax has been deducted at source is done on floppy, diskette, magnetic tape, CD-ROM, or any other computer readable media.
- To enable online filing of such statements, it is proposed to amend the current law so as to provide filing of statement in prescribed form and manner. It is also proposed to provide for correction of such statements for rectification of any mistake or to add, delete or update the information furnished.
- Amendments consequential to those changes in the interim budget in respect to increase in threshold for TDS on interest payment by banking company or cooperative society or public company are also proposed to be made.

This amendment is proposed to be effective from 1 September 2019.

Strengthening Anti-Abuse Measures

Tax on Buy-Back of listed shares

- Under the erstwhile tax regime, buy-back of shares other than those listed on a recognized stock exchange was chargeable to tax at the rate of 20% in the hands of the company and the same was exempted from tax in the hands of the share holders. It is now proposed to introduce this additional tax on buy-back of shares of companies listed on a recognized stock exchange.
- Corresponding amendment has been proposed, so as to provide exemption to the income arising to shareholders pursuant to such buy-backs.

The said provision is proposed to be made applicable from 5 July 2019.

Cancellation of registration of the Trust or Institution

- It is proposed that at the time of granting registration to the Trust or Institution, it shall be observed that the trust or institution complies to such other laws and regulations which are necessary for the purpose of achieving its objectives. In case of failure to meet the above compliances, the Principal commissioner or the Commissioner shall have the power to cancel registration.

This amendment is proposed to be effective from 1 September 2019.

Removing difficulties faced by Taxpayers

Facilitating demerger of Ind-AS compliant companies

- In case of demerger, condition of recording the value of property and liabilities in the books of the resulting company at the same value as in the books of the demerged company immediately before the demerger is relaxed where Indian Accounting Standards (IndAS) is applicable.

Relaxation of provisions in case of non-resident payments

- A person is deemed to be an assessee in default if fails to deduct the required taxes or after deducting fails to pay the said taxes.
- Under the current regime, the law provides relief to such deductors in respect to payments to resident on satisfaction of certain conditions.
- It is now proposed to amend the existing provision with a view to extend this benefit in respect to payments to non residents as well on satisfaction of the said condition.

This amendment is proposed to be effective from 1 September 2019.

Concessional rate of Short Term Capital Gain Tax (STCG) to certain equity oriented funds of funds

- It is proposed to expand the definition of 'equity oriented fund', for purpose of applying the concessional rate of STCG, so as to include a fund which invests in the unit of other fund, traded on a recognised stock exchange, and that other fund in turn invests at least 90% of its total proceeds in equity shares of domestic companies.

Provide for pass through of losses in cases of Category I and Category II Alternative Investment Fund (AIF)

- Presently section 115UB of the Act, provides for pass through of income earned by the SEBI registered Category I (Cat I) and Category II (Cat II) Alternative Investment Funds (AIF), except for business income which is taxed at AIF level. However, pass through of losses are not provided under the existing regime and are retained at AIF level to be carried forward and set off in accordance with Chapter VI.
- It has been proposed to provide pass through of losses for Cat I and Cat II AIFs.
- In case of Cat I and Cat II AIFs, losses incurred by AIFs other than business losses are permitted to be passed on to the unit holders/investors. However, if the loss has arisen in respect of a unit which has not been held by the unit holder for a period of at least twelve months, such loss should be ignored for the purpose of pass through to its unit holders/investors.
- Business loss would be continued to be carried forward and set off at AIF level.
- Losses other than business loss accumulated at AIF level as on 31 March 2019 would be deemed to be the losses of unit holders/investors holding unit as on 31 March 2019 and would be allowed to be carried forward by him for the remaining period for the purpose of carry forward and set off in the manner prescribed.

Provision of credit of relief provided under section 89

- Tax relief is provided under law when salary is paid in advance or in arrears.
- As per the existing provisions while calculating the tax liability benefit of such relief was not categorically provided.
- Accordingly, to reduce the genuine hardship caused to taxpayers, it is now proposed to amend the relevant provision so as to allow credit of such relief while computing the tax and interest liability.

It is proposed that the said amendment will be effective retrospectively from AY 2007 - 08.

TDS on non-exempt portion of life insurance pay-out on net basis

- Under the current regime, a person is obliged to withhold tax at the rate of one percent at the time of making payments to residents under a life insurance policy. Though the tax is payable only on the non exempt portion, since there is no clarity currently, for the purposes of withholding taxes, tax is deducted on the gross amount of payment.
- In order to ease the difficulties in tax administration and to ensure that the income as per the withholding tax return and the return of income filed by the recipient matches, it is proposed to provide for TDS at the rate of five percent on the income component of the sum paid by the person (i.e. after deducting the amount of insurance premium paid by the person from the total sum received).

This amendment is proposed to be effective from 1 September 2019.

Rationalization of provisions

Compliance with the notification of exemption issued in respect of certain income

- As per the existing provisions consideration in excess of FMV received for issue of shares by certain companies is taxable in the hands of the company. The said provision however, is not applicable, if notified companies receive such consideration. The exemption is given by the Central Government, subject to the fulfilment of certain conditions.
- In case of failing to comply with the conditions specified, it is proposed that the consideration in excess of FMV received by such notified companies is taxable.

- It has been further proposed that the above provision shall not be applicable to specified funds being funds which has been granted certificate of registration as Category II Alternative Investment Fund.

Rationalization of penalty provisions for under-reported income

- The existing laws provides for various scenario for levy of penalty for under-reporting and misreporting of income. However, the said scenarios did not include a situation where the return of income is filed for the first time in response to a notice requiring the taxpayer to file the same.

It is now proposed to include this scenario with retrospective effect from AY 2017-18.

Rationalization of prosecution proceedings on non-filing of returns of income

- Presently, prosecution proceedings for failure to furnish returns of income cannot be initiated if tax payable if the tax on total income does not exceed INR 3,000.
- With a view to rationalize the provision, it is proposed to rationalize this limit and increase the same from INR 3,000 to INR 10,000. It s further clarifies that the said threshold limit of tax payable is to be determined after taking into account the prepaid taxes including tax collected at source and self assessment tax paid before the expiry of the assessment year.

Rationalization of provisions of claim of refund

- In order to simplify the procedure of claim of refund it is proposed that the claim of refund is to be made by furnishing the return in as per the provisions of law.

Enhancing the time limit for sale of attached property

- In order to protect the interest of the Revenue, it is proposed to extend the time limit for selling the property, attached for recovery, from three years to seven years. Further it is also proposed that the CBDT may, for certain reasons, extend the aforesaid period of seven years by a further period of three years.

Transfer Pricing Highlights

Secondary Adjustments (SA) simplified

- The concept of 'secondary adjustment' was introduced by Finance Act 2017 by introducing new section 92CE in the Indian Income Tax Act ("the Act") to align transfer pricing provisions with international best practices. The provisions require Indian taxpayers to get the repatriation of "excess money" from the overseas Associated Enterprises ("AE") in certain specified situations. In case the repatriation is not made within 90 days, it would be deemed to be an advance made/deemed loan by the taxpayer to AE, and the interest shall be computed till the time the repatriation is made by AE. The existing provisions provided a relief to the taxpayers from SA, in following scenario:
 - a. Amount of primary adjustment is less than 1 crore; and,
 - b. The primary adjustment is made in respect of an assessment year commencing on or before the 1 April 2016

Finance Bill 2019 seeks to clarify certain anomalies that exists on the applicability of these provisions and also introduces an alternative for taxpayers.

- **Anomaly in applicability:** The literal interpretation suggests that if the primary adjustment pertains to an assessment year 2017-18 or thereafter, the secondary adjustment will be required even if the quantum of primary adjustment is less than 1 crore. More so, secondary adjustment will be required even if it pertains to assessment year 2016-17, or before, in situations where primary adjustment is in excess of INR 1 crore. Having said this, the intention of the law (as read from the budget speech of Finance Bill 2017) appears to be to exclude instances where primary adjustments are less than INR 1 crore. Finance Bill 2019 seeks to resolve the above anomaly by making the above two conditions alternate (replacing "and" with "or") to qualify for relief from secondary adjustment.

This amendment will take retrospective effect from 1 April 2018.

- **Alternate to secondary adjustment:** As noted above, the existing provisions seek to characterize the secondary adjustment as deemed loan. Whereas, if we refer to the secondary adjustment related provisions in certain other jurisdiction such as USA, Canada, Europe etc. it is typically characterized as deemed dividend / capital. Finance Bill 2019 has proposed that the taxpayer may choose not to make secondary adjustment by a one-time tax payment at 18% on amount to be repatriated plus 12% surcharge on such tax. The taxpayer will have to pay due interest till the date of payment of such onetime tax as per the existing provisions.

This amendment will be effective from 1 September 2019.

- **Liberalized Repatriation:** It has been proposed that the repatriation can be made from any associated enterprise that is not a resident in India (and need not from the associated enterprise with which transaction has been entered into).

This amendment will take retrospective effect from 1 April 2018.

Master file compliances applicable even when no international transaction

- The Indian transfer pricing regime introduced three-tiered documentation (Local File, Master File and CbCR) requirements effective Financial year 2016-17 in line with BEPS plan recommendation.
- Master file related provisions as stipulated in section 92D(1) read with Rule 10DA applies when the taxpayer has entered into international transactions.
- Finance Bill 2019 seeks to extend the master file related to compliances to instances where the taxpayer as not entered into international transactions with associated enterprises.
- While the memorandum to Finance Bill 2019 suggests that the amendment to section 92D has been proposed with a view to rationalize it, expecting dormant companies to do Master File related compliance appears to be irrational.
- It is also proposed that assessing officer or commissioner (appeals) shall not have power to call for master file documentation from the taxpayer.
- This amendment will take effect from the 1 April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Clarification regarding definition of the 'Accounting Year'

- Section 286 of the Act contains provisions relating to specific reporting regime in the form of Country-by-Country Report (CbCR) in respect to an international group. It provides that every parent entity or the Alternate Reporting Entity (ARE), resident in India, shall furnish CbCR within a period of twelve months from the end of the said reporting accounting year, in the prescribed form and manner.
- In order to address industry concerns and to bring clarity in law, it is proposed to amend Section 286 of the Act so as to provide that the accounting year in case of the ARE of an international group, the parent entity of which is not resident in India, the reporting accounting year shall be the one applicable to such parent entity.
- The amendment will take effect retrospectively from the 1 April 2017 and will, accordingly apply in relation to the assessment year 2017-18 and subsequent assessment years.

Advance Pricing Agreement (APA)

- Taxpayers that have entered into an APA are required to furnish a modified return to give effect to the transfer pricing agreed in the APA. The existing provisions seem to suggest that the Assessing officer may assess/reassess or re-compute the total income that may arise on account of a modified return that the taxpayer would file.
- In view of the above language of the law, the taxpayers feared that the tax authority may do a re-assessment beyond the terms agreed in an APA.
- The Finance Bill 2019 proposes to eliminate any possibility of assessment/reassessment or re-computation of the total income that may arise on account of a modified return that the taxpayer would file. The budget has proposed to direct assessing officers to only modify the total income in accordance with the APA and limited their scope of any further assessment/reassessment/re-computation that is not in accordance with the APA.
- While this amendment is effective from 1 September 2019, this would provide additional confidence to taxpayers in the APA program and ease the compliance burden for taxpayers on account of the effect of signing an APA.

Key Indirect Tax Proposals

Union Budget 2019

Goods and Services Tax

(Effective on the enactment of the Finance (No. 2) Bill, 2019)

- States allowed to prescribe an increased threshold exemption limit for suppliers engaged in the exclusive supply of goods from INR 2 million to INR 4 million.
- Alternative composition scheme of 6% tax for suppliers of services or mixed suppliers having an annual turnover of up to INR 5 million in the preceding year, subject to compliance with certain prescribed conditions.
- Interest in case of a delayed payment of tax to be payable only on the net cash liability except under Section 73 and Section 74.
- Facility to transfer amount from one head of electronic cash ledger to another head will be available on the GSTN portal.
- National Appellate Authority for Advance Ruling constituted to hear appeals against conflicting advance rulings pronounced by Appellate Authorities of two or more states.
- Introduction of penalty equivalent to 10% of profiteered amount under the anti-profiteering measures.

Dispute Resolution Scheme

A special 'Sabka Vishwas Legacy Dispute Resolution Scheme' for resolution and settlement of legacy cases of Central Excise and Service Tax has been introduced (effective from the date to be notified by the government). Key features of the scheme:

Reason of disputed tax	Up to INR 5 million	More than INR 5 million
Tax dispute at Show Cause Notice (SCN) stage or appellate stage	Waiver of 70% dues	Waiver of 50% dues
Only late fee and/or penalty disputed	100% waiver of dues	100% waiver of dues

Reason of disputed tax	Up to INR 5 million	More than INR 5 million
Tax arrears declared as payable in returns	Waiver of 60% dues	Waiver of 40% of dues
Tax dues are related to inquiry, investigation, and audit against the assessee	Waiver of 70% dues	Waiver of 50% dues
Voluntary disclosure of tax dues	100% waiver of interest and penalty (No waiver of tax amount)	100% waiver of interest and penalty (No waiver of tax amount)

- Relief under the above scheme is not applicable for:
 - a. An assessee who has filed an appeal before the appellate forum, however, the final hearing has been done on or before 30 June 2019;
 - b. An assessee who has been convicted for an offense punishable under any Indirect Tax enactment;
 - c. An assessee who has been issued an SCN, but the final hearing has been done on or before 30 June 2019;
 - d. An assessee who has been issued an SCN for an erroneous refund;
 - e. An assessee who has been subjected to an inquiry, investigation or audit and where the amount of duty involved is not quantified till 30 June 2019;
 - f. An assessee who has filed an application before settlement commission;
 - g. Persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.
 - In the calculation of final tax to be paid according to the above table, the pre-deposit paid at any stage of appeal would be subtracted.
 - No dues under this scheme to be paid through input tax credit.
 - Dues paid under this scheme not available as input tax credit under any indirect tax law.

Customs Law

Changes in Customs duty (effective from 6 July 2019)

- Downward revision in rate/exemption granted:

Sector	Illustrative list of goods	Old rate	Revised rate
Electric vehicles	E-drive assembly, on-board charger, etc. of electric vehicles	Applicable rates	Nil
Electronics	Capital goods for manufacturing PCBA, lithium-ion cell, etc.	Applicable rates	Nil
Health	Raw material, parts or accessories for the manufacture of artificial kidneys, disposable sterilized dialyzer and micro-barrier of artificial kidney	Applicable rates	Nil
Defense	Specified Defense equipment and their parts imported by the Ministry of Defense or the Armed Forces	Applicable rates	Nil

- Upward revision in rate/withdrawal of exemption:

Sector	Illustrative list of goods	Old rate	Revised rate
Construction materials	Base metal fittings, mountings, and similar articles	10%	15%
Textile	Wool fiber, wool top	5%	2.5%
Electronics	Air-conditioner, CCTV cameras, etc.	10%/15%	20%
Automobile parts	Glass mirrors, intake air-filters for internal combustion engines, etc.	10%/7.5%	15%
Precious metals	Gold, silver, etc.	10%	12.5%
Petroleum	Petroleum crude	Nil	INR 1 per ton

- Option for oil rigs - On disposal of unserviceable and mutilated goods used for petroleum operations which were imported without payment of Customs duty.
 - Previously, Basic Customs Duty was payable at an applicable rate on the depreciated value of such goods.
 - Now, an **option to pay Basic Customs Duty at 7.5%** on the transaction value of disposal of such goods has been introduced.
- Additional duty of Customs on petrol and high-speed diesel oil increased from INR 8 per litre to INR 9 per liter.

Other Customs Amendments

(Effective on the enactment of the Finance (No. 2) Bill, 2019)

- Extension of powers of Customs Officers empowering them to arrest a person outside India or outside Indian Customs waters who has committed specified offenses.
- Fraudulently availing or attempting to avail drawback or any exemption, or obtaining scrip, license, etc. under the Foreign Trade Policy [where duty exceeds INR 5 million] to be a cognizable and non-bailable offense.
- Maximum amount of general penalty increased from INR 0.1 million to INR 0.4 million.

Legacy Law Amendments

- Introduction of Basic Excise Duty on petroleum crude of INR 1 per ton (effective from 6 June 2019).
- Additional duty of excise on petrol and diesel increased from INR 8 per liter to INR 10 per liter (effective from 6 June 2019).
- Upfront consideration of long term lease of thirty years or more for development of infrastructure for financial business exempted from service tax [period from 1 October 2013 to 30 June 2017] (effective on enactment of the Finance (No. 2) Bill, 2019).

**For more information on this publication,
please contact our specialists**



Neeraj Sharma
Senior Executive Director
Direct Tax and Regulatory
E: neeraj.sharma@skpgroup.com



Maulik Doshi
Senior Executive Director
Transfer Pricing and
Transaction Advisory Services
E: maulik.doshi@skpgroup.com



Jigar Doshi
Executive Director
Indirect Tax
E: jigar.doshi@skpgroup.com

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Our cross-functional teams serve a wide range of industries, with a specific focus on healthcare, food processing, and banking and financial services. Over the last decade, SKP has built and leveraged capabilities across key global markets to provide transnational support to numerous clients.

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Our team provides you with solutions for tomorrow; we help you think next.

Contact Us

India - Mumbai

Urmi Axis, 7th Floor
Famous Studio Lane, Dr. E. Moses Road
Mahalaxmi, Mumbai 400 011
India
T: +91 22 6730 9000
E: IndiaSales@skpgroup.com

UAE - Dubai

Emirates Financial Towers
503-C South Tower, DIFC
PO Box 507260, Dubai
UAE
T: +971 4 2866677
E: UAESales@skpgroup.com

USA - Chicago

2917 Oak Brook Hills Road
Oak Brook, IL 60523
USA
T: +1 630 818 1830
E: NorthAmericaSales@skpgroup.com

www.skpgroup.com

 [linkedin.com/company/skp-group](https://www.linkedin.com/company/skp-group)

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