

BUDGET 2018 HIGHLIGHTS – DIRECT TAXES

TAX RATES

No change in tax rates and basic exemption limit

Tax rates continue to be same for A.Y. 2019-20 as applicable for A.Y. 2018-19. Further, there is no change in the basic exemption limit.

Health and Education Cess

“Education Cess on income-tax” @2% and “Secondary and Higher Education Cess on income-tax” @1% is levied.

Proposed amendment: A new cess named “Health and Education Cess is proposed to be levied @ 4% of income-tax including surcharge, if applicable, in place of existing cess of “Education Cess and “Secondary and Higher Education Cess on income-tax”.

PERSONAL TAXATION

Relief to Salaried employees

At present an employee is entitled for exemption of Rs. 19,200 (Rs. 38,400 for physically handicapped or blind or deaf and dumb employees) towards transport allowance and exemption of Rs. 15,000 in respect of reimbursement of medical expenses. No Standard deduction is allowed.

Proposed amendment: A standard deduction of maximum of Rs. 40,000 is proposed to be allowed to salaried employees in lieu of present exemption in respect of transport allowance and reimbursement of medical expenses. **The net benefit is only Rs. 5,800 which would be further reduced due to increase in cess by 1%.** However, benefit of enhanced transport allowance to differently able persons shall be allowed.

Deduction in respect of interest income to senior citizen

A deduction upto Rs 10,000 is allowed under section 80TTA to an assessee in respect of interest income from savings account.

Proposed amendment: A new section 80TTB proposed to be inserted to enhance **such deduction to Rs. 50,000** from the existing limit of Rs. 10,000 for senior citizens. Moreover, the benefit of such deduction is proposed to extended to interest on fixed deposits and recurring deposits.

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

Section 80D, inter-alia, provides that a deduction upto Rs 30,000 to an assessee, being an individual or a Hindu undivided family, in respect of payments towards annual premium on health insurance policy, or preventive health check-up, of a senior citizen, or medical expenditure in respect of very senior citizen.

Proposed amendment: Section 80D proposed to be amended to increase such limit of deduction from Rs. 30,000 to Rs. 50,000 for resident senior citizens, who is of the age of 60 years or more during the previous year.

Senior citizens not covered by insurance can claim reimbursement of medical expenditure upto Rs. 50,000. Earlier this benefit was available only for very senior citizens.

Further, in case of single premium health insurance policies to effect or to keep in force an insurance on the health for more than a year, it is proposed that the deduction shall be allowed on proportionate basis for the number of years for which health insurance cover is provided, subject to the specified monetary limit.

Enhanced deduction to senior citizens for medical treatment of specified diseases

Section 80DDB, *inter-alia*, provide that a deduction shall be available to an individual and Hindu undivided family in respect of an amount paid for medical treatment of specified diseases upto Rs 80,000 in case of very senior citizen and upto Rs 60,000 in case of senior citizens.

Proposed amendment: It is proposed to **increase such deduction upto Rs. 1,00,000 for both senior citizens and very senior citizens** in place of existing deduction upto Rs 80,000 and Rs. 60,000 in respect of very senior citizen and senior citizens, respectively.

Extending the benefit of exemption of withdrawal from NPS to non-employee subscribers

The existing provisions of the clause (12A) of section 10 of the Act provides an exemption of 40% of the total amount payable to an employee contributing to the NPS on closure of his account or on his opting out. This exemption is not available to non-employee subscribers.

Proposed amendment: It is proposed to amend this section to extend the benefit of such **exemption to all assessees. However, benefit of exemption under clause (12B) for partial withdrawal continues to be restricted to employees alone.**

CAPITAL GAINS TAXATION

Taxability of Long-term Capital Gains on sale of listed equity shares etc.

Long term capital gains(LTCG) arising from transfer of long term capital assets, being equity shares of a company or an unit of equity oriented fund or an unit of business trusts, is exempt by virtue of section 10(38), provided sale and acquisition transactions carried out on a recognized stock exchange and are liable to securities transaction tax (STT).

Proposed Amendment: In order to minimize economic distortions and curb erosion of tax base, section 10(38) proposed to be withdrawn. For taxing LTCG in excess of Rs. 1 lakh @10%, a new section 112A proposed to be inserted with effect from A.Y. 2018-19.

All LTCG up to 31st January, 2018 will be grandfathered by way of providing that the **cost of acquisitions** in respect of the long term capital asset acquired by the assessee before the 1st day of February, 2018 , shall be deemed to be the higher of –

a) the actual cost of acquisition of such asset; and

b) the lower of –

(I) the fair market value of such asset on 31.1.2018 ; and

(II) the full value of consideration received or accruing as a result of the transfer of the capital asset.

Such capital gains would neither be eligible for benefit of Chapter VI-A deductions nor rebate u/s 87A.

Short-term Capital Gains under section 111A

Short-term capital gains taxable under section 111A would continue to be taxable @15%.

Conversion of stock-in-trade into Capital Asset

Section 45 of the Act, *inter alia*, provides that capital gains arising from a conversion of capital asset into stock-in-trade shall be chargeable to tax. However, in cases where the stock in trade is converted into, or treated as, capital asset, the existing law does not provide for its taxability.

Proposed Amendment: Section 28 proposed to be amended to tax the profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset as business income. The full value of the consideration received or accruing as a result of such conversion would be fair market value of the inventory on the date of conversion determined in the prescribed manner.

Further, for determining capital gain on transfer of such capital asset, the fair market value on the date of conversion shall be the cost of acquisition. The period of holding would be reckoned from the date of conversion or treatment.

It may be noted that business income would be taxable in the year of conversion and there is no provision for postponement of taxability of income to the year in which the transfer took place.

Transfer of immovable property

At present, while taxing income from capital gains (section 50C), business profits (section 43CA) and other sources (section 56) arising out of transactions in immovable property, the sale consideration or stamp duty value, whichever is higher is adopted. The difference is taxed as income both in the hands of the purchaser and the seller.

Proposed Amendment: Section 50C, 43CA & 56 proposed to be amended to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is **not more than 5%** of the sale consideration.

Deduction under section 54EC

Deduction under section 54EC is available in respect of capital gain, arising from the transfer of a long-term capital asset, invested in the long-term specified asset at any time within a period of six months after the date of such transfer. Long-term specified asset means any bond, redeemable after three years and issued on or after the 1st day of April, 2007 by the National Highways Authority of India (NHAI) or by the Rural Electrification Corporation Limited (RECL); or any other bond notified by the Central Government.

Proposed Amendment: Section 54EC proposed to restrict the exemption in respect of capital gain arising from the transfer of **a long-term capital asset, being land or building or both only and not other capital assets**. Further, the period for redemption of long-term specified asset, being a bond increased from **three years to five years**.

INCOME COMPUTATION DISCLOSURE STANDARDS (ICDSs)

The central government has notified ten ICDSs effective from A.Y. 2017-18. These are applicable to all assesses (other than an individual or a Hindu undivided family who are not subject to tax audit under section 44AB of the said Act) for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

Proposed Amendment: The Delhi High Court in case of *Chamber of Tax Consultants & Anr Vs. Union Of India & Ors* has held that certain provisions of ICDSs are *ultra vires* the Income-tax Act, 1961. In order to bring

certainly, the following amendments are proposed to be effected with retrospective effect from A.Y. 2017-18, in the Income-tax Act in line with the ICDSs:

Section No. Proposed to be amended/inserted	Proposed Amendment
36 & 40A	ICDS I: Accounting Policies ICDS I provides that marked to market losses would not be allowed unless the same is in accordance with any other ICDS. Therefore, only Marked to market losses specifically permitted under any other ICDS would be allowable as deduction under section 36. Other marked to market losses would not be allowed as per section 40A.
43AA	ICDS VI: Effects of changes in Foreign exchange rates Any gain or loss arising on account of effects of changes in foreign exchange rates in respect of specified foreign currency transactions shall be treated as income or loss.
43CB	ICDS III: Construction Contract Profits arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method as per ICDS III except for certain service contracts. Contract revenue shall include retention money, and contract cost shall not be reduced by incidental interest, dividend and capital gains.
145A	ICDS II : Valuation of Inventory Valuation of inventory shall be made at lower of actual cost or net realizable value computed as per ICDS II: Valuation of Inventories. However, inventories being securities not listed on a recognised stock exchange with regularity from time to time, has to be valued at actual cost initially recognised . Other securities held as inventory would be valued at lower of actual cost or net realisable value.

BUSINESS TAXATION

Incentives to micro and SMEs

Domestic companies whose turnover was less than Rs. 50 crore in financial year 2015-16 was liable to pay corporate tax @25% in FY 2017-18.

Proposed amendment: The benefit of concessional rate of corporate tax@25% is proposed to be extended to domestic companies whose total turnover or gross receipt in the previous year 2016-17 does not exceed Rs. 250 crores.

Charitable Trusts: To go digital for claiming exemption

Last year, the post demonetisation Union Budget witnessed changes in tax laws denying benefit of deductions from business income in respect of expenditure for which cash payment exceeds Rs.10,000 . However, such changes were not incorporated in the special taxation regime applicable to charitable trusts. Hence, charitable trusts were availing benefits even in respect of application of income by way of cash payments.

Proposed amendment: This year, the restrictive provisions are proposed to be made applicable to charitable trusts governed by the special taxation regime under section 10(23C) and 11 and 12. Furthermore, non-deduction of tax at source would now attract disallowance in the hands of the charitable trust also. This is a positive measure for bringing charitable trusts into the digital net.

Deduction in respect of employment of new employees

A deduction of 30% is allowed in addition to normal deduction of 100% in respect of emoluments paid to eligible new employees who have been employed for a minimum period of 240 days during the year under section 80JJAA.

However, the minimum period of employment is relaxed to 150 days in the case of apparel industry.

Proposed amendment: Section 80JJAA proposed to be amended to **extend this relaxation to footwear and leather industry**. Further, the deduction of 30% would also be available for a new employee who is employed for less than the minimum period during the first year but continues to remain employed for the minimum period in subsequent year. **Such deduction would be available from the subsequent year.**

Deduction in respect of income of Farm Producer Companies

Section 80P provides for 100 percent deduction in respect of profit of cooperative society which provide assistance to its members engaged in primary agricultural activities.

Proposed amendment: This benefit proposed to be extended to Farm Producer Companies (FPC), having a total turnover upto Rs 100 crore, whose gross total income includes any income from-

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

The benefit shall be available for a period of five years from the financial year 2018-19.

Dividend Distribution tax on deemed dividend

Dividend distributed by a domestic company is subject to dividend distribution tax payable by such company. However, deemed dividend under section of 2(22)(e) is taxed in the hands of the recipient and no dividend distribution tax is currently being levied.

Proposed amendment: It is proposed to tax deemed dividend referred under section 2(22)(e) in the hands of company. Dividend distribution tax @30% without grossing up is proposed to be levied on the company.

Expanding scope of accumulated profits for deeming dividend

Accumulated profits for deeming dividend has been provided in section 2(22) as all profits of the company upto the date of distribution or payment or liquidation, subject to certain conditions.

Proposed amendment: The scope of accumulated profits for deeming dividend would include, in a case of amalgamated company, the accumulated profits of the amalgamating company also, whether capitalised or not, on the date of amalgamation.

RETURN OF INCOME AND ASSESSMENT PROCEDURE

Mandatory filing of return to claim deduction under the heading C in Chapter VIA

Section 80AC provides that no deduction would be admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, unless the return of income by the assessee is furnished on or before the due date specified under sub-section (1) of section 139 of the Act.

Proposed amendment: It is proposed to extend the scope of section 80AC to provide that the benefit of deduction under the heading “C.—Deductions in respect of certain incomes” in Chapter VIA **shall not be allowed unless the return of income is filed by the due date. It will now include its scope section 80P, 80PA, 80QQB and 80RRB.**

Entities to apply for Permanent Account Number in certain cases

Section 139A, *inter-alia*, provides that every person specified therein and who has not been allotted a permanent account number shall apply to the Assessing Officer for allotment of a Permanent Account Number (PAN).

Proposed amendment: Section 139A proposed to be amended to provide that non-individual entities, which enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more in a financial year shall be required to apply to the Assessing Officer for allotment of PAN. Further, the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities would also apply to the Assessing Officer for allotment of PAN.

Prosecution for failure to furnish return

Section 276CC provides that if a person willfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine. However, a person shall not be proceeded against under the said section for failure to furnish return if the tax payable by him on the total income determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed Rs. 3,000.

Proposed amendment: It is proposed to exclude company from such exemption of prosecution. **Therefore, companies would be liable for prosecution for failure to furnish return even if there is no tax liability.**

Rationalisation of *prima-facie* adjustments during processing of return of income

Section 143(1) provides for processing of return of income made under section 139, or in response to a notice under section 142(1). At the time of processing of return, the total income or loss shall be computed after making the adjustment, *inter alia*, **in respect of addition of income appearing in Form 26AS or Form 16A or Form 16** which has not been included in computing the total income in the return.

Proposed amendment: It is proposed to restrict the scope of adjustments in processing of return by providing that **aforesaid adjustment shall not be made** in respect of any return furnished on or after the assessment year commencing on the first day of April, 2018.

E-Assessments: A tax-payer friendly measure

The budget proposal to notify an electronic mode for assessment across the country will significantly reduce harassment of tax payers by the tax authorities and usher in greater efficiency and transparency in the assessment procedure.

Union Budget 2018-19

Proposed Amendments in International Tax- Synopsis

1.	Taxation of long-term capital gains in the case of Foreign Institutional Investor[Section 115AD]
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Consequent to the proposal for withdrawal of exemption under section 10(38) of the Act, the FIIs will be liable to tax on long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of equity oriented fund or a unit of business trusts only in respect of amount of such **gains exceeding one lakh rupees**.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

2.	Aligning the scope of “business connection” with modified PE Rule as per Multilateral Instrument (MLI) [Section 9(1)(i)]
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a. Amendment to Explanation 2 to section 9(1)(i)

“Business connection” shall include any business activities carried through a person who, acting on behalf of the non-resident,

- habitually concludes contracts or
- **habitually plays the principal role leading to conclusion of contracts by the non-resident and**
- the contracts are
 - i. in the name of the non-resident; or
 - ii. for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use; or
 - iii. for the provision of services by that non-resident.

This amendment is to give effect to BEPS Action Plan 7, which suggests that an agent would include not only a person who habitually concludes contracts on behalf of the non-resident, but also a person who habitually plays a principal role leading to the conclusion of contracts.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

b. Insertion of Explanation 2A to section 9(1)(i)

“Business connection” to include “Significant Economic presence”.

Significant Economic presence shall mean *(mutually exclusive definition)*

- any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India **if**

the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or

- systematic and continuous soliciting of its business activities or engaging in interaction **with such number of users as may be prescribed**, in India through digital means.

The threshold of “revenue” and the “users” in India will be decided after consultation with the stakeholders.

Further, it is proposed as under:

- only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.
- the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

It is also clarified that unless corresponding modifications to PE rules are made in the DTAA's, the cross border business profits will continue to be taxed as per the existing treaty rules.

The above amendment is in accordance with OECD’s BEPS Action Plan 1, as per which, a non-resident enterprise would create a taxable presence in a country if it has significance economic presence in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years

3.	Rationalisation of provisions relating to Country-by-Country Report[Section 286]
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- The time allowed for furnishing the Country-by-Country Report (CbCR), in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, is proposed to be extended to twelve months from the end of reporting accounting year(*For FY 2017-18 the time limit shall be March 31, 2019*)
- In case its parent entity outside India has no obligation to file the report in its country or territory then constituent entity resident in India, shall also furnish CbCR within the aforesaid due date i.e. twelve months from the end of reporting accounting year

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

4.	Measures to promote International Financial Services Centre (IFSC)[Section 47]
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- Transactions in the following assets, by a non-resident on a recognized stock exchange located in any IFSC shall not be regarded as transfer, if the consideration is paid or payable in foreign currency:—
 - ✓ bond or Global Depository Receipt, as referred to in section 115AC(1); or
 - ✓ rupee denominated bond of an Indian company; or
 - ✓ derivative
- It is further proposed to amend the section 115JC so as to provide that in case of a unit located in an IFSC, the alternate minimum tax under section 115JC shall be charged at the rate of 9% (earlier it was 18.5%).

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

5.	Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement or arrangement[Section 10(48B)]
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- The benefit of exemption is presently not available on any income accruing or arising to a foreign company on account of sale out of the leftover stock of crude in case of termination of the said agreement or the arrangement.
- It is now proposed to amend Section 10(48B) to provide that the benefit of tax exemption in respect of income from left over stock will be available even if the agreement or the arrangement is terminated in accordance with the terms mentioned therein.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

6.	Royalty and FTS payment by NTRO to a non-resident to be tax-exempt[Section 10]
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- Section 195 requires a person to deduct tax at the time of payment or credit to a non-resident.
- Given the business exigencies of the National Technical Research Organisation (NTRO), it is proposed to amend section 10 so as to provide that the income arising to non-resident, not being a company, or a foreign company, by way of royalty from, or fees for technical services rendered in or outside India to, the NTRO will be exempt from income tax.
- Consequently, NTRO will not be required to deduct tax at source on such payments.

This amendment will apply in relation to the assessment year 2018-19 and subsequent assessment years.

7.	Clarification regarding non applicability of section 115JB [Section 115JB]
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An explanation is proposed to be incorporated in the Section 115JB to clarify that the provisions of section 115JB shall not be applicable and shall be deemed never to have been applicable to an assessee being a foreign company, if its total income comprises solely of profits and gains from business referred to in section 44B or section 44BB or section 44BBB and such income has been offered to tax at the rates specified in the said sections.

This amendment will apply retrospectively from 1st April, 2001 ie in relation to the assessment year 2001-02 and subsequent assessment years.

Highlights of Union Budget 2018-19 relating to Indirect Taxes

CUSTOMS

Amendments to be effective from 2nd February, 2018

- A social welfare surcharge at 10% of the aggregate customs duties has been levied on imported goods in place of existing 3% education cesses. However, this surcharge will not be leviable on integrated tax and GST compensation cess on imported goods.
- In order to provide impetus to domestic industry and giving boost to “*make in India*” campaign, Customs duty rate has been increased in certain sectors, like food processing, electronics, auto components, footwear and furniture. It would also encourage starting of some high tech products to be manufactured in India.

Amendments to be effective from the date on which Finance Bill, 2018 receives the assent of the President

- Central Board of Excise and Customs is to be renamed as “Central Board of Indirect Taxes and Customs”.
- Section 1 proposed to be amended so as to expand the scope of the Customs Act to any offence or contravention committed thereunder outside India by any person.
- Section 2 proposed to be amended so as to substitute the definition of assessment in sub-section (2); to extend the limit of 'Indian Customs Waters' into the sea from the existing 'Contiguous zone of India' to the 'Exclusive Economic Zone (EEZ)' of India, incorporate the definition of notification. Considering that 'levy' now stands attracted at 200 nautical miles, this is a very significant amendment. But the assessment of duty continues to be on the 'date' specified in section 15.
- Section 17 relating to assessment of duty to be amended so as to:
 - Expand the scope of verification beyond self-assessment to all the entries made under section 46 or section 50.
 - insert a new sub-section (2A) to provide legal backing for the risk-based selection of self-assessed Bill of Entry or Shipping Bill through appropriate selection criteria;
 - extend the scope of re-assessment by omitting specific reference to

valuation, classification and exemption or concessions of duty availed consequent to any notification issued therefor under this Act from sub-section (5);

- omit sub-section (6) providing for audit of assessment of duty, in view of the new dedicated Chapter for Audit;
- Section 18 dealing with provisional assessment of duty is proposed to be amended so as cover export consignments under provisional assessment of duty by amending sub-section (1). For the first time, exporters are also allowed facility of provisional assessment.
- Further, a new sub-section (1A) also to be inserted to empower the Board to issue regulation for providing time-limit for the importer/exporter to submit the documents and information, for finalization of provisional assessments and for the proper officer to finalize the provisional assessment. Failure to submit documentation to finalize provisional assessments can prove disadvantageous to assessee;
- Reference to import manifest and export manifest, wherever they occur in the Customs Act, to include Arrival Manifest and Departure Manifest respectively.
- A new section 25A to be introduced in the Customs Act to empower the Central Government to exempt goods imported for repair, further processing or manufacture ['Inward Processing of Goods'] from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions. Similarly, outward processing of goods also proposed to be exempted vide a new section 25B. While the goods imported (and exported) will be exempt from customs duties, the consideration for such repair or processing activity will be liable to GST as the Place of Supply will continue to the 'in India' and not qualify as export under section 13(3)(a).
ICAI has made representations to set this anomaly right by including these activities in the proviso in IGST Act.

- Section 28 dealing with recovery of duty to be amended so as to:
 - provide pre-notice consultation in cases not involving collusion, willful mis-statement, suppression etc. before issue of demand notice. The manner of pre-notice consultation shall be provided in the regulations. Such consultations are welcome as they could reduce litigation since the option of payment of reduced penalty before issue of SCN has not seen much success;
 - provide for issuance of supplementary show cause notice in circumstances and in such manner as may be prescribed within the existing time period. It

would be interesting to see the 'circumstances' when supplementary SCN would be issued, which is not the same as 'statement of demand' that has been followed in other laws for coverage of subsequent period but on identical issue;

- provide for extension of time to pass orders on a SCN issued and where no orders are passed even after such extension, the SCN itself will abate. The benefit of such provision is that orders will forcibly be passed. Keeping SCN in abeyance (also called 'on call book') is not accommodated in cases where the same issue is pending before an appellate authority.
- Section 30 pertaining to delivery of import manifest or import report to be amended so as to include export goods in addition to imported goods as part of the information provided in the manifest, provide for prescribing the manner of delivery of manifest through regulations.
- Section 41 pertaining to delivery of export manifest or export report also to be amended so as to include imported goods in addition to export goods as part of the information provided in the manifest, provide penalty provisions for late filing of manifest upto maximum limit of Rs. 50,000 and provide for prescribing the manner of delivery of manifest through regulations.
- Section 46 relating to entry of goods on importation to be amended to clarify the time limit for the prior presentation of bill of entry, by substituting the words, 'within thirty days of' with the words, 'at any time not exceeding thirty days prior to' in sub-section (3). Further, a new sub-section (4A) to be inserted so as to provide for observance of the accuracy, authenticity, validity of the declarations made by the importer under this section and compliance to the prohibitions or restrictions under this act or any other law for the time being in force.
- Section 47 relating to clearance of goods for home consumption to be amended so as to have a provision for clearance of goods by Customs Automated System in addition to existing clearance by the proper officer.
- **Amendments in provisions of Advance Ruling**
 - (i) Section 28E is proposed to be amended so as make the following changes-
 - The definition of 'activity' to be omitted as it is no longer relevant;
 - The existing definition of advance ruling to be substituted with the following definition: -
 - "advance ruling" means a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation

- or exportation;
 - definition of 'appellate authority' to be included- Appellate Authority" means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961. This is welcome where rulings of AAR need not be carried to High Court;
 - the definition of 'applicant' to be substituted in order to make it broad based by providing that "applicant" means any person, —
 - holding a valid Importer-exporter Code Number granted under section 7 of the Foreign Trade (Development and Regulation) Act, 1992; or
 - exporting any goods to India; or
 - with a justifiable cause to the satisfaction of the Authority, who makes an application for advance ruling under section 28H;';
 - the definition of 'authority' proposed to be substituted to mean the Customs Authority for Advance Ruling as referred to in section 28EA;
 - In the definition of "chairperson" and "member", the term "authority" to be substituted with "Appellate Authority".
- (ii) A new section 28EA relating to 'Customs Authority for Advance Rulings' proposed to be inserted, which empower the Board to appoint officers of the rank of Principal Commissioner of Customs or Commissioner of Customs as Customs Authority for Advance Rulings by way of notification. Till such appointment by the Board, existing Authority shall continue to pronounce Advance Rulings.
- (iii) Section 28F proposed to be amended so as to substitute the word "Authority" with the words "Appellate Authority" and to provide that on appointment of Customs Authority for Advance Rulings, the applications and proceedings pending before the erstwhile Authority shall stand transferred to Customs Authority for Advance Rulings.
- (iv) Section 28H relating to application for advance ruling is proposed to be amended so as to amend sub-section 2(d) thereof to include the word "tax" in addition to "duty" mentioned therein. Further, it is proposed to enable Central Government to notify any other matter on which advance ruling can be sought by an applicant.
- A new sub-section (5) to be inserted to provide that an applicant may be represented by a duly authorized person who is resident in India. The definition of resident shall be same as provided in clause (42) of section 2 of Income Tax Act, 1961.
- (v) Section 28-I (6) to be amended so as to reduce the time from 6 months to 3 months within which the authority shall pronounce its advance ruling.

(vi) Section 28K to be amended so as to-

- a. omit the expression 'after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section' in sub-section (1);
- b. insert a proviso to sub-section (1) stating that the period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded from the time period of two years and five years respectively specified in section 28.

(vii) A new section 28KA relating to Appeal provisions in respect of Advance Ruling to be inserted with effect from a date to be notified providing that-

- Any officer authorised by the Board, by notification, or the applicant may file an appeal to the Appellate Authority against any ruling or order passed by the Authority, within 60 days from the date of the communication of such ruling or order, in the prescribed form and manner.
- Also, where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period so specified, it may allow a further period of 30 days for filing such appeal.
- The provisions of section 28-I and 28J shall, *mutatis mutandis*, apply to the appeal proceedings'.
- Section 50 stipulates the provisions regarding filing of Bill of Entry/Shipping Bill for exportation. Sub-section (1) and proviso thereof are proposed to be amended to insert a reference to Customs Automated System, i.e. the Bill of Entry/Shipping Bill which is required to be presented electronically are to be presented electronically on Customs Automated System.

A new sub-section (2A) is inserted in section 50 so as to provide for observance of the accuracy, authenticity, validity of the declarations made in the Bill of Export/Shipping Bill by the exporter and compliance to the prohibitions or restrictions under the Customs Act, 1962 or any other law for the time being in force.
- Section 51 to be amended to provide that order for clearance of goods for exportation may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.
- A new Chapter VIIA on 'Payments through Electronic Cash Ledger' is proposed to be inserted. The provisions are contained in newly inserted section 51A. It

provides for advance deposit which would enable payment of duties, taxes, fee, interest, and penalty through electronic cash ledger. This is a welcome measure that will avoid delays in payment of duty or amounts being transferred to CHA towards payment of duty. With this ECL, money can be transferred in advance and appropriated in respect of each demand;

- Section 54 contains provisions pertaining to transshipment of certain goods without payment of duty. It is proposed to be amended so as to empower the Board to make Regulations provide manner of presenting a bill of transshipment and declaration for transshipment.
- Sections 60, 68 and 69 are to proposed be amended to provide that order for clearance of goods from customs station for the purpose of deposit in a warehouse, order for clearance of warehoused goods for home consumption and order for clearance of warehoused goods for export may be made electronically through the customs automated system in addition to existing mechanism of clearance by the proper officer.
- The scope of sections 83 and 84 has been widened to include reference to goods imported or exported by courier through the authorized courier. The extant provisions in the sections relate to goods imported or exported by post only.
- A new Chapter XIIA containing the provisions relating to 'Audit' is proposed to be inserted. The provisions are contained in newly inserted section 99A. It seeks to empower the proper officer to carry out the audit of assessment of imported goods or export goods or of an auditee under Customs Act, 1956 either in his office or in the premises of the auditee in such manner as may be prescribed. This is remarkable new reach that the Customs authorities are availing themselves for the first time. It will be realized later if this provision opens new areas of concern due to roving inquiries under the guise of 'audit' will commence in Customs also;
- The proper officer is proposed to be empowered to undertake controlled delivery through the newly inserted section 109A. It seeks to authorize the proper officer or any other officer authorized by him to undertake controlled delivery of any consignment of goods to any destination in India or a foreign country. The consignment of goods for which controlled delivery is applicable and the manner of the same is to be prescribed in the Regulations by the Board.

- Section 110(2) stipulates that a show cause notice is to be issued to the person from whom the goods are seized within six months of the seizure of the goods. Second proviso is proposed to be inserted to said sub-section to provide that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.
- Section 122 to be amended so as to substitute the extant clauses (b) and (c) to empower the Board to fix monetary limits for adjudication of cases by officers below the rank of Joint Commissioner by way of notification.
- Second proviso to be inserted to section 124 to provide for issuance of supplementary show cause notice under such circumstances and in such manner as may be prescribed through regulations.
- Section 125 to be amended to provide that where the demand proceedings against a noticee / co-noticees have been closed on grounds of having paid the dues mentioned in section 28, then the provisions of section 125 shall not be applicable if the goods are not prohibited or restricted.
Further, sub-section (3) is proposed to be inserted to provide that option to pay redemption fine would become void if redemption fine is not paid within a period of 120 days from the date of option given, except in cases where any appeal against such order is pending.
- Section 128A proposed to be amended to allow Commissioner (Appeals) to remand back the matters to original adjudicating authority in specified categories of cases. This is a reversal of amendment made in 2001 when 'power of remand' was withdrawn so as to compel authority to reach a clear finding. And since then, in spite of this restriction, by recording a finding on facts or law, appellate authority was remanding the matter for computation or verification;
- Board is proposed to be empowered to prescribe trade facilitation measures or separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods for:
 - ✓ Maintenance of transparency in import and export documentation and procedure; or
 - ✓ expeditious clearance or release of goods entered for import or export; or

- ✓ reduction in the transaction cost of clearance of importing or exporting goods; or
 - ✓ maintenance of balance between customs control and facilitation of legitimate trade vide new section 143AA proposed to be inserted.
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- A new section 151B proposed to be inserted providing for reciprocal arrangement for exchange of information facilitating trade.
 - Section 153 stipulates provisions pertaining to service of order, decision, etc. It is to be substituted so as to align it with the provisions of the section 169 of the CGST Act, 2017 to include speed post, courier, and registered email as valid modes of delivery and in case of non-service by such means, to also provide for affixing it at some conspicuous place at the last known place of business or residence in addition to affixing it on the notice board of the Customs House etc.
 - Section 157 to be amended so as to empower the Board to make regulations relating to manner to deliver or present, a bill of entry, shipping bill, bill of export, import manifest, import report, export manifest, export report, bill of transshipment, declaration for transshipment, boat note and bill of coastal goods; time and manner of finalization of provisional assessment; manner of conducting pre-notice consultation; circumstances under which, and the manner of issuing supplementary notice; form and manner in which an application for advance ruling or appeal shall be made, and the procedure for the authority; manner of clearance or removal of imported or export goods; documents to be furnished in relation to imported goods; conditions, restrictions and the manner for deposits in electronic cash ledgers, the utilization and refund therefrom and the manner of maintaining such ledger; manner of conducting audit; goods for controlled delivery and the manner thereof; measures and the simplified or different procedures or documentation for a class of importers or exporters or categories of goods or on the basis of the modes of transport of goods.

Amendments proposed in the Customs Tariff Act, 1975

New sub-sections (8A) and (10A) are proposed to be inserted to provide the method to compute the value of imported article for the purpose of calculating the integrated tax and GST compensation cess in case where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act. This amendment is

remarkable considering that section 15 prescribed that the 'date for determination of value' is the date of filing ex-bond bill of entry under section 68 which has been followed for decades. It must be appreciated that goods stored in a bonded warehouse have not yet 'crossed the point' where customs duties are liable for assessment. Further, in prescribing the valuation, an expression 'transaction value' is used which is neither in alignment with section 14 of Customs Act or section 15 of CGST Act (made applicable to IGST).