UNION BUDGET 2018

SYNOPSIS OF PROPOSED AMENDMENTS TO DIRECT TAX

CONTENTS

CORPORATE TAX

- **<u>Tax Rate reduced from 30% to 25%</u> -** for micro, small and medium enterprises having turnover between 50 crore to Rs 250 crores (turnover to be considered is for financial year 2016-17).

- **<u>Education cess increased</u> –** The "education cess on income tax" and "secondary and higher education cess on income tax" shall be discontinued. This totaled to 3% on the tax amount. They will be replaced by a new cess named "Health and education cess" at 4% of income tax.

- **<u>Amalgamation</u> -** Definition of "accumulated profits" for the purpose of deemed dividend widened in the cases of amalgamation to include the accumulated profits of the amalgamating company in the accumulated profits of the amalgamated company (with effect from financial year 2017-18)

CORPORATE TAX

- **<u>Deemed dividend -</u>** For an unlisted company, any loan or advance given to a shareholder having shareholding of 10% or above or to a concern in which such shareholder holds substantial interest or any payment made on behalf of or for the individual benefit of such shareholder is considered to be deemed dividend and taxed at the marginal rate in the hands of the recipient of such advance/loan/payment.

  It is now proposed that the above deemed dividend be brought under the scope of dividend distribution tax to be taxed in the hands of the company advancing the loan and not in the hands of the recipient. Also, such dividend is proposed to be taxed at 30% (without grossing up) (applicable to transactions after 1 April 2018).

CORPORATE TAX

- **<u>Compensation in connection to business</u> –** **Section 28 is restrictive in its scope as far as taxation of compensation is concerned and large amount of compensation receipts is out of the purview of taxation.**

  Hence it is proposed to state that "any" compensation received/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.

OTHER PROPOSALS

- **Restriction on cash transactions** – There are at present no restrictions on payments made in cash by charitable or religious trusts or institutions. It is proposed that no deduction will be allowed for any expenditure made in cash above Rs 10,000 in a day in case of these entities.

  The limit of Rs 20,000 was reduced to Rs 10,000 a day in the last budget for other entities.

- **Deduction in respect of income of Farm Producer Companies** – 100% deduction in respect of profit of Farm Producer Companies having a total turnover upto Rs 100 crore is proposed. This benefit is proposed for a period of five years from financial year 2018-19.

OTHER PROPOSALS

- **<u>Incentive for employment generation –</u>** **The existing provision of allowing 30% additional deduction in respect of salary paid to new employees has been extended even in cases where condition of the minimum period of employment of a new employee is not met in the first year but the employee remains to be employed for the said period in the subsequent year.**

- **Also, in above, the period of minimum of 240 days of working was extended to apparel manufacturing industry earlier. This relaxation has been now proposed to be extended to leather and footwear companies.**

OTHER PROPOSALS

- **Minimum Alternate Tax (MAT) for a company where corporate insolvency resolution process has been admitted** – It is proposed that the aggregate of loss brought forward and unabsorbed depreciation to be allowed to such companies as a deduction for the purpose of MAT calculation. Existing provision provides for a deduction of loss brought forward or unabsorbed depreciation whichever is lower.

  It is also proposed to relax the provisions of section 79 in case of such companies which involves change in the beneficial owners of shares beyond permissible limit under section 79.

- **Scrutiny assessments** – It is proposed to prescribe a new scheme for the purpose of making assessments so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and

OTHER PROPOSALS

- the assessee, optimal utilization of the resources, and introduction of team-based assessment. The exceptions, modifications will be proposed in due course.

- **Requirement of PAN** – It is proposed that every entity (non individual) which enters into a financial transaction aggregating to INR 0.25 million or more during a fiscal year is required to obtain a PAN.

  Further, so as to link such financial transactions with the natural persons through which such financial transaction will be executed, it is also proposed that 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 above mentioned entities are required to obtain PAN.

TRANSFER PRICING & INTERNATIONAL TAXATION

- **Permanent Establishment (PE) definition –** it is recommended to make changes to the definition of a person acting in India as an agent on behalf of the non resident in order to constitute a permanent establishment in India. At present, the definition provides that if a person is habitually authorized to conclude contracts for the non resident in India, such an agent would constitute a PE. However, it is now proposed that an agent would include not only a person who habitually concludes contracts but also a person who plays a principal role leading to the conclusion of contracts.

  Further, a PE is deemed not to exist when a place of business is engaged solely in certain activities such as maintenance of stocks of goods for storage, display, delivery or processing, purchasing of goods or merchandise, collection of information. This exclusion applies only when these activities are preparatory or auxiliary in relation to business as a whole. It is now recommended to introduce anti fragmentation rule to prevent the tax payer from resorting to fragmentation of functions which are otherwise a whole activity in order to avail the benefit of above exclusion.

TRANSFER PRICING & INTERNATIONAL TAXATION

- **Significant economic presence** – **The definition of "business connection" in section 9 of the Act is proposed to be amended. It is proposed that "significant economic presence" in India shall also constitute "business connection". Significant economic presence for this purpose would mean –**

i) **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 transactions during the year exceeds the prescribed amount.**

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

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

TRANSFER PRICING & INTERNATIONAL TAXATION

- **Country by Country reporting (CBCR)** – **The time allowed for furnishing CBCR in case of parent entity or alternate reporting entity is proposed to be extended to twelve months from the end of the reporting accounting year.**

  Constituent entity resident in India, having a non-resident parent, shall also furnish CbCR in case its parent entity outside India has no obligation to file the report in the latter's country or territory. The above time period is proposed for this purpose too.

WITHHOLDING TAX

- **<u>Charitable Trusts/Institutions</u>** – At present, the TDS (tax withholding) provisions were not applicable to these entities. However, the budget has proposed that charitable trusts/institutions will also be subject to the tax withholding rules and regulations. If the tax is not withheld or paid in time, 30% of the expenditure would be disallowed (this is similar to other entities).

- **<u>TDS under section 194A on interest income</u>** – The threshold for deduction of tax on interest income for senior citizens is proposed to be raised from Rs 10,000 to Rs 50,000.

START UPS

- **<u>Start up definition</u> –** **The definition of start up has been expanded to provide that the benefit would be available if the start up 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 and wealth creation. Thus the requirement of startups being driven by technology or intellectual property has been removed.**

INDIVIDUAL TAXATION

- **Compensation in connection to employment –**

  It is proposed that “any” compensation received/receivable whether “revenue or capital”, in connection with the termination or the modification of the terms and conditions of any contract relating to its employment shall be taxable as income from other sources.

- **Senior citizens –**

  i) Deduction in respect of payments towards annual premium on health insurance policy or preventive health check up or medical expense in respect of very senior citizen is currently at Rs 30,000. This is proposed to be raised to Rs 50,000.

INDIVIDUAL TAXATION

ii) **Deduction for medical treatment of specified diseases in respect of very senior citizens or senior citizens is currently up to Rs 80,000 and Rs 60,000 respectively. It is proposed to increase these limits to Rs 1,00,000 for senior and very senior citizens both.**

iii) Deposit interest – **It is proposed to add a new section for allowing a deduction up to Rs 50,000 in respect of interest income from deposits held by senior citizens.**

- **Allowances withdrawn** - **Transport allowance and reimbursement of medical expenses for salaried persons is proposed to be withdrawn.**

INDIVIDUAL TAXATION

- **Standard deduction** - **of Rs 40,000 or the amount of salary received, whichever is less, is proposed for salaried individuals.**

- **Processing of income tax returns** – **Existing provisions provides for an adjustment to be made to the total income or loss of an assessee for addition of income appearing in form 26AS or form 16A or form 16.**

  It is proposed that no adjustment to be made for the above for assessment year 2018-19 and going forward.

INDIVIDUAL TAXATION

- **National pension scheme** – **The benefit of exemption with respect to 40% of the total amount received on closure or opting out is currently provided to employee subscribers. It is proposed to extend this benefit to non employee subscribers also from assessment year 2019-20 onwards.**

- **Variation between stamp duty value and sale consideration** - **At present, while taxing income from capital gains, business profits and income from other sources 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. It is proposed that where the variation is not more than five percent of the sale consideration, no adjustments will be made.**

CAPITAL GAINS TAX

- **<u>Long term capital gains</u> -** **arising from transfer of listed equity shares or units of equity oriented fund or units of business trusts were exempt from income tax. This exemption stands withdrawn.**

  10% tax rate has now been proposed on the above transfer and this will be levied on capital gains in excess of Rs 1,00,000. Indexation benefit will not be allowed.

  Cost of acquisition for such holdings acquired before 1 Feb 2018 shall be the higher of –

  a) actual cost of acquisition

  b) lower of fair market value on 31 January 2018 or full value of consideration as accruing on transfer

(Applicable from financial year 2018-19)

CAPITAL GAINS TAX

- Due to the above amendment, long term capital gains on the above mentioned securities will become taxable in the hands of the foreign institutional investors also.

- **Trading in agricultural commodity derivatives** – It is proposed to provide that a transaction in respect of trading of agricultural commodity derivatives in a registered stock exchange or registered association will be treated as non speculative transaction as against the speculative transaction statius as per existing provisions.

THANK YOU

GREENVISSAGE BUSINESS CONSULTING LLP