

CONNECT **2019**



DIRECT TAX



Important Amendment to be kept in mind while finalizing Income Tax Return of Trusts for AY 2019-20 as amended by Finance Act, 2018.

Union Budget 2018 has brought drastic change in the relief already provided to hospitals, educational institutions, trusts and funds registered under section 10(23)(C) & section 11, which is very important & considerable.

As per section 11 so much of income as it consists of income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is **not in excess of fifteen per cent of the income from such property** shall not be included in the total income of the person.

In short if the trust has applied at least 85% of the receipts for the charitable or religious purposes in India then whole 100% of the income will be exempt.

Before proposal of budget 2018-19 that 85% of application was not subjected to the provisions of section 40(a)(ia), 40A(3) & 40A(3A). i.e. provisions of Business Chapter were not considered for application of Income.

Therefore the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A is also applicable to trust from AY 2019-20 and any non compliance with respect to this clause will lead to disallowance of expenses incurred in respect of application of Income under Trust.





COMPOUNDING OF OFFENCES UNDER DIRECT TAXES

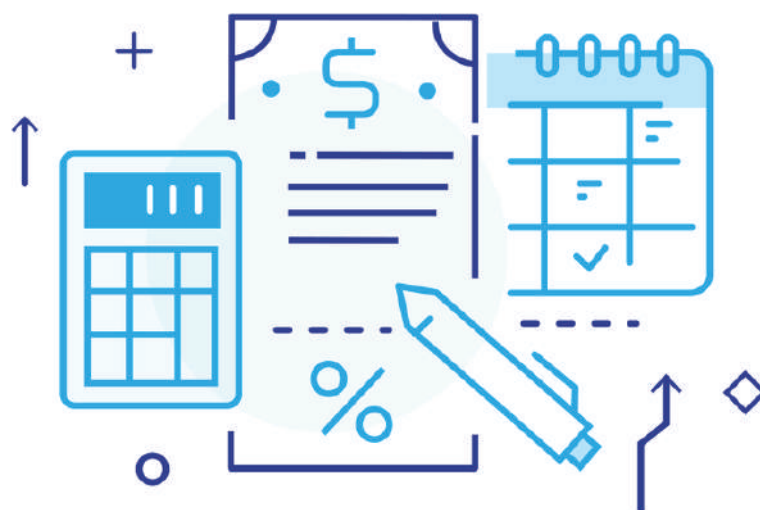
(Effective from June 17, 2019)

Offences which can be compounded (only thrice in the life-time of the Company)

- Delay in deposit or non-deposit of
 - > Taxes deducted at source (TDS);
 - > Dividend Distribution Tax (DDT);
 - > Taxes collected at source (TCS);
- Wilfully fails to furnish Return of Income;
- Making a wilful false statement with respect to above offences;
- Abating or inducing a person to commit the above offences;

Offences which can be compounded (only once in the life-time of the Company)

- Wilfully attempts to evade tax, penalty or interest;
- Wilfully attempts to under report income;
- Wilfully attempts to evade payment of tax, penalty or interest;
- Wilfully fails to produce accounts and documents;
- Falsification of books of account or other documents;
- Making a wilful false statement with respect to above offences;
- Abating or inducing a person to commit the above offences;





Offences which cannot be compounded

- Committed by a person who was convicted by a court of law under Direct Taxes Laws;
- In cases where compounding application has already been rejected;
- A person who has enabled others in tax evasion, like., money laundering, generating bogus invoices of sale/purchase, providing accommodation entries, etc;
- Offences related to undisclosed foreign bank accounts / assets;
- Offences under the Black Money Act;
- Offences found related to anti- national/terrorist activity;
- Offences under the Benami Transactions (Prohibition) Act;
- All other offences under Direct Tax Laws (excluding the offences where compounding is permitted);

Compounding Fees and Other Points to remember:

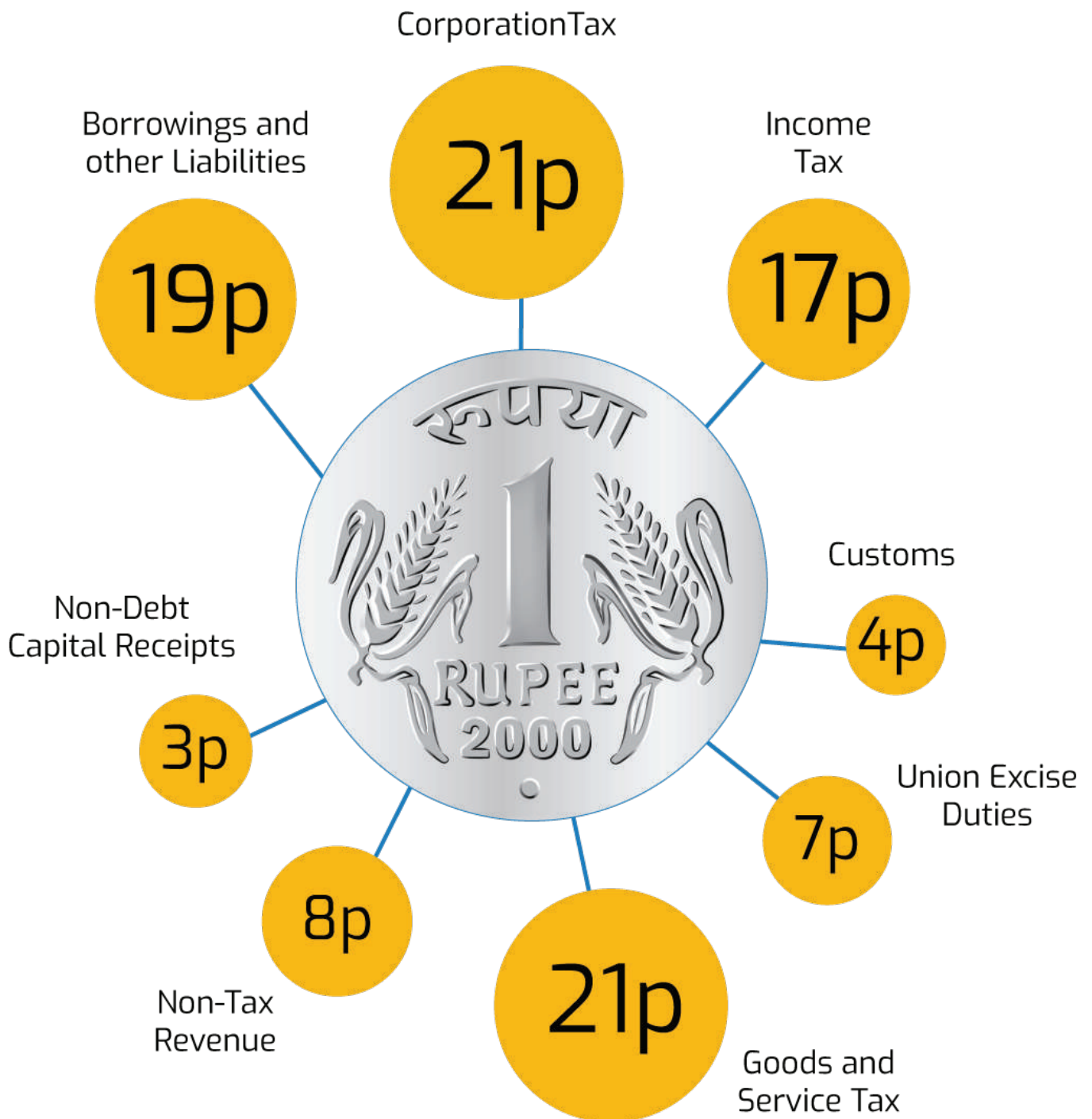
- Chief Commissioners or Director Generals are the competent authorities to hear these pleas;
- Pleas wherein complete taxes, interest and penalties are paid are only entertained;
- Disposal of plea - within six months from the end of the month of its receipt;
- Compounding charges shall include compounding fee, prosecution establishment expenses and litigation expenses, including Counsel's fee;
- Minimum compounding fees – RS.100K
- Compounding fees – in case of TDS, TCS and DDT - 2% per month for the period of default;
- Compounding fees – in case of failure to furnish return – varies between Rs. 2K to 5k per day;
- Compounding fees – in case of tax evasion – varies between 100% to 150% of taxes evaded;

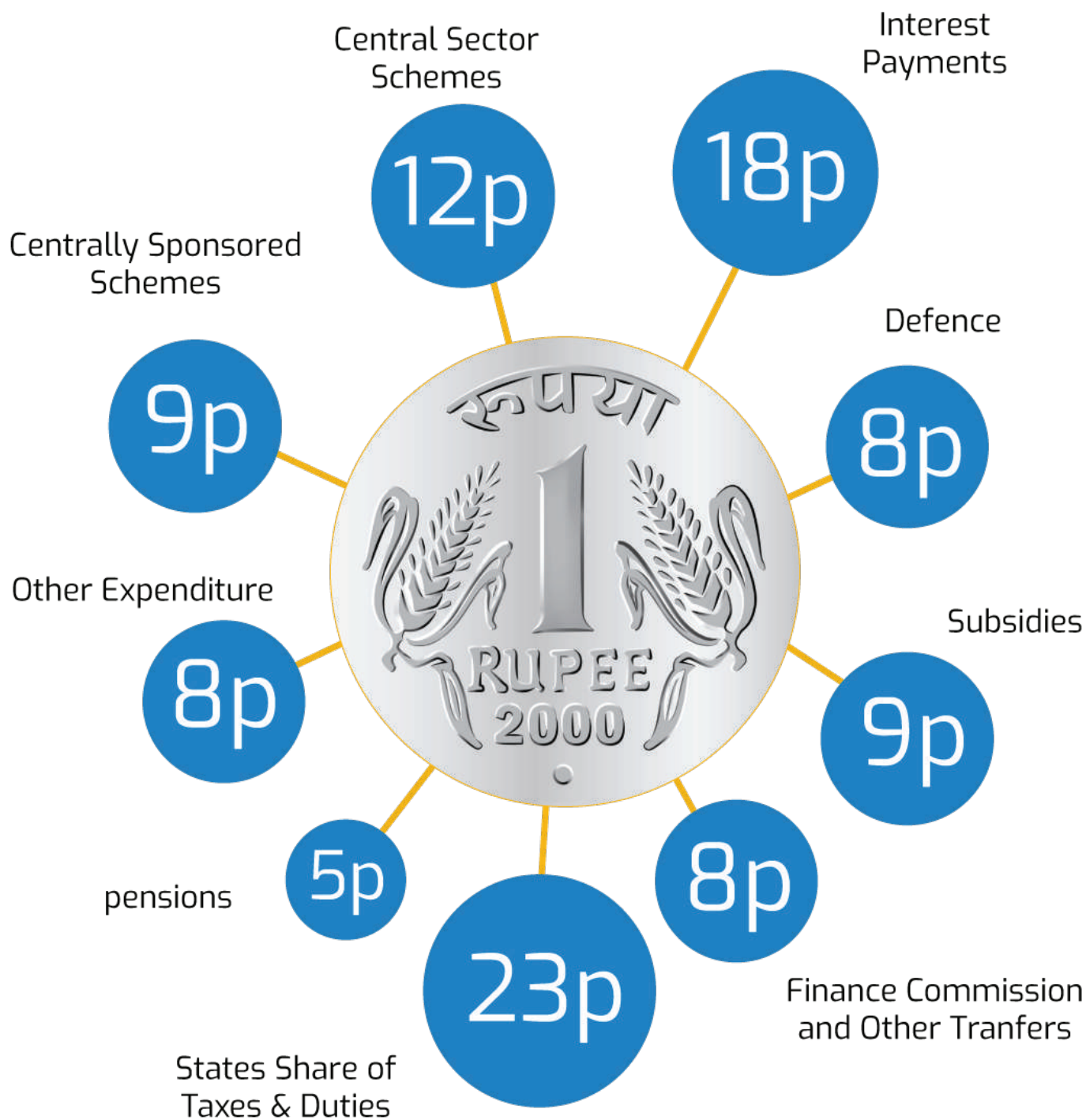




Budget 2019: Will income tax slabs, rates get another revision?

Expectations are soaring among Indian taxpayers, who are eagerly awaiting new finance minister Nirmala Sitharaman's maiden budget speech on July 5. Most of the taxpayers are hoping for further revision in income tax slabs and individual rates







Union Budget 2019-20; The Backdrop

The Union budget has come at the time where the unemployment in the country is at its highest. The 6.1% unemployment number is surely not lost on the government. Nirmala Sitharaman has herself affirmed in pre-budget discussions that the budget will have very strong jobs focus. This could include a boost to industry, exports, MSMEs, and agricultural sector.

Common Man's expectation of personal taxation

1. Increase in the Basic Exemption Limit: It is expected that the government may increase the income tax basic exemption limit in Budget 2019 to Rs 3.0 lacs.
2. Increase 80C limit: The limit of Rs 1.5 lacs was last revised in Budget 2014-15. We can expect the government to consider revising this limit to Rs 2.0 lacs.
3. Increase in 80D limit: The government could revise deductible limits for health insurance premiums under Sec 80D to Rs 50,000 for self and family.
4. Increase in relief on Housing Loan deduction: It is expected that the limit of the housing loan deduction shall be enhanced to Rs. 2.5 Lacs from Rs. 2 Lacs. This change will help many individuals to save a significant amount of tax through housing loans.
5. Lowering Holding period of Debt funds: The government is expected to bring down the Long-term Capital Gain cut off period of Debt Funds from 3 to 1 year. This will align debt funds' long-term capital gain time limit with that of other capital market securities. This will mean tax relief for debt investors.

Other expectations

6. Lowering Corporate Tax Rate: It is expected Government may adhere to its 2014 election campaign commitment to reduce Corporate Tax rate across to 25%.
7. Electric vehicles to get host of tax sops: EV segment could be offered upfront weighted deduction on capital expenditure under Section 35AD(1) of the income tax Act.





Case Laws

While calculating disallowance u/s 14A read with rule 8D only those investments which have yielded the exempt income during the year should be considered and the investments that have not yielded any exempt income should be ignored

E Centric Solutions Pvt. Ltd. Vs. Asst. Commissioner of Income-tax, Circle – 17(1) – ITAT Hyderabad - ITA No. 1549/Hyd/2016

Balaji Mines and Minerals Private Limited Vs. Asst. CIT-1, Margao Range – ITAT Panaji – ITA No. 325/PAN/2017

The Hon'ble Tribunals held that while calculating disallowance u/s 14A read with rule 8D, only those investments which yielded exempt income during the year were to be considered.

No Tax is required to be deducted on reimbursement of expenses and consequently on disallowance u/s 40(a)(ia)

JCIT (OSD), Range-1, Hyderabad Vs. AGA Publications Limited – ITAT Hyderabad - ITA No. 879/JP/2018

The Hon'ble Tribunal in the case reimbursement of expenses, no Tax is required to be deducted and consequently no disallowance u/s 40(a)(ia) can be made

No penalty u/s 271B where books of accounts are not maintained

Smt. Shanta Singhvi Vs. The ITO, Ward-3, Pali – ITAT Jodhpur - ITA NOs. 293 & 294/Jodh/2018

Somnath Ghosh Vs. ITO, Ward- 47(1), – ITAT Kolkata - ITA No. 640/KOL/2018

The Hon'ble Tribunal(s) held that Separate penalty has been provided for non-maintenance of accounts, i.e. under section 271A of the Income-tax Act, 1961, and for not getting the accounts audited and not furnishing the audit report, i.e. under section 271B. If a person has not maintained account books or any accounts the question of audit does not arise. In such an event the imposition of penalty under the provision contained in section 271A for alleged non-compliance with section 44AA may arise but the provisions of section 44AB do not get violated in a case where accounts have not been maintained at all and therefore the penal provisions of section 271B of the Act would not apply.





Compensation paid to the tenants for getting the vacant possession of the premises is allowed as deduction while computing the capital gain.

Acmevac Pumps & Engg Pvt Ltd Vs Asst. Commissioner of Income-tax- 2(1)(1), Mumbai – ITAT Mumbai - ITA No.5155/Mum/2017

The hon'ble Tribunal held that compensation paid by the assessee to two tenants for getting vacant possession of the property is deductible as an expenditure incurred wholly and exclusively in connection with transfer of the property while computing capital gains.

No penalty can be levied u/s 271(1)(c) against those additions in respect of which assessing officer has not recorded initiation of penalty proceedings in the assessment order

Hindustan Coca Cola Marketing Company (P) Ltd. Vs. Deputy Commissioner Of Income Tax – ITAT Delhi – ITA No. 7900/Del/2018

When the AO specifically initiates penalty proceedings in respect of certain additions in the assessment order, but does not record initiation of penalty proceeding in respect of the other additions; it has to be inferred that the additions in respect of which penalty proceedings were not initiated were not intended to be considered for subsequent order imposing penalty under s. 271(1)(c). When certain things are specifically included and remaining things are not included therein, it has to be inferred that what was not specifically included was not intended to be included at all. Scope of penalty proceedings under s. 271(1)(c) cannot be widened later to include within its scope such additions which were not sought to be covered within the scope of penalty under s. 271(1)(c) at the time when penalty proceedings were initiated and assessment order was passed. The retrospective widening of the scope of penalty, to include those items for levy of penalty under s. 271(1)(c) which were not included for this purpose at the time when penalty proceedings under s. 271(1)(c) were initiated and assessment order was passed amounts to review and change of opinion by the AO, to the detriment of the assessee; which has no authority of law.





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