Recent tax amendments impacting corporate restructuring and investments

Taxation, especially direct taxation is a key driver in most of the modern day corporate restructuring and investment transactions. The outcome and efficiencies of a transaction can be completed diverse in different tax positions. In the ever-evolving world of direct tax provisions affecting corporate restructurings and investments we evaluate and cull out the recent major changes for your handy read.

1. **Extending the period for claiming deduction by Start-ups (section 80-IAC)**

Section No.	Provision Prior to Finance Act 2017	Provision After Finance Act 2017
80IAC (1)	Where the gross total income of an assessee, being an eligible start-up, includes any profits and gains derived from eligible business, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business for any three consecutive assessment years.	Where the gross total income of an assessee, being an eligible start-up, includes any profits and gains derived from eligible business, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business for any three consecutive assessment years.
80IAC (2)	The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any three consecutive assessment years out of five years beginning from the year in which the eligible start-up is incorporated.	The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any three consecutive assessment years out of ***seven*** years beginning from the year in which the eligible start-up is incorporated.

Analysis:

i. Section 80IAC was introduced by the Government in the Finance Act 2016 to provide deduction of an amount equal to 100% of the profits and gains for 3 consecutive year out of 5 years from the year the start-up is incorporated. In view of the fact that start-ups generally incur losses in the first few years from their incorporation and may take some time to derive profit out of their business, the complete benefit of this tax deduction provided to the start-ups was practically impossible to be claimed, hence through an amendment in section 80IAC, the government has now extended the total period out of which the start-ups can claim the above-mentioned deductions from 5 years to 7 years.

ii. This amendment is applicable from the financial year beginning from 1st April 2017. Please note that to take the benefit of the above-mentioned deduction, "eligible business" means a business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property;

2. Carry forward and set off of loss in case of certain companies (section 79)

Section No.	Provision Prior to Finance Act 2017	Provision After Finance Act 2017
79(a)	Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless— (a) on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred	Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year,— (a) in the case of a company not being a company in which the public are substantially interested and other than a company referred to in clause (b), no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred;
79(b)	N.A	***in the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—*** ***(i) continue to hold those shares on the last day of such previous year; and*** ***(ii) such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.***

Analysis:

i. The purpose of introducing section 79 was that benefit of carry forward and set-off of business losses for previous years of a company should not be misused by any new owner, who may purchase the shares of the Company, only to get the benefit of set-off of business losses of the previous years, which may bear profits in the subsequent years after the new owner takes over the Company.

ii. But the restriction prescribed under Section 79 was proving to be a hindrance to the start-up ecosystem where change in shareholding pattern is due to the infusion of funds by investors without change in the management of the company run by original founders.

iii. Therefore, in order to facilitate ease of doing business and to promote start up India, an amendment to section 79 is introduced, with an addition of clause b, to provide that where there is a change in shareholding taking place in a previous year in case of a company in which public are not substantially interested and being an eligible start-up as referred to section 80 – IAC, loss shall be carried forward and set off against the income of the previous year, if all the shareholders of such company which held shares carrying voting power on the last day of the year/s in which the loss was incurred, being the loss incurred during the period 7 years beginning from the year in which such company is incorporated, continue to hold those shares on the last day of such previous year.

iv. This amendment is applicable from the financial year beginning from 1st April 2017.

v. As per the case law of CIT vs. AMCO power Systems Ltd. ITA No.766 OF 2009 c/w ITA Nos.769/2009, 1046/2008, 765/2009 & 767/2009, of the Karnataka High Court, it was held that as the purpose of the provision is to prevent misuse of losses by transferring ownership, it should be restricted to cases of transfer of 'beneficial shareholding'. A transfer of shares of the loss-making company by the shareholder-company to its subsidiary is not hit by s. 79.

3. **Definitions (section 2(42A))**

Section No.	Provision Prior to Finance Act 2017	Provision After Finance Act 2017
	"short-term capital asset" means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer: Provided that in the case of a security (other than a unit) listed in a recognized stock exchange in India or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of an equity oriented fund or a zero coupon bond, the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted: Provided further that in case of a share of a company (not being a share listed in a recognised stock exchange) or a unit of a Mutual Fund specified under clause (23D) of section 10, which is transferred during the period beginning on the 1st day of April, 2014 and ending on the 10th day of July, 2014, the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted	"short-term capital asset" means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer : Provided that in the case of a security (other than a unit) listed in a recognized stock exchange in India or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of an equity oriented fund or a zero coupon bond, the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted: Provided further that in case of a share of a company (not being a share listed in a recognised stock exchange) or a unit of a Mutual Fund specified under clause (23D) of section 10, which is transferred during the period beginning on the 1st day of April, 2014 and ending on the 10th day of July, 2014, the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twelve months" had been substituted: ***[Provided also that in the case of a share of a company (not being a share listed in a recognised stock exchange in India), [or an immovable property, being land or building or both,] the provisions of this clause shall have effect as if for the words "thirty-six months", the words "twenty-four months" had been substituted.]***
2(42A) Explanation 1 clause (hf)	N.A	***In determining the period for which any capital asset is held by the assessee—*** ***in the case of a capital asset, being equity shares in a company, which becomes the property of the assessee in consideration of a transfer referred to in clause (xb) of section 47, there shall be included the period for which the preference shares were held by the assessee;***
2(42A) Explanation 1 clause (hg)	N.A	***in the case of a capital asset, being a unit or units, which becomes the property of the assessee in consideration of a transfer referred to in clause (xix) of section 47, there shall be included the period for which***

		the unit or units in the consolidating plan of a mutual fund scheme were held by the assessee;

Analysis:

i. To qualify for long term capital asset in order to take the benefit of concessional rate of tax and also indexation benefit for taxation of capital gain on its transfer, an assessee is required to hold the asset for more than 36 months subject to certain exceptions.

ii. With a view to promote the real estate sector and to make it more attractive for investment, section 2(42A) of the Act is amended so as to reduce the period of holding from the existing 36 months to 24 months in case of immovable property, being land or building or both, to qualify as long term capital asset.

iii. This amendment is applicable from the financial year beginning from 1st April 2017.

4. **Tax Neutral conversion of preference shares into equity shares (section 47(xb), 2(42A) and 49(2AE))**

Section No.	Provision Prior to Finance Act 2017	Provision After Finance Act 2017
47(xb)	N.A	***any transfer by way of conversion of preference shares of a company into equity shares of that company***
49(2AE)	N.A	*Where the capital asset, being equity share of a company, became the property of the assessee in consideration of a transfer referred to in clause (xb) of section 47, the cost of acquisition of the asset shall be deemed to be that part of the* ***cost of the preference share in relation to which such asset is acquired by the assessee.***

Analysis:

i. Under the existing provisions of the Income Tax Act. Conversion of security from one person to another is regarded as transfer for the purpose of levy of capital gains tax. However, tax neutrality to the conversion of bond or debenture of a company to share or debenture of that company was provided under section 47.

ii. No similar tax neutrality to the conversion of preference share of a company into its equity share was provided.

iii. In order to provide tax neutrality to the conversion of preference share of a company into equity share of that company, an amendment has been introduced in the form of a new subsection (xb) of section 47 to provided that the conversion of preference share of a company into its equity share shall not be regarded as transfer and will not attract any capital gains tax.

iv. Consequential amendments have been introduced in the form of subsection (2AE) of section 49 and Explanation 1 clause (hf) of section 2 (42A) to provide that the cost of acquisition and the period of holding of preference shares held, which are being converted into equity shares, will be a part of the cost of acquisition and the holding period of the converted equity shares for the purpose of calculating capital gains tax on the transfer of the converted equity shares.

v. Hence, an investor who generally prefers to invest in a company or a start up in the form of convertible debentures and then convert the same into share capital within 18 months with an objective of securing his investments in the company/start-up for those 18 months and also earn a fixed rate of interest in the convertible debentures, was able to convert the debentures into equity shares without an capital gains tax liability on conversion but now he can also convert the debentures into preference shares and continue earning the interest income post conversion in the form of fixed dividend on the converted preference shares. Also, compulsory convertible dentures can be issued into redeemable preference shares for ease of redemption also the redeemable preference shares will be a part of net worth of the company for analysing the finance raising capacity of the company.

vi. This amendment is applicable from the financial year beginning from 1st April 2017.

5. **Exemption of long term capital gains tax (section 10(38))**

Section No.	Provision Prior to Finance Act 2017	Provision After Finance Act 2017
10(38)	any income arising from the 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 where— (a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and (b) such transaction is chargeable to securities transaction tax under that Chapter: Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.	any income arising from the 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 where— (a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and (b) such transaction is chargeable to securities transaction tax under that Chapter : Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB: ***[Provided also that nothing contained in sub-clause (b) shall apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.]*** ***Provided also that nothing contained in this clause shall apply to any income arising from the transfer of a long-term capital asset, being an equity share in a company, if the transaction of acquisition, other than the acquisition notified by the Central Government in this behalf, of such equity share is entered into on or after the 1st day of October, 2004 and such transaction is not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004).***

Analysis:

i. Prior to Finance Act, 2017, the income arising from a transfer of long term capital asset, being equity share of a company or unit of equity oriented was exempt from tax if the transaction of sale was undertaken on or after 1st October 2014 and was chargeable to Securities Transaction Tax.

ii. It was noticed that exemption provided under section 10(38) was being misused by certain persons for declaring their unaccounted income as exempt from long term capital gains by entering into sham transactions.

iii. With a view to prevent this abuse, an amendment to section 10(38) was introduced to provide that exemption can be claimed on transfer of shares only if the transaction has taken place on or after 1st October 2004 and if the acquisition of share is chargeable to Securities Transaction Tax.

iv. Hence, to plug sham transactions (such as penny stocks), which were entered to misuse the exemption provisions of section 10(38), it is provided that where shares were acquired after October 1, 2004, both the transaction of purchase as well as sale of the equity shares should be done through a recognised stock exchange.

v. The broad coverage of the proposed amendment, may hamper/affect even genuine cases. For example, in case of start-up companies, the initial investment generally is by of private equity shares, which could subsequently have been listed. In such cases, denying exemption u/s. 10(38) on transfer of the equity shares would lead to unintended consequences. The actual impact of the proposed amendment on genuine cases would need to be evaluated once the list of exceptions are notified by the Central Government.

vi. However, to protect the exemption for genuine case where the Securities Transactions Tax could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company acquisition by non-resident in accordance with FDI policy of Government, etc.

vii. Recently the income tax department issued a draft notification for public comments for the third proviso to section 10(38), where it notifies all transactions of acquisition of equity share entered into on or after the 1st day of October, 2004 which are not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004, other than the following: -

(a) where acquisition of listed equity share in a company, whose equity shares are not frequently traded in a recognised stock exchange of India, is made through a preferential issue other than those preferential issues to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply;

(b) Where transaction for purchase of listed equity share in a company is not entered through a recognised stock exchange;

(c) Acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act,1956 read with Securities and Exchange Board of India Act,1992 and any rules made there under.

viii. Hence, the benefit of section 10(38) post issue of the above-mentioned notification can also be taken for the preferential issue of equity shares due to below mentioned transactions:

ix.

(a) On conversion of loan or option attached to convertible debt instruments.

(b) Pursuant to scheme of restructuring approved by High Court under section 391 to 394 of the Companies Act, 1956 or a Tribunal under sections 230 to 234 of the Companies Act, 2013, whichever applicable.
(c) in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or the Tribunal under the Insolvency and Bankruptcy Code, 2016, whichever applicable.

x. This amendment is applicable from the financial year beginning from 1st April 2017.

6. Limitation of Interest deduction in certain cases (section 94B)

Section No.	Provision Prior to Finance Act 2017	Provision After Finance Act 2017
94B	N.A	***(1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :*** ***Provided that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.*** ***(2) For the purposes of sub-section (1), the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.*** ***(3) Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.*** ***(4) Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it***

		and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2): ***Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.*** ***(5) For the purposes of this section, the expressions—*** ***(i) "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;*** ***(ii) "debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";*** ***(iii) "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.***

Analysis:

i. The proposed provision seems to be in line with international best practices and BEPS recommendation. Also it seems to be for the benefit of the national interest as it would safeguard Indian tax base and curb shifting of profits outside India.

ii. This provision may also be beneficial from a forex point of view that debt funding, which is repatriable in a defined time period would be de-motivated and equity funding would be promoted.

iii. A company is typically financed or capitalized through a mixture of debt and equity. The way a company is capitalized often has a significant impact on the amount of profit it reports for tax purposes as the tax legislations of countries typically allow a deduction for interest paid or payable in arriving at the profit for tax purposes while the dividend paid on equity contribution is not deductible. Therefore, the higher the level of debt in a company, and thus the amount of interest it pays, the lower will be its taxable profit. For this reason, debt is often a more tax efficient method of finance than equity. Multinational groups are often able to structure their financing arrangements to maximize these benefits.

iv. Under the initiative of the G-20 countries, the Organization for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) project had taken up the issue of base erosion and profit shifting by way of excess interest deductions by the MNEs in Action plan 4. The OECD has recommended several measures in its final report to address this issue.

v. In view of the above, it is proposed to insert a new section 94B, in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less.

vi. The provision shall be applicable to an Indian company, or a permanent establishment of a foreign company being the borrower who pays interest in respect of any form of debt issued to a non-resident or to a permanent establishment of a non-resident and who is an 'associated enterprise' of the borrower. Further, the debt shall be deemed to be treated as issued by an associated enterprise where it provides an implicit or explicit guarantee to the lender or deposits a corresponding and matching amount of funds with the lender.

vii. The disallowed interest shall be carried forward to 8 assessment years immediately succeeding the assessment year for which the disallowance was first made and deduction shall be allowed against the income computed under the head "Profits and gains of business or profession to the extent of maximum allowable interest expenditure.

viii. A threshold of interest expenditure of Rs 1 crore is provided exceeding which the provision would be applicable. Banks and insurance business are excluded from the ambit of section 94B.

ix. Due to the above provisions of section 94B, it is observed that many non-resident investors and who had previously invested in Indian businesses through ECB's and investee companies now prefer to convert their investments into share capital to keep themselves away from the hassles of compliance with the provisions of section 94B.

x. This amendment is applicable from the financial year beginning from 1st April 2017.

7. **Widening the scope of Income from Other Sources (section 56(2)(x))**

Section No.	Provision Prior to Finance Act 2017	Provision After Finance Act 2017
56(2)(x)	N.A	***Where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017—*** ***(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*** ***(b) any immovable property—*** ***(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*** ***(B) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:*** ***Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause:*** ***Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:*** ***Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;***

		(c) any property, other than immovable property,— *(A)without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;* *(B)for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :* *Provided that this clause shall not apply to any sum of money or any property received—* *(I) from any relative; or* *(II) on the occasion of the marriage of the individual; or* *(III)under a will or by way of inheritance; or* *(IV)in contemplation of death of the payer or donor, as the case may be; or* *(V)from any local authority as defined in the Explanation to clause (20) of section 10; or* *(VI)from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or* *(VII)from or by any trust or institution registered under section 12A or section 12AA; or* *(VIII)by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or*

		(IX)by way of transaction not regarded as transfer under clause (i) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47; or ***(X)from an individual by a trust created or established solely for the benefit of relative of the individual.*** ***Explanation.—For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "stamp duty value" shall have the same meanings respectively assigned to them in the Explanation to clause (vii).]***

Analysis:

i. Under the provisions of section 56(2)(vii) prior to Finance Act 2017, any sum of money or any property which was received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family was chargeable to income-tax in the hands of the resident under the head "Income from other sources" subject to certain exceptions.

ii. Further, receipt of certain shares by a firm or a company in which the public was not substantially interested was also chargeable to income-tax in case such receipt was in excess of Rs. 50,000 and was received without consideration or for inadequate consideration.

iii. The existing definition of property for the purpose of this section included immovable property, jewellery, shares, paintings, etc. These anti-abuse provisions were applicable only in case of individual or HUF and firm or company in certain cases.

iv. Therefore, receipt of sum of money or property without consideration or for inadequate consideration did not attract these anti-abuse provisions in cases of other assessees.

v. In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration a new clause (x) in sub-section (2) of section 56 is inserted so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources".

vi. Due to the introduction of the above mentioned new clause, clause (vii) and clause (viia) of subsection (2) of section 56 (2) has been cancelled from 1st April 2017.

vii. For the purpose of this new clause, fair market value of property, jewellery or shares will be calculated as per Rule 11U and Rule 11UA of the Income Tax Act, 1961.

viii. After the introduction of the above clause, shares received by a firm or closely held company from any person of a listed company without consideration (as a gift) or for a consideration which is less than the aggregate for market value by more than Rs 50,000, would become taxable under clause (x) of section 56(2), which was previously not taxable under section 56(2)(viia).

ix. In absence of an amendment in the definition of 'income' under section 2(24), can it still be argued that receipts envisaged in aforesaid provisions are capital receipts not chargeable to tax.

x. This amendment is applicable from the financial year beginning from 1st April 2017.

8. Fair market value to be full value of consideration for transfer of share other than quoted share (section 50CA)

Section No.	Provision Prior to Finance Act 2017	Provision After Finance Act 2017
50CA	N.A	***Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of section 48, be deemed to be the full value of consideration received or accruing as a result of such transfer.*** ***Explanation.—For the purposes of this section, "quoted share" means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.***

Analysis:

i. Under the provisions of the Act prior of Finance Act 2017, income chargeable under the head "Capital gains" was computed by taking into account the amount of full value of consideration received or accrued on transfer of a capital asset.

ii. In order to ensure that the full value of consideration is not understated, the Act also contained provisions for deeming of full value of consideration in certain cases such as deeming of stamp duty value as full value of consideration for transfer of immovable property in certain cases.

iii. In order to rationalise the provisions relating to deeming of full value of consideration for computation of income under the head "capital gains", a new section 50CA is introduced to provide that where consideration for transfer of share of a company (other than quoted share) is less than the Fair Market Value (FMV) of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "Capital gains".

iv. This amendment is applicable from the financial year beginning from 1st April 2017.

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