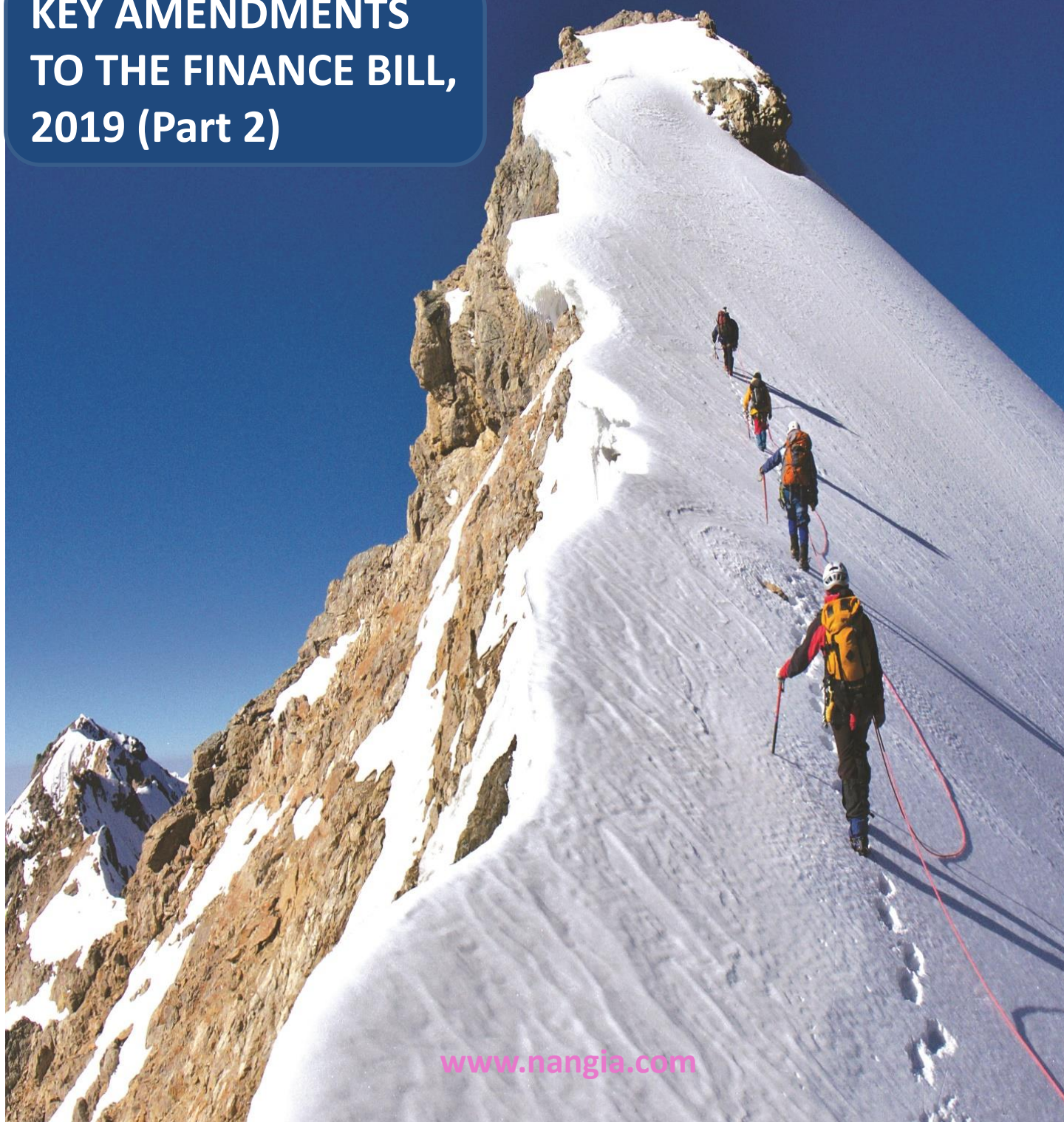


NEWSFLASH

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**KEY AMENDMENTS
TO THE FINANCE BILL,
2019 (Part 2)**



KEY AMENDMENTS TO THE FINANCE BILL, 2019 (Part 2)

Background:

The Finance Bill 2019 (Part 2) was announced on 5th July, 2019 proposing a slew of amendments in as many as 24 different laws. Thereafter, on 18th July, 2019, a notification has been issued introducing some amendments to the proposed bill. The key amendments to the Finance Bill 2019 (part 2) and their impact are as follows:

Section amended	Budget Proposal	Amended Proposal
Newly proposed clause (viii) in section 9(1)	The scope of 'income' was limited to gifts to person outside India either in the form of any sum of money or transfer of a property situated in India.	The scope of 'income' has been restricted to include only gifts of money paid by a person resident in India to a non-resident (not being a company or to a foreign company).

Nangia's Take:

'Person outside India' – the term used in the budget proposal is not defined under the Act. Also there is no machinery provision for taxability of gift of property situated in India. Hence, in order to bring clarity and minimize the chances of opacity of legitimate provisions, clarificatory amendments has been proposed.

Section 10(23C)	The clause for withdrawal of exemption under section 10(23C) was not there.	It is now proposed to amend the second proviso to section 10(23C) to encapsulate a rider that the exemption granted under section 10(23C) of the Income Tax Act to a prescribed body (being a fund or trust or institution or any university or other educational institution) shall be withdrawn if any such body fails to comply with such requirements under any other law as are vital for the purpose of achieving its objects.
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Nangia's Take:

The amendment is in line with the amendment that was brought about under section 12AA. Now, exemption under section 10(23C) shall also be withdrawn in case the institution violates any condition that was the basis for its formation or if it fails to comply with the provisions of any other law.

<p>New provision Section 56(2)(viib)</p>	<p>If a company which has been granted an exemption under section 56(2)(viib) upon fulfilment of predefined conditions, subsequently fails to comply with the said conditions, consideration received in excess of FMV of shares shall be deemed to be the income of that company to be chargeable to income tax for the previous year in which such failure has taken place.</p>	<p>The said proposal has been made tighter and more stringent. A company, which subsequently fails to comply with any of such conditions, shall, additionally be treated as a company that has underreported the said income and a penalty equivalent to 200% of the amount of tax payable on such under-reported income shall be imposed on the company in default.</p>
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Nangia's Take:

The companies falling in the ambit of Section 56(2)(viib) shall not be spared and shall be penalised upon failure to comply with the required conditions, thereby making tax administration process more stringent than ever before.

<p>Newly proposed Section 194M</p>	<p>Any person (individual or HUF other than those liable to deduct TDS under section 194C or 194J) responsible for making payment to a resident for carrying out any work in pursuance of a contract or towards fee for rendition of professional services shall, at the time of credit of such sum to the account of the payee, deduct tax at a rate of 5%, provided the transaction amount is more than Rs. 50 lacs.</p>	<p>The scope of the new Sec. 194M has been expanded to also include TDS deduction @ 5% by an individual or an HUF on the sums paid towards commission [not covered u/s. 194H], apart from contractual work or professional fees, not covered u/s. 194C and 194J.</p>
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Nangia's Take:

The scope of the newly introduced section 194M has been widened by this amendment.

<p>Newly proposed Section 194N</p>	<p>TDS on cash withdrawals from an account maintained with a bank or co-operative sector bank or a post office exceeding Rs. 1 crore during a financial year was proposed to be deducted at the rate of 2% in the Budget.</p>	<p>The amended proposal provides that the bank or co-operative sector bank or a post office shall aggregate the cash withdrawals from all accounts maintained by the taxpayers with them during the previous year for computing the threshold of Rs. 1 Cr.</p>
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Nangia's Take:

There was a possibility that people may misuse this by maintaining various bank accounts. The amended proposal plugs the loophole, but partially, since even now a person can maintain various accounts with difference banks and withdraw less than Rs. 1 cr from each such bank to avoid the TDS.

<p>Newly proposed clause 4D under section 10</p>		<p>A new clause 4D under Section 10 has been inserted to provide for exemption for any income accrued or arisen or received by a specified fund as a result of transfer of capital asset (rupee denominated bond, bond or global depository receipt or a derivative).</p> <p>The exemption shall be available to the extent such income accrued or arisen or received in respect of units held by a non-resident. However, the transfer must be on a recognised stock exchange located in any International Financial Services Centre (IFSC) and the consideration for such transaction must be received in convertible foreign exchange.</p>
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Nangia’s Take:

The amendment recognises the fact that a resident sponsor or fund manager located in IFSC or elsewhere in India would also be required to hold investments in the fund. Hence reacting to industry demand it is proposed to exclude such resident investors for the fund to qualify for capital gains exemption. Accordingly, consequential amendments to the Finance Bill have been made to provide for exemption to the fund from capital gains to the extent gains are in respect of units held by non-residents.

<p>Amendments proposed to PBPT Act</p>	<p>There was no provision, prescribing penalty in case of non-compliance with summons or failure to furnish required information.</p> <p>There was no provision governing rectification of orders/ mistakes apparent from record</p>	<p>Prohibition of Benami Property Transactions Act, 1988 (PBPT Act)</p> <p>Section 46 of the PBPT Act has been amended to include within its ambit, a provision for appeal to the Appellate Tribunal within 45 days against an order under section 54A. Section 54A levies a penalty of INR 25,000 for failure to comply with summons issued or failure to furnish information under section 19 or section 21 of the PBPT Act.</p> <p>Section 47 of the PBPT Act has also been amended to provide for rectification of orders of the Appellate Tribunal. The order to rectify any mistake apparent from record, or make any other amendment can be passed within one year from the end of the month in which such order was passed.</p>
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Nangia’s Take:

In line with its objective to curb unlawful activities revolving around the PBTP Act, stringent penalties have been prescribed. The amendment, prescribing penalty in case of failure to comply with summons/ non-provision of information to the authorities will make implementation of the law easier and strict.

<p>Amendments to PMLA Act</p>	<p>The situations in which a person could be treated to be guilty of money laundering were not specified</p>	<p>Prevention of Money Laundering Act (PMLA Act)</p> <p>A person shall be treated guilty of the offence of money laundering if such person is found to have directly or indirectly attempted to indulge or is knowingly involved in the following processes or activities connected with proceeds of crime in any manner whatsoever:</p> <ol style="list-style-type: none"> 1. Concealment 2. Possession 3. Acquisition 4. Use 5. Projecting as untainted property 6. Claiming as untainted property <p>It has also been clarified that the process or activity connected with proceeds of the crime shall continue till a person enjoys the proceeds of the crime (directly/indirectly)</p>
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Nangia’s Take:

In order to bring about clarity, as to what would account for an ‘offence’ under the PMLA Act, offences have been clearly defined. The insertion would remove ambiguity on the subject and would aid in making compliance stricter.

<p>Amendments to PMLA Act</p>	<p>Transactions which were to be authenticated by banks were not defined</p>	<p>“Specified transaction” which are authenticated by banks have been defined in the PMLA Act</p> <p>Specified Transaction shall mean:</p> <ol style="list-style-type: none"> 1. Any withdrawal or deposit in cash, exceeding such amount 2. Any transaction in foreign exchange, exceeding such an amount 3. Any transaction in any high value imports or remittances 4. Such other transaction or class of transactions, in the interest of revenue or where there is a high risk of money laundering or terrorist financing
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Nangia’s Take:

In order to be precise and enhance obedience, the specified transactions, which are required to be authenticated by banks, have been clearly specified.

<p>Amendments to PMLA Act</p>	<p>Section 45, governing offences cognizable and non-bailable provided no explanation regarding the powers of the authorised officers</p>	<p>An explanation has been added in respect of Section 45 of the PMLA Act. It has been clarified that in case of cognizable and non-bailable offences, notwithstanding provisions of CPC, officers authorised under the Act are empowered to arrest without warrant subject to the fulfilment of conditions of Section 45 and Section 19</p>
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Nangia’s Take:

The powers of the officers have been made clear. Now the authorised officers are empowered to arrest without warrant subject to the fulfilment of prescribed conditions under the Act.

ABOUT US

Nangia & Co LLP is a premier professional services organization offering a diverse range of Taxation, Transaction Advisory and Business Consulting services. Nangia & Co LLP has presence currently in Noida, Delhi, Gurugram, Mumbai, Dehradun, Bengaluru and Pune. Nangia & Co LLP has been in existence for more than 38 years and has been consistently rated as one of the best advisory firms in India for entry strategy, taxation, accounting & compliances over the past many years.

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