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Katalyst Kaleidoscope

February 2018: The Union Budget

A. Overview of the Finance Bill 2018

Introduction

2017 was clearly a historic year for reforms (particularly tax) in India – after effects of demonetisation, introduction of GST and RERA, drive to digitise the economy and increase tax compliance, have all caused disruption in some form to the usual mode of doing business in India. 2018 began with yet another landmark moment when Hon'ble Prime Minister delivered an impactful speech at the Annual World Economic Forum in Davos, making him the first Indian Prime Minister to speak at the event in 20 years. The Prime Minister said that India will become a $5 trillion economy by 2025, and welcomed all leaders, CEOs and entrepreneurs to visit India, and invest. This, coupled with the fact that Budget 2018 is the last comprehensive NDA budget before the elections next year has led to a great interest in this Budget, since not only India but the world has been waiting to see how the India story will unravel further.

Macro-economic backdrop for Budget 2018

The Economic Survey was released on Jan 29, 2018. It is a report card of sorts on how the Indian economy fared in the past 12 months. It forms an important pre cursor to the Budget announcement and is a key indicator of the macro economic factors affecting the Budget exercise. Here's a quick look at some of the key statistics:

Macro-economic factors:

- GDP growth of between 7 to 7.5% in 2018-19 is forecasted (as against an expected growth of 6.5% to 6.75% in 2017-18);
- Inflation (based on Consumer Price Index) is expected to 3.3% (for April to Dec 2017) as against 4.5% in the previous year;
- Historically, the tax-GDP ratio has been about 10% of GDP between 2013-14 and 2015-16. The same is likely to rise to 11.3% of GDP in 2017-18;
- Total FDI inflow grew by 8% ie US$ 60 billion in 2016-17 in comparison to approx US$ 56 billion for the prior year. In 2017-18, till September, the inflow of total FDI was to the quantum of US$ 33.75 billion.

Income-tax:

- The survey reveals addition of about 1.8 million (over and above trend growth) in individual income tax filers since November 2016 (i.e. post demonetization);
- Based on the data on Central Government finances available till November 2017 from the Controller General of Accounts (CGA), direct tax collections are on track (with a growth rate of 13.7% for the Centre).

GST:

- A 50 percent increase in unique indirect taxpayers under the GST compared with the pre-GST system;
- As per the Survey, as of December 2017, there were 9.8 million unique GST registrants – 3.4 million new and 6.4 million existing.

Ease of doing business:

- 2017 saw another feather in India's cap when India jumped 30 paces into the top 100 for the first time in the World Bank's Ease of Doing Business Report, 2018.
- While India saw a substantial jump in the taxation and insolvency indices, it continues to lag on the indicator on enforcing contracts (currently, @ 164, behind Pakistan, Congo and Sudan). Further, indices dealing with starting a new business and trading across borders saw a marginal fall in the rankings.
- There is still tremendous scope for improvement of the tax litigation machinery in India. The Survey reveals that as on March 31, 2017, approximately 137,000 direct tax cases are pending at various levels (Tribunal, HC and SC). Of this, just 0.2% cases amounted for nearly 56% of the total demand in value terms. Report also reveals that the success rate of the tax department is abysmally low (ranging from 13% to 27%) as against its petition rate of 83% to 88%. This clearly indicates the need for selective litigation on the part of the Income-tax Department.

B. Highlights of the Finance Bill 2018

- Budget 2018 reinforces Government's commitment to the path of fiscal consolidation which would build a stronger global economy. As announced by the Hon'ble FM, the focus was on agricultural & rural economy, poverty eradication, healthcare to senior citizens, supporting states in creating better infrastructure, digitisation and "Ease of Living" in India while we attain the ease of doing business in India.

- The Hon'ble FM made a proud mention that at USD 2.5 trillion, the Indian economy is the 7th largest in the world and on its path to become the 5th largest. The estimated GDP for FY 18-19 is seen at 7.5%. The FM also indicated that the economy is firmly set on growth path of 8%+ for coming years. Further, current fiscal deficit is estimated to be at 3.5% of the GDP and it should see a reduction to 3.3% in 2018-19.

- While not many surprises have been unearthed in the fine print, Budget 2018 seems to be a fine balancing act of funding the increased social spend through broad basing of tax revenues and not giving in to the popular demand of doling out tax perks. Some of the key highlights of the direct tax proposals include reduced corporate tax rate of 25% for MSMEs, rationalization of some tax provisions relating to companies undergoing the insolvency process and introduction of Long Term Capital Gains ("LTCG") tax (on sale of

listed equity shares, units of equity oriented mutual funds and business trusts). We have analysed some of the key direct tax proposals for our readers.

C. The Direct Tax landscape

C.1. Tax rates for domestic companies on total income

Particulars	Tax Rate (Note 1)	Surcharge (Note 2)	Health and Education Cess	Effective Tax Rate for FY19 (FY18)
C.5.1. For Companies with turnover up to INR 2,500 Million in FY 2016-17				
Income up to INR 10 million	25%	None	4%	26% (25.75%)
Income above INR 10 million up to INR 100 million	25%	7%	4%	27.82% (27.55%)
Income above INR 100 million	25%	12%	4%	29.12% (28.84%)
C.5.2. For Companies with turnover above INR 2,500 Million in FY 2016-17				
Income up to INR 10 million	30%	None	4%	31.20% (30.9%)
Income above INR 10 million up to INR 100 million	30%	7%	4%	33.38% (33.06%)
Income above INR 100 million	30%	12%	4%	34.94% (34.61%)

Katalyst comments

- Domestic companies, whose total turnover or gross receipts in the FY 2016-17 does not exceed INR 2500 Million are now taxable at a reduced rate of 25% (plus surcharge and cess). However, please read the comments in para C.2 below.

- Also, one needs to bear in mind that unlike Section 115BA, this reduced rate of 25% is not for newly set-up companies but will be available for companies set up even before April 1, 2016.

- Accordingly, there are now 3 parallel "tracks" of tax rates for corporates:

- 25% (plus surcharge and cess) for companies in any sector with a turnover of less than INR 2500 million in FY 2016-17 for all incomes;
- 25% (plus surcharge and cess) for newly set up (after March 1, 2016) manufacturing companies etc for income from such activity;

- 30% (plus surcharge and cess) for all other companies.

C.2. Section 115BA – Reduced tax rates for newly set-up domestic manufacturing companies

- Section 115BA of the Income-tax Act, 1961 ("Act") was introduced to by way of Finance Act 2016 and was made effective from 1st April, 2017. As per the existing provisions of this section, the total income of a newly set up (i.e. on or after March 1, 2016) domestic company at its option, the income tax shall be computed at the rate of 25%; however, subject to the company being engaged in the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

- Therefore, as per the provisions of this section, the tax on the total income of the company was capped at 25% which may not have been the intention of the Finance Act, 2016.

- Hence, the Finance Bill 2018 has clarified that under the amended section, the tax rate of 25% shall be restricted to income from the business of manufacturing, production, research or distribution. For the balance income however, the relevant scheduler rates would be applicable.

- It should also be noted that the said amendment is proposed to be effective from 1 April 2017, i.e. with respect to Financial Year beginning with 1 April 2016.

Katalyst comment

- As a consequence of the proposed amendment, an example, income from short term capital gains (on transfer of capital asset other than equity shares) shall be taxed at 30% rather than 25% as per existing provisions of Section 115BA of the Act.

- However, it is important to note that the corporate tax rate on MSMR generally proposed to be reduced to 25% (i.e. at par with the rate mentioned in Section 115BA of the Act). This reduced rate is subject to the condition that the Gross turnover of the domestic company should be less than INR 2500 million in FY 2016-17; please see para C.1 above.

- However, it needs to be seen what rate of tax would be applicable for companies who had a turnover of less than INR 2500 million in FY 2016-17, but cross that threshold subsequently, say in FY 2017-18 or FY 2018-19.

C.3. Financial Markets related amendments

C.3.1. New taxation regime for sale of listed equity shares/ units of business trusts/ unit of an equity oriented funds, units of business trusts or equity oriented funds

- For several years, the Long-term Capital Gains, arising from sale of listed shares and units of equity oriented mutual funds on recognised stock-exchanges, was tax exempt. The Finance Bill proposes to introduce the new tax regime for taxing such long-term capital gain in excess of INR 100,000 per year on sale of listed shares/ units of business trusts (which would cover REITs and INVITs)/ unit of an equity oriented funds at the rate of 10% through insertion of Section 112A in the Act, subject to the following:

  a. In case of equity shares, security transaction tax (STT) must have been paid at the time of acquisition and transfer.

  b. In case of unit of equity oriented fund or a unit of business trust, the STT must be paid at the time of transfer.

  c. No benefit of indexation in respect of the cost of acquisition or cost of improvement and the benefit of computation of gain in foreign currency will not be allowed.

- The new regime however, comes with grandfathering to provide that any gains accrued till 31 January 2018 will not be taxable and to give effect to this, while calculating the gain from sale of such shares or units, the fair market value as on 31 January 2018 or the actual cost of acquisition, whichever is higher shall be deemed to the be cost of acquisition.

- The FM has also introduced a level-playing field amendment for levying similar tax of 10% on distribution made by equity oriented mutual fund or tax arising to Foreign Institutional Investors.

Katalyst Comments

- The amendment will change the net-effective rate of return for investors from Indian equity markets. It is perhaps worth noting that the amendment provides for thoughtful grandfathering and does not intend to tax gains accrued till the date of announcement of the Finance Bill, i.e. 31 January 2018.

- While the newly introduced section prescribes that the Central Government may notify the nature of acquisitions in respect of which the payment of STT shall not

apply in case of equity shares, it will need to closely watched for as a few genuine cases may suffer adversely – for instance, what would be the cost of acquisition in case of shares acquired prior to introduction of STT itself or through amalgamation of promoter companies or gifts within promoter families.

- It should also be noted that the said section is proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018. Hence, sales in Feb 2018 and Marc 2018 continue to exempt.

- As an example of the calculation of the LTCG under the proposed amendment:

1,000 listed shares were bought on Jan 1, 2017 at the rate of INR 50 per share (total original cost of acquisition = INR 50,000). The market value of the shares on Jan 31, 2018 was INR 100 per share (ie FMV = INR 100,000). The shares are sold on April 15, 2018. Consider two scenarios for sale price –

(A) INR 150 per share (ie sale consideration = INR 150,000)

Here, LTCG = INR 150,000 less INR 100,000 = INR 50,000

(B) INR 75 per share (ie sale consideration = INR 75,000).

Here, LTCG = INR 75,000 less 75,000 = NIL.

- Interestingly, if shares are sold prior to April 1, 2018 (ie in Feb or March 2018), the capital gains would not be liable to tax.

C.3.2. Introduction of Income distribution tax for Equity Oriented Mutual Funds

- Presently, no taxes are payable either by the Mutual Funds or unit holders for investment in and distribution of income from equity oriented mutual funds.
- The Finance Bill 2018 proposes to amend Section 115R such that any income distributed by an equity oriented mutual fund to any person shall be chargeable to tax by the mutual fund at 10% on the income so distributed.
- It should also be noted that the said section is proposed to be effective from 1 April 2019, i.e. with respect to distributions made after 1 April 2018.

Katalyst Comments

- The proposed amendment has been brought in with a view to providing a level playing field between growth-oriented funds and dividend paying funds, in wake of the new capital gains tax regime for equities. We believe that the levy of DDT would reduce the payout in the hands of investors, assuming that the total amount

of distribution by the mutual fund remains constant in the pre and post DDT scenario.

- Further, such a levy could lead to part double taxation of the distributions since the dividends received by mutual funds from the investee companies would anyways have been subject to DDT by such investee companies.

C.3.3. Taxation of Long-term capital gain in the case of Foreign Institutional Investor:

- As per section 115AD of the Act, any long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of an equity oriented fund / business trust was exempt under Section 10(38).
- However, consequent to withdrawal of exemption under section 10(38) under the Finance Bill 2018, such long-term capital gains shall be rendered taxable in the hands of FIIs at 10% provided that the amount of such capital gain without the indexation benefit exceeds INR 1 lakh.
- It should also be noted that the said section is proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

Katalyst Comments

- While the proposed amendment does bring investments and subsequent gains of FIIs in the LTCG net, one would need to refer to the beneficial provisions under the applicable DTAA (primarily, Singapore and Mauritius which have some grand fathering provisions as well as transitional provisions for rates of tax). For details on taxability and computation, reference may be made to the discussion at para C.3.1.

C.4. Measures to promote International Financial Services Centre (IFSC)

- Sec 115JB deals with levy of Minimum Alternate Tax on book profits of companies. Sec 115JC is a similar section which deals with levy of Alternate Minimum Tax (AMT) on adjusted total income of taxpayers other than companies. Presently, the AMT under Section 115JC is chargeable at the rate of 18.5%.
- The Finance Bill 2018, proposes to decrease the rate of AMT for a unit which is located in an IFSC, to 9% from the standard rate of 18.5%.
- Further, an amendment is also proposed with respect to transfer of specified capital assets on a stock exchange situated in an IFSC. It is proposed that such a transfer would be regarded as tax neutral transfer u/s 47 provided that the consideration for such transaction is paid or payable in foreign currency. The specified assets which are eligible for such exemption include the following:

  a. Bond; or

b. Global Depository Receipt, as referred to in sub-section (1) of section 115AC; or
c. Rupee denominated bond of an Indian company; or
d. Derivative

- It should also be noted that the said amendment is proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

C.5. Mergers and Acquisitions

C.5.1. Accumulated Profits of amalgamated company to include accumulated profits of amalgamating company as on the date of amalgamation

- Currently, Section 2(22) defines "dividend" to include distribution of accumulated profits under certain specific circumstances. The said section essentially provides that the distribution of accumulated profits vide distribution of any assets to shareholders, issue of debentures, distribution on liquidation, reduction of capital or through a loan or advance to a shareholder or a concern in which such shareholder has substantial interest; generally referred to as "deemed dividend".
- The key aspect was that the tax on deemed dividend was leviable only in case of accumulated profits which could be eliminated through amalgamation of a company with accumulated profits into another company without or with lesser accumulated profits.
- The Finance Bill proposes to plough this possibility and proposes that the accumulated profits of a Company will be computed after including the accumulated profits of the amalgamating company as on the date of amalgamation, whether capitalized or not. The amendment shall be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

Katalyst Comments

- This proposed amendment is an anti-evasion amendment in nature and is specifically targeted at cases wherein Corporate Groups merge a Company (having accumulated profits) with another Company, such that the surplus cash is transferred to the amalgamated Company but the accumulated profits of amalgamating Company are eliminated through an accounting mechanism. Going forward, any distribution of cash to shareholders through reduction of capital, after eliminating accumulating profits through amalgamation, will be taxable at the rate of 15% plus surcharges, with effective rate of tax being 20%.
- For example, A Co and B Co are part of the same group in India. A Co has accumulated profits of INR 100 crores and cash of INR 500 crores. B Co does not have accumulated profits. A Co intends to distribute INR 500 crores to its shareholders but the same would be taxable for the shareholders to the extent of INR 100 crores (being accumulated profits). So, A Co would merge into B Co whereby the cash of A Co would be transferred to B Co under the merger but not the accumulated profits. Post this merger, distribution to shareholders on capital

reduction would not be taxable since B Co would not have accumulated profits. However, the same has now been made taxable by the above proposed amendment.

C.5.2. Compensation of any kind to businesses or persons

- Under the existing law, compensations in the nature of capital receipt were not taxable. Section 28 of the Act sought to tax certain compensations with respect to termination or modification of a few specific types of contracts.
- The Finance Bill proposes to broaden the tax-net to include any kind of compensation receipts, whether capital or revenue in nature, relating to termination or the modification of the terms and conditions of any contract, relating to employment or business.
- The amendment seeks to tax compensation from change or termination of business contracts as business income under Section 28 and compensation from change or termination of employment contract as income from other sources under Section 56.

Katalyst Comments

- The proposed amendment is likely to have wide impact including in situations like earn-out payments in case of M&As being paid to exiting management etc. The said amendment is also proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

C.5.3. Transfer of Capital Assets between a Parent Company and its wholly-owned subsidiary

- Currently, any transfer of a capital asset from a Parent Company to its wholly-owned subsidiary and vice-versa is tax exempt under Section 47(iv) and 47(v) of the Act, respectively. However, with effect from April 1, 2017, a similar exemption was not made in the hands of the recipient Company under Section 56(2)(x) of the Act which provides for taxation on receipt of certain specified assets for no consideration or consideration less than FMV.
- Sec 56(2)(x) currently prescribes for a list of exemption where no tax is leviable even in case where there is receipt of "specified property" for NIL or less than FMV consideration. Finance Bill 2018 proposes to extend the exemptions under Section 56(2)(x) of the Act to such receipts by the wholly-owned subsidiary or Parent Company, as the case may be, which qualify for exemption under Section 47(iv) and 47(v) of the Act. This would mean that even if a wholly owned subsidiary receives a specified property from its parent (or vice-versa) for inadequate consideration, the same will not be taxable under Section 56(2)(x).

Katalyst Comments

- Section 56 seeks to tax receipts by any person, without consideration or for an insufficient consideration; of defined properties like immovable property or shares or securities etc. However, the Section also provides for exemptions for certain receipts which are tax neutral for the transferors, for instance receipt of any property pursuant to amalgamation. However, the transfers between Parent-Wholly-owned subsidiary which are exempted for transferor were not being exempted for the transferee. The amendment removes this ambiguity / unintended consequence. The amendment is proposed to be made applicable to transfers made on or after 1 April 2018, which means that transfer of specified asset till March 31, 2018 will still be hit.

C.5.4. Rationalisation of tax incentives for Start-ups

The Finance Bill proposes to rationalize the tax incentives provided for start-ups, which are briefly explained as follows:

#	Existing Framework	Proposed Framework
(I)	The start-up is incorporated on or after 1 April 2016 but before 1 April 2019	The benefit would also be available to start-ups incorporated on or after 1 April 2019 but before the 1 April 2019
(ii)	The total turnover of its business does not exceed INR 25 Crore in any of the financial years beginning from 2016-17 and ending on 2020-21	The requirement of the turnover not exceeding INR 25 Crore would apply to 7 previous financial years commencing from the date of incorporation
(iii)	It is engaged in the eligible business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property	The definition of eligible business is proposed to be expanded to provide the benefit 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 or wealth creation.

Katalyst Comments

- The tax incentive to start-ups has been optimized to reach to more start-ups through widening the tenure as well as the eligible businesses. The incentive is available to start-ups organized in the form of a Company or a Limited Liability Partnership. The amendment will become effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

- However, issues relating to tax on angel investors remains unaddressed. Also, the eligibility requirements for DIPP approval would continue to be an issue.

C.6. Facilitating Insolvency Resolutions

Basis various representations received from multiple quarters and to facilitate the insolvency resolution process under the Insolvency and Bankruptcy Code (IBC), 2016, the Finance Bill proposes the following two amendments:

C.6.1. Relief from Minimum Alternate Tax (MAT)

- Presently, for MAT purposes under the Act, the lower of brought forward loss or unabsorbed depreciation is allowed as deduction for computing taxable book profits of a company.
- The Finance Bill, 2018, proposes that for companies whose application for insolvency resolution has been admitted by the NCLT, aggregate of both i.e. brought forward loss and unabsorbed depreciation will now be allowed as deduction from book profits.
- It should also be noted that the said section is proposed to be effective from 1 April 2018, i.e. retrospectively with respect to Financial Year beginning with 1 April 2017.

C.6.2. Benefit of carry forward of losses

- Another amendment proposed in this regard is to Section 79 of the Act.
- Presently, Section 79 of the Act provides that carry forward and set off of losses in a closely held company shall be allowed only if 51% shareholders of the company on the last day of the year(s) in which the loss was incurred continue to be shareholders in the year of set off and carry forward.
- It is now proposed that such a requirement of Sec 79 will be done away with for companies under the IBC whose resolution plan has been approved by the NCLT. However, this is subject to granting an opportunity to be heard to the jurisdictional Principal Commissioner or Commissioner.
- It should also be noted that the said amendment is proposed to be effective from 1 April 2018, i.e. retrospectively with respect to Financial Year beginning with 1 April 2017.

Katalyst comments

- As one would expect, as a part of the debt restructuring exercise, generally the companies undergoing the insolvency process settle their outstanding liabilities with lenders taking a haircut, which results in a write back of liabilities in their books under the current accounting standards. There is currently an ongoing debate on

whether such write backs could be taxed – both under the normal provisions of the Act as well as under the MAT provisions. While the above relaxations are certainly welcome and would indeed facilitate the insolvency resolution process, a major issue is that no clarity has been provided on the tax treatment of write backs in the books of the company undergoing the insolvency process.

- Further, subjecting the relaxation of the requirements of Sec 79 to obtain inputs of Jurisdiction Principal Commissioner / Commissioner could cause unwarranted delays or hardship in the process.

C.7. Non-Resident Taxation - Amendments affecting international tax arena

Scope of business connection is proposed to be enlarged and brought at par with the modified PE Rule as per Multilateral Instrument (MLI) by insertion of the following two amendments:

- Amended "Business connection" shall now 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 should also be noted that the said amendment is proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

- The definition of "Business connection" is also proposed to be expanded to include "Significant Economic Presence", making India one of the first few countries to incorporate the concept of Digital PE in its tax laws.

  Significant Economic Presence includes any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means. The Revenue and number of users' criteria is expected to be prescribed subsequently.

Katalyst comments

- Since Section 90(2) of the Act provides that the provisions of the Act or the DTAA, whichever are more beneficial, will apply, the above amendment seeks to cover cases which would create a Permanent Establishment under the DTAA read with MLI but not business connection under the current definition in the Act. However, in cases where the definition of PE under the DTAA is narrower and does not stand amended by the MLI, the DTAA should prevail.

C.8. Other Tax proposals

C.8.1. Imposition of dividend distribution tax on deemed dividend

- Presently, as per the provisions of section 2(22)(e) of the Act, any loans and advances made by a closely held company to:

  a. its beneficial owner holding more than 10% of the voting power; or
  b. to any concern in which such shareholder holds atleast 20%; or
  c. any payment by the company for individual benefit of the shareholder.

  shall be taxable as deemed dividend (to the extent of accumulated profits of the company) in the hands of the shareholder.

- However, as per the Finance Bill 2018, it is proposed to amend Section 115O, 115Q and 2(22)(e) of the Act, such that deemed dividend would be subject to a distribution tax at the rate of 30% + applicable surcharge and education cess.
- It should also be noted that the said amendment is proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

Katalyst comments

- While deemed dividend was always taxable in the hands of the recipient shareholder, such shift of tax liability from the shareholder to the payer company could raise inherent challenges as are currently applicable to the DDT format i.e. unavailability of underlying tax credit for non-resident taxpayers and unavailability of set-off of losses against taxable income.

C.8.2. Conversion of Stock-in-trade into Capital Asset

- Presently, the Act provides for taxation on conversion (or treatment as such) of capital asset into stock in trade under section 45. However, no corresponding provision addressed the taxability on conversion of stock in trade into capital asset, thus making it a litigative issue.
- Hence, Finance Bill 2018 proposes to amend Section 28 of the Act such that conversion of stock in trade into a capital asset will now be taxable as business income on the date of conversion.
- Further, for the purpose of computing the taxable amount, FMV on the date of conversion shall be deemed to be the consideration accruing as a result of such conversion/ treatment.
- Correspondingly, the Finance Bill also proposes to amend Section 49 and 2(24) of the Act to provide that the cost of acquisition of the capital asset shall be the FMV on date of conversion and the period of holding of the capital asset shall be reckoned from the date of conversion or such treatment.

- It should also be noted that the said amendment is proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

Katalyst comments

- The taxable event and tax outflow provided for in the proposed amendment do not match with the liquidity event (ie sale of the capital asset). It is rather a tax on notional income and could create a negative cash flow impact.

C.8.3. Real Estate Sector – Sale / Purchase of Immovable property

- Presently, for the purposes of computing capital gains under the Act, the sale consideration of an immovable property is deemed to be the stamp duty value if the actual sale value is lesser than the stamp duty reckoner value. Correspondingly, for the recipient, on receipt of an immovable property, if the actual purchase price is lesser than the stamp duty reckoner value, tax is payable on such difference (as per provisions of Section 56).
- In light of the above, the Finance Bill 2018, by way of amendment to the sections 43CA, 50C and 56 of the Act, proposed to provide that the transfer consideration shall be sacrosanct for the purposes of the Act provided that the difference between the stamp duty reckoner value is not more than 5% of the consideration.
- It should also be noted that the said amendment is proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

C.8.4. E-assessment scheme for tax scrutiny

- It seems that one of the objectives of the Finance Bill 2018 is to pave the way for digitization and ease of business in India since the Bill proposes to set up an e-system ("Scheme") to carry out the tax scrutiny assessments in India such the personal Assesse-to-Assessing Officer contact is reduced. As contemplated by the proposed section 143(3A) of the Act, the key objectives of this Scheme are to impart greater efficiency, transparency and accountability by:

    a. Eliminating the interface between the assessing officer and the assesse to the extent it is technologically feasible
    b. Optimising utilisation of the resources through economies of scale and functional specialization; and
    c. Introducing a team-based assessment with dynamic jurisdiction.

- Further, as per the proposed Section 143(3B) of the Act, for the purpose of giving effect to the Scheme, 31st March, 2020 is envisaged as the last day for the Central Government to issue any notification(s) in relation to applicability and non-applicability of the various income tax assessment provisions.

- It should also be noted that the said amendment is proposed to be effective from 1 April 2019, i.e. with respect to Financial Year beginning with 1 April 2018.

Katalyst comments:

- This proposal is facing a huge resistance from the Revenue Department due to various reasons, including unavailability of taxpayers as well as infrastructure support. Anyway, in our view, for the e-assessment to be effectively operational as intended could take a significant period of time.

Do feel free to reach out to us for a detailed discussion on ketan.dalal@katalystadvisors.in