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# UNION BUDGET HIGHLIGHTS 2019

# MODI 2.0 BATS FOR A 'USD 5 TRILLION' ECONOMY

The Finance Minister ("**FM**") rose to present the first full budget of the Modi Government 2.0, with the weight of expectations on her shoulders. With a lot of forward looking statements, the FM picked up from the interim budget presented in February 2019 before the general elections.

India, as a nation, has set her eyes on becoming a USD 5 trillion economy in the next few years. The FM flagged ten points of the vision for India and announced a slew of policies aimed at achieving the vision and growth of the economy. As recounted by the economic survey, the drivers for this would be: investment, savings and job creation. The FM recognized and accepted the need to spur private investment along with Government investment.

Impact of investments by Foreign Portfolio Investors ("**FPIs**") on the Indian economy and the capital markets is recognized fully. Acknowledging this, the Government proposes to rationalize and streamline Know Your Customer ("**KYC**") requirements to make them investor friendly. The current investment limits for FPIs at 24%, are proposed to be increased to the level of sectoral caps applicable to Foreign Direct Investment ("**FDI**"). Debt securities issued by Real Estate Investment Trusts and Infrastructure Investment Trusts will also be made open for FPI investments. This is expected to provide depth to the capital markets.

Debt resolution at the level of banks as well as Non-Banking Financial Companies ("**NBFCs**") has been in focus over the last couple of years. The FM announced a one-time six months partial credit guarantee to promote further funding of NBFCs by public sector banks for first loss of up to 10%. NBFCs would be further brought under the control of the Reserve Bank of India while the Securities and Exchange Board of India will also continue to regulate this sector.

Improving connectivity for both, public as well as cargo transport, has been in focus over the last few years. The Government plans to improve connectivity between industrial corridors by increasing the reach of roads, railways as well as waterways. The UDAN (i.e. Hindi term for flight) Scheme is expected to bring air travel within the reach of the masses. The Government also proposes to adopt suitable measures for overhauling the airline industry by promoting self-reliance through leveraging engineering activities, repairs and maintenance and leasing. FDI in aviation sector is proposed to be further liberalized.

Over the last few years, India has been moving towards a greener and cleaner environment by promoting energy conservation, increased use of public transport and phasing out of diesel fueled vehicles. A slew of measures have been announced, under the tax laws as well as on the policy front, to promote adoption of electric vehicles.

Rural development, fisheries, agricultural infrastructure, water resource management including rain water harvesting, solid waste management etc., will be provided impetus through various economic initiatives of the Government. Shifting focus to urban India, the FM announced potential opportunities for public-private partnerships in the construction of metro lines and the railways sector. FDI norms are also proposed to be eased in insurance and media sectors while 100% FDI would be permitted in insurance intermediaries.

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With so many proposals requiring the dispensation of hefty funds, it is no surprise that the Government would need higher resource mobilization. While a significantly higher disinvestment program is intended and the Government proposes to borrow through foreign currency bonds - sovereign bonds, some tax mop up measures have also been introduced. A substantial increase in the surcharge rates for individuals in the higher income bracket came as a surprise. A big relief is absence of estate duty.

Some changes are proposed to improve the tax administration such as launching of 'Faceless e-assessment' in a phased manner. To begin with, these would only relate to verification of certain specified transactions or discrepancies. Additionally, the Government plans to make available 'pre-filled tax return' to taxpayers, to make filing of tax returns easier. Although welcome moves, it remains to be seen whether the administrative machinery is equipped with the necessary infrastructure to handle these proposals. Government is determined to reduce cash dealings in the economy, and to achieve this, it proposes to penalize cash payment of business expenses and has introduced some incentives for digital transactions.

Overall, the FM has tried to strike a balance between providing incentives to spur investment and push for further measures to benefit the poor and needy. One hopes for the desired roll out of policies and plans without any surprises to impact their success.

In the following sections, we have highlighted some of the key tax changes proposed in the Finance (No. 2) Bill, 2019 ("**the Bill**").

I hope you will find this useful.

**Cyril Shroff**
Managing Partner
Cyril Amarchand Mangaldas
July 6, 2019

1. **Tax rates**

   (i) In line with the phased corporate tax reduction, the Bill proposes to extend the benefit of lower corporate income tax rate of 25% to companies having gross receipts of up to INR 4 billion. Currently, this lower rate can only be availed by companies with gross receipts of up to INR 2.5 billion.

   (ii) Surcharge for individuals with total income of INR 20 million to INR 50 million is proposed to be increased to 25% from 15% (effective tax rate increase of 3%) and for individuals with total income exceeding INR 50 million to 37% from 15% (effective tax rate increase of 7%).

The amendments are proposed to be effective from April 1, 2019. There are no proposed changes in the rates of income tax, surcharge, as well as health education cess in other cases.

2. **Shout out to the funds industry**

***Offshore funds made attractive***

To promote offshore funds being managed from India, without creating taxable presence, the Income-tax Act, 1961 ("**IT Act**") contains a beneficial regime, which is available subject to certain eligibility criteria.

The Bill proposes two changes in the eligibility criteria, to make this proposition viable. One of the current conditions is that the corpus of the fund should be at least INR 1 billion at the end of the year in which it is established. The Bill proposes to relax this requirement and provides that the fund may satisfy the corpus requirement by the later of six months from the end of the month in which it is established, or at the end of such Financial Year ("**FY**"). The other condition is relating to the remuneration to the Indian fund manager. The arm's length remuneration determination is proposed to be replaced by an amount of remuneration to be determined in a prescribed manner. Practically, it remains to be seen if these changes are sufficient to address the issues faced by this industry.

These amendments are proposed to be effective retrospectively from April 1, 2018.

***Gains on capital gains for funds***

Presently, the IT Act provides for a concessional tax rate of 15% on short term capital gains arising from *inter alia*, transfer of units of equity oriented funds. The term 'equity oriented funds' is defined to mean a fund which invests over 65% of its total proceeds in domestic companies. The Bill proposes to expand this definition to include a fund, which invests a minimum of 90% of total proceeds in another fund, and such other fund in turn invests 90% of its total proceeds in domestic listed companies.

This amendment is proposed to be effective from April 1, 2019.

***Investments in Alternative Investment Funds: reasons to cheer***

Category I and Category II Alternative Investment Funds ("**AIFs**") are regarded as pass through entities under the IT Act with respect to income other than business income. Therefore, such income would be taxable directly in the hands of the investors. However, the IT Act does not provide the benefit of pass through in respect of the losses incurred by the AIF on the investments. This results in taxation of income which should have been reduced due to set off of losses.

In order to remove the above anomaly, the Bill proposes to amend the IT Act to provide that:

(i) business losses of the fund would be allowed to be carried forward and set off by the fund in accordance with provisions of the IT Act and such losses would not be passed to the investors;

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(ii) losses (other than business losses), accumulated as on March 31, 2019, would be deemed to be the loss of the investor holding the unit as on March 31, 2019. The investor can carry forward and set off such losses for the remaining period of such losses, computed from the year in which such losses first arose;

(iii) losses which are passed through to the investor would not be available to the AIF; and

(iv) losses (other than business losses), would not be passed through to the investor if the same arise in respect of units which have been held for less than 12 months.

These amendments are proposed to be effective from April 1, 2019.

**3. Relief for distressed companies**

***Relief from anti-abuse provisions on transfer of shares of distressed companies***

Currently, the anti-abuse measures require the transferor of unquoted equity shares to be taxed on deemed capital gains on the basis of fair market value ("**FMV**") of such shares, if the sale consideration is less than the FMV determined as per prescribed methodology. Similarly, the recipient of 'property' is taxed on the difference between the acquisition price and the FMV, if such FMV is higher than the acquisition price of such property. The Bill proposes to empower the Central Board of Direct Taxes ("**CBDT**") to prescribe transactions undertaken by certain classes of persons (subject to certain conditions) which would not be subjected to such anti abuse provisions. This has been done with the intention of catering to distressed companies, where determination of FMV under prescribed rules could lead to genuine hardship, where consideration is approved by certain authorities and transferor and purchaser do not have any control over the consideration.

This amendment is proposed to be effective from April 1, 2019.

***Distressed companies allowed to carry forward losses***

Carry forward and set off of tax losses are not permitted if a shareholding of certain specified companies changes by more than 49%. However, the IT Act provides this provision will not apply to companies where such change in shareholding takes place pursuant to a resolution plan under the Insolvency and Bankruptcy Code, 2016, subject to affording a reasonable opportunity of being heard to the tax authorities. The Bill proposes to extend this exemption to certain other distressed companies (as well as their direct and indirect subsidiaries) where:

(i) the National Company Law Tribunal ("**NCLT**") has suspended the board of directors of a company and has appointed new directors, who are nominated by the Central Government, under the provisions of the Companies Act, 2013 and

(ii) a change in shareholding of a company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a FY pursuant to a resolution plan approved by NCLT under the Companies Act, 2013, after affording a reasonable opportunity of being heard to the tax authorities.

Further, it is also proposed that for the purposes of calculating book profit under the Minimum Alternate Tax provisions, the aggregate amount of unabsorbed depreciation and loss (excluding depreciation) brought forward shall also be allowed to be reduced in cases of the above mentioned companies.

This amendment is proposed to be effective from April 1, 2019.

### 4. Strengthening anti-abuse provisions

***NRs beware: No free gifts from Indians***

Under the IT Act, tax is levied on the recipient of money and specified property, when such money or property is received without consideration or a consideration less than FMV, unless received from 'relatives'. Under the IT Act, non-resident ("**NR**") is taxed in India on income that accrues, arises, or is received, in India or is deemed so. In respect of gifts by residents to NRs, it has been claimed that such gifts do not result in income 'accruing or arising' in India and hence are not taxable in India. With the object of removing this anomaly and bringing it in line with the legislative intent, the Bill proposes to amend the IT Act to include that money and property gifts made to NR after July 5, 2019 are income 'deemed to accrue or arise' in India. This is subject to the availability of the existing exemptions and the tax treaty benefits, wherever applicable.

This amendment is proposed to be effective from April 1, 2019.

***PAN card vs. Aadhaar card – the buck stops here***

The Bill proposes to identify specific categories of transactions in relation to which Permanent Account Number ("**PAN**") / Aadhaar number would be mandatorily required to be quoted – these categories would be prescribed by the CBDT. The FM in her speech, hinted at the kind of transactions that may be included, such as

purchase of foreign currency, high amount bank withdrawals, and other high value transactions. However, the proposal also comes with a breath of fresh air – the Aadhaar card will now be interchangeable with PAN card, for the purpose of the IT Act. Therefore, not having a PAN card will no longer pose a deterrent to undertaking financial transactions and making investments, as long as one holds an Aadhaar card.

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

***No more tax arbitrage on buyback for listed companies.***

Currently, buy-back of shares of unlisted companies is subject to buy-back tax levied on the company on the distributed amount. To curb tax advantage availed by listed companies by resorting to buy-back of shares, rather than paying dividends due to lower rate of tax on capital gains compared to DDT, the Bill proposes to expand the scope of buy-back tax to make it applicable to buy-back of shares undertaken on or after July 5, 2019 by a company listed on a recognized stock exchange. Consequently, it is also proposed that amounts distributed by such a company on which the buy-back tax has been paid would be exempt from tax in the hands of the shareholders.

This amendment is proposed to be effective from July 5, 2019. This leaves no room for companies to rush to undertake buy-backs, so

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as to benefit from the erstwhile beneficial taxation regime applicable to buy-back.

***Reaching beyond the IT Act: charitable institutions at risk***

In relation to charitable and religious trusts or institutions, the Bill proposes to empower the income tax authority at the time of registration, to call for documents or information to satisfy himself that the trust or institution would undertake genuine activities, and would comply with requirements under such other laws that may be applicable to it. Under this proposal, special powers are sought to be granted to the authorities to check compliance with other laws, besides merely testing compliance with the IT Act. The Bill also seeks to authorize the tax authorities to cancel the registration at a later point, should they notice that it has been adjudicated with finality that the trust or institution has not complied with other laws applicable to it, in addition to the IT Act.

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

5. **Boost to Start-ups**

***Benefit from losses***

Currently, a closely held company would lose the benefit of set off of brought forward operational losses, if more than 49% of its shareholders change compared to the last day of the year in which the losses were incurred and the last day of the year in which the set off is claimed. An 'eligible' start-up is not permitted to carry forward and set off brought forward losses unless all the shareholders holding voting power as on the last day of the FY in which the loss was incurred continue to be shareholders on the last day of the FY in which the loss is sought to be set off.

To facilitate the ease of doing business for eligible start-ups and recognizing the commercial reality of startup companies, the Bill proposes to provide that an eligible start-up shall be allowed to carry forward and set-off losses if it meets either of the conditions prescribed for carrying forward of losses for closely held companies or the conditions for eligible start-ups.

This amendment is proposed to be effective from April 1, 2019.

**Reinvestment in eligible start-ups**

Roll over benefit in respect of the long term capital gains arising from the transfer of residential property owned by an eligible taxpayer is available if net consideration is reinvested in at least 50% equity shares or 50% voting rights of an eligible company. The Bill proposes to relax this condition of minimum shareholding of 50% of share capital or voting rights to 25%.

This amendment is proposed to be effective from April 1, 2019.

**Extension of 'angel tax' exemption**

Currently, the IT Act provides for an 'angel tax', i.e. tax on excess share premium received by closely held companies. However, premium received by a venture capital undertaking from a venture capital fund or a venture capital company does not attract this tax. Venture capital fund or company for this purpose, inter alia include a Category I AIF.

The Bill proposes to include Category II AIFs within the meaning of venture capital fund or company.

These amendments are proposed to be effective from April 1, 2019.

6. **Making International Financial Services Centres more attractive**

Businesses carried on from an International Financial Services Centre ("**IFSC**") are provided certain tax concessions under the extant law. To bring IFSCs in India at par with those in other

countries, the Bill proposes certain additional benefits discussed below.

**Tax neutral transfer of securities held by Category-III AIFs**

Transfer of capital asset being bonds, global depository receipts, rupee denominated bonds of Indian companies or derivatives by a NR through a recognized stock exchange located in an IFSC is not subject to capital gains tax. The Bill proposes to provide that transfer of such securities held by Category III AIFs would also not be taxable, subject to the following conditions:

(i) the Category III AIF should be located in the IFSC;

(ii) income should be derived solely in convertible foreign exchange; and

(iii) all unit holders are NR.

This amendment is proposed to be effective from April 1, 2019.

**External Commercial Borrowing**

Interest income in respect of monies borrowed in foreign currency is subject to concessional rate of tax. With a view to facilitate the external commercial borrowing by units located in an IFSC, the Bill proposes to exempt from tax, the interest income payable to a NR by a unit located in an IFSC, in respect of monies borrowed by it on or after September 1, 2019.

This amendment is proposed to be effective from April 1, 2019.

**Dividend distribution tax**

A company being a unit located in an IFSC deriving income solely in convertible foreign exchange on or after April 1, 2017 out of its current income is not be liable to dividend distribution tax and these dividends are also be exempt from tax in the hands of the shareholder.

The Bill proposes to extend this exemption to dividends paid out of the accumulated income from operations in the IFSC after April 1, 2017.

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

**Tax on distributed income to unit holders**

Currently, amounts distributed by a specified company or a mutual fund are subject to additional income tax on such distributed income. The Bill proposes to exempt a Mutual Fund located in an IFSC from this additional tax, where income is distributed on or after September 1, 2019.

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

**Tax holiday**

Presently, units in an IFSC can avail of profit linked deductions amounting to 100% of their income for the first five FYs and 50% of income for the next five years. To further incentivize operation of units in IFSCs, the Bill proposes a deduction of the entire amount of profits forany 10 consecutive years out of the initial 15 years beginning with year in which the necessary permission was obtained. Further, a NR or a foreign company is not allowed to claim deduction for expenses on income in the nature of dividends, interest, royalty, and fees for technical services etc. The Bill proposesto clarify that this restriction shall not apply to a company located in an IFSC.

This amendment is proposed to be effective from April 1, 2019.

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Presently, units in an IFSC can avail of profit linked deductions amounting to 100% of their income for the first five FYs and 50% of income for the next five years. To further incentivize operation of units in IFSCs, the Bill proposes a deduction of the entire amount of profits for any 10 consecutive years out of the initial 15 years beginning with year in which the necessary permission was obtained.

Further, a NR or a foreign company is not allowed to claim deduction for expenses on income in the nature of dividends, interest, royalty, and fees for technical services etc. The Bill proposes to clarify that this restriction shall not apply to a company located in an IFSC.

This amendment is proposed to be effective from April 1, 2019.

## 7. Impact on reorganisation

**Tax Neutral Demergers get a reprieve**

Under the IT Act, for a demerger to qualify as 'tax neutral' (i.e. not result in taxation on the transferee or transferor company), the resulting company, i.e. the transferee company, is required to record the acquired assets and liabilities at the value as they appear in the books of the demerged company, i.e. the transferor company. The applicable mandatory Indian Accounting Standard ("**Ind AS**") requires the resulting company to record such assets and liabilities at fair values. This created a conflict between the IT Act and Ind AS. The Bill proposes to rectify this by granting tax neutral status to a demerger as long as the acquired assets and liabilities are recorded by the resulting company in compliance with the applicable Ind AS.

This amendment is proposed to be effective from April 1, 2019.

## 8. Incentives for real estate sector

**Promise of affordable housing**

The Bill has made proposals towards realizing the Government's 'housing for all' dream by 2022. It is proposed to extend the benefits of 100% profits deduction scheme for developers of affordable housing, to projects approved on or after September 1, 2019. Further, the criteria for claiming benefits under this provision is proposed to be modified, including by way of increasing the carpet area cap for each residential unit (in specified metropolitan cities from 30 sq. mt. to 60 sq. mt., and in other regions from 60 sq. mt to 90 sq. mt.). These benefits are available to a developer where the stamp duty value of the residential unit does not exceed INR 4.5 million.

Currently a purchaser of a residential house is given a deduction for interest up to INR 0.05 million on housing loan of up to INR 3.5 million, if the loan were taken prior to March 31, 2017. With the intention to augment the purchasing power for affordable housing and thereby spur the demand for such houses, a new section is proposed to provide deduction for interest of up to INR 0.15 million payable to any financial institution, including NBFCs. This deduction is proposed to be available to an individual not owning any other residential property, the loan being sanctioned between April 1, 2019 and

March 31, 2020, and the stamp duty value of the house property not exceeding INR 4.5 million.

These amendments are proposed to be effective from April 1, 2019.

**No more escape from tax deduction at source by splitting property price**

The Bill clarifies that the 'consideration for immovable property' on which tax is required to be withheld at the time of sale at the rate of 1% by the buyer, would include all ancillary payments that the buyer is contractually bound to make to the seller, such as club membership fee, car parking fee, electricity and water charges, maintenance charges, etc.

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

## 9. Promoting digitalisation of economy

**Digitisation of payments**

The IT Act contains various provisions aimed at promoting digitalisation of payments. The Bill proposes to amend all such sections of the IT Act to include references to 'prescribed electronic methods' as one of the permissible methods of payment in addition to existing permissible methods such as account payee cheque, bank drafts etc.

These amendments are proposed to be effective from April 1, 2019.

**Penalizing cash withdrawal**

The Bill proposes to introduce a new provision in the IT Act to obligate banking companies, cooperative banks and post offices to deduct tax at the rate of 2% on cash withdrawals by an account holder if the aggregate cash withdrawals during the relevant year exceed INR 10 million. However, this section would not apply in respect of the withdrawals by certain persons, such as the Government, banking company, certain

cooperative societies etc. who are involved in the handling of substantial amounts of cash as a part of their business operation.

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

**Mandating acceptance of payment through electronic modes**

In order to move towards a 'less cash economy', the Bill proposes to introduce a new provision mandating that every person carrying on a business, whose turnover exceeds INR 500 million in a relevant year, should facilitate payments through prescribed electronic modes. The Bill also proposes imposition of penalty amounting to INR 5,000 per day for non-compliance with these provisions.

This amendment is proposed to be effective from November 1, 2019.

## 10. Amendments to transfer pricing provisions

**Accounting year for the purpose of CbC reporting**

Currently, an Indian resident entity which is nominated as the alternate reporting entity for the purpose of submitting annual Country by Country ("**CbC**") report, is faced with a conflict when its NR parent follows an accounting year

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other than that followed by Indian companies. The Bill clarifies that the accounting year to be followed for the purpose of submitting CbC reports will be the accounting year of the parent entity only. As a clarificatory amendment, it will be applied retrospectively with effect from April 1, 2017.

***Obligation for keeping transfer pricing related documents expanded***

The IT Act provides that every person entering into an international transaction or a specified domestic transaction is obligated to keep and maintain certain prescribed information and documents. It is further provided that a constituent entity of an international group, would also be required to keep, maintain and furnish such prescribed information and documents. The Bill in order to rationalize the said provisions, proposes that even when a constituent entity does not enter into an international transaction, it would be required to keep, maintain and furnish prescribed information and documents in respect of the international group.

The amendment is proposed to be effective from April 1, 2019.

***Clarification on modified return pursuant to advance pricing agreement***

The Advance Pricing Agreement ("**APA**") regime requires filing of a modified income tax return for the years covered under the APA and provides for the manner of completion of assessment by tax authorities having regard to the terms of the APA. There were apprehensions regarding the treatment of the modified return to restart the assessment or reassessment in respect of the completed assessment. In order to dispel those apprehensions, the Bill proposes to clarify that where the assessment or re-assessment has been completed and modified return has been filed by the taxpayer, tax authorities shall pass an order modifying total income of the relevant AY having regard to and in accordance with the APA.

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

***Clarifications related to secondary adjustments under transfer pricing regulations***

The IT Act provides that a taxpayer would be required to carry out secondary adjustment where the primary adjustment to transfer price has been made inter alia: (a) suo moto by the taxpayer or (b) made by the AO and accepted by taxpayer. The IT Act further provides that the excess money shall be repatriated to India within the prescribed time, failing which it shall be treated as an advance to its relevant 'associated enterprise'.

The IT Act provides an exemption in cases where the amount of primary adjustment made in any FY does not exceed INR 10 million and the primary adjustment is made in respect of FY 2015-16 or the years prior to that year. The Bill proposes to clarify that the condition of threshold of INR 10 million and the primary adjustment being made on or prior to FY 2015-16 are alternative conditions.

The Bill also proposes certain provisions to clarify and address concerns regarding the effective implementation of secondary adjustment regime.

This amendment is proposed to be effective retrospectively, with effect from April 1, 2017.

Further, the Bill proposes a one-time payment option where the excess money has not been repatriated to the taxpayer.

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

**11. Amendments to Black Money Act**

Currently, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("**BM Act**"), extends to 'assessees' defined to include residents other than those not ordinarily resident in India under the IT Act. To clarify the intent of the BM Act, the Bill proposes to amend the definition of 'assessee' as follows:

(i) Resident assessees, and

(ii) Person being NR or not ordinarily resident in India, but who was a resident either in the FY to which the undisclosed foreign income relates, or in the FY in which the undisclosed asset located outside India was acquired.

This clarificatory amendment is proposed to be effective retrospectively from July 1, 2015.

**12. Miscellaneous**

***Incentives to NBFCs***

Currently, the IT Act provides that interest income arising to public financial institutions, scheduled banks, etc. from certain prescribed bad or doubtful debts, shall be chargeable to tax in the year in which such interest is credited to its profit and loss account or is actually received, whichever is earlier.

The deposit-taking NBFCs and systemically important non-deposit-taking NBFCs are proposed to be extended tax benefit, similar to that available to banks. Thus, the interest receivable from certain prescribed bad and doubtful debts would be taxable in the hands of the NBFC only in the year of receipt or credit to profit and loss account, whichever is earlier.

Consequently, the Bill also proposes to amend the IT Act to provide that the interest payments on loan or advances from deposit-taking NBFCs and systemically important non-deposit-taking NBFCs would be allowed as deduction, to the borrower, only if the interest is actually paid on or before the due date of furnishing the return of income.

These amendments are proposed to be effective from April 1, 2019.

***Tax sops for driving 'smart'***

Any individual taking a loan from any financial institution, including NBFCs, for purchase of an electric vehicle would be entitled to a deduction for interest paid on such loan, up to INR 0.15 million per year. This is subject to the loan being sanctioned between April 31, 2019 and March 31, 2023.

These amendments are proposed to be effective from April 1, 2019.

***Taxpayers, watch out: mandatory filing of income tax returns in certain cases***

In a move against unaccounted money in the economy, the Bill requires persons undertaking certain specified high value transactions to mandatorily file income tax return and disclose these transactions in the returns, even if otherwise such persons would not have otherwise been required to file returns. The Bill also empowers the CBDT to prescribe any other additional criteria for mandating filing of returns. This provision applies to a person who:

(i) Has deposited more than INR 10 million in aggregate in one or more current accounts,

(ii) Has incurred aggregate expenditure of more than INR 0.2 million for the taxpayer's or any other person's travel to a foreign country, or

(iii) Has incurred aggregate expenditure of more than INR 0.1 million towards electricity consumption.

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Further, the Bill proposes to require any person claiming rollover benefits of exemption from capital gains upon re-investment in certain specified assets, otherwise having a total income less than the basic exemption limit, to mandatorily file income tax returns.

These amendments are proposed to be effective from April 1, 2019.

***No default for payment to* NR**

Currently, there is no provision in law to absolve a person responsible to withhold tax from payment to NR from being held taxpayer in default. The Bill seeks to rectify this by providing that the payer to a NR would not be held as taxpayer in default and no interest, penalty would be levied on the payer, if the NR payee files its return of income and discloses the said income in the return.

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

***Tax collection assistance from foreign jurisdictions made easy***

Under the extant provisions of the IT Act, foreign jurisdictions which have entered into tax collection assistance treaties with India, may make requests to the Indian Government to collect taxes on their behalf from defaulters under their local income tax laws who have property in India. In order to align the provision with those of treaties signed by India, the Bill proposes to include within the scope of the provision, not just those individuals who have property in India, but also Indian residents who may not have any property in India. Corresponding amendments are proposed to be made in regard to when the Indian Government makes requests for assistance in tax recovery to foreign governments.

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

***Rationalizing securities transaction tax***

The Bill proposes to amend the Finance Act, 2004 to provide that Securities Transaction Tax ("**STT**") on sale of options in securities, where the option is exercised, would be payable on difference between the strike price and the settlement price. Currently, STT with respect to such a transaction is levied on the settlement price

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

# INDIRECT TAX

1. **Customs**

   ***Tariff***

   The proposed amendments to customs duty rates and pruning of exemptions, are aligned with the Government's objective of boosting the domestic market through 'Make in India' Policy, reducing import dependence, promoting clean energy, curbing non-essential imports and promoting exports in select sectors. It would provide relief to various domestic sectors including automotive parts, agricultural, steel, electronic, publishing and printing industry, leather industry, etc.

   ***Tauter Controls***

   Checks and verifications by the customs officers are proposed to be enhanced to protect the interest of the revenue, prevent smuggling and fraudulent use of export incentives. Enhanced penalty and prosecution have been proposed for various offences under the Customs Act, 1962. For example, misuse of duty free scrips and drawback facility involving more than fifty lakh rupees is proposed to be treated as a cognizable and non-bailable offence.

2. **Excise**

   ***Basic Excise Duty on Crude and Tobacco***

   In order to settle litigations surrounding the levy of National Calamity and Contingent Duty on crude oil and tobacco products, without their exigibility to Basic Excise Duty, the Bill has increased the Basic Excise Duty on petroleum crude (subject to certain exceptions) and impose Basic Excise Duty on tobacco products.

   ***Increase in Special Additional Excise duty and Road and Infrastructure Cess***

   Owing to the reductions in crude price, the Government has increased Special Additional Excise duty and Road and Infrastructure Cess, each by one rupee a litre on petrol and diesel.

3. **Service Tax**

   The Bill proposes to provide retrospective exemption from service tax on service by way of grant of liquor license by the State Government, long duration degree or diploma programs except Executive Development Program provided by the Indian Institutes of Management and upfront amount paid for services by way of grant of long term lease of plots for development of infrastructure for financial business by the State Government Industrial Development Corporations or Undertakings, to the developers in the industrial or financial business area, for specified periods.

4. **Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019**

   A dispute resolution cum amnesty scheme is proposed to be introduced for liquidation of past disputes of Central Excise, Service Tax, Salt cess, textile cess, etc., as well as to ensure disclosure of unpaid taxes by an eligible person. The proposed scheme also provides relief from payment of interest and penalty. The proposed scheme shall be enforced by the Central Government from a date to be notified.

5. **Goods and Service Tax**

   ***Ease of Compliance***

   The Bill seeks to incorporate the changes in the Central Goods and Service Tax Act, 2017, as proposed by the GST Council and notified by various notifications, with the aim of facilitating trade and easing the compliance burden.

   ***Promotion of Digital Payment and Cross-utilization of electronic cash ledger***

   In line with the commitment of moving towards the "Digital India" initiative and a transparent regime the Bill proposes to grant the power to prescribe a class of taxpayers supplying of goods/services, who shall provide prescribed digital mode of payment to the recipient.

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In addition, to reduce the blockage of working capital, the Bill proposes to allow transfer of amount from the electronic cash ledger of Central GST Act, 2017 to ledger under Integrated GST Act, 2017 or State GST Act or Union Territory GST Act and vice versa.

***National Appellate Authority for Advance Ruling***

The Bill has provided for the constitution, qualification, appointment, tenure, conditions of services of the National Appellate Authority for Advance Ruling and related procedures. The setting-up of the national bench was imperative to serve the objective of an advance ruling mechanism and provide certainty to taxpayers.

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# Key Contacts


**Cyril Shroff**
Managing Partner
cyril.shroff@cyrilshroff.com

**Daksha Baxi**
Head-International Taxation
daksha.baxi@cyrilshroff.com

**S.R. Patnaik**
Partner (Head-Taxation)
sr.patnaik@cyrilshroff.com

**Mekhla Anand**
Partner
mekhla.anand@cyrilshroff.com

cyril amarchand mangaldas
advocates & solicitors

**www.cyrilshroff.com**


**mumbai**
peninsula chambers,
peninsula corporate park,
gk marg, lower parel,
mumbai – 400 013.
t: +91 22 2496 4455
email: cam.mumbai@cyrilshroff.com

**new delhi**
4th floor, prius platinum,
d-3, district centre,
saket,
new delhi – 110 017.
t: +91 11 6622 9000
email: cam.delhi@cyrilshroff.com

**bengaluru**
201,
midford house,
off. m. g. road,
bengaluru – 560 001.
t: +91 80 2558 4870
email: cam.bengaluru@cyrilshroff.com

**ahmedabad**
shapath -v, 1304/1305,
opp. karnavati club
s.g. road,
ahmedabad – 380 051.
t: +91 79 49039900
email: cam.ahmedabad@cyrilshroff.com

**hyderabad**
8-2-622/5/a, 3rd floor, indira chambers,
road no. 10, banjara hills,
hyderabad – 500 034,
telangana.
t: +91 40 6730 6000
email: cam.hyderabad@cyrilshroff.com

**chennai**
2nd floor, asv chamiers square,
87/48, chamiers road,
r. a. puram,
chennai – 600 028.
t: +91 44 6668 4455
email: cam.chennai@cyrilshroff.com


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