Snippets of changes made in Finance Bill, 2018 as passed by the Lok Sabha

1. 'Significant Economic Presence' even if agreement is entered into outside India

The Finance Bill, 2018 proposed insertion of a new *Explanation* 2A to Section 9 to clarify that 'Significant Economic Presence' in India shall also constitute 'Business Connection' in India.

This would enable levy of tax on dot com companies who are doing business in India through digital means without any physical presence.

The term "Significant Economic Presence" shall 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 transaction or transactions during the previous year exceeds the amount as may be prescribed; or

ii) Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed in India through digital means.

The Finance Bill, 2018 proposed a Proviso to *Explanation* 2A to section 9 to provide that 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.

The Finance Bill, 2018 as passed by the Lok Sabha expands the scope of this proviso by adding a new clause that transactions or activities shall constitute significant economic presence in India whether or not the agreement for such transactions or activities is entered into in India.

2. Computation of actual cost of capital asset acquired on conversion of stock-in-trade

The Finance Bill, 2018 proposed that conversion of an inventory into capital asset shall be charged to tax as business income under Section 28. For this purpose, the Fair Market Value (FMV) of the inventory, as on the date of conversion, shall be deemed to be the full value of the consideration of such inventory.

Though the Finance Bill, 2018 proposed the treatment of inventory into capital assets, yet no corresponding provisions were introduced for computation of actual cost of acquisition of the capital asset so obtained on conversion of inventory. The Finance Bill, 2018 as passed by the Lok Sabha, has now inserted a new *Explanation* 1A to Section 43 to provide that the FMV of the inventory as on the date of conversion shall be deemed to be the actual cost of capital asset in hands of business entity.

3. Streamlining the provisions of section 48 and section 55 in case of taxation of long-term capital gains

A new Section 112A is proposed in the Finance Bill, 2018 to levy tax on long-term capital gains arising from listed equity shares, units of equity oriented mutual funds and units of business trusts. The mechanism to compute long-term capital gains was provided for in the provisions of new Section 112A itself, instead of in other specific provisions, i.e., Sections 48 and 55. To rectify the fallacy, the Finance Bill, 2018 as passed by the Lok Sabha, streamlines the provisions by shifting a few provisions from Section 112A to Section 48 and Section 55.

Sub-section (5) of Section 112A provides that the long-term capital gains for this provision shall be computed without giving effect to First proviso (asset acquired in foreign currency) and Second Proviso (indexation benefit) to Section 48. The provision of this sub-section is now shifted to Section 48 by inserting a new proviso. Similarly, the method of computation of cost of acquisition of listed equity shares or units as explained in sub-section (6) of Section 112A is now shifted to Section 55.

The meaning of 'fair market value' is further elaborated in the Finance Bill, 2018 as passed by Lok Sabha to deal with the situation where shares were unlisted as on January 31, 2018 but are listed on the date of transfer which happens on or after April 1, 2018.

In the above scenario, the taxpayer is allowed to take the benefit of indexation of cost of acquisition of such unlisted equity shares which is otherwise not available for purpose of capital gains tax under Section 112A.

4. Withdrawal of Sec. 54EC exemption if bonds issued on or after 01-04-2018 are redeemed within 5 years

Section 54EC provides exemptions up to Rs. 50 lakhs if any long-term capital gain is invested in the specified bonds of NHAI and RECL within a period of six months after the date of such transfer. Such investments in these bonds have a lock-in period of 3 years.

The Finance Bill, 2018 proposes to restrict the scope of exemption under Section 54EC only in respect of long-term capital gains arising from land or building or both. Further, the lock-in period of these bonds, i.e., NHAI and RECL, has been proposed to be increased to 5 years.

Though the Finance Bill, 2018 proposed to increase the lock-in period of investments in bonds to 5 years, yet it didn't propose any amendment for reversal of exemption if these bonds are transferred or redeemed within 5 years.

The Finance Bill, 2018 as passed by Lok Sabha inserts a new proviso in section 54EC(2) that exemption shall be withdrawn if bonds issued on or after 01-04-2018 are transferred or redeemed within 5 years.

5. Amendment to section 80-IAC for requirement of threshold limit of turnover for Startups

Deductions under Section 80-IAC are available to an eligible start-up for 3 consecutive assessment years out of 7 years at the option of such start-up.

These deductions are allowed subject to certain conditions as given below:

a) The start-up company is incorporated between April 1, 2016 and March 31, 2021;

b) The total turnover from start-up business does not exceed Rs. 25 crores in any of the previous year 2016-17 to 2020-21; and

c) It is engaged in an eligible business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

The Finance Bill, 2018 proposes that the condition of 'turnover does not exceed Rs. 25 crores' shall be checked in 7 previous years commencing from the date of incorporation. The Finance Bill, 2018 as passed by Lok Sabha now provides that condition of 'turnover does not exceed Rs. 25 crores' shall be checked in 7 previous years commencing from the previous year in which deduction under section 80-IAC is first claimed.

6. Only resident non-individual entity is required to obtain PAN

The Finance Bill, 2018 proposed amendment to Section 139A to provide that that every non-individual entity will have to obtain a PAN as its Unique Entity Number (UEN) if they enter into a financial transaction of an amount aggregating to Rs. 2.50 lakhs or more in a financial year.

The Finance Bill, 2018 as passed by Lok Sabha restricts the scope of this provision to only non-individual resident persons.

7. Valuation of securities held by bank or financial institution

The Finance Bill, 2018 proposed to amend Section 145A to provide that the inventory, being unlisted securities or securities listed but not quoted on a recognised stock exchange, shall be valued at actual cost initially recognised in accordance with the Income Computation and Disclosure Standards (ICDS). The inventories of other securities shall be valued at lower of actual cost or net realizable value in accordance with ICDS.

The Finance Bill, 2018 as passed by Lok Sabha has inserted a new proviso in section 145A to provide that the securities held by a scheduled bank or public financial institution shall be valued in accordance with ICDS after taking into account the extant guidelines issued by the RBI in this regard.

8. Amendments to the Government Savings Banks Act, 1873

A new Section 14A has been proposed to be inserted in the said Act, whereby immunity has been provided from attachment of any amount standing credit to the account of any depositor in the Public Provident Fund Scheme from any decree or order of any court in respect of any debt or liability incurred by the depositor.

(Source: Taxmann.com)