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THE UNION BUDGET 2020-21

- An Analysis

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About the Cover

The present government's stated intention on the tax front seems to be to bring simplification and rationalisation in tax laws. There have been lot of statements made by various top leaders that the government respects "value creation" and would also like to ease the compliance burden on tax payers.

The Union Budget 2020-21 was slated to offer a healing balm to the struggling economy, the baffled businessman and the harassed tax payers. The importance given in the Economic Survey to value creators and value creation raised high hopes amongst the countrymen for a path breaking budget.

What we have finally got in our hands is a Budget that confuses more than clarifies; adds more to the already high compliance burden and which, because of the drafting, immediately requires a flurry of press releases and clarifications. One therefore has several questions about the promises of simplification, rationalisation, value creation and ease of compliance related averments of the government. This budget has raised more questions than provided solutions.

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The price of this publication is partly subsidised by a donation received from
Pragnya Girish Sharedalal Foundation.

Printed by **Finesse Graphics & Prints Pvt. Ltd.** | **Tel:** 022-4036 4600

The Union Budget
2020-21

– Analysis of Important Amendments

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DIRECT TAXES

All amendments proposed in the Finance Bill, 2020 would be effective from Assessment Year 2021-22 unless specifically mentioned otherwise.

In this booklet, the proposals of the Finance Bill, 2020 are referred to as if the amendments have been actually made, except in a few cases, where the effective dates are mentioned.

Unless otherwise specified, the reference to the words "the Act" used is to the Income-tax Act, 1961.

The major changes made by The Taxation Laws (Amendment) Act, 2019 have also been incorporated in this booklet at appropriate places.

1. TAX RATES

Tax rates for Individuals/HUF

Resident individual aged above 60 years but less than 80 years

Total Income	Tax Rate A.Y. 2020-21	Tax Rate A.Y. 2021-22
Up to Rs. 3,00,000	Nil	There are no changes to the slab rates.
Rs. 3,00,001 to Rs. 5,00,000	5%	
Rs. 5,00,001 to Rs. 10,00,000	20%	
Above Rs. 10,00,000	30%	

Resident individual aged above 80 years

Total Income	Tax Rate A.Y. 2020-21	Tax Rate A.Y. 2021-22
Up to Rs. 5,00,000	Nil	There are no changes to the slab rates.
Rs. 5,00,001 to Rs. 10,00,000	20%	
Above Rs. 10,00,000	30%	

Other individuals and HUF

Total Income	Tax Rate A.Y. 2020-21	Tax Rate A.Y. 2021-22
Up to Rs. 2,50,000	Nil	There are no changes to the slab rates.
Rs. 2,50,001 to Rs. 5,00,000	5%	
Rs. 5,00,001 to Rs. 10,00,000	20%	
Above Rs. 10,00,000	30%	

Surcharge applicable to Individual / HUF

Total Income	Surcharge A.Y. 2020-21	Surcharge A.Y. 2021-22
Exceeding Rs. 50 Lakh but not exceeding Rs. 1 crore	10%	There are no changes except those made by The Taxation Laws (Amendment) Act, 2019
Exceeding Rs. 1 crore but not exceeding Rs. 2 crore	15%	
Exceeding Rs. 2 crore but not exceeding Rs. 5 crore*	25%	
Exceeding Rs. 5 crore*	37%	
Effective tax rate (above Rs. 5 crore)	42.744%	

* surcharge on income taxable under sections 111A and 112A would be restricted to 15%

Optional tax regime – Section 115BAC

Government has introduced a new scheme for Individuals and HUFs with lower rates for those foregoing certain exemptions / deductions:

Total Income	Tax Rate (under the new regime)	Tax Rate (under the old regime)
Up to Rs. 2,50,000	Nil	Nil
Rs. 2,50,001 to Rs. 5,00,000	5%	5%
Rs. 5,00,001 to Rs. 7,50,000	10%	20%
Rs. 7,50,001 to Rs. 10,00,000	15%	20%
Rs. 10,00,001 to Rs. 12,50,000	20%	30%
Rs. 12,50,001 to Rs. 15,00,000	25%	30%
Above Rs. 15,00,000	30%	30%

1. The new scheme is optional and the assessees will have to opt for being covered by the new scheme in the prescribed manner:

   i) Where such individual or HUF does not have business income, the option is to be exercised for every year along with the filing of the return of income under section 139(1) for the year.

   ii) Where such individual or HUF has business income, the option is to be exercised on or before the due date of filing the return of income and such option once exercised shall apply for that previous year and to all subsequent years.

2. If the assessee having business income has opted to be governed by the new scheme, then, subsequently, he can opt out only once and thereafter, he will never be eligible to opt for the new scheme again except when he ceases to have any business income.

3. The above concessional tax rates can be opted after foregoing certain exemptions / deductions such as:

   i) Leave Travel Concession – section 10(5)

   ii) House Rent Allowance – section 10(13A)

   iii) Specified allowances exempt under section 10(14) (allowances granted to employees other than transport allowance, conveyance allowance, per-diems and travel and transfer allowance as mentioned in the Explanatory Memorandum)

   iv) Allowances to MPs / MLAs – section 10(17)

   v) Clubbed income of minor upto Rs. 1,500 – section 10(32)

   vi) Exemption for unit in SEZ – section 10AA

   vii) Standard and other deductions (including profession tax) from salary – section 16

   viii) Interest in respect of Self Occupied Property – section 24(b)

   ix) Set off of loss under the head income from house property against other heads – section 71

x) Additional depreciation – section 32(1)(iia)

xi) Deduction under sections 32AD, 33AB and 33ABA

xii) Specified deduction for donations or for expenditure on scientific research – section 35(1)(ii)/(iia)/(iii) or section 35(2AA)

xiii) Weighted deduction for expenditure on specified business / agricultural extension project – sections 35AD and 35CCC

xiv) Standard deduction for family pension – section 57(iia)

xv) Deductions under Chapter VI-A (such as section 80C, 80D, 80 TTA, 80TTB, 80G etc.) other than the following:-

a) 80CCD(2) – employer's contribution in notified pension scheme

b) 80JJAA – employment of new employees

c) 80LA – IFSC centre

xvi) Exemption in respect of voucher granted for free food and Beverages to employees, as mentioned in Explanatory Memorandum

xvii) Any exemption or deduction for allowances or perquisites provided under any other law

4. There is no separate higher threshold for senior and very senior citizens in the optional scheme.

5. Surcharge and Cess remain unchanged.

6. Once this option is exercised, provisions relating to Alternate Minimum Tax and Credit relating to the same will not be applicable. For this, amendments have been made in sections 115JC / 115JD.

If an assessee does not opt for the new scheme, he will continue to be governed by the existing regime. The slabs, tax rates and surcharge as applicable to individuals and HUFs have remained unchanged.

Tax rates for AOP/BOI

Particulars	Total Income	Tax Rate A.Y. 2020-21	Tax Rate A.Y. 2021-22
For AOP, BOI etc.	Up to Rs. 2,50,000	Nil	There are no changes to the slab rates
	Rs. 2,50,001 to Rs. 5,00,000	5%	
	Rs. 5,00,001 to Rs. 10,00,000	20%	
	Above Rs. 10,00,000	30%	

There is no change in the rates of surcharge for AOPs/BOIs and the rates mentioned in the table for Individuals / HUFs will apply to AOPs/BOIs also.

Tax rates for Firms, LLPs

The effective tax rates (including surcharge and cess) for AY 2021-22 will be as under:

Person	Total Income (Rs.)	
	Upto Rs. 1 crore	Above Rs. 1 Crore
Firms, LLP etc.	31.2%	34.944%

Tax rates for Co-operative Societies

Effective tax rates (including surcharge and cess) for AY 2021-22 will be as under:

Particulars	Income upto Rs. 1 crore	Income Above Rs. 1 crore
Co-operative societies opting for taxation under section 115BAD ##	25.168%	25.168%
Other Co-operative Society	31.20%	34.944%

Option of concessional tax scheme to resident co-operative societies – Section 115BAD

A new Section 115BAD is inserted for resident co-operative societies who have the option to pay tax at the rate of 22% (plus surcharge @ 10%) instead of 30%.

The conditions under section 115BAD(2) mention that the total income of a co-operative housing society shall be computed:-

1. without deduction under provisions of section 10AA, section 32(1)(iia), section 32AD, section 33AB, section 33ABA, section 35(1)(ii), section 35(1)(iia), section 35(1)(iii), section 35(2AA), section 35AD, section 35CCC or any provisions of Chapter VI-A (including section 80P) other than section 80JJAA;

2. without set off of any carried forward losses or depreciation from earlier assessment year in case such a loss or depreciation is attributable to deductions referred in paragraph 1 above; and

3. by claiming depreciation if any under section 32 except section 32(1)(iia) determined in the manner prescribed.

In case the co-operative society fails to satisfy the conditions mentioned under sub-section (2) of section 115BAD then the concessional rate of tax shall become invalid for that and subsequent assessment years as if the option to pay tax at concessional rate had never been exercised and other provisions of the Act shall apply.

Section 115BAD(3) provides that the loss or depreciation referred in section 115BAD(2)(ii) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

Where depreciation allowance in respect of block of asset was not given full effect prior to the assessment years beginning on 1st April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2020 in the prescribed manner, if the option to pay at concessional rate of tax is exercised for a previous year beginning 1st April, 2020.

Section 115BAD(4) provides that in case a person has a unit in International Financial Services Centre (IFSC), a deduction under section 80LA shall be available to such a unit subject to conditions mentioned under that section.

Section 115BAD(5) provides that the co-operative societies must opt for concessional rate of tax on or before the due date mentioned under section 139(1) for furnishing the return of income for any previous year relevant to Assessment Year 2021-22 or any subsequent assessment year. Such option, once exercised, shall continue to apply for all subsequent assessment years and cannot be subsequently withdrawn for the same or any subsequent year.

Once this option is exercised, provisions relating to Alternate Minimum Tax and Credit relating to the same will not be applicable.

Tax rates for Companies

Effective tax rates (including surcharge and cess) for AY 2021-22 will be as under:

Types of Companies	Income not exceeding Rs. 1 crore		Income exceeding Rs. 1 crore and upto Rs. 10 crore		Income above Rs. 10 crore	
	Effective tax rate (normal)	Effective tax rate (MAT)	Effective tax rate (normal)	Effective tax rate (MAT)	Effective tax rate (normal)	Effective tax rate (MAT)
Domestic Company with turnover up to Rs. 400 crore in FY 2018-19 and avails any tax incentives or exemptions or tax holiday	26%	15.60%	27.82%*	16.69%*	29.12%*	17.47%*
Other domestic company	31.20%	15.60%	33.384%*	16.69%*	34.944%*	17.47%*
Domestic Company exercising option to pay tax as per section 115BAA	25.168%**	Nil	25.168%**	Nil	25.168%**	Nil
New domestic manufacturing companies exercising option to pay tax as per section 115BAB	17.16% **	Nil	17.16%**	Nil	17.16%**	Nil
Foreign Company	41.60%^	15.60%^#	42.43%^	15.912%^#	43.68%^	16.38%^#

* Includes surcharge at the rate of 7% in case of income from Rs. 1 crore upto Rs. 10 crore and 12% in case of income above Rs. 10 crore

** Includes surcharge at the rate of 10%. It is assumed that other provisions of Chapter XII are not attracted in these cases.

^ Includes surcharge at the rate of 2% in case of income from Rs. 1 crore up to Rs. 10 crore and 5% in case of income above Rs.10 crore

\# If MAT is applicable to the foreign company

Amendments made *vide* The Taxation Laws (Amendment) Act, 2019

1. Optional Tax Regime for Domestic companies under Section 115BAA (effective from AY 2020-21)

Rate of tax

The tax rate is 22% (subject to other provisions of Chapter XII) plus surcharge of 10%.

Applicability

This option is available to any domestic company which satisfies certain conditions and which exercises the option on or before the due date specified under section 139(1) for furnishing returns of income for any previous year relevant to the assessment year commencing on or after 1st April, 2020.

Broad conditions

i) The total income of the company shall be computed without any deductions under the provisions of section 10AA or section 32(1) (iia) i.e. additional depreciation or section 32AD or section 33AB or section 33ABA or section 35(1)(ii), (iia) or (iii) or section 35(2AA) or section 35(2AB) or section 35AD or section 35CCC or section 35CCD or Chapter VI-A (other than the provisions of section 80JJAA or 80LA or 80M).

ii) Carried forward losses or unabsorbed depreciation which are attributable to any of the above referred deductions including deemed losses or depreciation under section 72A shall not be available for set off and it shall be deemed that full effect has been given to such losses or depreciation.

iii) The total income shall be computed by claiming depreciation under section 32 (other than additional depreciation) which shall be determined in a prescribed manner.

2. Optional Tax Regime for new manufacturing Domestic companies under Section 115BAB (effective from AY 2020-21)

Rate of tax

The tax rate is 15% (subject to other provisions of Chapter XII) plus surcharge of 10%.

Applicability

This option is available to a domestic company which has been set-up and registered on or after 1st October, 2019 and engaged in the business of manufacture or production of any article or thing (including business of generation of electricity). The option is required to be exercised on or before the due date specified under section 139(1) for furnishing the **first of the** returns of income for any previous year relevant to the assessment year commencing on or after 1st April, 2020.

Broad conditions

i) Manufacturing or production of an article or thing has been commenced on or before 31st March, 2023.

ii) The business is not formed by splitting up, or the reconstruction, of a business already in existence.

iii) The company does not use any machinery or plant previously used for any purpose. The usage of second-hand machinery or plant to the extent of 20% of the total value of machinery or plant and usage of machinery or plant which were previously used outside India are permitted.

iv) The company does not use any building previously used as a hotel or a convention centre in respect of which deduction under section 80-ID has been allowed.

v) The company is not engaged in any business other than 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. The following businesses would not be considered as a business of manufacture or production of any article or thing:

   a) Development of computer software in any form or in any media;

   b) Mining;

   c) Conversion of marble blocks or similar items into slabs;

   d) Bottling of gas into cylinder;

   e) Printing of books or production of cinematograph film; or

f) Any other business as may be notified by the Central Government on this behalf.

The business of generation of electricity shall be regarded as business of manufacture or production of any article or thing for this purpose.

vi) The total income of the company shall be computed without any deductions under the provisions of section 10AA or section 32(1) (iia) i.e. additional depreciation or section 32AD or section 33AB or section 33ABA or section 35(1)(ii), (iia) or (iii) or section 35(2AA) or section 35(2AB) or section 35AD or section 35CCC or section 35CCD or Chapter VI-A (other than the provisions of sections 80JJAA and 80M).

vii) Carried forward losses or unabsorbed depreciation which are deemed to be so under section 72A and which are attributable to any of the above referred deductions shall not be available for set off and it shall be deemed that full effect have been given to such losses or depreciation.

viii) The total income shall be computed by claiming depreciation under section 32 (other than additional depreciation) which shall be determined in a prescribed manner.

ix) Any income which is neither derived from nor is incidental to manufacturing or production of an article or thing shall be taxed @ 22%.

Note for (1) and (2) above:

In case of foreign companies and other non–residents the tax deducted at source will continue to be at the applicable rate plus surcharge and cess.

3. Amendments in MAT – Section 115JB (effective from AY 2020-21)

i) For companies opting for the new regime under section 115BAA or 115BAB the provisions of section 115JB relating to MAT are not applicable

ii) For other companies, the rate of MAT is reduced from 18.5% to 15%.

iii) For companies having income chargeable under sections 111A and 112A, the rate of surcharge on the tax on such income has been reduced to 15%.

2. RESIDENTIAL STATUS

Modification in conditions relating to residence – Section 6

An individual is resident in India in a previous year if (i) he is in India for a period or periods amounting to 182 days or more in that year; or (ii) he is in India for 365 days or more in the 4 years preceding that year and he is in India for a period of 60 days or more in that year.

Presently, in case of a citizen of India or a person of Indian origin who is outside India and comes on a visit to India in a previous year, the threshold of 60 days (referred to in earlier paragraph) is relaxed to 182 days. This limit of 182 days is now reduced to 120 days.

Similar relaxation in respect of a citizen of India who leaves India in a previous year as a member of the crew of an Indian ship or for the purposes of employment outside India remains unchanged.

An individual is a resident but not ordinarily resident if he has been non-resident in 9 out of the 10 previous years preceding that year or has during the seven previous years preceding that year been in India for an overall period of 729 days or less. Similar provisions exist for a manager of an HUF for determining the not ordinarily resident status of such an HUF.

The condition for an individual to be not ordinarily resident is now relaxed. Now, an individual will be not ordinarily resident if he is non-resident in 7 years out of 10 previous years preceding that year. The other condition relating to the overall period of 729 days or less in the preceding 7 years has been done away with.

Similar relaxation is available for the manager of an HUF in determining the status as not ordinary resident for the HUF.

Another related amendment is in respect of Indian citizens who are non-residents in India but **are not liable to tax** in any other country or territory by reason of their domicile, residence or any other criteria of similar nature. Such citizens are deemed to be residents in India and consequently their global income can potentially become taxable in India after they become ordinarily resident. Press Release issued by the Board on 2nd February, 2020 suggests that this provision may be suitably clarified.

3. INTERNATIONAL TAXATION

Income deemed to accrue or arise in India – Section 9

Deferring of 'Significant Economic Presence' (SEP) – Section 9(1)(i)

The Finance Act, 2018, inserted Explanation 2A to section 9(1)(i) w.e.f. 1st April 2019 to clarify that the SEP of a non-resident in India shall constitute "business connection" in India. The threshold of transactions constituting SEP has not been prescribed. Discussions on the issue of taxation of digital/digitized businesses is undergoing in G20-OECD BEPS project of which India is a participant. Accordingly, the said *Explanation* is omitted.

While existing *Explanation 2A* is omitted, a new Explanation 2A with modified definition of SEP has been inserted which defines SEP to include transactions in respect of any goods, services or property carried out by a non-resident with any person in India. Further, systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India will also result in SEP. For this purpose, the threshold limit of interactions resulting into SEP may be prescribed. The words "through digital mean" in erstwhile Explanation 2A are deleted. Consequently, interactions with users in India by any means shall constitute SEP.

Clause (a) of *Explanation 1* to section 9(1)(i) provides that only such part of income from business which is reasonably attributable to the operations carried out in India is considered deemed to accrue or arise in India. A corresponding change in clause (a) of *Explanation 1* to section 9(1)(i) is made to provide that the provisions contained therein shall not apply to the business having business connection in India on account of SEP.

It is also provided that the newly inserted *Explanation 3A* relating to income attributable to the operations carried out in India shall also apply to cases where business connection is established through SEP.

Clause (iib) is inserted in section 295(2)(b) to empower the Board for making rules to provide for the manner in which and the procedure by which the income shall be arrived at in the case of transactions or activities of a non-resident.

The existing *Explanation 2A* is omitted with effect from 1st April, 2021 while the new *Explanation 2A* is inserted with effect from 1st April, 2022. Explanation 3A is inserted with effect from 1st April, 2021 while its applicability to cases where business connection is established due to SEP under Explanation 2A is effective from 1st April, 2022.

Attribution of profit to permanent establishment – Section 9(1)

Further, a new *Explanation 3A* is inserted to clarify that the income attributable to the operations carried out in India, as referred in *Explanation 1* to section 9(1), shall include (a) income from advertisement that targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India; (b) income from sale of data collected from a person who resides in India or who accesses the data through internet protocol address located in India; and (c) income from sale of goods and services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.

For this purpose, clause (iia) is inserted in section 295(2)(b) to empower the Board for making rules to provide for the manner in which and the procedure by which the income shall be arrived at in the case of operations carried out in India by a non-resident.

Explanation 3A is inserted with effect from 1st April, 2021 while its applicability to cases where business connection is established due to SEP under *Explanation 2A* is effective from 1st April, 2022.

Aligning exemption from taxability of Foreign Portfolio Investors (FPIs), on account of indirect transfer of assets, with amended scheme of SEBI – Section 9(1)(i)

Explanation 5 to section 9(1)(i) provides that an asset or a capital asset being any share or interest in a company or entity incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest, derives, directly or indirectly, its value substantially from the assets located in India. The Finance Act, 2017 inserted second proviso to said explanation to give exemption to the assets held by non-residents by way of investment in Category I and II FPI under SEBI (FPI) Regulations, 2014.

Recently, SEBI has notified SEBI (FPI) Regulations, 2019 and repealed the SEBI (FPI) Regulations, 2014 wherein it has removed the broad basing criteria for the purposes of categorization of portfolios and has reduced the categories from 3 to 2. To align the same with amended SEBI Regulations and to grandfather past investments, exception to said *Explanation 5* is amended to cover both erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014 and investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to the Assessment Year 2020-21 and subsequent assessment years.

Definition of the term 'Royalty' – Section 9(1)(vi)

'Royalty' as defined in *Explanation 2* of section 9(1)(vi), excluded consideration for the sale, distribution or exhibition of cinematographic films. The definition of 'Royalty' is now modified to even include consideration received from the sale, distribution or exhibition of cinematographic films under its scope.

This change in definition will also affect deduction of tax at source under section 194J where payment is made to a resident towards consideration for sale, distribution or exhibition of cinematographic films.

Purpose of Tax Treaty now aligned with the revised preamble – Sections 90(1)(b) and 90A(1)(b)

Section 90(1) empowers the Central Government to enter into Double Taxation Avoidance Agreement (DTAA) with the Government of any country outside India. One of the main purposes of a DTAA is to prevent double taxation of income. Similarly, section 90A(1) empowers any specified association in India to enter into DTAA with any specified association in the specified territory outside India.

Recently, India has signed, ratified and deposited the Multilateral Instrument (MLI) with OECD, along with its list of Covered Tax Agreements (CTAs) sought to be modified by the MLI. The same will have effect on some of India's DTAA with effect from 1st April 2020. The Article 6(1) of the MLI provides for addition of an amended Preamble in tax treaties.

Now, section 90(1)(b) and section 90A(1)(b) are amended to incorporate the language of the Preamble of the MLI as follows: "without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory)".

Extension of applicability of Safe Harbour Rules to attribution of profits to permanent establishment – Section 92CB

Section 92CB(1) is amended to also include determination of attribution of profit to a permanent establishment of a non-resident under section 9(1)(i) within the scope of Safe Harbour Rules in addition to determination of the arm's length price under sections 92C or 92CA.

This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the Assessment Year 2020-21 and subsequent assessment years.

Advance pricing agreement to cover attribution of profits to permanent establishment cases – Section 92CC

Sub-sections (1), (2), (3) and (9A) in section 92CC relating to Advance Pricing Agreement (APA) are amended to also include determination of attribution of profit to the permanent establishment of a non-resident under section 9(1)(i) within the scope of Advance Pricing Agreement in addition to the determination of arm's length price of an international transaction.

This amendment will take effect from 1st April, 2020 and will, apply in relation to APAs entered into on or after 1st April, 2020.

Removal of limitation on deduction of interest on borrowings from Indian branch of a foreign bank – Section 94B

An Indian company or a permanent establishment (PE) of a foreign company is eligible to deduct interest or similar expenses exceeding Rs. 1 crore paid to its associated enterprises (AE as defined in section 92A) subject to a restriction of 30% of its earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to AE, whichever is less. Further, a loan is deemed to be from an AE, if an AE provides implicit or explicit guarantee in respect of that loan. This section was introduced to implement the measures recommended in final report on Action Plan 4 of the Base Erosion and Profit Shifting (BEPS) project to address the issue of base erosion and profit shifting by way of excess interest deductions.

Interest paid to an Indian branch of a foreign banking company, being a payment to a non-resident, could in some cases lead to establishment of an AE relationship where the amount of borrowing exceeds 50% of the book value of the total assets of the borrowing enterprise. Consequently, such interest payment would attract the provisions for limiting interest deductions in section 94B. With a view to remove this hardship, a new sub-section is inserted which provides that the interest deduction limitation contained in section 94B(1) shall not apply to interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident being engaged in the business of banking.

4. SPECIAL CASES

Tax on dividends and relaxation of filing of returns by foreign companies – Section 115A

Presently, the provision of section 115A(5) provides relief from filing of return of income in case of a foreign company or other non-residents receiving only interest or dividend income provided that tax has been deducted at source from such income. Section 115A(5) has

been amended to also extend the relief from filing of the return of income to above assesses having receipts in the nature of royalty and fees for technical services, where tax has been deducted at source at the prescribed rates of section 115A(1).

"This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years."

Tax on Income of unit holder and business trust – Section 115UA

Presently, section 115UA provides for a taxation regime applicable to Business Trusts and their unit holders. Under the said regime, the total income of the trust excluding capital gains income is charged at the maximum marginal rate. Under section 115UA(3), distribution of interest and rent by a business trust to its unit holders is taxable in the hands of unit holders.

Further, the income by way of interest and rent, received by the business trust from a Special Purpose Vehicle (SPV) is accorded pass through treatment i.e., there is no taxation of such interest or rental income in the hands of the trust as per section 10(23FC) and 10(23(FCA).

Now, section 115UA(3) is amended to omit the reference of section 10(23FC)(a) from the said section so as to provide that the distributed income of the nature interest, dividends and rent shall be deemed to be income of unit holder and shall be charged to tax as income of the previous year. Consequential amendments are also carried out to section 194LBA to provide for the liability to deduct tax on distribution of income referred to in section 115UA, to a resident and to a non-resident (not being a company) or a foreign company.

Registration of Charitable/Religious Trusts

1) **Section 12A:** Section 12A provides for the conditions to be fulfilled by any trust or institution subject to which exemption under sections 11 or 12 shall be available to it. Presently, application for registration is required to be made under section 12AA. Now, a new sub-clause (ac) is inserted in section 12A(1) whereby it provides for a new process for registration of both existing and new charitable trusts or institutions. The trust or institution is now required to be registered under a new section 12AB by making an application before the Principal Commissioner or Commissioner, within the below timelines:

   i) If the trust is already registered (under the erstwhile section 12A or present section 12AA) - within 3 months from i.e., 1st June, 2020;

ii) In case of trust provisionally registered under new section 12AB – at least 6 months prior to expiry of period of provisional registration, or within 6 months of commencement of its activities, whichever is earlier;

iii) For renewal of registration the trust registered under section 12AB – at least 6 months prior to expiry of the period of registration;

In other cases, the timelines for making application under section 12AB is given as under:

iv) Where registration of the trust has become inoperative, due to newly added proviso to section 11(7) - at least 6 months prior to commencement of the assessment year from which said registration is sought to be made operative. Section 11(7) is amended to introduce a proviso that clarifies that the registration of the trust under sections 12A or 12AA shall become inoperative from the date on which the trust is approved under section 10(23C) or is notified under section 10(46) or 1st June, 2020 on which this proviso has come into force, whichever is later. Further, the proviso provides that the trust whose registration has become inoperative, can choose to apply for making its registration operative under section 12AB. Upon registration becoming operative, its approval under other sections shall cease to have any effect. Application for registration is to be made at least 6 months prior to the commencement of the assessment year from which registration is sought to be made operative;

v) Where the trust or institution has adopted or undertaken modifications of its objects and such modification does not conform to the conditions of registration - within 30 days from the date of said adoption or modification;

vi) In any other case including all pending applications before Principal Commissioner or Commissioner on which no registration order has been passed under section 12AA(1)(b) as on 1st June, 2020 - at least 1 month prior to the commencement of the previous year relevant to the assessment year from which said registration is sought.

Consequential amendments are made in proviso to section 12A(2) to make reference to section 12AB and further proviso is substituted to clarify that where application is made under section 12AB to comply with sub-clause (ac), the provisions of section 11 and section 12 shall apply from the assessment year

from which such trust was earlier granted registration or from the first of the assessment years for which it was provisionally registered.

2) **Section 12AA(5):** A new sub-section (5) is inserted in section 12AA to provide that nothing contained in the said section shall apply on or after 1st June, 2020.

This amendment will take effect from 1st June, 2020.

3) **New procedure for registration of Charitable Trusts – Section 12AB**

Section 12AB is inserted providing for the procedure to be followed for fresh provisional registration and renewal of registration of the trust or institution. It provides that the Principal Commissioner or Commissioner on receipt of an application under section 12A(1)(ac) shall:

i) For certain categories of charitable trusts, like where trust's registration is expiring or provisional registration is expiring, registration of trust has become inoperative or modifications to the objects of the trust has been undertaken call for such documents or information or make such inquiries as he thinks necessary in order to satisfy himself of the genuineness of activities of the trust and the compliance with such requirements of any other laws as are material for the purpose of achieving its objects. After satisfying himself about the objects and genuineness of the activities if the trust, pass an order in writing registering the trust for a period of 5 years. If he is not satisfied, he shall pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard.

ii) Further, where registration under section 12AB is sought under residuary category of the trusts i.e., any other case, he shall pass an order in writing provisionally registering the trust for a period of 3 years beginning with the assessment year from which the registration is sought.

Where a) the activities of the trust are not genuine; or b) the activities are not being carried in accordance with the objects of the Trust; or c) the activities are being carried out in a manner that provisions of section 11 and section 12 do not apply to exclude either whole or any part of the income of such trust due to operation of section 13(1); or d) the trust has not complied with the requirement of any other law which are material for achieving its objects and the order of such non-compliance has

not been disputed or has attained finality, then the Principal Commissioner or Commissioner may cancel the registration of such trust. These provisions are along the lines of existing provisions under section 12AA(3)/(4).

This amendment will take effect from 1st June, 2020.

Note: Consequential amendments have been made in other sections of the Act (such as section 56(2)(x), section 115TD etc.) referring to the trust registered under section 12A/12AA to even include trusts registered under the provisions of section 12AB.

4) **Filing of Audit Report:** In view of amendment of Section 12A(1)(b) and read with amendment to clause (ii) of *Explanation* of section 44AB, the audit report in Form 10B is required to be furnished 1 month prior to the due date for furnishing the Return of income under section 139(1).

This amendment will take effect from 1st April 2020 and will apply in relation to assessment year 2020-21 and subsequent assessment years.

5. SALARIES

Tax treatment of employer's contribution to recognised provident fund, superannuation funds and national pension scheme – Section 17(2)(vii)

At present, the contribution by employer to the account of an employee in a recognised provident fund exceeding 12% of salary and in excess of Rs. 1,50,000 to an approved superannuation fund are taxable in the hands of the employee. Similarly, contribution by an employer to the account of an employee in National Pension Scheme is fully taxable in the hands of the employee subject to deductions under section 80CCD(2). However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer.

Now, section 17(2)(vii) is amended to provide that the aggregate contribution made to the account of employee by the employer, in a recognised provident fund, in a National Pension Scheme and in an approved superannuation fund, exceeding Rs. 7,50,000 in a previous year would be taxable as perquisite in the hands of the employee. Further, any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme will be treated as perquisite to the extent it relates to the employer's taxable contribution. The perquisite will be calculated in such manner as may be prescribed.

6. PROFIT AND GAINS OF BUSINESS OR PROFESSION

Option for not availing deduction in respect of expenditure on specified business – Section 35AD

Section 35AD(1) presently provides 100% deduction on capital expenditure (other than expenditure on land, goodwill and financial assets) incurred on any specified business during the previous year in which such expenditure is incurred and there is no optional claim of deduction under said section. Further, section 35AD(4) provides that no deduction is allowable under any other section in respect to the expenditure referred to in section 35AD(1).

After introduction of sections 115BAA and 115BAB, there was a possible legal interpretation that the domestic companies opting for concessional rates under this section would be denied normal depreciation under section 32 by virtue of section 35AD(4).

Section 35AD(1) has been amended to make the deduction optional. A further amendment has been made in section 35AD(4) so as to provide that no deduction will be allowed in respect of the expenditure incurred under section 35AD(1) in any other section in any previous year or under this section in any other previous year, if the deduction has been claimed by the assessee and allowed to him under this section.

This amendment will take effect from 1st April, 2020.

Speculative transaction – Section 43(5)

Proviso to section 43(5) exempts as an eligible transaction in respect of trading in commodity derivatives from being treated as a speculative transaction provided it is carried out in a recognised association (commodity exchange). Since all commodities derivatives transactions are now carried out only on recognised stock exchanges, section 43(5) has been amended to substitute the words 'recognized association' with 'recognized stock exchange' wherever it occurs in the said section.

Further, definition of 'recognized stock exchange' in clause (iii) of *Explanation 2* to section 43(5) has been amended to mean a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 and which fulfils such conditions as may be prescribed and notified by the Central Government for this purpose.

These amendments are applicable with effect from 1st April 2020.

7. CAPITAL GAINS

Increase in tolerance limit – Sections 43CA, 50C and 56(2)(x)

Presently, if the amount of consideration received or accruing as a result of transfer of land or building or both, held as a capital asset, is less than its stamp duty value then section 50C provides that stamp duty value shall be taken to be full value of consideration.

Similarly, if the amount of consideration received or accruing as a result of transfer of land or building or both, held as stock-in-trade, is less than its stamp duty value then section 43CA provides that stamp duty value shall be taken to be full value of consideration.

Upon receipt of land or building or both, for a consideration which is less than its stamp duty value, the difference between the stamp duty value and the amount of consideration is chargeable to tax under section 56(2)(x).

Presently, section 43CA, section 50C as well as section 56(2)(x) provide for a tolerance limit of 5% of the consideration i.e. if the difference between the stamp duty value and the amount of consideration received or accruing as a result of transfer is up to 5% of the amount of consideration then stamp duty value is not to be taken as full value of consideration / the difference between the stamp duty value and the amount of consideration is not to be charged. The tolerance limit of 5% provided for has been increased to 10%.

Capital Gains provisions on Segregation of Portfolios of Mutual Fund Schemes – Sections 49 and 2(42A)

Section 49 provides for cost of acquisition for capital assets which became the property of the assessee under specified circumstances. Further, section 2(42A) provides for period of holding of a capital asset by an assessee for it to be a short-term capital asset.

In the event of downgrade in credit rating of debt and money market instruments in portfolio of mutual fund schemes (referred to as a 'credit event'), the Securities and Exchange Board of India (*vide* its Circular SEBI/HO/IMD/DF2/CIR/P/2018/160 dated 28th December 2018) has permitted the Asset Management Companies (AMC) an option to segregate the portfolio of such schemes. The objective of creating a segregated portfolio of debt and money market instruments by mutual funds schemes is to ensure fair treatment to all investors in case of such a credit event and to deal with liquidity risk. Where an AMC decides to segregate a portfolio on the occurring of a credit event, all existing investors in the scheme on segregation are allotted equal number of units in the segregated portfolio as held in the main portfolio.

The said SEBI Circular defines the term 'main portfolio' to mean the scheme portfolio excluding the segregated portfolio. The term 'total portfolio' means the scheme portfolio including the securities affected by the credit event, which in effect, is the sum total of the segregate and main portfolio.

It is now provided that in determining whether units in a segregated portfolio are short-term capital assets, the period for which the original units in the main portfolio were held by the assessee will be included.

Further, the cost of acquisition of such units in a segregated portfolio shall be the cost of acquisition of the units held by the assessee in the total portfolio in proportion to the net asset value of the asset transferred to the segregate portfolio out of the net asset value of the total portfolio immediately before the segregation of portfolios. The cost of acquisition of the original units in the main portfolio shall also be suitably reduced by the amount derived as cost of the units of the segregated portfolio.

These provisions are similar to those applicable to allocation of cost of acquisition of shares on demerger of a company.

This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the Assessment Year 2020-21 and subsequent assessment years.

Cost of acquisition in case of land or building as on 1.4.2001 – Section 55

Presently, section 55 provides that where capital asset became property of the assessee before 1.4.2001, the assessee has an option to adopt fair market value of the asset transferred as on 1.4.2001 to be its cost of acquisition. Similarly, where the capital asset has been received by the assessee in a mode mentioned in section 49(1) i.e. by way of gift, inheritance, will, etc., and the capital asset became property of the previous owner before 1.4.2001 then the assessee has an option to adopt fair market value of the asset as on 1.4.2001 to be its cost of acquisition.

Section 55 has now been amended to provide that if the capital asset transferred is land or building or both then its fair market value on 1.4.2001 cannot be greater than its stamp duty value on that date, wherever available.

8. DEDUCTIONS UNDER CHAPTER VI-A

Time limit extended for sanctioning loan for affordable housing for availing deduction – Section 80EEA

Section 80EEA was introduced in the Finance Act (No.2), 2019 to provide to an individual assessee, a deduction of interest paid on loan taken by him from any financial institution for the purpose of acquiring any residential house property upto Rs. 1,50,000. Under the existing provisions, this deduction is allowed only if the loan is sanctioned by financial institution from period 1st April, 2019 to 31st March, 2020.

To continue the benefit of these provisions for affordable housing, the period of sanctioning of loan by financial institution has been extended up to 31st March, 2021.

Time limit extended for approval of affordable housing project – Section 80 IBA

Under the existing provisions, the assessee having profits and gains from business of developing and building affordable housing projects is allowed a 100% deduction of such profits or gains derived from such business subject to certain conditions. One of the conditions is that the project should be approved by the competent authority during the period 1st June 2016 to 31st March, 2020.

With a view to incentivise and promote affordable housing projects and supply of such houses, it is now provided to extend this time limit for approval by one more year i.e., up to 31st March, 2021.

Extended benefits of deduction to start-ups – Section 80 IAC

Section 80IAC is a tax holiday provision for start-ups. Under the existing provisions, an eligible start-up can claim deduction of 100% of profits and gains derived from eligible business for 3 consecutive years out of 7 years subject to certain conditions. Also these beneficial provisions are currently applicable only to those businesses whose turnover is less than Rs. 25 crore in the year in which the deduction is claimed.

Following amendments are made:

a) The deduction shall be available to eligible start-ups for 3 consecutive assessment years out of 10 years beginning from the year in which the start-up is incorporated.

b) The deduction shall now be available to an eligible start-up if the total turnover of its business does not exceed Rs. 100 crore in the previous year relevant to the assessment year in which deduction under section 80IAC(1) is claimed.

9. DIVIDEND DISTRIBUTION TAX (DDT) / DIVIDEND

Distribution of dividend by domestic companies / income by mutual funds (DDT) to be taxable in the hands of the shareholders / unit holders – Sections 115-O and 115R

Presently, domestic companies and mutual funds are liable to pay DDT on the amount of dividend/income declared, distributed or paid by them. Such dividend/income is exempt in the hands of the shareholder/unit holder under sections 10(34)/10(35). Sections 115-O, 115R and several other sections have been amended to provide for taxation of dividends in the hands of the shareholder/unit holder.

Sections 115-O and 115-R not to apply:

DDT under section 115-O (by a domestic company) and under section 115R (by mutual fund, etc.) will not be payable in respect of dividends declared, distributed or paid by a domestic company / income distributed by a mutual fund on or after 1st April, 2020.

Taxation of dividends / income on units to be in the hands of the shareholder / unit holder – Sections 10(34), 10(35) and 115BBDA

Taxation of dividends will now be in the hands of the shareholder / unit holder at the rate applicable to them. Further, non residents will be eligible to claim benefit of applicable tax treaties which would include limit on tax rate for dividend specified in the treaty and tax credit in the home country.

Section 115BBDA levying tax on dividend income in excess of Rs. 10 lakh @ 10% in the hands of the shareholder will no longer be applicable.

Exemption hitherto granted to dividend/ income on units under section 10(34)/10(35) will no longer be available.

Deduction of interest – Section 57

Section 57 has been amended to provide that only expenditure by way of interest, restricted to a maximum of 20% of dividend income or income from units, shall be allowed to be deducted from such income. No other deductions will be allowed from such income.

Deduction of dividend for domestic companies – Section 80M

Section 80M has been introduced to provide deduction to a domestic company whose gross total income includes dividend from any other domestic company. Deduction under this section will be allowed to the extent of dividend distributed by such company on or before the due date. Deduction will be restricted to the amount of dividend received by the assessee company. "Due date" has been defined in an *Explanation* to the section to mean the date one month prior to the date for furnishing the return of income under section 139(1). It has been provided that where the amount of dividend distributed by the domestic company has been allowed as a deduction in a previous year, no deduction shall be allowed in respect of such amount in any other previous year.

It may be noted that dividend from a foreign company will not be allowed to be set off while computing deduction under section 80M.

Taxation of dividends received by a Business Trust – Section 115UA

This has been discussed in the paragraph relating to section 115UA under "Special Cases" hereinabove.

Income of non-residents – Sections 115AC, 115ACA, 115AD

Sections 115AC, 115ACA and 115AD have been amended to remove reference of dividend referred to in section 115-O to make such dividend taxable in accordance with these provisions.

10. TAX DEDUCTED AT SOURCE AND TAX COLLECTED AT SOURCE

Tax treatment in relation to ESOP issued by eligible start-ups – Sections 191, 192(1C), 140A, 156

At present, section 17(2)(vi) read with rule 3(8)(iii) taxes the value of any specified securities or sweat equity shares (ESOP) allotted to the employee by the employer. This is taxable as a perquisite in the hands of the employee. The value of ESOP is the fair market value on the date on which the option is exercised as reduced by the

amount actually paid by the employee. Further, when the shares are subsequently sold, the gains arising therefrom are taxable as 'Capital Gains'.

Under section 192, the employer-company is mandated to deduct tax at source on such income i.e., at the time of exercise of option.

In order to ease the burden of start-ups, a new sub-section (1C) is introduced in section 192 to provide that a company, being an eligible start-up referred to in section 80IAC, would deduct tax at source on such income within 14 days:

i) after the expiry of 48 months from the end of the relevant assessment year; or

ii) from the date of the sale of such ESOPs by the employee; or

iii) from the date of which the taxpayer ceases to be the employee;

whichever is earlier on the basis of rates in force of the financial year in which the said specified security or sweat equity share is allotted or transferred.

Thus, now, the tax payment / deduction on such perquisite is deferred as mentioned above without changing the year of its chargeability.

Similar amendments are made in section 140A (for calculating self-assessment tax); section 156 (for notice of demand) and section 191 (for employee to pay the tax direct, in case of no TDS).

This amendment will take effect from 1st April, 2020.

TDS on dividends / income on units by mutual funds / income from units of a business trust to resident shareholder / unit holder – Sections 194, 194K and 194LBA

Section 194 provides that dividend in excess of Rs. 5,000, declared by a domestic company to a resident person, will be liable for TDS @ 10%. In case dividend is paid by cash, the threshold of Rs. 5,000 will not be applicable. Section 194K has been introduced to provide for an obligation to deduct tax at source @ 10% when a mutual fund distributes income to a resident unit holder subject to a threshold of Rs. 5,000.

Section 194LBA has been amended to provide for TDS @ 10% in respect of income distributed by a business trust to a resident unit holder being dividend received or receivable from a Special Purpose Vehicle.

TDS on dividends / income on units by mutual funds to non-resident shareholder / unit holder – Sections 195 and 196A

Proviso to section 195 granting exemption from TDS in respect of dividends referred to in section 115-O has been deleted. Consequently, declaration of dividend by a domestic company to a non-resident shareholder will attract TDS under section 195 at the rates in force. The rates in force are 40% for foreign companies and 30% for other non residents.

Section 196A providing for TDS from income in respect of units of mutual fund payable to a non-resident has been revived. Consequently, payment of income in respect of units of a mutual fund to a non-resident unit holder (not being a company or a foreign company) will require TDS @ 20%.

Section 196C dealing with TDS in respect of income by way of interest or dividends in respect of bonds or GDRs purchased in foreign currency, payable to a non-resident, has been amended to remove exclusion provided to dividends referred to in section 115-O. Consequently, payment of dividend to a non-resident who has purchased the bonds or GDRs in foreign currency will require TDS @ 10%.

Section 196D dealing with TDS in respect of income in respect of securities held by a FII has been amended to remove exclusion provided to dividends referred to in section 115-O. Consequently, payment of dividend to a FII will require deduction of TDS @ 20%.

Section 194LBA has been amended to provide that income distributed by a business trust to a non-resident unit holder will require TDS @ 10% from dividend income and @ 5% from interest income.

Amendments to sections 194, 194K, 194LBA, 195, 196A, 196C and 196D are made effective from 1st April, 2020.

Extending the applicability of TDS on interest to a large co-operative society – Section 194A

The existing provision of section 194A exempts a co-operative society from the requirement to deduct tax at source on interest other than interest on securities in the following cases –

i) Interest credited or paid by a co-operative society (other than a co-operative bank) to its members

ii) Interest credited or paid by a co-operative society to any other co-operative society

iii) Interest credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank

iv) Interest credited or paid in respect of deposits (other than time deposits) with a co-operative society (other than those societies which are referred to in (iii) above) engaged in the business of banking

Under the amended provisions, the aforesaid exemption from the requirement to deduct tax at source shall not apply and the co-operative society shall be liable to deduct tax at source in all the cases as mentioned above if –

i) the total sales, gross receipts or turnover of the co-operative society exceeds Rs. 50 crore during the financial year immediately preceding the financial year in which the interest is credited or paid; and

ii) the amount of interest, or the aggregate of the amounts of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than Rs. 50,000 in case of payee being a senior citizen (resident individual having age of 60 years or more) and Rs. 40,000 in any other case.

This amendment is effective from 1st April, 2020.

Definition of 'work' – Section 194C

Currently 'work' includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. Now 'work' will also include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from the associate of such customer. For this purpose, associate means person specified under section 40A(2)(b).

This amendment will take effect from 1st April, 2020.

Change in rate of tax deduction at source in respect of technical services – Section 194J

The rate of tax deductible at source has been reduced to 2% from 10% in respect of fees for technical services (other than professional services).

This amendment will apply to all payments or credits on or after 1st April 2020.

Change in rate of tax deducted at source from income of a non resident by way of interest from long term infrastructure bonds from domestic company – Section 194LC

The eligibility of borrowings under the loan agreement or by issue of long term bonds for the concessional rate of TDS under this provision has now been extended from 30th June 2020 to 30th June, 2023.

A clause (ib) has been inserted in section 194LC(2) to include interest on monies borrowed by an Indian company from a source outside India by way of issue of long-term bond or rupee denominated bond on or after the 1st April, 2020 but before 1st July, 2023, which is listed only on a recognized stock exchange located in any International Financial Services center. In this case, the rate of TDS would be 4% (as against 5% in other cases). However, it appears that a corresponding amendment in section 115A specifying the rate of tax for such income has remained to be made.

This amendment will take effect from 1st April, 2020.

Tax deduction at source on income by way of interest on certain bonds and government securities – Section 194LD

An amendment has been made to cover interest payable up to 30th June, 2023 by any person to a person, being a Foreign Institutional Investor or a Qualified Foreign Investor on a Rupee denominated bond of an Indian company or a government security under section 194LD.

Further, now interest on municipal debt securities issued after 1st April, 2020 but before 30th June, 2023 will also be covered under the provisions of section 194LD and will attract tax deductible at source at the rate of 5%.

This amendment will take effect from 1st April, 2020.

Furnishing of statement of tax deducted in form 26AS – Sections 203AA and 285BB

Section 203AA, *inter alia*, required the prescribed income-tax authority or the person authorised by such authority referred to in section 200(3), to prepare and deliver a statement in Form 26AS to every person from whose income, the tax has been deducted or in respect of whose income the tax has been paid specifying the amount of tax deducted or paid.

However, with the advancement in technology and enhancement in the capacity of system, multiple information in respect of a person

such as sale/purchase of immovable property, share transactions etc. are being captured or proposed to be captured.

In future, it is envisaged that in order to facilitate compliance, this information will be provided to the assessee by uploading the same in the registered account of the assessee on the e-filing portal of the Income-tax Department, so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability.

As the scope of Form 26AS would extend beyond the information about TDS and other tax payments, a new section 285BB has been inserted regarding 'Annual Financial Statement'. This section mandates the prescribed income-tax authority or the person authorised by such authority to upload in the registered account of the assessee a statement in such form and manner and setting forth such information, which is in the possession of an income-tax authority, and within such time, as may be prescribed.

Consequently, section 203AA is deleted and section 285BB is inserted with effect from 1st June, 2020.

Widening the scope of TDS on E-Commerce transactions – Sections 194-O and 206AA(1)

A new section 194-O has been inserted providing for levy of TDS to bring participants of e-commerce within tax net. An e-commerce operator facilitating sale of goods or provision of services of an e-commerce participant, through its digital electronic facility or platform, is required to deduct tax @ 1% of the gross amount of sales or services or both, at the time of credit or payment, whichever is earlier, to the e-commerce participant.

For the purposes of deduction of tax, the gross amount of sale or services shall include any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for such sale of goods or services or both, which are facilitated by an e-commerce operator, as the same shall be deemed to be the amount credited or paid by e-commerce operator to e-commerce participant.

No TDS is required to be deducted by an e-commerce operator from the sum credited or paid to an e-commerce participant, being an individual or HUF, if the gross amount of sales or services or both, of such individual or HUF during the previous year, through the e-commerce operator does not exceed Rs. 5 lakh and the PAN or Aadhaar Number of e-participant is furnished to e-commerce operator.

It has been provided that a transaction in respect of which tax has been deducted by the e-commerce operator or which is not liable

to deduction under this section, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B. This exemption shall not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services.

In case of non-furnishing of PAN or Aadhaar Number by e-commerce participant, the rate of TDS under section 206AA would be 5% instead of 1% provided in the section.

Consequential amendments have been made in section 197 (relating to lower TDS) and section 204 (relating to person responsible for paying taxes).

This amendment is effective from 1st April 2020.

Tax Collection at Source (TCS) - Widening the scope of TCS on foreign remittance through Liberalised Remittance Scheme (LRS); TCS on selling of overseas tour package and on sale of goods over a limit – Section 206C

Section 206C providing for TCS in respect of specified businesses by the seller from the buyer of certain goods, equal to specified percentage, has been amended to widen and deepen the tax net.

i) Levy of TCS on foreign remittance through LRS and sale of overseas tour program package:

An Authorised Dealer (Bank) receiving Rs. 7 lakh or more in a financial year, for remittance out of India under LRS of RBI, is liable to collect TCS @ 5% from the person remitting such amount out of India.

Similarly, a seller of an overseas tour program package, receiving any amount from any buyer of such package, is liable to collect TCS @ 5%.

In view of section 206CC(1)(i), in non-PAN or Aadhaar case, the rate of TCS would be 10%.

ii) Levy of TCS on sale of goods above specified limit:

A seller of goods is liable to collect TCS at the rate of 0.1% on receipt of consideration from a buyer in excess of Rs. 50 lakh in a previous year. In non-PAN or Aadhaar case, the rate of TCS would be 1%.

For this purpose, seller means a person whose total sales, gross receipt or turnover from the business carried on by him exceeds

Rs. 10 crore during the financial year immediately preceding the financial year in which sale of goods is carried out.

The above mentioned TCS provision in (a) and (b) above shall not apply, if the buyer is (i) liable to deduct tax at source under any other provision of the Act and he has deducted such TDS; and (b) the Central Government, a State Government, an embassy etc. or any other person notified by the Central Government.

In case of failure to collect whole or any part of the tax, the person shall be deemed to be an assessee in default and relief provided in proviso to section 206C(6A) is not available in above cases.

This amendment is effective from 1st April 2020.

11. FILING OF RETURNS, ASSESSMENTS, APPEALS AND PENALTIES

Increase in threshold, rationalisation of provisions relating to tax audit and deduction of tax at source – Section 44AB

Under the existing provisions, every person carrying on business is required to get his accounts audited under section 44AB, if his total sales from the business or turnover/ gross receipts exceed Rs. 1 crore in any previous year. With an intention to reduce the compliance burden, the threshold limit to conduct tax audit has been increased from Rs. 1 crore to Rs. 5 crore subject to following conditions:

i) aggregate of receipts in cash during the previous year does not exceed 5% of all the receipts and

ii) aggregate of payments in cash during the previous year does not exceed 5% of all payments.

The threshold limit for audit for professionals is not changed and continues to be Rs. 50 lakh.

Further, the tax audit report has to be furnished by the specified date. Under the existing provisions, the specified date means the due date for furnishing the return of income under section 139(1). It is now provided to substitute the specified date as one month prior to the due date for furnishing the return of income. This implies that the tax audit report under section 44AB will now have to be furnished one month prior to the due date for filing of return under section 139(1). This provision has been amended to enable the Government to provide the pre filled income tax return forms. The existing due date for filing return of income in case of assessees to whom tax audit is applicable is 30th September.

Hitherto, the due date of filing return of income of only the working partner(s) of the firm, whose accounts are required to be audited under the Act or any other law is 30th September. Now, the due date of filing return of income of all partners of such firm will be 31st October.

Now, the due date of filing return of income by a company, any other person whose accounts are required to be audited under the Act or any other law and any partner of the firm whose accounts are required to be audited under the Act or any other law will be 31st October of Assessment Year. Thus, the revised time limits for compliance effective Assessment Year 2020-21 will be:

Category of Assessee	Due date for filing tax audit	Due date for filing return of income
Assessee to whom tax audit is applicable under section 44AB	30th September	31st October
Assessee to whom audit is applicable under section 92E (Transfer pricing audits)	31st October	30th November
All partners in firm which are subject to audit under section 44AB and / or 92E	30th September (wherever applicable)	31st October

There is also a corresponding amendment to section 92F amending the due date for furnishing of Transfer Pricing Report from 30th November to 31st October.

There are other provisions under the Act which provide for furnishing various reports by the due date specified for tax audit purpose under section 44AB. Similar amendments have been made in all such provisions. Following are those sections in which these amendments have been made-

Section	Description
10A	Special provision in respect of newly established undertakings in free trade zone, etc.
12A	Conditions for applicability of sections 11 and 12
32AB	Investment deposit account
33AB	Tea Development account, coffee development account and rubber development account
33ABA	Site Restoration Fund

Section	Description
35D	Amortisation of certain preliminary expenses
35E	Deduction for prospecting etc. for certain minerals
44DA	Special provisions for computing income by way of royalties etc, in case of non-residents.
50B	Special provisions for computation of capital gains in case of slump sale
80-IA	Deduction in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development
80-IB	Deduction in respect of profits and gains from industrial undertakings other than infrastructure development undertakings
80-JJAA	Deduction in respect of employment of new employees
92F	Definition of certain terms relevant to computation of arm's length price
115JB	Special provision for payment of tax by certain companies (MAT)
115JC	Special provision for payment of tax by certain persons other than companies
115VW	Maintenance and audit of accounts

Further, there are certain withholding sections, which determine the applicability of TDS / TCS based on the threshold limit of turnover or gross receipts as specified in section 44AB. These include sections 194A, 194C, 194H, 194I, 194J and 206C. The existing provisions of these sections provide that TDS/TCS for individual and HUF shall be deducted / collected if the total sales or gross receipts from business or profession carried on by him exceeds the monetary limit specified in sub section (a) and (b) of section 44AB.

Now, all of the above sections stand amended to provide that the said provisions shall be applicable to such individuals and HUF whose turnover or gross receipts exceed Rs. 1 crore in case of business and Rs. 50 lakh in case of profession. This implies that the enhanced limit of tax audit is not extended for the purpose of deducting tax at source.

These amendments will be effective from 1st April, 2020 and apply in relation to Assessment Year 2020-21 and subsequent assessment years.

Taxpayer's Charter – Section 119A

Currently, there is no provision under the Act providing for declaration and adoption of Taxpayer's Charter by the Board. In order to enshrine it in the Statute, a new section 119A is inserted mandating the Board to adopt and declare a Taxpayer's Charter. The Board is also empowered to issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of Taxpayer's Charter.

This amendment is effective from 1st April, 2020.

Restriction on the power of survey – Section 133A

As per existing provisions of section 133A, the power of survey under sub-section (1) cannot be exercised by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner. This requirement to obtain the approval of the higher authorities in order to take any action under section 133A(1) has been amended as follows –

Type of Case	Requirement to obtain the approval
Where the information is received from the authority to be prescribed for this purpose	No action shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining approval of the Joint Director or the Joint Commissioner, as the case may be
Any other case	No action shall be taken by a Joint Director or a Joint Commissioner or an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining approval of the Director or the Commissioner, as the case may be

This amendment is effective from 1st April, 2020.

Verification of return of income – Section 140

Presently, in case of a company, the return of income is required to be verified by its managing director. Where the managing director is not able to verify for any unavoidable reason or where there is no managing director, any director of the company can verify the return. Similarly, in case of a limited liability partnership, the return has to be verified by its designated partner or by any partner, where such

designated partner is not able to verify for any unavoidable reason or in case there is no such designated partner.

Section 140 has been amended so as to enable the assessee to authorize any other person, as may be prescribed for this purpose, to verify the return in the cases where the managing director or designated partner is not able to verify it or where there is no such managing director or designated partner.

This amendment is effective from 1st April, 2020.

Modification of faceless assessment scheme – Section 143(3A) and 143(3B)

Hitherto, provisions of faceless assessment were applicable only in respect of assessment under section 143(3). Now, faceless assessment can also result in the order under section 144.

Now, the time limit for the Central Government to issue any notification giving direction that any of the provisions of this Act relating assessment of total income or loss shall not apply or shall apply with such exceptions, modifications or adaptions as may be specified, has been extended from 31st March, 2020 to 31st March, 2022.

This amendment will take effect from 1st April, 2020.

Dispute Resolution Panel – Draft Assessment Order – Section 144C

So far, this section applies only in case of transfer pricing adjustments pursuant to an order passed by a Transfer Pricing Officer or to any foreign company. Now, the provision is extended to all non-residents.

Hitherto, an Assessing Officer was required to send draft assessment order to the assessee if he proposed to make any variation in the income or loss returned which is prejudicial to the interest of an eligible assessee. Now, the Assessing Officer will be required to send draft assessment order, if he proposes to make any variation which is prejudicial to the interest of the eligible assessee.

These amendments are applicable for variations proposed on or after 1st April, 2020.

Provisions to introduce E-Appeals scheme – Section 250

Under the existing provisions, the filing of appeal before Commissioner of Income Tax (Appeals) [CIT(A)] is mandatorily to be done through electronic mode. However, once the appeal is filed, the

hearings before CIT(A) are to be attended in person before the CIT(A) and all the subsequent procedures are also not done by electronic mode. In order to further reduce human interface from the system and taking it to the next level, the Finance Bill provides for bringing out a new E-appeal scheme on similar lines of E-assessment scheme. Sub-sections (6A), (6B) and (6C) have been introduced in section 250 to provide for:

a) Powers to Central Government to notify an e-appeal scheme for disposal of appeal so as to impart greater efficiency, transparency and accountability.

b) Eliminating interface between the CIT(A) and the appellant in the course of appellate proceedings to the extent technologically feasible.

c) Optimizing utilization of resources through economies of scale and functional specialisation.

d) Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more CIT(A).

The Central Government may direct for exceptions, modifications, and adaptations as may be specified in notification. The above directions are to be issued before 31st March, 2022 and every notification to be issued shall be required to be laid before both the Houses of Parliament.

This amendment will take effect from 1st April, 2020.

Modification in the power of the Appellate Tribunal to grant a stay – Section 254

Under section 254, the Appellate Tribunal has been given power to pass an order of stay in any proceedings relating to an appeal filed before it after considering the merits of the stay application made by the assessee. Presently, there was no provision requiring the Appellate Tribunal to impose the condition of depositing the disputed amount while granting a stay. The first proviso to sub-section (2A) has been amended to provide that the Appellate Tribunal may pass an order of stay subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof. Similarly, the extension of stay may be granted only if the assessee has complied with this condition of depositing the amount or furnishing security of equal amount. The appeal in respect of which such stay is granted is required to be disposed off within 365 days of granting of the stay.

This amendment is effective from 1st April, 2020.

Penalty for false entry in books – Section 271AAD

A new section 271AAD has been inserted to provide that if during any proceeding under the Act, either a false entry or an omission of any entry which is relevant for computation of total income of such person is found in the books of account maintained by any person with a view to evade tax liability, the Assessing Officer may levy a penalty a sum equal to the aggregate amount of such false or omitted entry. Definition of "false entry" includes use or intention to use–

i) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

ii) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

iii) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

This amendment will take effect from 1st April, 2020.

Scheme for conducting penalty proceedings electronically – Section 274

Section 274 has been amended to provide for scheme for conducting penalty proceeding on a line similar to the E-assessment Scheme, 2019. It has been provided that the Central Government may notify a scheme for the purposes of imposing penalty so as to impart greater efficiency, transparency and accountability by—

i) eliminating interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;

ii) optimising utilisation of resources through economies of scale and functional specialisation;

iii) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

The Central Government has also been empowered to issue notification directing that any of the provisions of the Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be

specified in the notification. However, no such notification shall be issued after 31st March, 2022.

This amendment is effective from 1st April, 2020.

12. VIVAD SE VISHWAS SCHEME

A scheme similar to the Sabka Vishwas Scheme is now proposed to be introduced for direct tax also. This would be a dispute resolution scheme which will remain open upto 30th June, 2020. Under this scheme, the taxpayer opting for the scheme would need to pay only the disputed tax and would get a waiver of interest and penalty if the tax is paid by 31st March, 2020. For those paying the tax after 31st March, 2020 but by 30th June, 2020, an additional amount will have to be paid.

13. ALIGNMENT OF COMMODITY TRANSACTION TAX WITH RECENT REGULATORY CHANGES – SECTION 117 OF CHAPTER VII OF THE FINANCE ACT, 2013

Chapter VII of the Finance Act, 2013 provides for Commodities Transaction Tax (CTT) on sale of commodity derivatives based on non-agricultural commodities traded in recognised association. The scope of CTT was expanded *vide* the Finance Act, 2018 by including the sale of options on commodity derivatives as taxable commodity transactions.

And recently, the scope of CTT was further expanded through the definition of the 'derivative' under section 2(ac) of the Securities Contract (Regulation) Act, 1956 *vide* Notification dated 18th October, 2019 to include 'option in goods' with goods being notified on 27th September, 2016 directly as the underlying asset. Further, 'Commodity Futures' based on prices or indices of prices of commodity futures is also likely to be introduced as a new product in the commodities derivative market.

Now, section 117 of the Finance Act, 2013 is amended to align the tax provisions of CTT with the regulatory changes in the commodity derivatives market. New commodity derivative products are:

i) Sale of a commodity derivative based on prices or indices of prices of commodity derivatives at the rate of 0.01 per cent payable by the seller, which is the same rate at which CTT is currently charged on a transaction of sale of a commodity derivative;

ii) Sale of an option in goods, where option is exercised resulting in actual delivery of goods at the rate of 0.0001 per cent payable by purchaser;

iii) Sale of an option in goods, where option is exercised resulting in a settlement otherwise than by the actual delivery of goods at the rate of 0.125 per cent payable by purchaser, which is also the rate at which securities transaction tax is levied on a transaction of sale of an option in securities, where the option is exercised.

Table (as amended)

Sr. No.	Taxable commodities Transaction	Rate	Payable by
1	Sale of commodity derivative	0.01%	Seller
2	Sale of commodity derivatives based on prices of indices of prices of commodity derivatives	0.01%	Seller
3	Sale of option on commodity derivatives	0.05%	Seller
4	Sale of option in goods	0.05%	Seller
5	Sale of option on commodity derivatives, where option is exercised	0.0001%	Purchaser
6	Sale of option in goods, where option is exercised resulting in actual delivery of goods	0.0001%	Purchaser
7	Sale of option in goods, where option is exercised resulting in a settlement otherwise than by the actual delivery of goods	0.125%	Purchaser

This amendment is applicable from 1st April 2020.

INDIRECT TAXES

Amendments to the CGST Act, 2017

1) Section 2(114) defining the term "Union Territory" is proposed to be amended to give effect to the consolidation of the Union Territories of Dadra and Nagar Haveli and Daman and Diu and the notification of Ladakh as a Union Territory (without Legislature). Since Jammu & Kashmir is mentioned as a Union Territory with Legislature, it will be defined as a State for the purposes of GST Law and no amendment is required on that account.

2) Section 10(2) dealing with conditions for claim of composition benefit is proposed to be amended to neutralise the difference between supply of goods and services therein.

3) Section 16(4) prescribing the time limit of claiming the credit is proposed to be amended to permit the input tax credit on a debit note by reference to the debit note date without reference to the date of the underlying invoice.

4) Section 29 dealing with cancellation of registration is proposed to be amended to permit cancellation in case a taxpayer who obtained voluntary registration wishes to opt out of the GST Law.

5) Section 30 dealing with revocation of *suo motu* cancellation of registration is proposed to be amended to permit the Additional Commissioner to condone a delay of 30 days and also permit the Commissioner to condone a further delay of 30 days in the application of revocation of *suo motu* cancellation

6) Section 31 dealing with the issuance of invoices is proposed to be amended to empower the Government to notify categories of persons who are exempted from issuing invoice or for whom a specified document issued by them may be considered as an invoice

7) Section 51 relating to the procedure for issuance of TDS Certificate is proposed to be amended.

8) Sections 122 and 132 are proposed to be amended to cover beneficiaries of fake invoicing also within the net of penalties and prosecution. Further, availment of input tax credit without

an invoice is added in the list of cognizable and non-bailable offences.

9) Section 140 is proposed to be amended retrospectively to bring in the concept of due date for claim of transition credit.

10) Section 168 is proposed to be amended to empower the jurisdictional Commissioner to exercise powers under Section 66(5) and proviso to Section 143(1).

11) Section 172 is proposed to be amended to increase the period of issuance of removal of difficulty orders from 3 years to 5 years from the appointed date.

12) Schedule II is proposed to be amended to remove the reference to consideration for certain classification of goods and services.

Retrospective tax benefits proposed *vide* Clause 133 of Finance Bill, 2020

13) Exemption is granted to supply of fishmeal during the period 1-7-2017 to 30-9-2017.

14) The rate of tax on supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery of headings 8432, 8433 and 8436 is reduced to 12% for the period from 1-7-2017 to 31-12-2018.

15) It is also provided that no refund shall be granted of tax which has already been collected.

Notes

1) The abovementioned amendments will be effective from a date to be notified after the enactment of the Finance Bill, 2020.

2) Corresponding changes are also proposed in IGST Act and UTGST Act. For the sake of brevity, they are not reproduced again.

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FORTHCOMING EVENTS

COMMITTEE	EVENT NAME	SPEAKER	DATE	VENUE	NATURE OF EVENTS	FEES
Human Resource Development Committee	18th Residential Leadership Retreat	Mr. Deepak Shinde	Friday, 7th & Saturday, 8th February 2020	Rambhau Mhalgi Prabodhini, Bhayander-West	Leadership Retreat	Member & Spouse ₹ 7,906/- Non-member CA & Spouse ₹ 8,496/-
Managing Committee	Digital Taxation	CA Rashmin Sanghvi	Wednesday, 12th February 2020	BCAS Conference	Lecture Meeting	Free to all
Managing Committee	Analytics and AI – A Global Perspective and the India Story Hashtag # Internal Audit	Mr. Jeff Sorensen CA Deepjee Singhal	Thursday, 20th February 2020	BCAS Conference	Lecture Meeting	Free to all
International Taxation Committee	Workshop on Understanding MLI	Various Speaker	Friday, 21st and Saturday 22nd February 2020	Orchid Hotel Vile parle	Workshop	Members ₹ 6,550/- Non-Members ₹ 8,320/-

COMMITTEE	EVENT NAME	SPEAKER	DATE	VENUE	NATURE OF EVENTS	FEES
Accounting & Auditing Committee	10th RSC on Ind AS	Various Speakers	Thursday, 5th to Sunday, 9th March 2020	Alila Diwa GOA HYATT	RSC	Members EB, ₹ 26,650/- Single Occupancy ₹ 48,970/- N-Members EB, ₹ 30,090/- Single Occupancy ₹ 51,920/- Non-Resident (M) ₹ 12,390/- Non-Resident (NM) ₹ 15,340/-
International Taxation Committee	Four Day Study Course on Foreign Exchange Management Act (FEMA)	Various Speakers	20th & 21st March 2020 (Friday, Saturday) 27th & 28th March 2020 (Friday, Saturday)	BCAS Conference	Course	Members EB, ₹ 5,900/- Non Members ₹ 6,785/- Early Bird 29th Feb 2020
Indirect Taxation Committee	14th RSC on GST	Various Speakers	Thursday, 23rd to Sunday, 26th April 2020	Taj Swarna Amritsar	RSC	Members Early Bird, ₹ 19,175/- Non-Member ₹ 2,125/- Non-residential, Members, ₹ 13,570/- Non-Mem, ₹ 15,930/-

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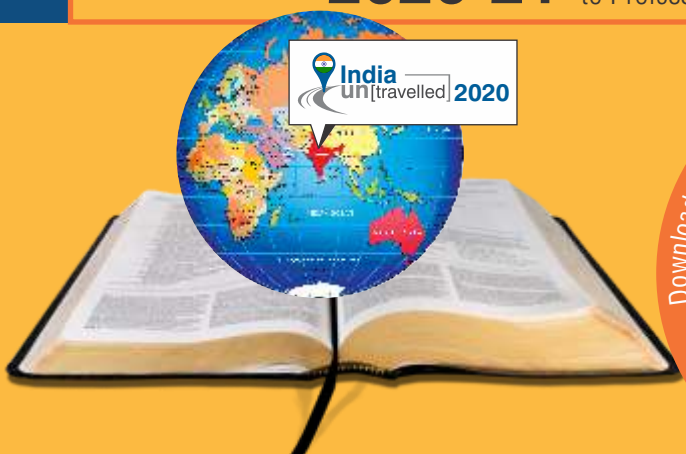

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