



# 2018 UNION BUDGET

K R GIRISH & ASSOCIATES

# Union Budget 2018

## Analysis of the budget proposal

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## 1. Foreword

This budget clearly has the underpinning on the forth coming central elections in 2019 and is quite evident from the path chosen by the Finance Minister expect large allocation to rural economy rural infrastructure, healthcare and education.

On the tax side post the GST implementation there was high expectation given the bold US tax reform of the Trump's administration. Sri Modi and his team has played it very conservative and instead of any bold moves have instead tinkered with some minor relaxations.

Some relief to salaried class by way of re-introduction of standard deduction, a move which should appeal the salaried class, however, here again there has been some tinkering by removing certain tax free allowances .

To counter the argument that stock market gains are going tax free, LTCG has been introduced at 10 percent, per se not a retrograde step but seems a move to get build the perception rather a clear strategy as STT continues to be levied.

The slippage in fiscal deficit to 3-5 percent cannot be considered that alarming for a country which has been recording the highest GDP growth rate and this has been affirmed by Moodys . A few bold moves could be taken given the buoyancy in the economy but it seems political compulsions have been the reason the Finance Minister had taken the middle path so as to please all and as mentioned at some quarters it is a Bharat budget!

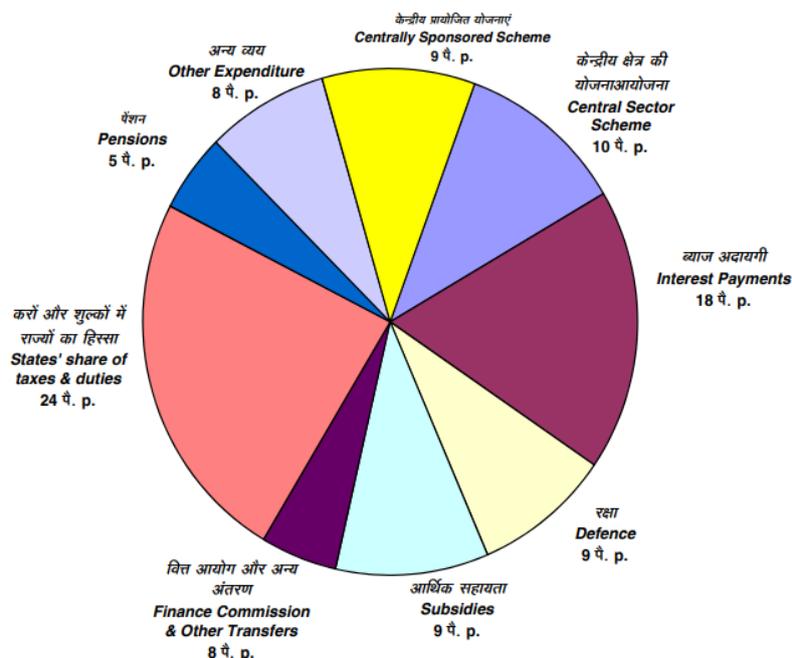
Again a case of missed opportunity where it was possible to take some bold measures to spur growth and employment.

**K R Girish**

## 2. Economic analysis

The idea of the ruling Government is to build a strong, confident and a New India. The last few years definitely saw some radical economic reforms which have contributed to ease of doing business, increase of tax base and greater digitization. The honorable Finance Minister stressed on their mission to achieve “Minimum Government and Maximum Governance” for India. Also India stands out among the fastest growing economies of the world

The Budget 2018-19 reflects the Government’s firm commitment to substantially boost investment in Agriculture, Social Sector, Digital Payments, Infrastructure and Employment Generation on one hand and simultaneously stick to a delayed but a committed path to fiscal consolidation by keeping the fiscal deficit at 3.3 percent of GDP for the financial year 2018-19. The total outlay for the Budget presented by the Honorable Finance Minister is 24.42 lakh crore and the allocation in terms of percentage.



### Important Stats and Facts

- Indian economy has achieved an average growth of 7.5 percent in last three years – one of the fastest-growing economies in the world.
- Indian economy is now a 2.5 trillion-dollar economy – seventh largest in the world.
- GDP growth is at 6.3 percent however the second quarter the IMF signaled to grow at 7.2 percent to 7.5 percent.
- The GDP is pegged at 7.4 percent for the coming year and the FM confirmed that India is firmly on course to achieve a high growth of 8 percent plus
- Manufacturing sector is back on good growth path. The services sector resumed high growth rates of 8 percent plus.
- Exports are expected to grow at 15 percent in 2017-18.
- India for the first time enters World Bank’s ‘Ease of Doing Business’- breaking into top 100

- The growth of direct taxes in financial year 2016-17 was 12.6 percent, and for financial year 2017-18 (upto 15th January, 2018) is 18.7 percent.
- The Finance Minister also said that there has been a huge increase in the number of returns filed by tax payers.
- The number of Effective Tax Payers has increased from 6.47 crore at the beginning of Financial year 2014-15 to 8.27 crore at the end of 2016-17.
- The Direct Benefit Transfer system of India is a success story that is reiterated across the world:

### **Investment, Expenditure and Policy Initiatives:**

#### **Agriculture and Rural Economy**

- This year's particularly focus on agriculture and emphasis has been laid on generating higher income and productive employment for the farmers.
- A Minimum Support Price for agricultural products has been introduced at 1.5 times the cost of produce for Kharif crops
- Government will ensure farmers get MSP if prices fall; Niti Aayog will discuss with State Governments for mechanism to ensure farmers get better prices.
- Govt has promoted organic farmers in a big way; women self-help groups to be encouraged to take up organic farming.
- Food Processing sector is growing at an average rate of 8% per annum.
- The state government to purchase surplus solar power produced by local farmers at suitable prices.
- A sum of Rs 500 crore for 'Operation Green' on the lines of 'Operation Flood' "Operation Greens" shall promote Farmer Producers Organizations (FPOs), agri-logistics, processing facilities and professional management
- India's agri-exports potential is as high as US \$ 100 billion against current exports of US \$ 30 billion. To realize this potential, export of agri-commodities will be liberalized and set testing facilities in all the forty two Mega Food Parks.
- Institutional credit for agriculture sector raised to ` 11 lakh crore for the year 2018-19.
- A special scheme to address air pollution in the Delhi-NCR region and has proposed subsidised machinery for in-situ management of crop residue in Punjab, Haryana, Uttar Pradesh and NCT Delhi.
- Ujjwala scheme to provide free LPG connections proposed to increase the target of providing free connection to 8 crore poor women.
- Under Prime Minister Awas Yojana more than one crore houses will be constructed in rural areas and in urban areas the assistance has been sanctioned to construct 37 lakh houses.

#### **Health, Education and Social Protection**

- Govt's health scheme to cover 10 crore poor families providing coverage upto 5 lakh rupees per family per year. It is world's largest government-funded health protection scheme.
- 24 new Govt medical colleges and hospitals to be set up by upgrading existing district hospitals
- Pradhan Mantri Jeevan Jyoti Bima Yojana to reach all poor households.

- The address quality of education Right to Education Act to enable more than 13 lakh untrained teachers to get trained by an integrated B.Ed. programme
- Move gradually from “black board” to “digital board” to upgrade the skills of teachers through the recently launched digital portal “DIKSHA”
- Scheduled Tribe populated areas will have an Ekalavya Model Residential School which will be on par with Navodaya Vidyalayas.
- To tackle brain drain a scheme to identify bright students pursuing B Tech in premiere engineering institutes, and providing them higher-education opportunities in the IITs and IISc. These students will receive handsome fellowships, and will be required to dedicate a few hours to teach in higher education institutions weekly
- Launch a major initiative named “Revitalising Infrastructure and Systems in Education (RISE) by 2022” with a total investment of `1,00,000 crore in next four years
- Set up two new full-fledged Schools of Planning and Architecture
- Specialised railway university to be set up at Vadodara.
- With the vision of an inclusive society Govt identifies 115 "aspirational districts" to make them model districts of development.
- Government increased total earmarked allocation for Scheduled Castes (SCs) and Scheduled Tribes (STs)

#### **Medium, Small and Micro Enterprises (MSMEs) and Employment**

- Rs. 3,794 crore to MSME last year for mass formalisation.
- Govt will soon announce measures to address non-performing assets of MSMEs.
- Tax burden on MSME - the income tax reduced to 25% for small companies with annual turnover of up to Rs250 crore.
- Rs. 3 lakh crore for lending under Mudra to be allocated in FY 18- 19
- Creation of job opportunities has been at the core of policy making
- Contribution of 8.33% or 12% to EPF for new employees for three years by the Government depending on the sector
- 70 lakh formal jobs will be created this year
- Government will contribute 12% of the wages of the new employees in the EPF for all the sectors
- Enable higher take-home wages for women reduced employees' contribution to 8% for first three years of their employment with no change in employers' contribution and the paid maternity leave for women revised to 26 months.

#### **Infrastructure and Financial Sector Development**

Emphasising that infrastructure is the growth driver of economy, the Finance Minister estimated that investment in excess of Rs.50 lakh crore is needed to increase growth of GDP and connect the nation with a network of roads, airports, railways, ports and inland waterways. He announced increase of budgetary allocation on infrastructure for 2018-19 to Rs.5.97 lakh crore

#### **❖ Aviation infrastructure development**

- Airport capacity to be expanded to accommodate 1 billion flights a year.

- Regional connectivity scheme of UDAN (Ude Desh ka Aam Nagrik) initiated by the government last year shall connect 56 unserved airports and 31 unserved helipads across the country.
- Revival of 50 airports and viability gap funding for improving aviation infrastructure in the north-east states under the flagship regional connectivity scheme.
- The domestic air passenger traffic grew at 18 per cent per annum and Indian airlines companies placed orders for more than 900 aircraft.

❖ **Railway infrastructure**

- A capital expenditure of Rs 1.48 crore allocated for the railways. This includes redevelopment of 600 major railway stations and setting up of escalators and CCTVs and Wi-Fi facilities.
- 4,000 km of new railway track will be laid down by 2019.

❖ **Telecom infrastructure**

- The Govt proposed to set up 5 lakh WiFi hotspots and also allocated Rs 10,000 crore for this under telecom infrastructure.
- The Department of Telecom will support establishment of an indigenous 5G Test Bed at IIT, Chennai

❖ **Others**

- Under Smart Cities Mission 99 Cities have been selected with an outlay of `2.04 lakh crore
- To preserve and revitalize soul of the heritage cities in India, National Heritage City Development and Augmentation Yojana (HRIDAY) has been taken up in a major way
- The government also announced a programme to focus on water supply to all households in 500 cities.
- In order to boom the tourism industry the minister added that 10 tourist destinations to attract more people to the country.
- Number of Fastags has gone up from about 60,000 in December, 2016 to more than 10 lakh now to allow seamless road travel

❖ **Finance**

- To encourage raising funds from bond market, the Finance Minister urged regulators to move from 'AA' to 'A' rating for investment eligibility.
- The Government will establish a unified authority for regulating all financial services in International Finance Service Centre (IFSCs) in India.

❖ **Digital Economy**

- The Finance Minister said that NITI Aayog will initiate a national program to direct efforts in artificial intelligence.
- Department of Science & Technology will launch a Mission on Cyber Physical Systems to support establishment of centres of excellence for research, training and skilling in robotics,

artificial intelligence, digital manufacturing, big data analysis, quantum communication and internet of things.

- The Budget doubled the allocation on Digital India programme to Rs 3073 crore in 2018-19.
- The Government does not consider crypto-currencies legal tender or coin and will take all measures to eliminate use of these crypto-assets in financing illegitimate activities or as part of the payment system.
- The Government will explore use of block chain technology proactively for ushering in digital economy.

### **Building Institutions and Improving Public Service Delivery**

#### ❖ **Defence infrastructure**

- In order to boost domestic defence production, government aims at bringing out new industry-friendly policy and has opened the sector under FDI.
- It is proposed to develop two defence industrial production corridors.

#### ❖ **Disinvestment**

- The Government has approved listing of 14 CPSEs(Central Public Sector Enterprise), including two insurance companies, on the stock exchanges. The Government has also initiated the process of strategic disinvestment in 24 CPSEs. This includes strategic privatization of Air India.
- A disinvestment target of Rs.80,000 crore for 2018-19.
- Three Public Sector Insurance companies- National Insurance Co. Ltd., United India Assurance Co. Ltd., and Oriental India insurance Co. Ltd., will be merged into a single insurance entity.

#### ❖ **Others**

- The Government will evolve a Scheme to assign every individual enterprise in India a unique ID under ADAAR
- National Housing Bank Act is being amended to transfer its equity from the Reserve Bank of India to the Government.
- Indian Post Offices Act, Provident Fund Act and National Saving Certificate Act are being amalgamated and certain additional people friendly measures are being introduced.
- To provide the Reserve Bank of India an instrument to manage excess liquidity, Reserve Bank of India Act is being amended to institutionalize an Uncollateralized Deposit Facility.
- Securities and Exchange Board of India, Act 1992, Securities Contracts (Regulation) Act 1956, and Depositories Act 1996, are being amended to streamline adjudication procedures and to provide for penalties for certain infractions.
- The Budget proposes to revise emoluments of the President, the Vice President and Governor. These emoluments were last revised in 2006. Also the MP's emoluments would be revised every five years.
- A comprehensive Gold Policy will be formulated to develop gold as an asset class and establishment of regulated gold exchanges in the country.

- Gold Monetization Scheme will be revamped to enable people to open a hassle-free Gold Deposit Account.
- Allocation of Rs 150 crore for commemoration of 150th birth anniversary of Mahatma Gandhi.

**Allocation of important Ministries (In Cr)<sup>1</sup>**

<b>Name of the Ministry/Department</b>	<b>BE 2017-18</b>	<b>BE 2018-19</b>
Rural Development	<b>107,758</b>	<b>112,750</b>
Health & Family Welfare	<b>48,853</b>	<b>52,800</b>
Social Justice and empowerment	<b>7,763</b>	<b>8,820</b>
Women and Child Development	<b>22,095</b>	<b>24,700</b>
Minority Affairs	<b>4,195</b>	<b>4,700</b>
Water Resources, River Development & Ganga Rejuvenation	<b>6,887</b>	<b>18,761</b>
Agriculture, Cooperation & Farmers Welfare	<b>51,026</b>	<b>42,211</b>
Drinking Water & Sanitation	<b>20,011</b>	<b>37,343</b>
Micro, Small & Medium Enterprises	<b>6,408</b>	<b>2,908</b>
Skill Development & Entrepreneurship	<b>3,016</b>	<b>1,171</b>

The above allocation table indicates that there has only been a marginal increase in most of the ministries from the budgeted estimates of FY 2017-18

<sup>1</sup> Source: Budget document 17-18 & 18-19

### 3. Direct tax

#### 3.1. Capital Gains

##### **New regime for taxation of long-term capital gains on sale of equity shares etc.**

- A new section 112A is introduced to provide that long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10 percent of such capital gains exceeding one lakh rupees, thereby withdrawing the exemption granted to such long term capital assets under section 10(38) of the Act. However, all gains up to January 31, 2018 will be exempt.
- This concessional rate of 10 percent will be applicable to such long term capital gains, if—
  - i) in a case where long term capital asset is in the nature of an equity share in a company , securities transaction tax (“STT”) has been paid on both acquisition and transfer of such capital asset; and
  - ii) in a case where long term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, STT has been paid on transfer of such capital asset.
- The requirement of payment of STT at the time of transfer of long term capital asset, being a unit of equity oriented fund or a unit of business trust, shall not apply if the transfer is undertaken on recognized stock exchange located in any International Financial Services Centre (“IFSC”) and the consideration of such transfer is received or receivable in foreign currency.
- The new provisions of section 112A also provide that long term capital gains will be computed without giving effect to 1<sup>st</sup> and 2<sup>nd</sup> provisos to section 48 and the benefit of computation of capital gains in foreign currency in case of a non-resident.
- Further, the new section also provides for the meaning of cost of acquisition, equity oriented fund and fair market value.
- The above changes are also applicable in case of Foreign Institutional Investor.
- These amendments will take effect from April 1, 2019.

##### **Measures to promote International Financial Services Centre (IFSC)**

- In order to promote the development of world class financial infrastructure in India, it is proposed to amend the section 47 of the Act so as to provide that transactions in the following assets being bond or Global Depository Receipt, rupee denominated bond of an Indian company or derivative, 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.

- 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 percent instead of 18.50 percent.

#### **Rationalisation of provision relating to 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. Accordingly, to provide similar treatment it is proposed that section 28 of the Act shall be amended to provide that any profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as business income.
- It is also proposed to provide that the fair market value of the inventory on the date of conversion or treatment determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment.
- It is proposed that the fair market value on the date of conversion shall be the cost of acquisition and the period of holding of such capital asset shall be reckoned from the date of conversion or treatment [Section 2(42A)].
- This amendment will take effect, from April 1, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

#### **Capital assets transfer from Holding to subsidiary and vice-versa to be tax neutral**

- Section 47 provides for certain tax neutral transfers. Section 56 also excludes income arising out of certain tax neutral transfers from its ambit. However, the transfers in relation to the capital assets by an Indian holding company to and Indian subsidiary or vice-versa have not been excluded from the scope of section 56.
- Accordingly, the same is now included within the scope of exclusions under section 56 of the Act.
- This amendment will take effect from 1st April, 2018.

#### **The exemption under section 54EC restricted to only on transfer of land or building**

- Section 54EC of the Act provides that 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, shall not be charged to tax subject to certain conditions specified in the said section.
- The above exemption provided under section 54EC is now restricted to capital gains arising on transfer of only land or building or both.

- This amendment will take effect, from April 1, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

### **3.2. Corporate tax**

#### **Lower rate of 25 percent**

- Proposal to extend reduced rate of 25 percent currently available for companies with turnover of less than 50 crore, to companies reporting turnover up to Rs 250 crore in Financial Year 2016-17, to benefit micro, small and medium enterprises.
- “Education Cess and Secondary and Higher Education Cess” has been discontinued and a new cess, by the name of “Health and Education Cess” shall be levied at the rate of four percent of income tax including surcharge wherever applicable.

#### **Application of Dividend Distribution Tax to Deemed Dividend**

- It is proposed to delete the Explanation occurring after section 115Q of the Act so as to bring deemed dividends under section 2(22)(e) (*for transactions undertaken on or after April 1, 2018*) also under the scope of dividend distribution tax under section 115-O.
- Further, such deemed dividend is proposed to be taxed at the rate of 30 percent (without grossing up) in order to prevent camouflaging dividend in various ways such as loans and advances.

#### **Widening of scope of Accumulated profits for the purposes of Dividend under Section 2**

- In order to curb abusive arrangements via the amalgamation route to escape liability of paying tax on distributed profits, it is proposed to insert a new Explanation 2A in section 2(22) of the Act to widen the scope of the term ‘accumulated profits’ so as to provide that in the case of an amalgamated company, accumulated profits whether capitalized or not, as on the date of amalgamation also, will also be included
- This amendment will take effect from 1st April, 2018 and will accordingly apply in relation to assessment year 2018-19 and subsequent assessment years.

#### **Dividend distribution tax on dividend payouts to unit holders in an equity oriented fund**

- In the wake of new capital gains tax regime for unit holders of equity oriented funds, it is proposed to amend the section 115R to introduce a dividend distribution tax on equity-oriented mutual funds at the rate of 10 percent. This amendment will take effect from April 1, 2018.

**Incentive for employment generation**

- Deduction of 30 percent on emoluments paid to new employees under Section 80-JJAA to be relaxed to 150 days for apparel, footwear and leather industry, to create more employment.
- It is also proposed to rationalize this deduction of 30 percent by allowing the benefit 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.
- This amendment will take effect from April 1, 2019.

**Taxability of compensation in connection to business or employment**

- Section 28 of the Act is amended to provide that any compensation received or receivable, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to 'business' shall be taxable as business income.
- It is further proposed that any compensation received or receivable, whether in the nature of revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to 'employment' shall be taxable under section 56 of the Act.

**Deduction in respect of income of Farm Producer Companies**

- 100 percent deduction proposed to companies registered as Farmer Producer Companies with an annual turnover up to Rs100 crore on profit derived from such activities, for five years from 2018-19.

**Measures to promote start-ups**

- In order to improve the effectiveness of the scheme for promoting start-ups in India, it is proposed to make following changes in the taxation regime for the start-ups with effect from April 1, 2018:—
  - (i) The benefit would also be available to start ups incorporated on or after the 1st day of April 2019 but before the 1st day of April, 2021;
  - (ii) The requirement of the turnover not exceeding Rs 25 Crore would apply to seven previous years commencing from the date of incorporation;
  - (iii) The definition of eligible business has been expanded to provide that the benefit would be available if it is engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation

**Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement or arrangement**

- Given the strategic nature of the project benefitting India to augment its strategic petroleum reserves, it is 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.

**Relief from liability of Minimum Alternate Tax (“MAT”) – Companies seeking insolvency resolution**

- if a company’s application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority, such company can reduce the aggregate amount of unabsorbed depreciation and loss brought forward (excluding unabsorbed depreciation) from the book profit.
- This amendment will take effect, from April 1, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

**Clarification on applicability of MAT – Foreign companies**

- A clarificatory amendment is proposed in section 115JB of the Act to provide that the provisions of section 115JB of the Act 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 following business and such income has been offered to tax at the rates specified in the said sections:
  - Profits and gains of shipping business in the case of non-residents (Section 44B)
  - Profits and gains in connection with the business of exploration, etc., of mineral oils (Section 44BB)
  - Profits and gains of the business of operation of aircraft in the case of non-residents (Section 44BBA)
  - Profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects (Section 44BBB)
- This is effective from April 1, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent assessment years.

**Benefit of carry forward and set off of losses - Companies seeking insolvency resolution**

- Section 79 of Act provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51 percent of the voting power, on the last day of the year or years in which the loss was incurred. However, the same cannot be maintained in case of a company seeking

insolvency resolution under Insolvency and Bankruptcy Code, 2016, which involves change in the beneficial owners of shares beyond the permissible limit under section 79.

- In order to extend the benefit of section 79 of the Act, it is proposed to relax the rigors of section 79 in case of such companies, whose resolution plan has been approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
- This amendment will take effect, from April 1, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

#### **Rationalisation of provision of section 115BA relating to certain domestic companies**

- It is clarified that the concessional rate of 25 percent provided to domestic companies under Section 115BA of the Act is only in relation to the business of manufacture or production of any article or thing and research in relation thereto, or distribution of such article or thing manufactured or produced by it. Tax on other class of incomes like capital gains and other sources which are subject to a scheduler tax at a rate which is lower or higher than 25 percent shall be as applicable.
- This amendment will take effect retrospectively, from April 1, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

#### **Rationalisation of provision of section 115BBE of the Act**

- Section 115BBE(2) of the Act provides that no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision of the Act in computing his income referred to in subsection 1(a). A similar provision was not there for the income referred to in subsection 1(b).
- Accordingly, the same has been now proposed to be introduced. This amendment will take effect retrospectively, from April 1, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

### **3.3. International Taxation**

#### **Aligning the scope of “business connection” with modified PE Rule as per Multilateral Instrument (“MLI”)**

- It is proposed to amend the provision of section 9 of the Act so as to align them with the provisions in the DTAA as modified by MLI so as to make the provisions in the Double Tax Treaty effective.
- Accordingly, section 9(1)(i) is being proposed to be amended to provide that “business connection” shall also 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 . It is further proposed that the contracts should be-

- (iv) in the name of the non-resident; or
  - (v) 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
  - (vi) for the provision of services by that non-resident.
- Further, Explanation 2A is introduced to provide that 'significant economic presence' in India shall also constitute 'business connection'. Further, "significant economic presence" for this purpose, shall mean-
    - (vii) 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
    - (viii) 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.
  - It is further proposed to provide that only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India and 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.
  - This amendment will take effect from April 1, 2019.

#### **Royalty and FTS payment by NTRO to a non-resident to be tax-exempt**

- 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 and NTRO will not be required to deduct tax at source on such payments, with effect from April 1, 2018.

#### **Aligning of provisions relating to Country-by-Country Report with model legislation of BEPS**

- Certain clarificatory amendments are proposed in Section 286 of the Act to improve the effectiveness and reduce the compliance burden.
- Such proposed amendment include extending the time limit allowed for filing the report to 12 months from the end of reporting year, obligation of constituent entity to file the report in case the parent entity is not under an obligation to file such report, reporting accounting year is defined to mean accounting year in respect of which the financial and operational results are required to be reflected in the report

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

### **3.4. TDS/TCS provisions**

#### **Tax deduction at source and manner of payment in respect of certain exempt entities**

- In order to have audit trail of the expenses incurred by trusts, charitable, educational, hospital or other such institutions, payments exceeding Rs 10,000 in cash made by such entities shall be disallowed and the same shall be subject to tax, in accordance with section 40A(3) and (3A) of the Act.
- Further, in order to improve TDS compliance by these entities, in case of non-deduction of tax, 30 percent of the amount shall be disallowed and the same shall be taxed in accordance with section 40(a)(ia) of the Act.

#### **Non-deduction of tax in case of senior citizens**

- It is proposed to amend section 194A so as to raise the threshold for deduction of tax at source on interest income for senior citizens from Rs 10,000 to Rs 50,000.

#### **Tax deduction at source on 7.75% GOI Savings (Taxable) Bonds, 2018**

- Government of India introduced 8% Savings (Taxable) Bonds, 2003 in 2003. Government has now decided to discontinue the existing 8% Savings (Taxable) Bonds, 2003 with a new 7.75% GOI Savings (Taxable) Bonds, 2018. The interest received under the new bonds will continue to be taxed as in the case of the earlier one. However, no TDS will be deducted if the amount of interest is less than or equal to ten thousand rupees during the financial year.

### **3.5. Compliance related changes**

#### **Verification of return in case of resolution process**

- It is proposed to amend section 140 of the Act so as to provide that during the resolution process under the Insolvency and Bankruptcy Code, 2016, the return shall be verified by an insolvency professional appointed by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.

#### **Entities to apply for Permanent Account Number in certain cases**

- Non-individual entities, which enter into a financial transaction of an amount aggregating Rs 250,000 or more in a financial year shall be required to apply to the Assessing Officer for allotment of PAN.

- Further, in order to link the financial transactions with the natural persons, it is also proposed that 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 non-individual entities shall also apply to the Assessing Officer for allotment of PAN.
- This amendment will take effect from 1st April, 2018.

#### **New scheme for scrutiny assessment**

- It is proposed to prescribe a new scheme, by introducing a new section 143(3A), 143(3B) and 143(3C), for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources, and introduction of team-based assessment.
- Section 143(1)(a)(iv) provides for adjustment 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. It is proposed to provide that no adjustments shall be made under section 143(1)(a)(vi) of the Act while processing the return filed for the assessment year 2018-19 and subsequent assessment years.

#### **Rationalisation of section 276CC relating to prosecution for failure to furnish return**

- The sub-clause (b) of clause (ii) of proviso to the section 276CC provides that a person shall not be proceeded against under the said section for failure to furnish return for any assessment year, 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 three thousand rupees.
- In order to prevent abuse of the said proviso by shell companies or by companies holding Benami properties, it is proposed to amend the provisions of the said sub-clause so as to provide that the said sub-clause shall not apply in respect of a company.

#### **Furnishing of return within the due date to claim certain deductions**

- It is proposed to mandate that in order to avail benefit of any deduction under Chapter VIA-C, the persons have to file return within due date specified under section 139(1) of the Act.
- This amendment will take effect, from April 1, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

### **3.6. Administration related changes**

#### **Amendments to the structure of Authority for Advance Rulings**

- In view of the proposed amendment in the Customs Act creating a new custom Authority for Advance Ruling, it is proposed to provide that the Authority for Advance Ruling constituted

under the Income-tax Act shall act as an Appellate Authority in respect of the rulings given by the customs Authority for Advance Ruling. It is also proposed to provide that when the authority is dealing with an application relating to Income-tax Act, the revenue member shall be from income-tax.

**Appeal against penalty imposed by Commissioner (Appeals) under section 271J**

- Section 253 of the Act inter-alia provides that any assessee aggrieved by any of the orders mentioned in sub-section (1) of the said section may appeal to the Appellate Tribunal against such order. It is proposed to amend clause (a) of the said sub-section so as to also make an order passed by a Commissioner (Appeals) under section 271J appealable before the Appellate Tribunal.

**Accordinging approval to specified income of class of body, authority, Board, Trust or Commission in certain cases**

- Clause 46 of section 10 of the Act empowers the Central Government to exempt, by notification, specified income arising to a body or authority or Board or Trust or Commission. Currently, the Central Government is required to notify each case separately even if they belong to the same class of cases. Consequently, the whole process of approval is considerably delayed. Accordingly, it is proposed to amend the said clause so as to enable the Central Government to also exempt, by notification, a class of such body or authority or Board or Trust or Commission.

**Rationalisation of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**

- It is proposed to amend the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 to rationalise the designations of authorities competent to grant approval for penalty and prosecution.

**3.7. Individuals & HUF**

**Personal Income tax**

- No change in the structure of the income tax rates for individuals.
- “Education Cess and Secondary and Higher Education Cess” has been discontinued and a new cess, by the name of “Health and Education Cess” shall be levied at the rate of four per cent of income tax including surcharge wherever applicable.

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

- The limit of deduction under section 80D for senior citizens has been proposed to be hiked from Rs 30,000 to Rs 50,000 with effect from April 1, 2019.
- In case of single premium health insurance policies having cover of more than one 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**

- It is proposed to amend the provisions of section 80DDB of the Act so as to raise this monetary limit of deduction to Rs 1,00,000 for both senior citizens and very senior citizens, with regard to amount paid for medical treatment of specified diseases, with effect from April 1, 2019.

**Deduction in respect of interest income to senior citizen**

- It is proposed to allow a deduction on the interest income on bank and post office deposits for senior citizens upto Rs 50,000 (this is for all FDs and RDs) under new section 80TTB of the Act, with effect from April 1, 2018.

**Standard deduction on salary income**

- It is proposed to provide a standard deduction of Rs 40,000 from salary income to employees on withdrawing the exemption allowed earlier in respect of transport allowance and reimbursement of medical expenses, with effect from April 1, 2019.

**3.8. Miscellaneous**

**Presumptive income under section 44AE in case of goods carriage**

- It is proposed to amend the section 44AE of the Act to provide that, in the case of heavy goods vehicle (more than 12MT gross vehicle weight), the income would deemed to be an amount equal to one thousand rupees per ton of gross vehicle weight or unladen weight, as the case may be, per month or part of a month for each goods vehicle or the amount claimed to be actually earned by the assessee, whichever is higher.

**Rationalisation of the provisions relating to Commodity Transaction Tax**

- It is proposed to provide that trading in agricultural commodity derivatives on a recognized stock exchange shall not be treated as a speculative transaction even if no Commodity Transaction Tax ("CTT") has been paid in respect of those derivative transactions.

- It is proposed to amend Finance Act, 2013 to rationalise levy of CTT on options in commodity futures. The CTT on devolvement of a commodity option, converting option to futures position has been kept at 0.0001% and not 0.125% prevalent on options that are exercised.
- This amendment will take effect, from April 1, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

#### **Rationalization of section 43CA, section 50C and section 56**

- 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.
- In this regard, it is proposed 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 five percent of the sale consideration.
- This amendment will take effect, from April 1, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

#### **Amendments in relation to notified Income Computation and Disclosure Standards**

- Income Computation and Disclosure Standards(ICDS) being given statutory backing in view of decision of Delhi High Court decision. The following are some of the glaring amendments proposed in the Finance Bill, 2018 which would solemnize the provisions contained in ICDS:

- **Marked to market losses:** ICDS – I provides for not allowing marked to market loss or expected loss while computing income under the head "profits and gains of business or profession" unless such loss is recognized in accordance with the provisions of any other ICDSs.

The Finance Bill proposes to insert section 36(1)(xviii) to provide that any marked to market loss or other expected loss as computed in accordance with the income computation and disclosure standards notified under section 145(2) of the Act shall be allowed.

Further, section 40A(13), which is proposed to be inserted by the Finance Bill, provides that no deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss, except as allowable under section 36(1)(xviii).

- **Foreign currency gains or losses:** ICDS –VI provides for giving effect to the changes in foreign exchange rates on the closing date and recognize the loss or gain irrespective of whether such change is on the loan taken for capital purposes.

The Finance Bill proposes to insert section 43AA which provides that any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss.

- **Construction contracts:** ICDS – III deals with taxation of construction contracts and provides for taxing the retention money which is contrary to judicial decisions.

The Finance Bill proposes to recognize whatever is contained in ICDS-III as valid by inserting section 43CB which says that the profits and gains arising from construction contract or a contract for providing service is to be determined in accordance with the ICDS notified under section 145(2).

However, section 43CB will not apply to following:

- (a) where the duration of contract is not more than 90 days for which the income shall be determined on the basis of project completion method;
  - (b) involves indeterminate number of acts over a specified period of time and the income has to be determined on the basis of straight line method.
- Valuation of Inventory including Securities to be as per ICDS.
  - Interest on compensation, enhanced compensation. Claim or enhancement claim and subsidy, incentives to be taxed in the year of receipt only as per new Section 145B.

#### 4. Indirect tax

##### 4.1. Service Tax

###### **Retrospective exemptions are provided for the following services**

- Services provided or agreed to be provided by the Naval Group Insurance Fund by way of life insurance to personnel of Coast Guard, under the Group Insurance Schemes of the Central Government, are proposed to be exempted from service tax for the period commencing from the 10th September, 2004 and ending with the 30th June, 2017
- Services provided or agreed to be provided by the Goods and Services Tax Network ("GSTN") to the Central Government or State Governments or Union territories administration, are proposed to be exempted from service tax for the period commencing from March 28, 2013 and ending with June 30, 2017.
- Consideration paid to the Government in the form of Government's share of profit petroleum in respect of services provided or agreed to be provided by the Government by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, is proposed to be exempted from service tax for the period commencing from 1st April, 2016 and ending with the 30th June, 2017.

##### 4.2. Customs

###### **Amendments in the Customs Act, 1962**

- The name "Central Board of Excise and Customs" has been changed to "Central Board of Indirect Taxes and Customs".
- Sub-section (2) to section 11 of the Customs Act, has been introduced to prohibit or restrict or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder. It shall be executed from the date of notification.
- Introduced "risk based selection" for verifying Self-Assessment.
- New sections 25A has been introduced to empower the Central Government to exempt goods imported for repair, further processing or manufacture from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions.
- Section 25B has been introduced in the Customs Act to empower Central Government to exempt goods re-imported after export for repair, further processing or manufacture from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions.

- Section 28 of the Customs Act has been amended to provide for pre-notice consultation, issue of supplementary show cause notices on receipt of additional information but within present limitation period, time bound Adjudication and deemed closure of cases.
- Section 28H of the Customs Act is being amended so as
  - To include “tax” in addition to “duty”
  - To enable Central Government to notify any other matter on which advance ruling can be sought by an applicant
  - An applicant may be represented by a duly authorized person who is a resident in India.
- Time limit for advance ruling pronouncement reduced from six months to three months.
- Proviso has been inserted to sub section (1) of section 28K of the Act, 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 of the Act.
- Section 30 of the Customs Act amended to include imported goods in addition to export goods as part of the information provided in the manifest.
- As per amended section 51 of the Customs Act, along with clearance of goods by the proper officer, it also requires clearance of goods by Customs Automated System.
- Introduced provisions related to “controlled delivery for certain goods” under section 109A of the Customs Act.
- Section 122 of the Customs Act is being amended to empower the Board to fix monetary limits for adjudication of cases by officers below the rank of Joint Commissioner by way of notification.
- Amended section 125 of the Customs Act provides for closure of cases without imposition of redemption fine in cases of voluntary payment of all dues.
- Commissioner (Appeals) to remand back the matters to original adjudicating authority as per amended section 128A when an order or decision has been passed without following the principles of natural justice or after re-assessment under section 17 of the Customs Act or where an order of refund under section 27 of the Customs Act has been issued crediting the amount to the fund without recording any finding on the evidence produced by the applicant.
- Inserted a new section 143AA to provide for simplified and different procedures as part of Trade Facilitation.
- Introduced a new section 151B for exchange of information with competent authorities of other countries.

### **Payments Through Electronic Cash Ledger**

- Section 51A to have a provision for advance deposit which would enable payment of duties, taxes, fee, interest, and penalty through electronic cash ledger. It is also proposed to issue regulations in this regard.

### **Amendments in Advance Ruling Provisions**

- Section 28E of the Act is being amended to create a new custom authority for advance ruling, it is proposed to provide that the authority for advance ruling constituted under the Income-tax Act shall act as an appellate authority in respect of the rulings given by the customs authority for advance ruling. It is also proposed to provide that when the authority is dealing with an application relating to Income-tax Act, the revenue member shall be from income-tax.

### **Amendments in Customs Tariff Act, 1975**

- Inserted subsections 8A and 10A to provide for valuation of warehoused goods, which are sold to another person before clearance for home consumption or export, for the purposes of Integrated Tax and Goods and Services Tax Compensation Cess.

### **Amendments in the first schedule to the Customs Tariff Act, 1975**

- To protect the interest of domestic industry the following amendments has been done to the rate of duty of the following industry.

<b>Commodity</b>	<b>From</b>	<b>To</b>
Food Processing	30%	50%
Perfumes and toiletry preparations	10%	20%
Automobile parts	7.5%/10%	15%
Jewellery/ Electronics / Hardware	15%	20%
Furniture/ Watches and Clocks/ Toys and Games	10%	20%

- The tariff rate of customs duty for the items specified in First Schedule to the Custom Tariff Act,1975 is being increased from 7.5% to 10%. The effective rate of import duty on such medical devices will, however, remain unchanged.
- The tariff rate of customs duty for Lithium-ion batteries is being increased from 10% to 20%. The effective rate of import duty on Lithium-ion batteries [other than Lithium-ion batteries for cellular mobile phones] will, however, remain unchanged at 10%.

### **Amendments in the second schedule to the Customs Tariff Act, 1975**

- Proposed to insert a new Note to specify Nil rate of duty in respect of all other goods which are not covered under column (2) of the Schedule.

- Introduction of 20% Tariff rate of Export Duty on Electrodes of a kind used for furnaces. The effective rate of Export duty on such electrodes will, however, remain Nil.

#### **4.3. Other Changes**

##### **Amendment in notification No. 50/2017-Customs**

- Notification No. 65/2017-Customs dated 8th July 2017 amending notification No. 50/2017-Customs dated 30th June 2017 is proposed to be given retrospective effect so as to exempt integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 on aircrafts, aircraft engines and other aircraft parts imported under cross-border lease during the period from the 1st July, 2017 to the 7th July, 2017 subject to the payment of Integrated tax leviable under section 5(1) of the IGST Act, 2017 on the said supply.

##### **Introducing Social Welfare Surcharge**

- The Education Cess and Secondary and Higher Education Cess on imported goods has been abolished, and in its place impose a Social Welfare Surcharge, at the rate of 10% of the aggregate duties of Customs, on imported goods, to provide for social welfare schemes of the Government. Goods which were hitherto exempt from Education Cesses on imported goods will, however, be exempt from this Surcharge.

##### **Repeal of Certain Enactments**

- Additional duty of Customs and Excise on Motor Spirit commonly known as Petrol is being abolished by repealing the respective section of the Finance Act, 1999.
- Additional duty of Customs and Excise on High Speed Diesel oil is being abolished by repealing the respective section of the Finance Act, 1999.
- Education Cess on imported goods is being abolished by omitting Chapter VI of the Finance Act (No.2), 2004.
- Secondary and Higher Education Cess on imported goods is being abolished by omitting Chapter VI of the Finance Act, 2007.

##### **Levy of the Road and Infrastructure Cess**

- An Additional duty of customs called as 'Road and Infrastructure Cess' to be levied on motor spirit commonly known as petrol and high speed diesel oil and on domestically produced motor spirit commonly known as petrol and high speed diesel oil for the purpose of financing infrastructure projects.

## About K R Girish & Associates

The Firm offers a wide range of services in the tax and regulatory space to clients in India and around the world.

Mr K R Girish, has a strong track record of designing and implementing practical and extraordinary solutions in several areas of domestic and international tax. Girish has been rated as one of the top tax professionals in the country consistently for the last 4 years by International Tax Review UK.

He has represented clients before tax authorities at various forums. Girish specializes in International Tax Law and had handled various matters on Tax Dispute Resolution.

Girish is also a co-founder of ITRAF, Chaired by Dr. Parthasarathi Shome, an independent and exclusive forum for tax policy research, analysis and support conducting research and analysis on important tax matters including those relevant to India. Information about ITRAF can be accessed on [itraf.org](http://itraf.org).

With a highly regarded and experienced team of professionals, who have deep industry experience across virtually all sectors including Technology, Communications, Real Estate, FMCG, Pharmaceuticals and Financial Services. The firm provides well-thought out strategies and solutions to complex problems in tax and regulatory matters.

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