

A LOOK AT UNION



2020

Analysis by
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TAX LAW EDUCARE SOCIETY

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EXTRACTS FROM THE BUDGET SPEECH

Everything that we do, all of us do, is for this beautiful country

One must “first tend to till one’s land and then eat”.

One must eat only after work.

Freedom from illness, wealth, produce, happiness and protection;

these five, are the ornaments of a kingdom

Surya, the Sun, collects vapour from little drops of water.

So does the King.

They give back copiously.

They collect only for people’s wellbeing.

REACTIONS TO BUDGET

Hon'ble PM Narendra Modi: 'This budget will help to increase farmer's income'. 'BUDGET has a vision and an action'. 'The new reforms announced in the budget will work to accelerate the economy, financially empower every citizen of the country and strengthen the foundation of the economy in this decade'.

Union Minister Piyush Goyal: It is a balanced Budget which prepares India for the decade ahead of us and prepares it to be a 5 trillion dollar economy. It also covers a vast canvas both on the social side, on economic development & ensures that we continue to remain an economic powerhouse.

Union Home Minister Amit Shah: "In this budget, the Modi Govt has taken effective steps to rationalize the tax system, boost the basic infrastructure, strengthen the banking system, promote investment and ease of doing business, which will further Modi gov't's resolve to make India a 5 trillion-dollar economy."

Hon'ble Former PM Dr Manmohan Singh: "It's such a long budget, I was unable to absorb it,"

Former Prime Minister Manmohan Singh today remarked that Budget 2020 was "too long" for him to absorb it, after Finance Minister Nirmala Sitharaman went on for a record 160 minutes, or two hours and 40 minutes, before stopping without finishing her speech.

Former finance minister P. Chidambaram

P Chidambaram on Saturday slammed the Budget and said that the government had given up on reviving the economy. 'I am at a loss to understand what was the message intended to be conveyed by Budget 2020-21.

Rahul Gandhi on Saturday slammed the Union Budget and said "Our youth want jobs. Instead they got the longest budget speech in parliamentary history that said absolutely nothing of consequence. PM & FM both looked like they have absolutely no clue what to do next,"

Delhi Chief Minister Arvind Kejriwal Union Budget has meted out step-motherly treatment to Delhi again in the Union Budget. Taking to Twitter, he wrote, "Delhi had high expectations from the budget. But once again the Delhiites were given step-motherly treatment.

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Disclaimer

Budget 2020 proposals presented by the Finance Minister before the parliament are analysed in this document. It should not be relied upon as a substitute for detailed advice or a basis for formulating business decisions.

The proposals are subject to amendment as the Finance Bill is yet to be passed by the Parliament.

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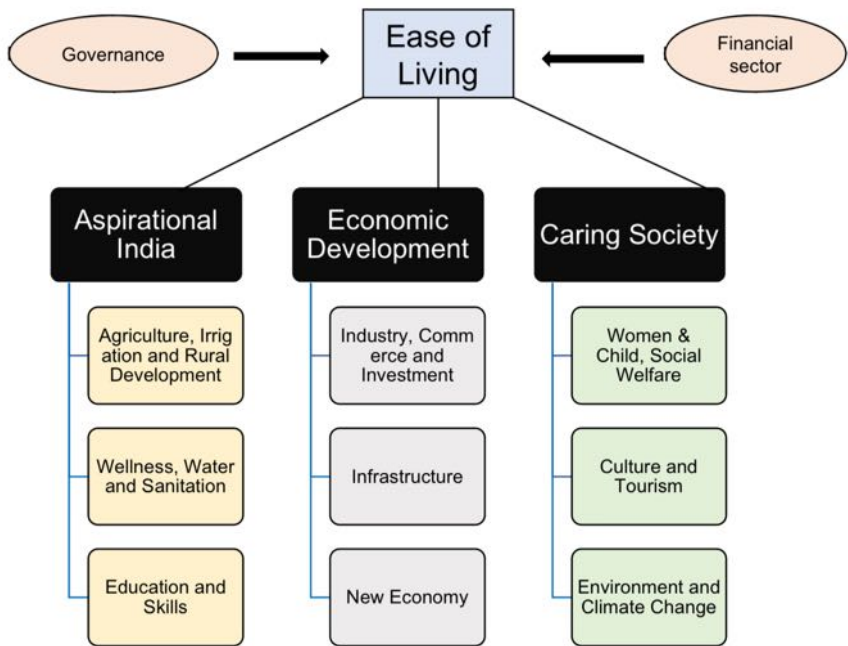
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CONTENTS

KEY FEATURES OF BUDGET 2020-21	5
DIRECT TAX PROPOSALS — FINANCE BILL, 2020	19
INDIRECT TAX PROPOSALS	85

KEY FEATURES OF BUDGET 2020-21

Prominent Themes of the Budget



GOVERNANCE

STRUCTURAL REFORMS

<p>IBC</p> <ul style="list-style-type: none"> Honourable exit through IBC for companies. 	<p>GST</p> <ul style="list-style-type: none"> 20 per cent reduction in turn around time for trucks. Benefit to MSMEs through enhanced threshold and composition limits. Savings of about 4 per cent of monthly spending for an average household. In last 2 years, 60 lakh new taxpayers added and 105 crore e-way bills generated
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DIGITAL REVOLUTION

Shift to DBT

- During 2018-19, ₹7 lakh crore transferred through DBT.

Next wave

- Digital Governance.
- Improve physical quality of life through National Infrastructure Pipeline
- Disaster Resilience.
- Social Security through Pension and Insurance penetration.

INCLUSIVE GROWTH

- Governance guided by “Sabka Saath, Sabka Vikas, Sabka Vishwas” with focus on:
 - Preventive Healthcare: Provision of sanitation and water
 - Healthcare: Ayushman Bharat
 - Clean energy: Ujjawala and Solar Power
 - Financial Inclusion, Credit support and Pension
 - Affordable Housing
 - Digital penetration

FINANCIAL SECTOR



- Deposit Insurance Coverage to increase from ₹1 lakh to ₹5 Lakh per depositor.
- Eligibility limit for NBFCs for debt recovery under SARFAESI Act proposed to be reduced to asset size of ₹100 crore or loan size of ₹50 Lakh.
- Proposal to sell balance holding of government in IDBI Bank.
- Separation of NPS Trust for government employees from PFRDAI.

- Specified categories of government securities would be opened for non resident investors
- FPI Limit for corporate bonds to be increased to 15 per cent.
- New debt ETF proposed mainly for government securities.



Agriculture, Irrigation and Rural Development

PM KUSUM to cover 20 lakh farmers for stand alone solar pumps and further 15 lakh for grid connected pumps.

- Viability gap funding for creation of efficient warehouses on PPP mode.
- SHGs run Village storage scheme to be launched.
- Integartion of e-NWR with e-NAM.



“Kisan Rail” and “Krishi Udaan” to be launched by Indian Railways and Ministry of Civil Aviation respectively for a seamless national cold supply chain for perishables.

- Elimination of FMD and brucellosis in cattle and PPR in sheep and goat by 2025.
- Increasing coverage of artificial insemination to 70 per cent.
- Doubling of milk processing capacity by 2025.
- Agricultural credit target of ₹15 lakh crore for 2020-21.

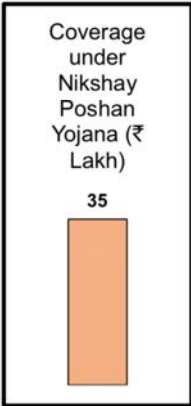
- Fish Production target of 200 lakh tonnes by 2022-23.
- Another 45000 acres of aqua culture to be supported.
- Fishery extention through 3477 Sagar Mitras and 500 fish FPOs.
- Raise fishery exports to ₹1 lakh crore by 2024-25.



Wellness, Water and Sanitation



- More than 20,000 empanelled hospitals under PM Jan Arogya Yojana.
- FIT India movement launched to fight NCDs.

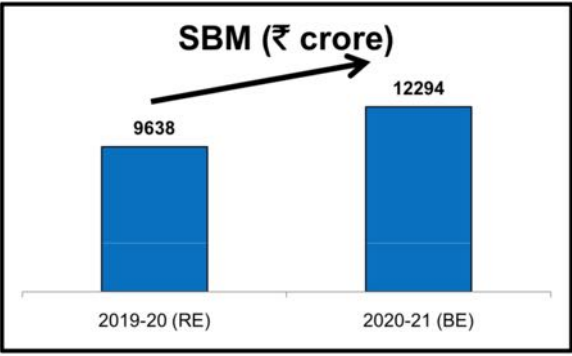
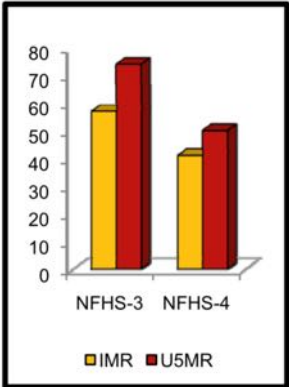


- “TB Harega Desh Jeetega” campaign launched to end TB by 2025.

- Viability gap funding proposed for setting up hospitals in the PPP mode.
- Expansion of Jan Aushadhi Kendra Scheme to all districts by 2024.



- ODF Plus to sustain ODF behaviour.
- Focus on liquid and grey water management along with waste management.



Infrastructure



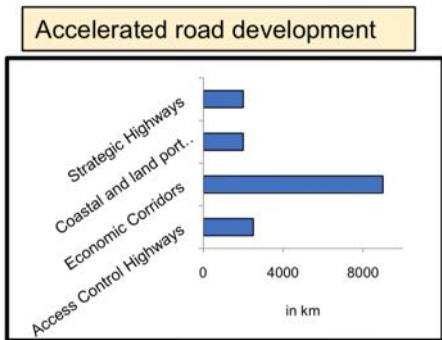
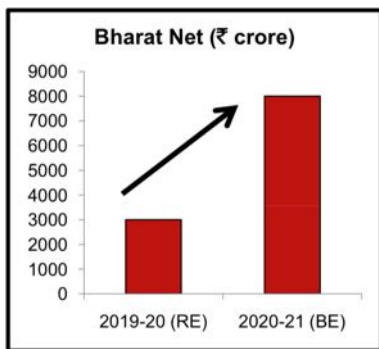
- National Logistics Policy to be launched soon.
- **Roads:** Accelerated development of Highways.
- **Railways:** Four station redevelopment projects
- 150 passenger trains through PPP mode.
- More Tejas type trains for tourist destinations.
- **Port:** Corporatizing at least one major port.
- **Air:** 100 more airports to be developed under UDAAN.

- **Power:** Efforts to replace conventional energy meters by prepaid smart meters.



- **Gas Grid:** Expand National Gas Grid to 27,000 km

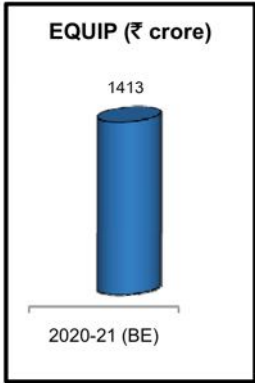
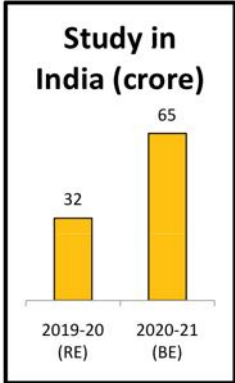
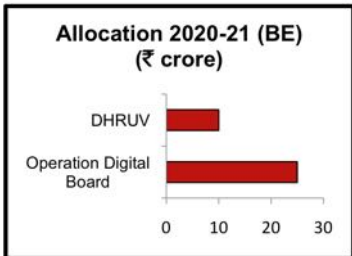
- **Infrastructure Financing:** ₹103 lakh crore National infrastructure Pipeline projects announced.
- An international bullion exchange to be set up at GIFT City.



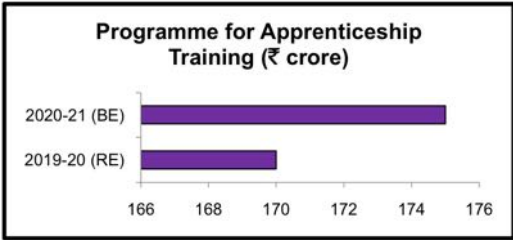
Education and Skills



- About 150 higher educational institutions will start apprenticeship embedded courses.
- Internship opportunities to fresh engineers by urban local bodies.
- Special bridge courses to improve skill sets of those seeking employment abroad.



- Degree level online education programmes for students of deprived sections of the society.
 - Ind-SAT to be conducted in Asia and Africa under Study in India programme.
-



New Economy

- Knowledge Translation Clusters for emerging technology sectors
- Scaling up of Technology Clusters harbouring test beds and small scale manufacturing facilities.
- National Mission on Quantum Technologies and applications with an outlay of Rs.8000 crore proposed.

Caring Society

Women & child, social Welfare

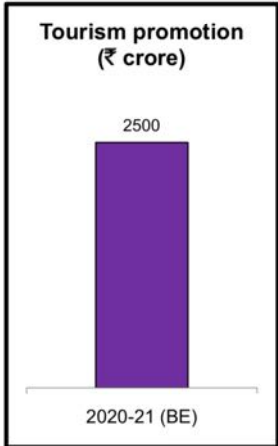
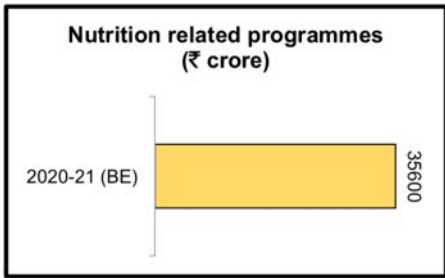
- More than 6 lakh anganwadi workers equipped with smart phones.
- A task force to be appointed to recommend regarding lowering MMR and improving nutrition levels.

Culture and Tourism

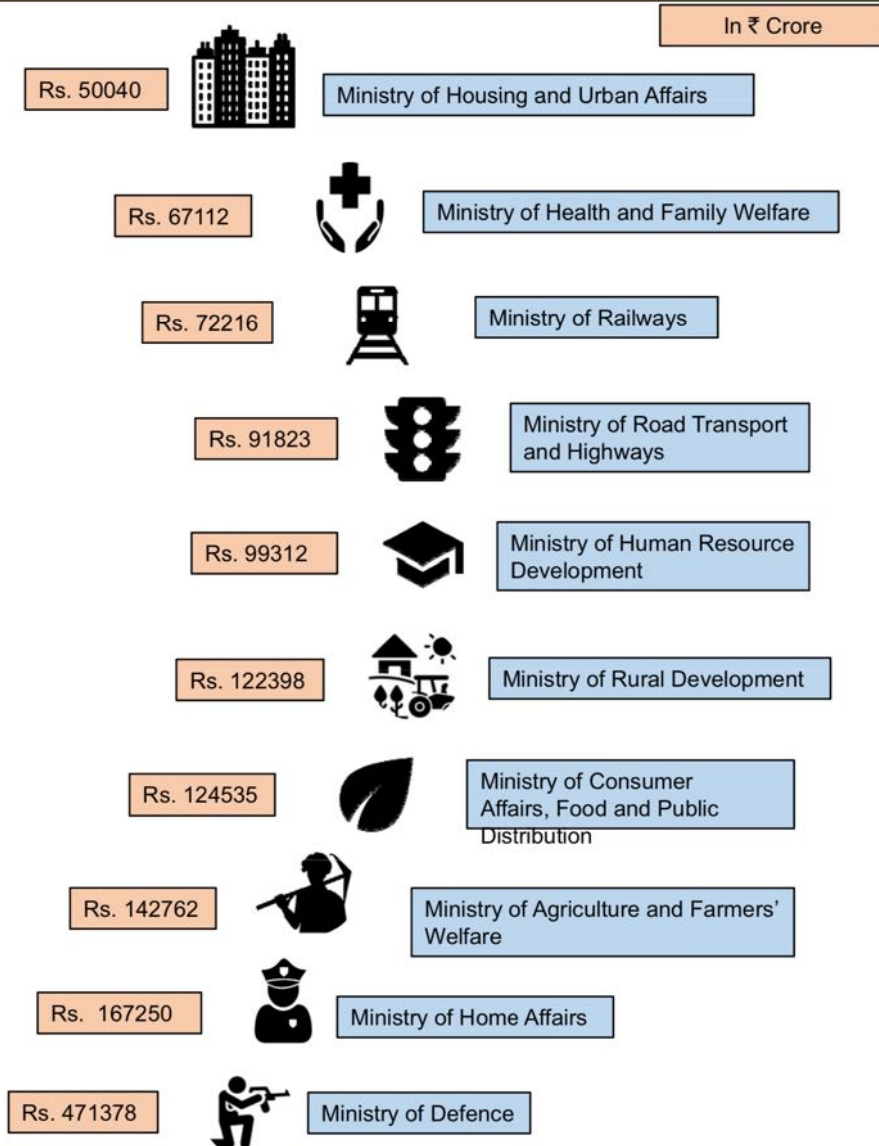
- Proposal to establish Indian Institute of Heritage and conservation.
- 5 archaeological sites to be developed as iconic sites.
- A museum on Numismatics and Trade to be established
- Tribal museum in Ranchi .
- Maritime museum to be set up at Lothal.

Environment and Climate Change

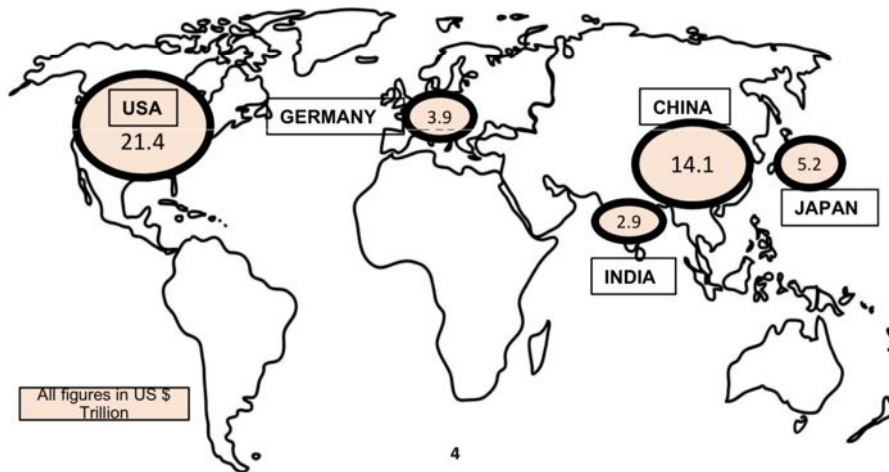
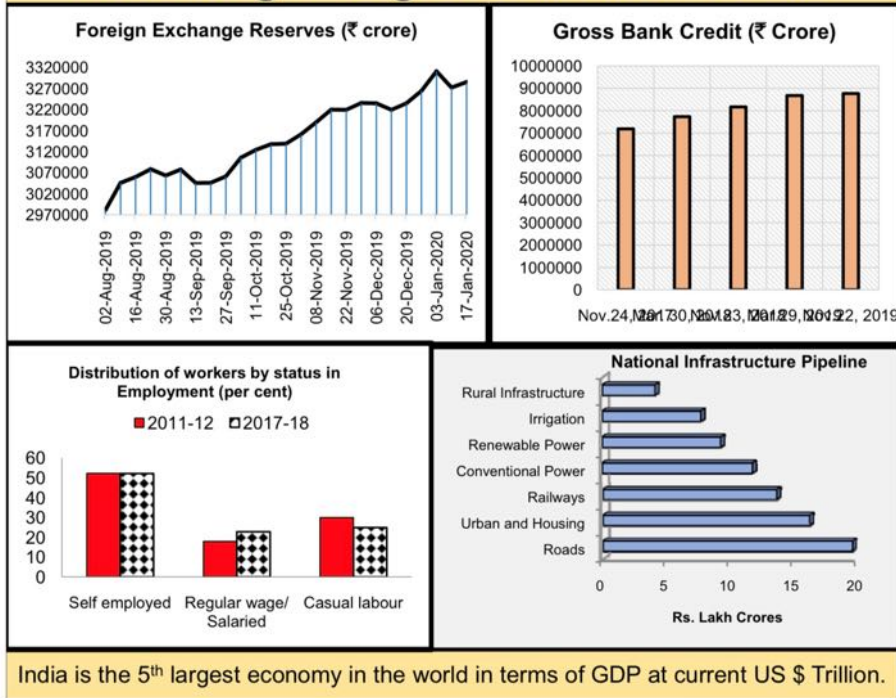
- Coalition for Disaster Resilient Infrastructure launched in September 2019.
- Encouragement to states implementing plans for cleaner air in cities above 1 million.



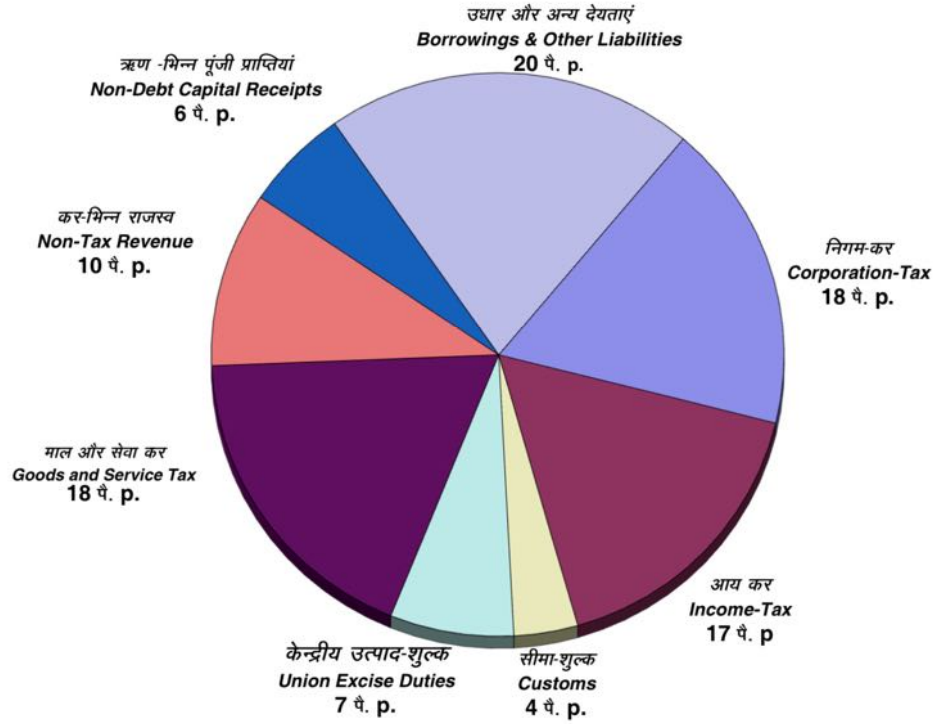
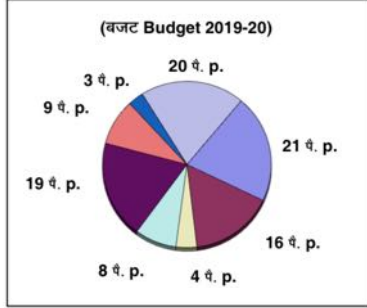
Expenditure of major items



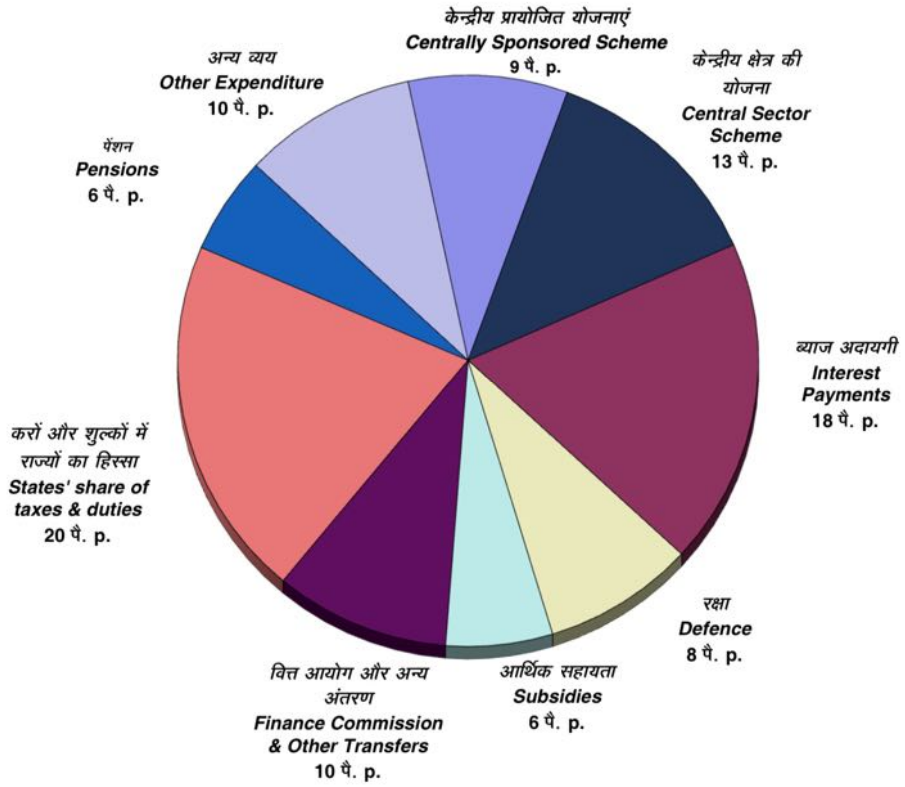
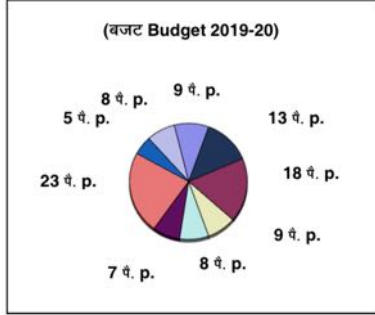
Tracking Progress in Numbers



रुपया कहां से आता है Rupee Comes From (बजट Budget 2020-21)



रुपया कहाँ जाता है Rupee Goes To (बजट Budget 2020-21)



**DIRECT TAX PROPOSALS AS
PER THE FINANCE BILL, 2020**

DIRECT TAXES

Rates of income-tax for assessment year 2021-22

Rates of Income Tax

(A) I. In the case of every Individual (other than those covered in part (II) or (III) below) or Hindu undivided family or AOP/BOI (other than a co-operative society) whether incorporated or not, or every artificial judicial (other than the person opt for taxation under the newly inserted section 115BAC of the Act — See para (A)IV below)

Upto ₹2,50,000	Nil
₹2,50,001 to ₹5,00,000	5%
₹5,00,010 to ₹10,00,000	20%
Above ₹10,00,000	30%

II. In the case of every **individual**, being a **resident in India**, who is of the **age of 60 years or more but less than 80 years** at any time during the previous year.

Upto ₹3,00,000	Nil
₹3,00,001 to ₹5,00,000	5%
₹5,00,001 to ₹10,00,000	20%
Above ₹10,00,000	30%

III. In the case of every **individual**, being a **resident in India**, who is of the **age of 80 years or more** at any time during the previous year.

Upto ₹5,00,000	Nil
₹5,00,001 to ₹10,00,000	20%
Above ₹10,00,000	30%

Surcharge

The amount of income-tax shall be increased by a surcharge for the purposes of the Union, calculated, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in section 2(31)(vii) of the Income-tax Act not having any income under section 115AD of the Act—

- having a total income exceeding ₹50,00,000 but not exceeding ₹1 crore, at the rate of 10% of such income-tax;
- having a total income exceeding ₹1 crore but not exceeding ₹2 crore, at the rate of 15% of such income-tax;

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- (c) having a total income exceeding ₹2 crore but not exceeding ₹5 crore, at the rate of 25% of such income-tax; and
- (d) having a total income exceeding ₹5 crore, at the rate of 37% of such income-tax:

Marginal relief: Marginal relief has also been provided in all cases where surcharge is proposed to be levied.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

IV. From the assessment year 2021-22 (FY 2020-21), individual and HUF tax payers have an option to opt for taxation under the newly inserted section 115BAC of the Act.

(i) On satisfaction of certain conditions, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

Upto ₹2,50,000	Nil
₹2,50,001 to ₹5,00,000	5%
₹5,00,001 to ₹7,50,000	10%
₹7,50,001 to ₹10,00,000	15%
₹10,00,001 to ₹12,50,000	20%
₹12,50,001 to ₹15,00,000	25%
₹15,00,001 and Above	30%

Plus the surcharge, marginal relief and cess applicable as discussed above

(ii) The option shall be exercised for every previous year where the individual or the HUF has no business income, and in other cases the option once exercised for a previous year shall be valid for that previous year and all subsequent years.

(iii) The option shall become invalid for a previous year or previous years, as the case may be, if the Individual or HUF fails to satisfy the conditions and other provisions of the Act shall apply;

(iv) the condition for concessional rate shall be that the total income of the individual or HUF is computed,—

- (a) without any exemption or deduction under the provisions of clause (5) or clause (13A) or prescribed under clause (14) (other than those as may be prescribed for this purpose) or clause (17) or clause (32) of section 10 or section 10AA or section 16 or clause (b) of section 24 [in respect of property referred to in sub-section (2) of section 23] or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause

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- (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or clause (iia) of section 57 or under any provisions of Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA;
- (b) without set off of any loss,-
- (i) carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (a) above; or
- (ii) under the head house property with any other head of income;
- (c) by claiming the depreciation, if any, under section 32, except clause (iia) of sub-section (1) thereof, determined in such manner as may be prescribed; and
- (d) without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.
- (v) the loss and depreciation referred to in (ii)(b) above 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 so however, that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1.4.2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1.4.2020 in the prescribed manner, if the option is exercised for a previous year relevant to the assessment year beginning on 1.4.2021;
- (vi) the concessional rate shall not apply unless option is exercised by the individual or HUF in the form and manner as may be prescribed,-
- (a) where such individual or HUF has no business income, along with the return of income to be furnished under sub-section (1) of section 139 of the Act; and
- (b) in any other case, on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the return of income for any previous year relevant to the assessment year commencing on or after 1.4.2021 and such option once exercised shall apply to subsequent assessment years;
- (vii) if the individual or HUF has a Unit in the International Financial Services Centre [clause (zc) of section 2 of the Special Economic Zones Act, 2005], as referred to in sub-section (1A) of section 80LA, the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that section; and
- (viii) the option can be withdrawn only once where it was exercised by the individual or HUF having business income for a previous year other than the year in which it was exercised and thereafter, the individual or HUF shall never be eligible to exercise option under this section, except where such individual or HUF ceases to have any business income in which case, option under para (vi)(a) above shall be available.

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It is further proposed to amend section 115JC of the Act so as to provide that the provisions relating to AMT shall not apply to such individual or HUF having business income.

It is also proposed to amend section 115JD of the Act so as to provide that the provisions relating to carry forward and set off of AMT credit, if any, shall not apply to such individual or HUF having business income.

The condition listed at (iva) above, means that the individual or HUF opting for taxation under the newly inserted section 115BAC of the Act shall not be entitled to the following exemptions/ deductions:

- (i) Leave travel concession as contained in clause (5) of section 10;
- (ii) House rent allowance as contained in clause (13A) of section 10;
- (iii) Some of the allowance as contained in clause (14) of section 10;
- (iv) Allowances to MPs/MLAs as contained in clause (17) of section 10;
- (v) Allowance for income of minor as contained in clause (32) of section 10;
- (vi) Exemption for SEZ unit contained in section 10AA;
- (vii) Standard deduction, deduction for entertainment allowance and employment/professional tax as contained in section 16;
- (viii) Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23. (Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);
- (ix) Additional depreciation under clause (iia) of sub-section (1) of section 32;
- (x) Deductions under section 32AD, 33AB, 33ABA;
- (xi) Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;
- (xii) Deduction under section 35AD or section 35CCC;
- (xiii) Deduction from family pension under clause (iia) of section 57;
- (xiv) Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub-section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme) and section 80JJAA (for new employment) can be claimed.

As many allowances have been provided through notification of rules, it is proposed to carry out amendment of the Income-tax Rules, 1962 (the Rules) subsequently, so as to allow only following allowances notified under section 10(14) of the Act to the Individual or HUF exercising option under the proposed section:

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- (a) Transport Allowance granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty
- (b) Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office;
- (c) Any Allowance granted to meet the cost of travel on tour or on transfer;
- (d) Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.

It is also proposed to amend rule 3 of the Rules subsequently, so as to remove exemption in respect of free food and beverage through vouchers provided to the employee, being the person exercising option under the proposed section, by the employer.

(B) In the case of every co-operative society

(other than those who opt for taxation under the newly inserted section 115BAD of the Act.)

(1) where the total income does not exceed ₹10,000	10% of the total income;
(2) where the total income exceeds ₹10,000 but does not exceed ₹20,000	₹1,000 <i>plus</i> 20% of the amount by which the total income exceeds ₹10,000;
(3) where the total income exceeds ₹20,000	₹3,000 <i>plus</i> 30% of the amount by which the total income exceeds ₹20,000.

Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 12% of such income-tax in case of a co-operative society having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

From the assessment year 2021-22, resident co-operative societies have an option to opt for taxation under newly inserted section 115BAD of the Act.

(i) notwithstanding anything contained in the Act but subject to the provisions of Chapter XII and satisfaction of certain conditions, a co-operative society resident in India shall have the option to pay tax at **22%** for assessment year 2021-22 onwards in respect of its total income so however that if it fails to satisfy the conditions in any previous year, the option shall become invalid and other provisions of the Act shall apply;

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(ii) the condition for concessional rate shall be that the total income of the co-operative society is computed,—

- (a) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or under any provisions of Chapter VI-A;
- (b) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (a) above; and
- (c) by claiming the depreciation, if any, under section 32, except clause (iia) of sub-section (1) thereof, determined in such manner as may be prescribed;

(iii) the loss and depreciation referred to in (ii)(b) above 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. However, where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1.4.2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1.4.2020 in the prescribed manner, if the option is exercised for a previous year relevant to the assessment year beginning on 1.4.2021;

(iv) the concessional rate shall not apply unless option is exercised by the co-operative society in the prescribed manner on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after 1.4.2021 and such option once exercised shall apply to subsequent assessment years;

(v) if the person has a Unit in the International Financial Services Centre (IFSC), as referred to in sub-section (1A) of section 80LA, the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that section; and

(vi) the option so exercised cannot be withdrawn;

(vii) The surcharge applicable to such co-operative society shall be levied at 10%. It is further proposed to amend section 115JC of the Act so as to provide that the provisions relating to Alternate Minimum Tax (AMT) shall not apply to such co-operative society.

It is also proposed to amend section 115JD of the Act so as to provide that the provisions relating to carry forward and set off of AMT credit, if any, shall not apply to such co-operative society.

(C) In case of any firm (including limited liability partnership) — 30%.

Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 12% of such income-tax in case of a firm having a total income exceeding ₹ 1 crore.

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Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

(D) In the case of a company

(i) For domestic companies:

- | | |
|--|-----|
| (a) If the total turnover or gross receipts of the previous year 2018-19 does not exceed ₹ 400 crore | 25% |
| (b) In all other cases | 30% |

Surcharge: Surcharge at the rate of 7% shall continue to be levied in case of a domestic company (except those opting for taxation under section 115BAA and section 115BAB of the Act), if the total income of the domestic company exceeds ₹1crore but does not exceed ₹10 crore. Surcharge @ 12% shall continue to be levied, if the total income of the domestic company (except those opting for taxation under section 115BAA and section 115BAB of the Act) exceeds ₹10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹1 crore but not exceeding ₹10 crore, shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹10 crore, by more than the amount of income that exceeds ₹10 crore.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

However, domestic companies also have an option to opt for taxation under section 115BAA or section 115BAB of the Act on fulfilment of conditions contained therein. The tax rate is 15 % under section 115BAB and 22 % under section 115BAA. The Surcharge is 10 % in both the cases.

For detailed analysis of Section 115BAA and Section 115BAB please refer para (F) below:

It is now proposed to amend the provisions of section 115BAA and section 115BAB to not allow deduction under any provisions of Chapter VI-A other than section 80JJAA or section 80M, in case of domestic companies opting for taxation under these sections.

In other cases [including sub-section (2A) of section 92CE, sections 115-O, 115QA, 115R, 115TA or 115TD], the surcharge shall be levied @ 12%.

(E) For foreign company: 40%.

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Surcharge: In case of companies other than domestic companies, the surcharge of 2% shall be levied if the total income exceeds ₹ 1 crore but does not exceed ₹10 crore.

The surcharge at the rate of 5% shall be levied if the total income of the company other than domestic company exceeds ₹10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹1 crore but not exceeding ₹10 crore, shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹10 crore, by more than the amount of income that exceeds ₹10 crore.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

(F) Tax on income of certain domestic companies (Tax on income of certain manufacturing domestic companies as per the amendment made by the Taxation Laws (Amendment) Act, 2019) [Section 115BA]

(1) Certain domestic companies given option to be taxed at the special rate of 25% [Section 115BA(1)]: Notwithstanding anything contained in this Act but subject to the other provisions of this Chapter (i.e. Chapter XII relating to determination of tax in certain special cases), ***other than those mentioned under section 115BAA and section 115BAB*** the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after 1.4.2017, shall, at the option of such person, be computed @ 25%, if the conditions specified in section 115BA(2) are satisfied.

* The words in bold italics above inserted by The Taxation Laws (Amendment) Act, 2019 w.e.f. A.Y. 2020-21.

(2) Specified conditions for opting provisions of section 115BA(1) [Section 115BA(2)]

- (a) the company has been set-up and registered on or after 1.3.2016;
- (b) 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; and
- (c) the total income of the company has been **computed**,—
 - (i) **without any**—
 - **deduction** under the provisions of section 10AA (relating to special economic zone), or
 - benefit of accelerated depreciation/additional depreciation under section 32(1)(*ia*), or
 - benefit of investment allowance under section 32AC or under section 32AD, or

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- deduction under section 33AB (tea/coffee/rubber development account), or
 - deduction under section 33ABA (site restoration fund), or
 - deduction under section 35(1)(ii), (ia), (iii), section 35(2AA), section 35(2AB) (relating to scientific research/social research), or
 - deduction under section 35AC (expenditure on eligible projects and scheme), or
 - deduction under section 35AD (deduction on account of capital expenditure on specified business), or
 - deduction under section 35CCC (agricultural extension project), or
 - deduction under section 35CCD (skill development project), or
 - deduction under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” other than the provisions of section 80JJAA;
- (ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i) of clause (c); and
- (iii) depreciation under section 32, other than additional depreciation under section 32(1)(ia), is determined in the manner as may be prescribed.

The loss referred to in section 115BA(2)(c)(ii) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year. [Section 115BA(3)].

(3) Section not to apply unless the option is exercised in the prescribed manner on or before due date specified under section 139(1) [Section 115BA(4)]: Nothing contained in this section shall apply unless the option is exercised by the person in the **prescribed manner** (See rule 21AD and Form No. 10-1B) on or before the due date specified under section 139(1) for furnishing the **first of the returns of income** which the person is required to furnish under the provisions of this Act:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Provided further where the person exercises option under section 115BAA, the option under this section may be withdrawn (Second proviso inserted by The Taxation Law (Amendment) Act, 2019, w.e.f. A.Y. 2020-21).

Surcharge for assessment years 2019-20 and 2020-21: The amount of income-tax computed as above shall be increased by a surcharge of 7% in case of domestic companies and 2% in case of foreign companies provided the total income of such domestic/foreign company exceeds ₹1 crore. If total income of the company exceeds ₹10 crore, surcharge in case of domestic company shall be 12% and 5% in case of foreign company.

Health and education cess (H&EC) for A.Ys. 2019-20 and 2020-21: H&EC @ 4% shall be levied on the total tax (including surcharge) payable by the assessee.

3. Insertion of new sections 115BAA and 115BAB by The Taxation Laws (Amendment) Act, 2019, w.e.f. A.Y. 2020-21

(A) Special provisions of tax on income of certain domestic companies referred to in section 115BAA

(1) Rate of income tax in case of a domestic company [Section 115BAA(1)]

Notwithstanding anything contained in this Act but subject to the provisions of this Chapter (i.e. Chapter XII, other than those mentioned under section 115BA and section 115BAB), the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1.4.2020, shall, at the option of such person, be computed at the rate of 22%, if the conditions contained in section 115BAA(2) are satisfied.

(1A) Option exercised for section 115BAA to become invalid if the conditions contained in section 115BAA(2) are not satisfied [Proviso to section 115BAA(1)]

Where the person fails to satisfy the conditions contained in section 115BAA(2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) Conditions to be satisfied for paying tax under section 115BAA(1) [Section 115BAA(2)]

The total income of the company will be **computed**,—

(i) without any—

- **deduction** under the provisions of section 10AA (relating to special economic zone), or
- benefit of accelerated depreciation/additional depreciation under section 32(1)(*ii*a), or
- benefit of investment allowance under section 32AD, or
- deduction under section 33AB (relating to tea/coffee/rubber development account), or
- deduction under section 33ABA (relating to site restoration fund), or
- deduction under section 35(1)(*ii*) (relating to any sum paid to certain research associations or to a university, college or other institution to be used for scientific research),
- deduction under section 35(1)(*ii*a) (relating to any sum paid to a company to be used by it for scientific research),
- deduction under section 35(1)(*iii*) (relating to any sum paid to certain research associations or to a university, college or other institution to be used for research in social science or statistical research),

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- deduction under section 35(2AA) (relating to any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person to be used for scientific research undertaken under an approved programme)
 - deduction under section 35(2AB) (relating to any expenditure incurred on in-house scientific research and development facility (not being expenditure in the nature of cost of any land or building) by a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule)
 - deduction under section 35AD (relating to deduction on account of capital expenditure on specified business), or
 - deduction under section 35CCC (relating to agricultural extension project), or
 - deduction under section 35CCD (relating to skill development project), or
 - deduction under any provisions of Chapter VI-A under the heading “C.— *Deductions in respect of certain incomes*” (i.e 80-IA to 80Q whichever is applicable to a company other than the provisions of section 80JJAA);
- (ii) **without set off of** any loss carried forward or depreciation from any earlier assessment year if such loss or depreciation is attributable to any of the deductions **referred to in sub-clause (i) above** (See also section 115BAA(3) below);
- (iii) without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i) above; and
- (iv) **by claiming** the depreciation, if any, under any provisions of section 32, (other than additional depreciation under section 32(1)(ii)), determined in such manner as may be prescribed.

(3) Loss and depreciation referred to in clause (ii) and clause (iii) above shall be deemed to have been already given full effect to [Section 115BAA(3)]

The loss and depreciation referred to clause (ii) and clause (iii) above shall be deemed to have been already given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

(3A) Adjustment to the written down value of the relevant block to be made if the effect of depreciation allowance has not been given full effect to prior to the assessment year 2020-21 [Proviso to section 115BAA(3)]

Where there is a depreciation allowance in respect of a block of asset which **has not been given full effect** to prior to the assessment year 2020-21, corresponding adjustment shall be made to the written down value of such block of assets as on 1.4.2019 in the prescribed manner, if the option under section 115BAA(5) is exercised for a previous year relevant to the assessment year beginning on 1.4.2020.

(4) Conditions contained in section 115BAA(2) above to be modified to the extent the deduction under section 80LA is available to such Unit [Section 115BAA(4)]

In case of a person, having a Unit in the International Financial Services Centre, as referred to in of section 80LA(1A), which has exercised option under section 115BAA(5), the conditions contained in section 115BAA(2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

(5) Assessee to opt for section 115BAA in the prescribed manner before the specified date [Section 115BAA(5)]

Nothing contained in section 115BAA shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under section 139(1) for furnishing the returns of income for any previous year relevant to the assessment year **commencing on or after 1.4.2020 and such option once exercised shall apply to subsequent assessment years.**

(5A) Person may exercise the option under this section (i.e. section 115BAA) if certain conditions of section 115BAB are violated [First proviso to section 115BAA(5)]

In case of a person, where the option exercised by it under section 115BAB has been rendered invalid due to violation of conditions contained in

- sub-clause (ii) (relating to machinery or plant previously used for any purpose) or sub-clause (iii) (relating to building previously used as a hotel or convention centre) of clause (a) of section 115BAB(2) or
- clause (b) (relating to company engaged in any business other than the business of manufacture of production, etc.) of section 115BAB(2),

such person may exercise option under this section (i.e. section 115BAA):

(5B) Option for section 115BAA once exercised cannot be subsequently withdrawn [Second proviso to section 115BAA(5)]

Once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

(6) Surcharge on income tax on total income computed under section 115BAA

Provided that in respect of any income chargeable to tax under section 115BAA of the Income-tax Act, the tax computed shall be increased by a surcharge, for the purposes of the Union, calculated at the rate of 10%.

Health and education cess (H&EC): Further H&EC @ 4% shall be levied on the total tax (including surcharge) payable by the assessee.

Hence, the tax payable by such company shall be 25.168% (ie 22% + 10% + 4%)

Notes

(1) Amendment of section 115JAA relating to allowability of brought forward MAT credit. [Section 115JAA inserted by the Taxation Laws (Amendment) Act, 2019, w.e.f. A.Y. 2020-21]

The provisions of section 115JAA (relating to allowability of brought forward MAT credit) shall not apply to a person who has exercised the option under section 115BAA.

(2) Option for section 115BAA can be exercised at any time

As there is no time line within which option under section 115BAA can be exercised, it may be noted that a domestic company having credit of MAT may, if it so desires, exercise the option after utilising the said credit against the regular tax payable under the taxation regime existing prior to promulgation of the Tax Laws (Amendment) Ordinance, 2019.

(B) Special provisions relating to tax on income of certain new manufacturing domestic companies referred to in section 115BAB

(1) Rate of income tax in case of a new manufacturing domestic company [Section 115BAB(1)]

Notwithstanding anything contained in this Act but subject to the provisions of this Chapter (i.e. Chapter XII, other than those mentioned under section 115BA and section 115BAA), the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after 1.4.2020, shall, at the option of such person, be computed at the rate of 15%, if the conditions contained in section 115BAB(2) are satisfied.

(1A) Incomes other than derived from manufacturing or production and incomes in respect of which no specific rate of tax has been provided separately under this Chapter XII to be taxed @ 22% [First proviso to section 115BAB(1)]

Where the total income of the person, includes any income,

- which has neither been derived from nor is incidental to manufacturing or production of an article or thing, and
- in respect of which no specific rate of tax has been provided separately under this Chapter (i.e. Chapter XII relating to determination of tax in certain special cases),

such income shall be taxed @ 22% and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income:

(1B) Income computed by the AO by applying the specified domestic provisions to be taxed @ 30% [Second proviso to section 115BAB(1)]

The income-tax payable in respect of the income of the person deemed so under second proviso to section 115BAB(6) (see below) shall be computed @ 30%.

(1C) Short-term capital gain on transfer of depreciable of a capital asset on

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which no depreciation is allowable to be taxed @ 22% [Third proviso to section 115BAB(1)]

The income-tax payable in respect of income being short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed @ 22%.

(1D) Option to become invalid if the conditions contained in section 115BAB(2) are not satisfied [Fourth proviso to section 115BAB(1)]

Where the person fails to satisfy the conditions contained in section 115BAB(2) (see below) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) Conditions to be satisfied for paying tax under section 115BAB(1) [Section 115BAB(2)]

- (a) The company has been set-up and registered on or after 1.10.2019, and has commenced manufacturing or production of an article or thing on or before 31.3.2023 and—
 - (i) the business is not formed by splitting up, or the reconstruction, of a business already in existence:
Provided that this condition shall not apply in respect of a company, business of which is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in the said section;
 - (ii) does not use any machinery or plant previously used for any purpose.

Explanation 1.—For the purposes of sub-clause (ii) above, any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—
(A) such machinery or plant was not, at any time previous to the date of the installation, used in India;
(B) such machinery or plant is imported into India from any country outside India; and
(C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

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Explanation 2.—Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed 20%, of the total value of the machinery or plant used by the company, then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with.

- (iii) does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.

Explanation.—For the purposes of this sub-clause, the expressions "convention centre" and "hotel" shall have the meanings respectively assigned to them in clause (a) and clause (b) of subsection (6) of section 80-ID.

- (b) 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; and

Explanation.—For the removal of doubts, it is hereby clarified that the business of manufacture or production of any article or thing referred to in clause (b) above shall not include business of,—

- (i) development of computer software in any form or in any media;
- (ii) mining;
- (iii) conversion of marble blocks or similar items into slabs;
- (iv) bottling of gas into cylinder;
- (v) printing of books or production of cinematograph film; or
- (vi) any other business as may be notified by the Central Government in this behalf; and

- (c) the total income of the company has been computed,—

- (i) **without any**—

- **deduction** under the provisions of section 10AA (relating to special economic zone), or
- benefit of accelerated depreciation/additional depreciation under section 32(1)(ia), or
- benefit of investment allowance under section 32AD, or
- deduction under section 33AB (relating to tea/coffee/rubber development account), or
- deduction under section 33ABA (relating to site restoration fund), or

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- deduction under section 35(1)(i) (relating to any sum paid to certain research associations or to a university, college or other institution to be used for scientific research),
 - deduction under section 35(1)(iia) (relating to any sum paid to a company to be used by it for scientific research),
 - deduction under section 35(1)(iii) (relating to any sum paid to certain research associations or to a university, college or other institution to be used for research in social science or statistical research),
 - deduction under section 35(2AA) (relating to any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person to be used for scientific research undertaken under an approved programme
 - deduction under section 35(2AB) (relating to any expenditure incurred on in-house scientific research and development facility (not being expenditure in the nature of cost of any land or building) by a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule
 - deduction under section 35AD (relating to deduction on account of capital expenditure on specified business), or
 - deduction under section 35CCC (relating to agricultural extension project), or
 - deduction under section 35CCD (relating to skill development project), or
 - deduction under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” (i.e 80-IA to 80Q whichever is applicable to a company other than the provisions of section 80JJAA);
- (ii) **without set off** of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i) above;
Explanation.—For the removal of doubts, it is hereby clarified that in case of an amalgamation, the option under section 115BAB(7) shall remain valid in case of the amalgamated company only and if the conditions contained in section 115BAB(2) are continued to be satisfied by such company; and
- (iii) **by claiming** the depreciation under the provision of section 32, except clause (ia) of sub-section (1) of the said section, determined in such manner as may be prescribed.
- (3) Loss referred to clause (ii) of section 115BAB(2)(c) above to be deemed to have been already given full effect to [Section 115BAB(3)]:** The loss referred to

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in clause (ii) of section 115BAB(2) above, shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Board with the approval of Central Government empowered to issue guidelines for the purpose of any difficulty [Section 115BAB(4)]: If any difficulty arises regarding fulfilment of the conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a) of section 115BAB(2) or clause (b) of said section, as the case may be, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery.

(5) Guidelines issued by the Board under section 115BAB(4) to be laid before each House of Parliament and shall be binding on the person and department [Section 115BAB(5)]: Every guideline issued by the Board under section 115BAB(4) shall be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.

(6) How to compute profit where there is close connection between the company and any other person [Section 115BAB(6)]: Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F:

Provided further that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person.

(7) Assessee to opt for section 115BAB in the prescribed manner and before the specified date [Section 115BAB(7)]: Nothing contained in section 115BAB shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under section 139(1) for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after 1.4.2020 **and such option once exercised shall apply to subsequent assessment years.**

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

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Explanation.—For the purposes of section 115BAA and this section, the expression "unabsorbed depreciation" shall have the meaning assigned to it in clause (b) of sub-section (7) of section 72A.

(8) Rate of income tax on total income if the new manufacturing domestic company opts for section 115BAB

S. No.	Nature of Income	Rate of income tax
1.	Income derived from manufacturing or production of an article or thing [Section 115BAB(1)]	15%
2.	Income taxable at special rates as per Chapter XII i.e. (i) Short-term capital gain referred to in section 111A	15%
	(ii) Long-term capital gain other than referred to in section 112A	10/20%, as the case may be
	(iii) Long-term capital gain referred to in section 112A	10% on the LTCG exceeding ₹ 1,00,000
3.	Income computed by the AO by applying the specific domestic provisions i.e. where there is close connection between the company and any other person [Second proviso to Section 115BAB(1)]	30%
4.	Short-term capital gain on transfer of of a capital asset on which no depreciation is allowable [Third proviso to Section 115BAB(1)]	22%
5.	Any other income of the company [First proviso to Section 115BAB(1)]	22%

(9) Surcharge on income tax on total income computed under section 115BAB

Provided that in respect of any income chargeable to tax under section 115BAB of the Income-tax Act, the tax computed above shall be increased by a surcharge, for the purposes of the Union, calculated at the rate of 10%.

(10) Health and education cess (H&EC)

Further H&EC @ 4% shall be levied on the total tax (including surcharge) payable by the assessee.

4. Amendment of section 115JAA relating to allowability of brought forward MAT credit. [Section 115JAA inserted by the Taxation Laws (Amendment) Act, 2019, w.e.f. A.Y. 2020-21]

The provisions of section 115JAA (relating to allowability of brought forward MAT credit) shall not apply to a person who has exercised the option under section 115BAA.

5. Rate of MAT reduced from 18.5% to 15% and MAT has been made non applicable in certain cases

As per section 115JB(1), where in the case of a company, the *income-tax payable* on the total income as computed under the Income-tax Act, is less than 18.5% of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income (book profit) shall be the amount of the income-tax at the rate of 18.5%.

**Amendment made by the Taxation Laws (Amendment) Act, 2019
[W.e.f. A.Y. 2020-21]**

(1) The following proviso has been inserted under section 115JB(1)

"Provided that for the previous year relevant to the assessment year commencing on or after 1.4.2020, the provisions of section 115JB(1) shall have effect as if for the words "18.5%", the words "15%" had been substituted."

(2) Section 115JB(5A) amended

As per section 115JB(5A), the provisions of section 115JB shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B.

The above sub-section (5A) has been substituted by the following:

"(5A) The provisions of this section shall not apply to —

- (i) any income accruing or arising to a company from life insurance business referred to in section 115B;
- (ii) a person who has exercised the option referred to under section 115BAA or section 115BAB."

6. Enhanced surcharge not to apply on any capital gain on sale of equity share or equity oriented mutual fund covered under section 111A and 112A

The Taxation Laws (Amendment) Act, 2019 has amended section 2 and Part II & III of the First Schedule to the Finance (No. 2) Act, 2019—

(1) Amendment in section 2 of the Finance (No. 2) Act, 2019, w.e.f. 1.4.2019

Where the foreign institutional investor (FII) is an association of persons or body of individuals, whether incorporated or not, having income under section 115AD of the Income-tax Act, the surcharge shall be chargeable—

- (i) @ 10%, of such "advance tax", where the total income exceeds ₹50,00,000, but does not exceed ₹1 crore;

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- (ii) @ 15%, of such "advance tax", where the total income exceeds ₹ 1 crore but does not exceed ₹ 2 crore;
- (iii) @ 25%, of such "advance tax", where the total income [excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds ₹ 2 crore but does not exceed ₹ 5 crore;
- (iv) @ 37%, of such "advance tax", where the total income [excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds ₹ 5 crore;
- (v) @ 15%, of such "advance tax", where the total income [including the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act] exceeds ₹ 2 crore but is not covered in sub-clauses (iii) and (iv) above:

Provided that in case where the total income includes any income chargeable under section 115AD(1)(b) of the Income-tax Act, the rate of surcharge on the advance tax computed on that part of income shall not exceed 15%;;

In other words, in case of foreign institutional investor, the surcharge on the tax payable on short-term capital gain referred to in section 111A and long-term capital gain referred to in section 112A shall not exceed 15% even if the total income exceeds ₹2 crore or ₹5 crore, as the case may be.

(2) Amendment in Part II and Part III of the First Schedule of the Finance (No. 2) Act, 2019

Enhanced surcharge on individual HUF, AOP, BOI @ 25% in case income exceeds ₹ 2 Crore and @ 37% in case income exceeds ₹ 5 Crore **shall not be applicable** in respect of short-term capital gain referred to in section 111A and long-term capital gain referred to in section 112A arising on sale of equity share in a company or a unit of equity oriented fund or unit of a business trust liable for security transaction tax.

This surcharge shall also not apply on capital gain arising on sale of any security including derivatives in the hands of foreign portfolio investor.

However, surcharge on the tax on the total income other than referred to section 111A and 112A shall be 10%/15%/25%/37% as applicable.

Amendments relating to Definitions

1. Rationalisation of the provisions of section 49 and clause (42A) of section 2 of the Act in respect of segregated portfolios [Section 2(42A)] [W.e.f. A.Y. 2021-22]

See para 19.

Amendments relating to Scope of Total Income and Residential Status
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2. Modification of residency provisions [Section 6] [W.e.f. A.Y. 2021-22]

Sub-section (1) of section 6 of the Act provide for situations in which an individual shall be resident in India in a previous year. Clause (c) thereof provides that the individual shall be Indian resident in a year, if he,—

- (i) has been in India for an overall period of 365 days or more within four years preceding that year, and
- (ii) is in India for an overall period of 60 days or more in that year.

Clause (b) of Explanation 1 of said sub-section provides that an Indian citizen or a person of Indian origin shall be Indian resident if he is in India for 182 days instead of 60 days in that year. This provision provides relaxation to an Indian citizen or a person of Indian origin allowing them to visit India for longer duration without becoming resident of India.

Instances have come to notice where period of 182 days specified in respect of an Indian citizen or person of Indian origin visiting India during the year, is being misused. Individuals, who are actually carrying out substantial economic activities from India, manage their period of stay in India, so as to remain a non-resident in perpetuity and not be required to declare their global income in India.

Sub-section (6) of the said section provides for situations in which a person shall be “not ordinarily resident” in a previous year. Clause (a) thereof provides that if the person is an individual who has been non-resident in nine out of the ten 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. Clause (b) thereof contains similar provision for the HUF.

This category of persons has been carved out essentially to ensure that a non-resident is not suddenly faced with the compliance requirement of a resident, merely because he spends more than specified number of days in India during a particular year. The conditions specified in the present law in respect of this carve out have been the subject matter of disputes, amendments and further disputes. Further, due to reduction in number of days, as proposed, for visiting Indian citizen or person of Indian origin, there would be need for relaxation in the conditions.

The issue of stateless persons has been bothering the tax world for quite some time. It is entirely possible for an individual to arrange his affairs in such a fashion that he is not liable to tax in any country or jurisdiction during a year. This arrangement is typically employed by high net worth individuals (HNWI) to avoid paying taxes to any country/ jurisdiction on income they earn. Tax laws should not encourage a situation where a person is not liable to tax in any country. The current rules governing tax residence make it possible for HNWIs and other individuals, who may be Indian

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citizen to not to be liable for tax anywhere in the world. Such a circumstance is certainly not desirable; particularly in the light of current development in the global tax environment where avenues for double non-taxation are being systematically closed.

In the light of above, it is proposed that—

- (i) the exception provided in clause (b) of Explanation 1 of sub-section (1) to section 6 for visiting India in that year be decreased to 120 days from existing 182 days.
- (ii) an individual or an HUF shall be said to be “not ordinarily resident” in India in a previous year, if the individual or the manager of the HUF has been a non-resident in India in seven out of ten previous years preceding that year. This new condition to replace the existing conditions in clauses (a) and (b) of sub-section (6) of section 6.
- (iii) an Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India.

Amendments relating to income deemed to accrue or arise in India

3. Deferring Significant Economic Presence (SEP) proposal, Extending source rule, Aligning exemption from taxability of Foreign Portfolio Investors (FPIs), on account of indirect transfer of assets, with amended scheme of SEBI, and rationalising the definition of royalty [Section 9] [W.e.f. A.Y. 2020-21]

(I) Section 9 of the Act contains provisions in respect of income which are deemed to accrue or arise in India. Sub-section (1) thereof creates a legal fiction that certain incomes shall be deemed to accrue or arise in India.

Clause (i) of sub-section (1) deems the following income to accrue or arise in India:

“all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.”

Finance Act, 2018, *inter alia*, inserted Explanation 2A to said clause so as to clarify that the “significant economic presence” (SEP) of a non-resident in India shall constitute “business connection” in India and SEP for this purpose, shall mean:

- (a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

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Said Explanation further provided that the transactions or activities shall constitute significant economic presence in India, whether or not, the agreement for such transactions or activities is entered in India; or the non-resident has a residence or place of business in India; or the non-resident renders services in India. It was also provided that only so much of income as is attributable to the transactions or activities mentioned at para 2(a) and (b) shall be deemed to accrue or arise in India.

Therefore, for the purposes of determining SEP of a non-resident in India, threshold for the aggregate amount of payments arising from the specified transactions and for the number of users were required to be prescribed in the Rules. However, since discussion on this issue is still going on in G20-OECD BEPS project, these numbers have not been notified yet. G20-OECD report is expected by the end of December 2020. In the circumstances, it is proposed to defer the applicability of SEP to starting from assessment year 2022-23. Certain drafting changes have also been made while deferring the proposal.

The current SEP provisions shall be omitted from assessment year 2021-22 and the new provisions will take effect from 1.4.2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

(II) Further, as per the discussion going on in international forum, countries generally agree that income from advertisement that targets Indian customers or income from sale of data collected from India or income from sale of goods and services using such data collected from India, needs to be accounted for in Indian revenue. Hence, it is proposed to amend the source rule to clarify this position.

This amendment will take effect from 1.4.2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. However, for attribution of income related to SEP transaction or activities the amendment will take effect from 1.4.2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

(III) Further, the Finance Act, 2012, *inter alia*, had inserted Explanation 5 to said clause to clarify that an asset or capital asset being any share or interest in a company or entity registered or 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. Second proviso to said Explanation, inserted through the Finance Act, 2017, provides that the Explanation shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 [SEBI (FPI) Regulations, 2014].

Vide Gazette Notification No. SEBI/LAD-NRO/GN/2019/36, SEBI has notified Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [SEBI (FPI) Regulations, 2019] and repealed the SEBI (FPI) Regulations, 2014. The difference between these two regulations pertinent in the present context is that the SEBI has done away with the broad basing criteria for the purposes of

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categorization of portfolios and has reduced the categories from three to two. In view of the same, necessary modification needs to be made in the proviso so inserted. Hence, it is proposed that the exception from said Explanation 5 provided to an asset or a capital asset, held by a non-resident by way of investment in erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014 may be grandfathered. Further, similar exception may be provided in respect of investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.

These amendments will take effect from 1.4.2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Clause (vi) of sub-section (1) of section 9 deems certain income by way of royalty to accrue or arise in India. Explanation 2 of said clause defines the term “royalty” to, inter alia, mean the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films.

Due to exclusion of consideration for the sale, distribution or exhibition of cinematographic films from the definition of royalty, such royalty is not taxable in India even if the DTAA gives India the right to tax such royalty. Such a situation is discriminatory against Indian residents, since India is foregoing its right to tax royalty in case of a non-resident from another country without that other country offering similar concession to Indian resident. Hence, it is proposed to amend the definition of royalty so as not to exclude consideration for the sale, distribution or exhibition of cinematographic films from its meaning.

These amendments will take effect from 1.4.2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

It is further proposed to amend section 295 of the Act so as 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,-

- (i) operations carried out in India by a non-resident; and
- (ii) transaction or activities of a non-resident.

The amendment at clause (i) will take effect from 1.4.2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. The amendment at clause (ii) will take effect from 1.4.2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

4. Modification in conditions for offshore funds' exemption from “business connection” [Section 9A] [W.e.f. A.Y. 2020-21]

Section 9A of the Act provides for a special regime in respect of offshore funds by providing them exemption from creating a “business connection” in India on fulfilment of certain conditions. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on

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behalf of such fund shall not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. The benefit under section 9A is available subject to the conditions as provided in sub-sections (3), (4) and (5) thereof. Sub-section (3) of section 9A provides the conditions for eligibility of the fund.

One of the conditions for eligibility of the fund provided under clause (c) of said sub-section (3) requires that the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed 5% of the corpus of the fund. Representations have been received in this regard stating that this condition is difficult to comply with in the initial years for the reason that eligible fund manager, who is resident in India, is required to invest his money as “skin in the game” to create reputation to attract investment.

One other condition for eligibility of the fund provided under clause (j) of said sub-section (3) requires that the monthly average of the corpus of the fund shall not be less than ₹100 crore except where the fund has been established or incorporated in the previous year in which case, the corpus of fund shall not be less than ₹100 crore at the end of a period of six months from the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later. This condition does not apply in a case where the fund has been wound up.

Representations have been received in this regard stating that as per this condition, the period for fulfilling the requirement of monthly average of the corpus of ₹100 crore ranges from six months to eighteen months, in so far as the fund established or incorporated on last day of the financial year would get six months and the fund established or incorporated on first day of the financial year would get eighteen months. It has been stated that this results in anomaly as certain funds due to its date of establishment and incorporation get favoured or discriminated against.

Accordingly, it is proposed to amend section 9A of the Act to relax these two conditions so as to provide that,-

- (i) for the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during first three years up to ₹25 crore shall not be accounted for; and
- (ii) if the fund has been established or incorporated in the previous year, the condition of monthly average of the corpus of the fund to be at ₹100 crore shall be fulfilled within 12 months from the last day of the month of its establishment or incorporation.

**Amendments relating to Incomes which do not
Form Part of Total Income**

5. Amendment in section 10(23C) relating to exemption to funds or trust or institution or university, etc. [W.e.f. 1.6.2020]

See para 11.

6. Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund [Section 10(23FE) inserted] [W.e.f. A.Y. 2021-22]

Section 10 of the Act provides for exemption in respect of certain incomes and activities under specific circumstances.

In order to promote investment of sovereign wealth fund, including the wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA), it is proposed to insert a new clause in the said section so as to provide exemption to any income of a specified person in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or equity, in a company or enterprise carrying on the business of developing, or operating and maintaining, or developing, operating or maintaining any infrastructure facility as defined in Explanation to clause (i) of sub-section (4) of section 80-IA of the Act or such other business as may be notified by the Central Government in this behalf. In order to be eligible for exemption, the investment is required to be made on or before 31.3.2024 and is required to be held for at least three years.

For the purpose of this exemption, "specified person" is proposed to be defined to mean,—

- (a) a wholly owned subsidiary of the ADIA, which is a resident of the United Arab Emirates (UAE) and which makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates; and
- (b) a sovereign wealth fund which satisfies the following conditions:
 - (A) It is wholly owned and controlled, directly or indirectly, by Government of a foreign country;
 - (B) It is set up and regulated under the law of the foreign country;
 - (C) Its earnings are credited either to the account of the Government of the foreign country or to any other account designated by that Government such that no portion of the earnings inures any benefit to any private person;
 - (D) Its asset vest in the Government of the foreign country upon dissolution;
 - (E) It does not undertake any commercial activity whether within or outside India; and
 - (F) It is notified by the Central Government in the Official Gazette for this purpose.

7. Removing dividend distribution tax (DDT) and moving to classical system of taxing dividend in the hands of shareholders/unit holders [Section 10(34)/(35)] [W.e.f. 1.4.2020]

Section 10(34) and 10(35) have been amended to provide that the provisions of these clauses shall not apply to any income, by way of dividend/income, received on or after 1.4.2020.

8. Withdrawal of exemption on certain perquisites or allowances provided to Union Public Services Commission (UPSC) Chairman and members and Chief Election Commissioner and Election Commissioners [Section 10(45)] [W.e.f. A.Y. 2021-22]

Section 10 of the Act provides for exemption in respect of certain incomes and activities under specific circumstances. Clause (45) thereof, inserted by the Finance Act, 2011, provides that any allowance or perquisite as may be notified by the Central Government, paid to the serving/retired Chairman or Members of UPSC shall not be included in computing their total income and hence shall be exempt from income-tax.

Further, vide Notification No. 49/2011 dated 6th September, 2011 bearing SO 2045(E), it was notified that in the case of serving Chairman and members of UPSC the following allowances and perquisites shall be exempt from income-tax for the purposes of clause (45) of section 10 of the Act, with effect from 1.4.2008:

- (i) the value of rent-free official residence;
- (ii) the value of conveyance facilities including transport allowance;
- (iii) the sumptuary allowance;
- (iv) the value of leave travel concession provided to a serving Chairman or member of the UPSC and members of his family.

In the case of retired Chairman and members of UPSC, the said Notification states that the following allowances and perquisites shall be exempt from income-tax for the purposes of clause (45) of section 10 of the Act, with effect from 1.4.2008:

- (i) a sum of maximum of Rs 14,000 per month for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis;
- (ii) the value of a residential telephone free of cost and the number of free calls to the extent of 1500 per month (overall and above the number of free calls per month allowed by telephone authorities).

Section 8 of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 which determines the conditions of service of the Chief Election Commissioner and other Election Commissioners, provides for income-tax exemption to the Chief Election Commissioner and other Election Commissioners on the value of rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and other such conditions of service as are applicable to a Judge of the Supreme Court under

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Chapter IV of the Supreme Court Judges (Conditions of Service) Act, 1958 and the rules made thereunder.

It is proposed to remove these exemptions. Accordingly, it proposed to:

- (i) delete clause (45) of section 10 of the Act;
- (ii) amend section 8 of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, so as to delete the exemption from income-tax on value of rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and other such conditions of service as are applicable to a Judge of the Supreme Court, paid to Chief Election Commissioner and other Election Commissioners.

9. Exemption in respect of certain income of Indian Strategic Petroleum Reserves Limited [Section 10(48C)] [W.e.f. A.Y. 2020-21]

It is proposed to provide exemption, by inserting a new clause in section 10, to any income accruing or arising to Indian Strategic Petroleum Reserves Limited (ISPRL), being a wholly owned subsidiary of Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of an arrangement for replenishment of crude oil stored in its storage facility in pursuance to directions of the Central Government in this behalf. This exemption shall be subject to the condition that the crude oil is replenished in the storage facility within three years from the end of the financial year in which the crude oil was removed from the storage facility for the first time.

Amendments relating to Assessment of Trusts

10. Amendment of section 11(7) to allow entities holding registration under section 12A/12AA to apply for notification under clause (46) of section 10 [W.e.f. 1.6.2020]

Section 11 of the Act provides for grant of exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act.

Sub-section (7) of section 11 of the Act, inserted by the Finance (No. 2) Act, 2014 with effect from 1.4.2015, provides that where a trust or an institution has obtained registration under section 12AA [as it stood immediately before its proposed amendment] or under section 12A [as it stood immediately before its amendment by the Finance (No 2) Act, 1996] and said registration is in force for any previous year, then, exemption under section 10 [except under clauses (1) and (23C)] shall not be allowed.

This sub-section was inserted on the basis that the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act constitute a complete code and that

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once any trust or institution has voluntarily opted for it by obtaining registration required for exemption of income, it should comply with the conditions of such exemption and in case of violation of such condition, if its income or part thereof becomes ineligible for exemption, no other provision of the Act should operate so as to exclude such income or part thereof from total income and that whether income which needs to be applied or accumulated under section 11 of the Act should include income which is exempt under section 10 of the Act.

It has been noticed that there is some anomaly by providing exclusion to institutions or fund registered under clause (23C) of section 10, but the same exclusion is not available to entities claiming exemption under clause (46) of section 10 which are established or constituted under a Central or State Act or by a Central or State Government. Such entities are, thus, not able to get notified under clause (46) of section 10 if they are holding registration under section 12A/12AA.

The anomaly pointed out above, needs to be addressed. However, as the provisions relating to charitable entities constitute a complete code and that once any trust or institution has voluntarily opted for it by obtaining the requisite registration, it flows that the conditions in relation thereto should be complied with and the option of switching at convenience should not be available. Accordingly, while request for exclusion of clause (46) may be acceded to for exemption the reunder even in those cases where registration under section 12AA or 12A remains in force, there should be only one mode of exemption available and also, that the switching may be allowed only once so that such switching is not done routinely and also it remains efficient to be administered.

11. Rationalising the process of registration of trusts, institutions, funds, university, hospital etc and approval in the case of association, university, college, institution or company etc. [Sections 12A, 12AA and newly inserted Section 12AB] [W.e.f. 1.6.2020]

The present process of registration of trusts, institutions, funds, university, hospital etc under section 12AA or under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, and approval of association, university, college, institution or company etc need improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/ approval/ notification before actually starting the activities.

It is also felt that the approval or registration or notification for exemption should also be for a limited period, say for a period not exceeding five years at one time, which would act as check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption. This would in fact also be a reason for having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis, in general, as in any case they would be revisiting the concerned authorities for new registration before expiry of the period of exemption. This new process needs to be provided for both existing and new exempt entities.

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The following new section 12AB has been inserted to provide procedure for fresh registration:

12. Procedure for fresh registration [Section 12AB]

(1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

- (a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;
- (b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—
 - (i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—
 - (A) the genuineness of activities of the trust or institution; and
 - (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; and
 - (ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),—
 - (A) pass an order in writing registering the trust or institution for a period of five years;
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;
- (c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought, and send a copy of such order to the trust or institution.

(2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

(3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as

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the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.

(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that—

- (a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or
- (b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality, then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.

13. Filing of statement of donation by donee to cross-check claim of donation by donor [Section 80G] [W.e.f. 1.6.2020]

See para 25.

Amendments relating to Income under the Head "Salaries"

14. Rationalization of tax treatment of employer's contribution to recognized provident funds, superannuation funds and national pension scheme [Section 17(2)] [W.e.f. A.Y. 2021-22]

Under the existing provisions of the Act, the contribution by the employer to the account of an employee in a recognized provident fund exceeding 12% of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding ₹1,50,000 is treated as perquisite in the hands of the employee. Similarly, the assessee is allowed a deduction under National Pension Scheme (NPS) for the 14% of the salary contributed by the Central Government and 10% of the salary contributed by any other employer. However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer. This is giving undue benefit to employees earning high salary income. While an employee with low salary income is not able to let employer contribute a large part of his salary to all these three funds, employees with high salary income are able to design their salary package in a manner where a large part of their salary is paid by the employer in these three funds. Thus, this portion of salary does not suffer taxation at any point of time, since Exempt-Exempt-Exempt (EEE) regime is followed for these three funds. Thus, not having a combined upper cap is iniquitous and hence, not desirable.

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Therefore, it is proposed to provide a combined upper limit of ₹7,50,000 in respect of employer's contribution in a year to NPS, superannuation fund and recognised provident fund and any excess contribution is proposed to be taxable. Consequently, it is also proposed that 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 may be treated as perquisite to the extent it relates to the employer's contribution which is included in total income.

Amendments relating to Income under the Head "Profits and Gains of Business or Profession"

15. Rationalisation of provisions relating to tax audit in certain cases [Section 44AB] [W.e.f. A.Y. 2020-21]

Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed or exceeds ₹1 crore in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, ₹50,00,000 in any previous year.

In order to reduce compliance burden on small and medium enterprises, it is proposed to increase the threshold limit for a person carrying on business from ₹1 crore to ₹5 crore in cases where,—

- (i) aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt; and
- (ii) aggregate of all payments in cash during the previous year does not exceed 5% of such payment.

Further, to enable pre-filing of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assessee at least one month prior to the due date of filing of return of income. This requires amendments in all the sections of the Act which mandates filing of audit report along with the return of income or by the due date of filing of return of income. Thus, provisions of section 10, section 10A, section 12A, section 32AB, section 33AB, section 33ABA, section 35D, section 35E, section 44AB, section 44DA, section 50B, section 80-IA, section 80-IB, section 80JJAA, section 92F, section 115JB, section 115JC and section 115VW of the Act are proposed to be amended accordingly.

Further, the due date for filing return of income under sub-section (1) of section 139 is proposed to be amended by:

- (A) providing 31st October of the assessment year (as against 30th September) as the due date for an assessee referred to in clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act;

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- (B) removing the distinction between a working and a non-working partner of a firm with respect to the due date as mentioned in sub-clause (iii) of clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act.

The amendment relating to extending threshold for getting books of accounts audited will have consequential effect on TDS/TCS provisions contained in sections 194A, 194C, 194H, 194I, 194J and 206C as these provisions fasten liability of TDS/TCS on certain categories of person, if the gross receipt or turnover from the business or profession carried on by them exceed the monetary limit specified in clause (a) or clause (b) of section 44AB.

Therefore, it is proposed to amend these sections so that reference to the monetary limit specified in clause (a) or clause (b) of section 44AB of the Act is substituted with ₹1 crore in case of the business or ₹50,00,000 in case of the profession, as the case may be.

These amendments will take effect from 1.4.2020.

16. Increase in safe harbour limit of 5% under section 43CA, 50C and 56 of the Act to 10% [Section 43CA] [W.e.f. A.Y. 2021-22]

Section 43CA of the Act, *inter alia*, provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

Section 50C of the Act provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration and capital gains shall be computed on the basis of such consideration under section 48 of the Act. The said section also provides that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

Clause (x) of sub-section (2) of section 56 of the Act, *inter alia*, provides that where any person receives, in any previous year, from any person or persons on or after 1.4.2017, any immovable property, for a consideration which is less than the

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stamp duty value of the property by an amount exceeding ₹50,000, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "income from other sources". It also provide that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds 5% of the consideration or ₹50,000, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "Income from other sources".

Thus, the present provisions of section 43CA, 50C and 56 of the Act provide for safe harbour of 5%.

Representations have been received in this regard requesting that the said safe harbour of 5% may be increased.

It is, therefore, proposed to increase the limit to 10%.

17. Providing an option to the assessee for not availing deduction under section 35AD [Section 35AD] [W.e.f. A.Y. 2020-21]

Section 35AD of the Act, relating to deduction in respect of expenditure on specified business, provides for 100% deduction on capital expenditure (other than expenditure on land, goodwill and financial assets) incurred by the assessee on certain specified businesses. Under sub-section (1) of section 35AD, the said deduction of 100% of the capital expenditure is allowable during the previous year in which such expenditure has been incurred. Further, sub-section (4) provides that no deduction is allowable under any other section in respect to the expenditure referred to in sub-section (1). At present, an assessee does not have any option of not availing the incentive under said section.

Due to this, a legal interpretation can be made that a domestic company opting for concessional tax rate under section 115BAA or section 115BAB of the Act, which does not claim deduction under section 35AD, would also be denied normal depreciation under section 32 due to operation of sub-section (4) of section 35AD. This has not been the intention of the statute.

Therefore, it is proposed to amend sub-section (1) of section 35AD to make the deduction thereunder optional. It is further proposed to amend sub-section (4) of section 35AD to provide that no deduction will be allowed in respect of expenditure incurred under sub-section (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.

Amendments relating to Income under the Head "Capital Gains"

18. Increase in safe harbour limit of 5% under section 43CA, 50C and 56 of the Act to 10% [Section 50C] [W.e.f. A.Y. 2021-22]

See para 16.

19. Rationalisation of the provisions of section 49 and clause (42A) of section 2 of the Act in respect of segregated portfolios [Section 49(2AG) and (2AH) inserted, w.e.f. A.Y. 2020-21]

Section 49 of the Act provides for cost of acquisition for the capital asset which became the property of the assessee under certain situations. Further, clause (42A) of section 2 of the Act provides the definition of the term “short-term capital asset”. It also provides for determination of period of holding of the capital asset held by the assessee.

SEBI has, vide circular SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018, permitted creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes. As per the SEBI circular, all the existing unit holders in the affected scheme as on the day of the credit event shall be allotted equal number of units in the segregated portfolio as held in the main portfolio. On segregation, the unit holders come to hold same number of units in two schemes -the main scheme and segregated scheme.

In view of the above, it is proposed to amend sub-section (42A) of section 2 of the Act to provide that in the case of a capital asset, being a unit or units in a segregated portfolio, referred to in sub-section (2AG) of section 49, there shall be included the period for which the original unit or units in the main portfolio were held by the assessee.

Further, a new sub-section (2AG) is proposed to be inserted in section 49 of the Act to provide that the cost of acquisition of a unit or units in the segregated portfolio shall be the amount which bears to the cost of acquisition of a unit or units held by the assessee in the total portfolio, the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios.

It is also proposed to insert another sub-section (2AH) in the said section to provide that the cost of the acquisition of the original units held by the unit holder in the main portfolio shall be deemed to have been reduced by the amount as so arrived at under the proposed sub-section (2AG).

The Explanation below these two new sub-sections, as proposed to be inserted, provide that for the purposes of sub-sections (2AG) and (2AH), the expressions “main portfolio”, “segregated portfolio” and “total portfolio” shall have the meaning respectively assigned to them in the said circular dated 28th December, 2018 issued by SEBI.

20. Rationalization of provisions of section 55 of the Act to compute cost of acquisition [Section 55(2)] [W.e.f. A.Y. 2021-22]

The existing provisions of section 55 of the Act provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 1.4.2001, the assessee has been allowed an

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option of either to take the fair market value of the asset as on 1.4.2001 or the actual cost of the asset as cost of acquisition.

It is proposed to rationalise the provision and to insert a proviso below sub-clause (ii) of clause (b) of Explanation under clause (ac) of sub-section (2) of the said section to provide that in case of a capital asset, being land or building or both, the fair market value of such an asset on 1.4.2001 shall not exceed the stamp duty value of such asset as on 1.4.2001 where such stamp duty value is available. It is also proposed to insert an Explanation so as to provide that for the purposes of sub-clause (i) and (ii), "stamp duty value" shall mean the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

**Amendments relating to Income under the Head
"Income from Other Sources"**

21. Increase in safe harbour limit of 5% under section 43CA, 50C and 56 of the Act to 10% [Section 56] [W.e.f. A.Y. 2021-22]

See para 16.

22. The deduction for expense under section 57 of the Act shall be maximum 20% of the dividend or income from units [Section 57] [W.e.f. A.Y. 2021-22]

See para 34.

**Amendments relating to Set off or Carry Forward
and Set off of Losses**

23. Allowing carry forward of losses or depreciation in certain amalgamations [Section 72AA] [W.e.f. A.Y. 2020-21]

Section 72AA of the Act provides for carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949. This section operates notwithstanding anything contained in sub-clause (i) to (iii) of clause (1B) of section 2 or section 72A of the Act.

In order to address the issue faced by the amalgamated public sector banks and public sector General Insurance Companies, it is proposed to extend the benefit of this section to amalgamation of,—

- (i) one or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or both, as the case may be, or

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- (ii) One or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government under section 16 of the General Insurance Business (Nationalisation) Act, 1972.

“Corresponding new bank” is proposed to be given the meaning as assigned to it in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

“Government company” is proposed to be given the meaning assigned to it in section 2(45) of the Companies Act, 2013. In addition, it is to be engaged in the general insurance business and has come into existence by operation of section 4 or section 5 or section 16 of the General Insurance Business (Nationalisation) Act, 1972.

“General insurance business” is proposed to be given the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972.

Amendments relating to Deductions to be Made in Computing Total Income

24. Extending time limit for sanctioning of loan for affordable housing for availing deduction under section 80EEA of the Act [Section 80EEA] [W.e.f. A.Y. 2021-22]

The existing provisions of section 80EEA of the Act provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. The deduction allowed is up to ₹1,50,000 and is subject to certain conditions. One of the conditions is that loan has been sanctioned by the financial institution during the period from 1.4.2019 to 31.3.2020.

The said deduction is aimed to incentivise first time buyers to invest in residential house property whose stamp duty does not exceed ₹45,00,000. In order to continue promoting purchase of affordable housing, the period of sanctioning of loan by the financial institution is proposed to be extended to 31.3.2021.

25. Filing of statement of donation by donee to cross-check claim of donation by donor [Section 80G] [W.e.f. 1.6.2020]

It may further be mentioned that certain provisions of the Act provide that an exempt entity may accept donations or certain sum for utilisation towards their objects or activities in respect of which the payer, being the donor, gets deduction in computation of his income. At present, there is no reporting obligation by the exempt entity receiving donation/any sum in respect of such donation/sum. With the advancement in technology, it is now feasible to standardise the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. This standardisation may be similar to the

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provisions relating to the tax collection/ deduction at source, which already exist in the Act. Therefore, the entities receiving donation/ sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed on that basis only.

In order to ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is failure to furnish the statement. A new section 234G has been inserted which provides for a fee of ₹200 for every day during which the failure continues.

Hence, it is proposed to amend relevant provisions of the Act to provide that,—

- (i) similar to exemptions under clauses (1) and (23C), exemption under clause (46) of section 10 shall be allowed to an entity even if it is registered under section 12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it would not be entitled for deduction under clause (46) from the date on which the registration becomes operative.
- (ii) the registration under section 12AA would also become inoperative in case of an entity exempt under clause (23C) of section 10 as well, to have uniformity. The condition about making it operative again would also be similar to what is proposed for clause (46) of section 10.
- (iii) an entity approved, registered or notified under clause (23C) of section 10, section 12AA or section 35 of the Act, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1.4.2020.
- (iv) an entity already approved under section 80G shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five years at one time.
- (v) application for approval under section 80G shall be made to Principal Commissioner or Commissioner.
- (vi) an entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.

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- (vii) the application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.
- (viii) deduction under section 80G/80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.
- (ix) similar to section 80G of the Act, deduction of cash donation under section 80GGA shall be restricted to Rs 2,000 only.

26. Amendment of section 80GGA [W.e.f. 1.6.2020]

Deduction of cash donation under section 80GGA shall be restricted to ₹2,000 only instead of ₹10,000.

27. Rationalization of provisions of start-ups [Section 80-IAC] [W.e.f. A.Y. 2021-22]

The existing provisions of section 80-IAC of the Act provide for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of seven years, at the option of the assessee, subject to the condition that the eligible start-up is incorporated on or after 1.4.2016 but before 1.4.2021 and the total turnover of its business does not exceed ₹25 crore.

In order to further rationalise the provisions relating to start-ups, it is proposed to amend section 80-IAC of the Act so as to provide that-

- (i) the deduction under the said section 80-IAC shall be available to an eligible start-up for a period of three consecutive assessment years out of **10** years beginning from the year in which it is incorporated;
- (ii) the deduction under the said section shall be available to an eligible start-up, if the total turnover of its business does not exceed **₹100 crore** in any of the previous years beginning from the year in which it is incorporated.

28. Extending time limit for approval of affordable housing project for availing deduction under section 80-IBA of the Act [Section 80-IBA] [W.e.f. A.Y. 2021-22]

The existing provisions of section 80-IBA of the Act, *inter alia*, provide that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building affordable housing projects, there shall, subject to certain conditions specified therein, be allowed a deduction of an amount equal to 100% of the profits and gains derived from such business. The conditions contained in the section, *inter alia*, prescribe that the project is approved by the competent authority during the period from 1.6.2016 to 31.3.2020.

In order to incentivise building affordable housing to boost the supply of such houses, the period of approval of the project by the competent authority is proposed to be extended to 31.3.2021.

29. Deduction in respect of certain inter-corporate dividends [New section 80M inserted, w.e.f. A.Y. 2021-22]

(1) Where the gross total income of a domestic company in any previous year includes any income by way of dividends from any other domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends received from such other domestic company as does not exceed the amount of dividend distributed by the first mentioned domestic company on or before the due date.

(2) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

Explanation.—For the purposes of this section, the expression “due date” means the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139.

<p style="text-align: center;">Amendments relating to Double Taxation Avoidance Agreements and International Taxation</p>
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30. Aligning purpose of entering into Double Taxation Avoidance Agreements (DTAA) with Multilateral Instrument (MLI) [Section 90 and section 90A] [W.e.f. A.Y. 2021-22]

Section 90 of the Act empowers the Central Government to enter into agreement with foreign countries or specified territories (commonly known as DTAA) for,—

- (a) granting relief in respect of —
 - (i) income on which tax has been paid both, in India and that foreign country or territory, or
 - (ii) income-tax chargeable under the laws of both, India and that foreign country or territory, to promote mutual economic relations, trade and investment.
- (b) avoidance of double taxation of income under the laws of both, India and that foreign country or territory,
- (c) exchange of information for prevention of evasion or avoidance of income-tax chargeable under the laws of both India and that foreign country or territory, or investigation of cases of such evasion or avoidance, or
- (d) recovery of income-tax under the laws of both India and that foreign country or territory.

Section 90A of the Act contains provision similar to section 90 of the Act so as to empower the Central Government to adopt and implement an agreement between a specified association in India and any specified association in specified territory

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outside India for granting relief, avoidance of double taxation, exchange of information and recovery of income-tax.

India has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (commonly referred to as MLI) along with representatives of many countries, which has since been ratified. India has since deposited the Instrument of Ratification to OECD, Paris along with its Final Position in terms of Covered Tax Agreements (CTAs), Reservations, Options and Notifications under the MLI, as a result of which MLI has entered into force for India on 1.10.2019 and its provisions will be applicable on India's DTAA's from FY 2020-21 onwards.

The MLI is an outcome of the G20-OECD project to tackle Base Erosion and Profit Shifting (the BEPS Project), i.e. tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The MLI will modify India's DTAA's to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out. The MLI will be applied alongside existing DTAA's, modifying their application in order to implement the BEPS measures.

Article 6 of MLI provides for modification of the Covered Tax Agreement to include the following preamble text:

“Intending to eliminate double taxation with respect to the taxes covered by this agreement 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 this agreement for the indirect benefit of residents of third jurisdictions),”

In order to achieve this, clause (b) of sub-section (1) of section 90 of the Act which provides for providing relief in respect of avoidance of double taxation of income under the laws of both country or territory (India and the other foreign country or territory) is required to contain the text provided for in MLI as mentioned at para 4 above. In case of section 90A of the Act also, similar amendment would be required to be carried out.

Therefore, it is proposed to amend clause (b) of sub-section (1) of section 90 of the Act so as to provide that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India for, inter alia, the avoidance of double taxation of income under the Act and under the corresponding law in force in that country or specified territory, as the case may be, 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 this agreement for the indirect benefit of residents of any other country or territory).

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It is also proposed to make similar amendment in clause (b) of sub-section (1) of section 90A of the Act.

31. Amendment for providing attribution of profit to Permanent Establishment in Safe Harbour Rules under section 92CB and in Advance Pricing Agreement under section 92CC [Sections 92CB and 92CC] [W.e.f. A.Y. 2020-21]

Section 92CB of the Act empowers the Central Board of Direct Taxes (Board) for making safe harbour rules (SHR) to which the determination of the arm's length price (ALP) under section 92C or section 92CA of the Act shall be subject to. As per Explanation to said section the term "safe harbour" means circumstances in which the Income-tax Authority shall accept the transfer price declared by the assessee. This section was inserted in the Act to reduce the number of transfer pricing audits and prolonged disputes especially in case of relatively smaller assesseees. Besides reduction of disputes, the SHR provides certainty as well.

Further, section 92CC of the Act empowers the Board to enter into an advance pricing agreement (APA) with any person, determining the ALP or specifying the manner in which the ALP is to be determined, in relation to an international transaction to be entered into by that person. APA provides tax certainty in determination of ALP for five future years as well as for four earlier years (Rollback).

SHR provides tax certainty for relatively smaller cases for future years on general terms, while APA provides tax certainty on case to case basis not only for future years but also Rollback years. Both SHR and the APA have been successful in reducing litigation in determination of the ALP.

It has been represented that the attribution of profits to the PE of a non-resident under clause (i) of sub-section (1) of section 9 of the Act in accordance with rule 10 of the Rules also results in avoidable disputes in a number of cases. In order to provide certainty, the attribution of income in case of a non-resident person to the PE is also required to be clearly covered under the provisions of the SHR and the APA.

In view of the above, it is proposed to amend section 92CB and section 92CC of the Act to cover determination of attribution to PE within the scope of SHR and APA.

With respect to section 92CC, the amendment will take effect from 1.4.2020 and therefore will apply to an APA entered into on or after 1.4.2020.

32. Excluding interest paid or payable to Permanent Establishment of a non-resident Bank for the purpose of disallowance of interest under section 94B [Section 94B] [W.e.f. A.Y. 2021-22]

Section 94B of the Act, *inter alia*, provides that deductible interest or similar expenses exceeding ₹1 crore of an Indian company, or a permanent establishment (PE) of a foreign company, paid to the associated enterprises (AE) shall be restricted to 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. AE for the purposes of this section has the meaning assigned to it in section 92A of the

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Act. This section was inserted in the Act through the Finance Act, 2017 in order to implement the measures recommended in final report on Action Plan 4 of the Base Erosion and Profit Shifting (BEPS) project under the aegis of G-20-Organisation of Economic Co-operation and Development (OECD) countries to address the issue of base erosion and profit shifting by way of excess interest deductions.

Representations have been received to carve out interest paid or payable in respect of debt issued by a PE of a non-resident in India, being a person engaged in the business of banking for the reason that as per the existing provisions a branch of the foreign company in India is a non-resident in India. Further, the definition of the AE in section 92A, *inter alia*, deems two enterprises to be AE, if during the previous year a loan advanced by one enterprise to the other enterprise is at 50% or more of the book value of the total assets of the other enterprise. Thus, the interest paid or payable in respect of loan from the branch of a foreign bank may attract provisions of interest limitation provided for under this section.

It is, therefore, proposed to amend section 94B of the Act so as to provide that provisions of interest limitation would not apply to interest paid in respect of a debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking, in India.

Amendments relating to Taxation of Non-Residents

33. Exempting non-resident from filing of Income-tax return in certain conditions [Section 115A] [W.e.f. A.Y. 2020-21]

Section 115A of the Act provides for the determination of tax for a non-resident whose total income consists of:

- (a) certain dividend or interest income;
- (b) royalty or fees for technical services (FTS) received from the Government or Indian concern in pursuance of an agreement made after 31.3.1976, and which is not effectively connected with a PE, if any, of the non-resident in India.

Sub-section (5) of said section provides that a non-resident is not required to furnish its return of income under sub-section (1) of section 139 of the Act, if its total income, consists only of certain dividend or interest income and the TDS on such income has been deducted according to the provisions of Chapter XVII-B of the Act.

While, the current provisions of section 115A of the Act provide relief to non-residents from filing of return of income where the non-resident is not liable to pay tax other than the TDS which has been deducted on the dividend or interest income, the same relief has not been extended to non-residents whose total income consists only of the income by way of royalty or FTS of the nature as mentioned in point (b) above. Representations have been received to extend this benefit to royalty and FTS income as well.

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Therefore, it is proposed to amend section 115A of the Act in order to provide that a non-resident, shall not be required to file return of income under sub-section (1) of section 139 of the Act if,—

- (i) his or its total income consists of only dividend or interest income as referred to in clause (a) of sub-section (1) of said section, or royalty or FTS income of the nature specified in clause (b) of sub-section (1) of section 115A; and
- (ii) the TDS on such income has been deducted under the provisions of Chapter XVII-B of the Act at the rates which are not lower than the prescribed rates under sub-section (1) of section 115A.

Amendments relating to Assessment of Companies

34. Removing dividend distribution tax (DDT) and moving to classical system of taxing dividend in the hands of shareholders/unit holders [Section 115-O and section 115R] [W.e.f. A.Y. 2021-22]

Section 115-O provides that, in addition to the income-tax chargeable in respect of the total income of a domestic company, any amount declared, distributed or paid by way of dividends shall be charged to additional income-tax @ 15%. The tax so paid by the company (called DDT) is treated as the final payment of tax in respect of the amount declared, distributed or paid by way of dividend. Such dividend referred to in section 115-O is exempt in the hands of shareholders under clause (34) of section 10. In case of business trust, specific exemption is provided under sub-section (7) of section 115-O, subject to certain conditions. Similarly, exemption is provided for distributed profits of a unit of an International Financial Service Centre, on fulfilment of certain conditions, under sub-section (8) of section 115-O.

Similarly under section 115R, specified companies and Mutual Funds are liable to pay additional income-tax at the specified rate on any amount of income distributed by them to its unit holders. Such income is then exempt in the hands of unit holders under clause (35) of section 10.

The incidence of tax is, thus, on the payer company/Mutual Fund and not on the recipient, where it should normally be. The dividend is income in the hands of the shareholders and not in the hands of the company. The incidence of the tax should therefore, be on the recipient. Moreover, the present provisions levy tax at a flat rate on the distributed profits, across the board irrespective of the marginal rate at which the recipient is otherwise taxed. The provisions are hence, considered, iniquitous and regressive. The present system of taxation of dividend in the hands of company/mutual funds was reintroduced by the Finance Act, 2003 (with effect from the assessment year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself.

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In view of above, it is proposed to carry out amendments so that dividend or income from units are taxable in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT. It is also proposed to provide that the deduction for expense under section 57 of the Act shall be maximum 20% of the dividend or income from units. Therefore, it is proposed to—

- (i) amend section 115-O to provide that dividend declared, distributed or paid after 1.4.2003, but on or before 31.3.2020 shall be covered under the provision of this section.
- (ii) amend clause (34) of section 10 to provide that the provision of this clause shall not apply to any income, by way of dividend, received on or after 1.4.2020.
- (ii) amend section 115R to provide that the income distributed on or before 31.3.2020 shall only be covered under the provision of this section.
- (iv) amend clause (35) of section 10 to provide that the provision of this clause shall not apply to any income, in respect of units, received on or after 1.4.2020.
- (v) amend clause (23FC) of section 10 so that all dividends received or receivable by business trust from a special purpose vehicle is exempt income under this clause.
- (vi) amend clause (23FD) of section 10 to exclude dividend income received by a unit holder from business trust from the exemption so that the dividend income is taxable in the hand of unit holder of the business trust.
- (vii) amend sub-section (3) of section 115UA to delete reference to sub-clause (a) so that distributed income of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 shall be deemed to be income of the unit holder and shall be charged to tax as income of the previous year. Thus dividend income distributed by a special purpose vehicle to business trust would be taxed in the hands of unit holder.
- (viii) remove reference of section 115-O dividend income in various sections like section 57, section 115A, section 115AC, section 115ACA, section 115AD and section 115C.
- (ix) remove the opening line of clause (23D) of section 10, as mutual fund no longer required to pay additional tax.
- (x) insert new section 80M as it existed before its removal by the Finance Act, 2003 to remove the cascading effect, with a change that set off will be allowed only for dividend distributed by the company one month prior to the due date of filing of return, in place of due date of filing return earlier.
- (xi) amend section 115BBDA which taxes dividend income in excess of ₹10,00,000 in the hands of shareholder at 10%, to only dividend declared, distributed or paid by a domestic company on or before 31.3.2020.

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- (xii) amend section 57 to provide that no deduction shall be allowed from dividend income, or income in respect of units of mutual fund or specified company, other than deduction on account of interest expense and in any previous year such deduction shall not exceed 20% of the dividend income or income from units included in the total income for that year without deduction under section 57.
- (xiii) amend section 194 to include dividend for tax deduction. At the same time the rates of 10% is proposed to be prescribed and threshold is proposed to be increased from Rs 2,500 to Rs 5,000 for dividend paid other than cash. Further, at present the mode of payment is given as "an account payee cheque or warrant". It is proposed to change this to any mode.
- (xiv) amend section 194LBA to provide for tax deduction by business trust on dividend income paid to unit holder, @ 10% for resident. For non-resident, it would be 5% for interest and 10% for dividend.
- (xv) insert a new section 194K to provide that any person responsible for paying to a resident any income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or units from the administrator of the specified undertaking or units from the specified company shall at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax there on @ 10%. It may also be provided for threshold limit of Rs 5,000 so that income below this amount does not suffer tax deduction. It is also proposed to define "Administrator", "specified company", as already defined in clause (35) of section 10. It is also proposed to define "specified undertaking" as in clause (i) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. It is also proposed to provide that where any income is credited to any account like suspense account, in the books of account of the person liable to pay such income, the liability for tax deduction under this section would arise at that time.
- (xvi) amend section 195 to delete exemption provided to dividend referred to in section 115-O.
- (xvii) amend section 196A to revive its applicability on TDS on income in respect of units of a Mutual Fund. It is also proposed to substitute "of the Unit Trust of India" with "from the specified company defined in Explanation to clause (35) of section 10" and "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".
- (xviii) amend section 196C to remove exclusion provided to dividend under section 115-O. It is also proposed to substitute "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".
- (xix) amend section 196D to remove exclusion provided to dividend under section 115-O. It is also proposed to substitute "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

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Amendments at clause (i) to (xii) above will take effect from 1.4.2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. Amendments at clause (xiii) to (xix) will take effect from 1.4.2020.

35. Amendment of section 115BAB of the Act to include generation of electricity as manufacturing [Section 115BAB] [W.e.f. A.Y. 2020-21]

The TLAA, *inter-alia*, inserted section 115BAB in the Act. The newly inserted section provides that new manufacturing domestic companies set up on or after 1.10.2019, which commence manufacturing or production by 31.3.2023 and do not avail of any specified incentives or deductions, may opt to pay tax at a concessional rate of 15%. Further, Explanation to clause (b) of sub-section (2) thereof provides that for the purposes of the said section, businesses engaged in development of computer software, mining, conversion of marble blocks or similar items into slabs, bottling of gas into cylinder, printing of books or production of cinematograph film or any other business as may be notified by the Central Government will not be considered as manufacturing or production.

Representations have been received from various stakeholders requesting to provide that the benefit of the concessional rate under section 115BAB of the Act may also be extended to business of generation of electricity, which otherwise may not amount to manufacturing or production of an article or thing. Accordingly, it is proposed to explain that, for the purposes of this section, manufacturing or production of an article or thing shall include generation of electricity.

Amendments relating to Survey

36. Providing check on survey operations under section 133A of the Act [Section 133A] [W.e.f. A.Y. 2020-21]

Under the existing provisions of section 133A of the Act, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction. To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso to sub-section (6) in the said section was inserted to provide that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be.

It is proposed to substitute the proviso to sub-section (6) of section 133A to provide that,—

- (A) in a case where the information has been received from the prescribed authority, no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be; and
- (B) in any other case, no income-tax authority below the rank of Commissioner or Director, shall conduct any survey under the said section without prior approval of the Commissioner or the Director, as the case may be.

**Amendments relating to Return of Income and
Procedure of Assessment**

37. Due date for filing return of income [Section 139(1)] [W.e.f. A.Y. 2020-21]

The due date for filing return of income under sub-section (1) of section 139 is proposed to be amended by:

- (A) providing 31st October of the assessment year (as against 30th September) as the due date for an assessee referred to in clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act;
- (B) removing the distinction between a working and a non-working partner of a firm with respect to the due date as mentioned in sub-clause (iii) of clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act.

38. Amendment in the provisions of Act relating to verification of the return of income and appearance of authorized representative [Section 140] [W.e.f. A.Y. 2020-21]

Section 140 of the Act provides that in case of company the return is required to be verified by the managing director (MD) thereof. Where the MD is not able to verify for any unavoidable reason or where there is no MD, any director of the company can verify the return. It is also provided that in case of a company in whose case application for insolvency resolution process has been admitted by the Adjudicating Authority (AA) under the Insolvency and Bankruptcy Code, 2016 (IBC), the return has to be verified by the insolvency professional appointed by such AA. Similarly, in case of a limited liability partnership (LLP), the return has to be verified by the designated partner of the LLP or by any partner, in case there is no such designated partner.

Therefore, it is proposed to amend clause (c) and (cd) of section 140 of the Act so as to enable any other person, as may be prescribed by the Board to verify the return of income in the cases of a company and a limited liability partnership.

Further, section 288 of the Act provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee, as its "authorised representative", in connection with any proceedings under that Act. While the IBC empowers the Insolvency Professional or the Administrator to exercise the powers of the Board of Directors or corporate debtor, it has been reported that lack of explicit reference in section 288 of the Act for an Insolvency Professional to act as an authorised representative of the corporate debtor has been raising certain practical difficulties.

Therefore, it is proposed to amend sub-section (2) of section 288 to enable any other person, as may be prescribed by the Board, to appear as an authorised representative.

39. Modification of e-assessment scheme [Section 143] [W.e.f. A.Y. 2020-21]

Section 143 of the Act provides the manner for processing and assessment of return of income (ITR) where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142 of the Act.

2. Sub-section (3A) of section 143 provides that the Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) of section 143 so as to impart greater efficiency, transparency and accountability by certain means specified therein. Accordingly, E-assessment Scheme, 2019 was notified under sub-section (3A) of Section 143 of the Act.

3. It is proposed to amend sub-section (3A) of section 143 of the Act to,—

- (i) expand the scope so as to include the reference of section 144 of the Act relating to best judgement assessment in the said sub-section;
- (ii) provide that Central Government may issue any direction under sub-section (3B) of the said section upto 31.3.2022.

40. Amendment in Dispute Resolution Panel (DRP) [Section 144C] [W.e.f. A.Y. 2020-21]

Section 144C of the Act provides that in case of certain eligible assessee, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act, the Assessing Officer (AO) is required to forward a draft assessment order to the eligible assessee, if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee. Such eligible assessee with respect to such variation may file his objection to the DRP, a collegium of three Principal Commissioners or Commissioners of Income-tax. DRP has nine months to pass directions which are binding on the AO.

It is proposed that the provisions of section 144C of the Act may be suitably amended to:—

- (A) include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of section 144C;
- (B) expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.

This amendment will take effect from 1.4.2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.

41. Deferring tax payment in respect of income pertaining to Employee Stock Option Plan (ESOP) of start-ups [Section 156] [W.e.f. A.Y. 2020-21]

See para 42.

**Amendments relating to Deduction and
Collection of Tax at Source**

42. Deferring TDS or tax payment in respect of income pertaining to Employee Stock Option Plan (ESOP) of start-ups [Section 192] [W.e.f. A.Y. 2020-21]

ESOPs have been a significant component of the compensation for the employees of start-ups, as it allows the founders and start-ups to employ highly talented employees at a relatively low salary amount with balance being made up via ESOPs.

Currently ESOPs are taxed as perquisites under section 17(2) of the Act read with Rule 3(8)(iii) of the Rules. The taxation of ESOPs is split into two components:

- (i) Tax on perquisite as income from salary at the time of exercise.
- (ii) Tax on income from capital gain at the time of sale.

The tax on perquisite is required to be paid at the time of exercising of option which may lead to cash flow problem as this benefit of ESOP is in kind.

In order to ease the burden of payment of taxes by the employees of the eligible start-ups or TDS by the start-up employer, it is proposed to amend section 192 of the Act, and insert sub-section (1C) therein to clarify that for the purpose of deducting or paying tax under sub-sections (1) or (1A) thereof, as the case may be, a person, being an eligible start-up referred to in section 80-IAC, responsible for paying any income to the assessee being perquisite of the nature specified in clause (vi) of sub-section (2) of section 17 of the Act, in any previous year relevant to the assessment year 2021-22 or subsequent assessment year, deduct or pay, as the case may be, tax on such income within fourteen days —

- (i) after the expiry of forty eight months from the end of the relevant assessment year; or
- (ii) from the date of the sale of such specified security or sweat equity share by the assessee; or
- (iii) from the date of which the assessee ceases to be the employee of the person;

whichever is the earliest 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 .

Similar amendments have been carried out in section 191 (for assessee to pay the tax direct in case of no TDS) and in section 156 (for notice of demand) and in section 140A (for calculating self-assessment).

43. Enlarging the scope for tax deduction on interest income under section 194A of the Act [Section 194A] [W.e.f. A.Y. 2020-21]

Section 194A of the Act governs interest other than interest on securities. Sub-section (1) thereof provides that any person not being individual or HUF who is

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responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall deduct income-tax at the rates in force.

Sub-section (3) of said section provides for circumstances in which the provisions of sub-section (1) shall not apply. Clause (i) thereof provides the circumstance where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person to the account of, or to, the payee, does not exceed a certain threshold. Clause (v) provides circumstance to be the income credited or paid by a co-operative society (other than a co-operative bank) to a member or to income credited or paid by a co-operative society to any other co-operative society. Clause (viiia) provides circumstance to be the income 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 and deposits (other than time deposits) with a co-operative bank other than a co-operative society or bank engaged in carrying on the business of banking.

In order to extend the scope of this section to interest paid by large co-operative society, it is proposed to amend sub-section (3) and insert proviso to provide that a co-operative society referred to in clause (v) or clause (viiia) of said sub-section (3) shall be liable to deduct income-tax in accordance with the provisions of sub-section (1), if—

- (a) the total sales, gross receipts or turnover of the co-operative society exceeds ₹50 crore during the financial year immediately preceding the financial year in which the interest referred to in sub-section (1) is credited or paid; and
- (b) the amount of interest, or the aggregate of the amount of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than ₹50,000 in case of payee being a senior citizen and ₹40,000, in any other case.

44. Consequential amendments in section 194A, 194C, 194H, 194I, 194J and 206C] [W.e.f. A.Y. 2020-21]

The amendment relating to extending threshold for getting books of accounts audited will have consequential effect on TDS/TCS provisions contained in sections 194A, 194C, 194H, 194I, 194J and 206C as these provisions fasten liability of TDS/TCS on certain categories of person, if the gross receipt or turnover from the business or profession carried on by them exceed the monetary limit specified in clause (a) or clause (b) of section 44AB.

Therefore, it is proposed to amend these sections so that reference to the monetary limit specified in clause (a) or clause (b) of section 44AB of the Act is substituted with ₹1 crore in case of the business or ₹50,00,000 in case of the profession, as the case may be.

45. Amending definition of “work” in section 194C of the Act [Section 194C] [W.e.f. A.Y. 2020-21]

Section 194C of the Act provides for the deduction of tax on payments made to contractors. The section provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of such credit or at the time of payment whichever is earlier deduct an amount equal to 1% in case payment is made to an individual or an HUF and 2% in other cases. Clause (iv) of the Explanation of the said section defines “work”. Sub-clause (e) of this definition includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer within the definition. However, it excludes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

It has been noted that some assesseees are using the escape clause of the section by getting the contract manufacturer to procure the raw material supplied through its related parties. As a result, a substantial amount of income escapes the tax net.

Therefore, to bring clarity in the section and plug the leakage, it is proposed to amend the definition of “work” under section 194C to provide that in a contract manufacturing, the raw material provided by the assessee or its associate shall fall within the purview of the 'work' under section 194C. Associate is proposed to be defined to mean a person who is placed similarly in relation to the customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A of the Act.

46. Reducing the rate of TDS on fees for technical services (other than professional services) [Section 194J] [W.e.f. A.Y. 2020-21]

Section 194J of the Act provides that any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of fees for professional services, or fees for technical services, or any remuneration or fees or commission by whatever name called (other than those on which tax is deductible under section 192 of the Act, to a director), or royalty or any sum referred to in clause (va) of section 28, shall, at the time of payment or credit of such sum to the account of the payee, deduct an amount equal to 10% as income-tax.

Section 194C of the Act provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of payment or credit of such sum deduct an amount equal to 1% in case payment is made to an individual or a HUF and 2% in other cases.

It is noticed that there are large number of litigations on the issue of short deduction of tax treating assessee in default where the assessee deducts tax under section 194C, while the tax officers claim that tax should have been deducted under section 194J of the Act.

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Therefore to reduce litigation, it is proposed to reduce rate for TDS in section 194J in case of fees for technical services (other than professional services) to 2% from existing 10%. The TDS rate in other cases under section 194J would remain same at 10%.

47. TDS on income in respect of units [Section 194K inserted, w.e.f. A.Y. 2020-21]

Any person responsible for paying to a resident any income in respect of—

- (a) units of a Mutual Fund specified under clause (23D) of section 10; or
- (b) units from the Administrator of the specified undertaking; or
- (c) units from the specified company,

shall, at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax thereon @ 10%.

Provided that the provisions of this section shall not apply where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed ₹5,000.

48. Amendment of section 194LC of the Act to extend the period of concessional rate of withholding tax and also to provide for the concessional rate to bonds listed in stock exchanges in IFSC [Section 114LC] [W.e.f. A.Y. 2020-21]

Section 194LC of the Act, provided for a concessional rate of Tax Deductible at Source (TDS) at 5% by a specified company or a business trust, on interest paid to non-residents on the following forms of borrowings (approved by the Central Government) made in foreign currency from sources outside India:

- (i) Monies borrowed under a loan agreement at any time on or after 1.7.2012 and before 1.7.2020;
- (ii) Borrowings by way of issue of any long-term infrastructure bond at any time on or after 1.7.2012 and before 1.7.2014;
- (iii) Borrowings by way of issue of long-term bond including long-term infrastructure bonds at any time on or after 1.10.2014 and before 1.7.2020;

The concessional rate of TDS of 5% is also applicable in respect of monies borrowed by a specified company or a business trust from a source outside India by way of issue of rupee denominated bond (RDB) before 1.7.2020, to the extent such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf. Representations have been received for extension of the time limit and also for a further concessional rate of TDS on interest payment against borrowings through issues of long-term bonds and RDB which are listed only on a recognised stock exchange in any IFSC.

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In order to attract fresh investment, create jobs and stimulate the economy, it is proposed to;—

- (i) extend the period of said concessional rate of TDS of 5% to 1.7.2023 from 1.7.2020;
- (ii) provide that the rate of TDS shall be 4% on the interest payable to a non-resident, in respect of monies borrowed in foreign currency from a source outside India, by way of issue of any long term bond or RDB on or after 1.4.2020 but before 1.7.2023 and which is listed only on a recognised stock exchange located in any IFSC.

49. Amendment of section 194LD of the Act to extend the period of concessional rate of withholding tax and also to extend this concessional rate to municipal debt securities [Section 194LD] [W.e.f. A.Y. 2020-21]

Section 194LD of the Act provides for lower TDS of 5% in case of interest payments to Foreign Institutional Investors (FII) and Qualified Foreign Investors (QFIs) on their investment in Government securities and RDB of an Indian company subject to the condition that the rate of interest does not exceed the rate notified by the Central Government in this regard. The section further provides that the interest should be payable at any time on or after 1.6.2013 but before 1.7.2020.

Representations have been received for extension of the time limit and also for a further concessional rate of TDS on interest payment on investment in municipal bonds, as Foreign Portfolio Investors (FPIs) have now been permitted to invest in municipal bonds by the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI) under the limits available for FPI investments in State Development Loans (SDL).

In order to attract fresh investment, create jobs and stimulate the economy, it has been proposed to amend section 194LD to,—

- (i) extend the period of rate of TDS of 5% under the said section to 1.7.2023 from the existing 1.7.2020;
- (ii) provide that the concessional rate of TDS of 5% under the said section shall also apply on the interest payable, on or after 1.4.2020 but before 1.7.2023, to a FII or QFI in respect of the investment made in municipal debt security.

50. Widening the scope of TDS on E-commerce transactions through insertion of a new section [New Section 194-O inserted, w.e.f. A.Y. 2020-21]

In order to widen and deepen the tax net by bringing participants of e-commerce within tax net, it is proposed to insert a new section 194-O in the Act so as to provide for a new levy of TDS @ 1% with the following key points:

- The TDS is to be paid by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;
- E-commerce operator is required to deduct tax at the time of credit of amount of sale or service or both to the account of e-commerce participant or at the time of payment thereof to such participant by any mode, whichever is earlier.

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- The tax at 1% is required to be deducted on the gross amount of such sales or service or both.
- Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant shall be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sales or services for the purpose of deduction of income-tax.
- The sum credited or paid to an e-commerce participant (being an individual or HUF) by the e-commerce operator shall not be subjected to provision of this section, if the gross amount of sales or services or both of such individual or HUF, through e-commerce operator, during the previous year does not exceed ₹5,00,000 and such e-commerce participant has furnished his Permanent Account Number (PAN) or Aadhaar number to the e-commerce operator.
- A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to deduction under the exemption discussed in the previous bullet, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Act. This is to provide clarity so that same transaction is not subjected to TDS more than once. However, it has been clarified that this exemption will 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 referred to in sub-section (1) of the proposed section.
- “e-commerce operator” is defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is a person responsible for paying to e-commerce participant.
- “e-commerce participant” is defined to mean a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.
- “electronic commerce” is defined to mean the supply of goods or services or both, including digital products, over digital or electronic network.
- “services” is defined to include fees for technical services and fees for professional services, as defined in section 194J.
- Consequential amendments are being proposed in section 197 (for lower TDS), in section 204 (to define person responsible for paying any sum) and in section 206AA (to provide for tax deduction at 5% in non-PAN/ Aadhaar cases).

51. Rationalisation of provision relating to Form 26AS [Section 203AA] [W.e.f. 1.6.2020]

Section 203AA of the Act, *inter-alia*, requires the prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) of section 200, 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.

The Form 26AS as prescribed in the Rules, *inter-alia*, contains the information about tax collected or deducted at source. 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 designated 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 mandate of Form 26AS would be required to be extended beyond the information about tax deducted, it is proposed to introduce a new section 285BB in the Act regarding annual financial statement. This section proposes to mandate 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 proposed to be deleted.

52. Widening the scope of section 206C to include TCS on foreign remittance through Liberalised Remittance Scheme (LRS) and on selling of overseas tour package as well as TCS on sale of goods over a limit [Section 206C] [W.e.f. A.Y. 2020-21]

Section 206C of the Act provides for the collection of tax at source (TCS) on business of trading in alcohol, liquor, forest produce, scrap etc. Sub-section (1) of the said section, *inter-alia*, provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of certain goods a sum equal to specified percentage, of such amount as income-tax.

In order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on overseas remittance and for sale of overseas tour package, as under:

- An authorised dealer receiving an amount or an aggregate of amounts of ₹7,00,000 or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of 5%. In non-PAN/Aadhaar cases the rate shall be 10%.

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- A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS @ 5%. In non-PAN/ Aadhaar cases the rate shall be 10%.
- The above TCS provision shall not apply if the buyer is,—
 - (a) liable to deduct tax at source under any other provision of the Act and he has deducted such amount.
 - (b) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified in that notification.
- “authorised dealer” is proposed to be defined to mean a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security.
- “Overseas tour program package” is proposed to be defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.

Further, in order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on sale of goods above specified limit, as under:

- A seller of goods is liable to collect TCS at the rate of 0.1% on consideration received from a buyer in a previous year in excess of ₹50,00,000. In non-PAN/Aadhaar cases the rate shall be 1%.
- Only those seller whose total sales, gross receipts or turnover from the business carried on by it exceed ₹10 crore during the financial year immediately preceding the financial year, shall be liable to collect such TCS.
- Central Government may notify person, subject to conditions contained in such notification, who shall not be liable to collect such TCS.
- No TCS is to be collected from the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification.
- No such TCS is to be collected, if the seller is liable to collect TCS under other provision of section 206C or the buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.

Amendments relating to Appeals and Revision

53. Provision for e-appeal [Section 250(6B), (6C) and (6D)] [W.e.f. A.Y. 2020-21]

In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced. With the advent of the e-assessment scheme, most of the functions/ processes under the Act, including of filing of return, processing of returns, issuance of refunds or demand notices and assessment, which used to require person-to-person contact between the taxpayer and the Income-tax Department, are now in the electronic mode. This is a result of efforts by the Department to harness the power of technology in reforming the system. All these processes are now not only faceless but also very taxpayer-friendly. Now a taxpayer can manage to comply with most of his obligations under the Act without any requirement for physical attendance in the offices of the Department.

The filing of appeals before Commissioner (Appeals) has already been enabled in an electronic mode. However, the first appeal process under the Commissioner (Appeals), which is one of the major functions/ processes that is not yet in full electronic mode. A taxpayer can file appeal through his registered account on the e-filing portal. However, the process that follows after filing of appeal is neither electronic nor faceless. In order to ensure that the reforms initiated by the Department to eliminate human interface from the system reach the next level, it is imperative that an e-appeal scheme be launched on the lines of e-assessment scheme.

Accordingly, it is proposed to insert sub-section (6A) in section 250 of the Act to provide for the following:

- Empowering Central Government to notify an e-appeal scheme for disposal of appeal so as to impart greater efficiency, transparency and accountability.
 - Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.
 - Optimizing utilization of the resources through economies of scale and functional specialisation.
 - Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, by notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31.3.2022. It is proposed that every notification issued shall be required to be laid before each House of Parliament.

54. Clarity on stay by the Income Tax Appellate Tribunal (ITAT) [Section 254] [W.e.f. A.Y. 2020-21]

The existing provisions of the first proviso to sub-section (2A) of section 254 of the Act, *inter-alia*, provides that the ITAT may, after considering the merits of the application made by the assessee pass an order of stay for a maximum period of 180 days in any proceedings against the order of the Commissioner of Income-tax (Appeal). Second proviso to the said sub-section prescribes that where the appeal is not so disposed of, the ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the periods originally allowed and the period so extended shall not, in any case, exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed. The third proviso of the said sub-section also provides that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

It is proposed to provide that ITAT may grant stay under the first proviso 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 furnish security of equal amount in respect thereof.

It is also proposed to substitute second proviso to provide that no extension of stay shall be granted by ITAT, where such appeal is not so disposed of which the said period of stay as specified in the order of stay. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. The total stay granted by ITAT cannot exceed 365 days.

Amendments relating to Penalties and Prosecutions

55. Penalty for false entry, etc. in books of account [Section 271AAD] [W.e.f. 2020-21]

In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

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Therefore, it is proposed to introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability. The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It is also propose to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry. The false entries is proposed to include use or intention to use—

- (a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
- (b) 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
- (c) invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

56. Penalty for failure to furnish statements, etc. [Section 271K inserted, w.e.f. 1.6.2020]

Without prejudice to the provisions of this Act, the Assessing Officer may direct that a sum not less than ₹10,000 but which may extend to ₹1,00,000 shall be paid by way of penalty by—

- (i) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (ia), of sub-section (1) of section 35, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or
- (ii) the institution or fund, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section.

57. Provision for e-penalty [Section 274] [W.e.f. A.Y. 2020-21]

In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced.

Section 274 of the Act provides for the procedure for imposing penalty under Chapter XXI of the Act. In response to a show cause notice issued by the Assessing Officer (AO), assessee or his authorised representative is still required to visit the office of the Assessing Officer. With the advent of the E-Assessment Scheme-2019 and in order to ensure that the reforms initiated by the Department to eliminate human interface from the system reaches the next level, it is imperative that an e-penalty scheme be launched on the lines of E-assessment Scheme-2019.

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Therefore, it is proposed to insert a new sub-section (2A) in the said section so as to provide that the Central Government may notify an e-scheme for the purposes of imposing penalty so as to impart greater efficiency, transparency and accountability by,—

- (a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31.3.2022. It is proposed that every notification issued shall be required to be laid before each House of Parliament.

Miscellaneous Provisions

58. Insertion of Taxpayer's Charter in the Act [Section 119A] [W.e.f. A.Y. 2020-21]

It is proposed to insert a new section 119A in the Act to empower the Board to adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of Charter.

59. Annual information statement [Section 285BB inserted, w.e.f. 1.6.2020]

See para 51.

60. Appearance by authorised representative [Section 288] [W.e.f. A.Y. 2020-21]

See para 38.

61. Power to make rules [Section 295] [W.e.f. A.Y. 2021-22]

See para 3.

62. Allowing deduction for amount disallowed under section 43B, to insurance companies on payment basis [Rule 5 of First Schedule] [W.e.f. A.Y. 2020-21]

Section 44 of the Act provides that computation of profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or a co-operative society shall be computed in accordance with the rules contained in the First Schedule to the Act.

Section 43B of the Act provides for allowance of certain deductions, irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by the assessee, only in the previous year in which such sum is actually paid.

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Rule 5 of the said Schedule provides for computation of profits and gains of other insurance business. It states that profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 or the rule made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 or the regulations made thereunder, subject to the condition that any expenditure debited to the profit and loss account which is not admissible under the provisions of sections 30 to 43B shall be added back; any gain or loss on realisation of investment shall be added or deducted, as the case may be, if the same is not credited or debited to the profit and loss account; any provision for diminution in the value of investment debited to the profit and loss account shall be added back. Thus, there is no specific provision, in this rule, in the case of other insurance companies, to allow deduction for any payment of certain expenses specified in section 43B if they are paid in subsequent previous year. There is a possibility that such sum may not be allowed as deduction in the previous year in which the payment is made. This has not been the intention of the legislature.

Therefore, it is proposed to insert a proviso after clause (c) of the said rule 5 to provide that any sum payable by the assessee which is added back under section 43B in accordance with clause (a) of the said rule shall be allowed as deduction in computing the income under the rule in the previous year in which such sum is actually paid.

63. Expanding the eligibility criteria for appointment of member of Adjudicating Authority under the Prohibition of Benami Property Transaction Act, 1988

The existing provisions of section 9 of the PBPT Act, *inter-alia*, provides that, a member of the Indian Revenue Service who has held the post of Commissioner of Income-tax or equivalent post in that Service; or a member of the Indian Legal Service who has held the post of Joint Secretary or equivalent post in that Service is qualified for appointment as a Member of the Adjudicating Authority.

It is proposed to amend the said section so as to provide that a person who is qualified for appointment as District Judge shall also be eligible for the appointment as a Member of the Adjudicating Authority.

This amendment will take effect from 1.4.2020.

Widening the scope of Commodity Transaction Tax (CTT)

The Finance Act, 2013 had introduced Commodities Transaction Tax (CTT) on the sale of commodity derivatives based on non-agricultural commodities traded in recognised associations. The intention behind introducing CTT was to bring parity between the derivative trading in the securities market and the commodity market. The CTT was levied at the rate of 0.01%, which was also the rate of Securities Transaction Tax (STT) levied on sale of 'futures' (a contract, which derives its value from an underlying asset and is settled by physical delivery) in securities. Subsequently, the scope of CTT was expanded vide the Finance Act, 2018 by also

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including the sale of options on commodity derivatives as taxable commodity transactions.

Trading in derivatives including commodity derivatives is regulated by the Securities Contract (Regulation) Act, 1956 (SCRA). Prior to 2015, derivative trading in commodities was regulated by the Forward Markets Commission (FMC) under the Forward Contracts (Regulation) Act, 1952 (FCRA). In 2015, the FCRA was repealed and the FMC was merged with the SEBI. As a result, the recognised associations defined in the FCRA were replaced by the recognised stock exchange defined in the SCRA. Subsequently, the scope of “commodity derivatives” was expanded vide notification dated 27th September, 2016, which notified a number of goods for the purpose of its definition in clause (bc) of section 2 of the SCRA. These goods included cereals and pulses, oil seeds/ oil cakes and oils, spices, metals, precious metals, gem and stones, fibres, energy, sweeteners, plantation, dry fruits and others.

Presently, as per SCRA regulations, derivative trading in commodities is limited only to commodity 'futures' and 'option on commodity futures'. The underlying asset in the 'option on commodity futures' is a 'commodity future'. This means that upon expiry, if the 'option' is exercised, the option-holder gets a right to buy or sell a 'commodity future' and not the right to buy or sell the goods directly. However, vide notification dated 18th October, 2019, 'option in goods' has also been included in the definition of 'derivatives' in clause (ac) of section 2 of the SCRA. This has paved the way for new derivative product 'options in goods' with goods notified on 27.09.2016 directly as the underlying asset. Moreover, 'commodity futures' based on prices or indices of prices of 'commodity futures' is also likely to be introduced as a new product in the commodity derivative market.

Necessary changes are, therefore, proposed in Chapter VII of the Finance Act, 2013, to align the provisions of CTT with the changes in commodity derivative market. Moreover, in order to encourage the commodity transactions, settled by physical or actual delivery of goods, it is proposed to charge CTT on the new commodity derivative products at following rates:

- Sale of a commodity derivative based on prices or indices of prices of commodity derivatives at the rate of 0.01% payable by the seller, which is the same rate at which CTT is currently charged on a transaction of sale of a commodity derivative;
- Sale of an option in goods, where option is exercised resulting in actual delivery of goods at the rate of 0.0001% payable by purchaser;
- 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% 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.

Further, the following changes are also proposed in the Finance Act, 2013—

- (a) The definition of taxable commodities transaction in clause (7) of section 116 is proposed to be amended to—

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- (i) include the transactions of “sale of option in goods” and “sale of commodity derivatives based on prices or indices of prices of commodity derivatives” and
 - (ii) substitute “recognised stock exchange” in place of “recognised association”.
- (b) The reference to FCRA in clause (8) of section 116 is proposed to be changed to SCRA.
 - (c) The table in section 117 to be amended to incorporate the taxable commodities transactions referred to in (a) above, specify the rate of CTT and specify the person by whom CTT is payable.
 - (d) The value of taxable commodities transactions defined in section 118 is proposed to be amended to incorporate the taxable commodities transaction referred to in para (a)(i) above.

This amendment will take effect from 1.4.2020.

Modification of the definition of “business trust”

Section 115UA of the Act provides for a taxation regime applicable to business trusts. Under the said regime, the total income of the trust, excluding capital gains income is charged at the maximum marginal rate. 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 and no withholding tax at the level of SPV. The business trusts are also required to furnish return of income and adhere to other reporting requirements.

The definition of “business trust” has been provided in clause (13A) of section 2 of the Act, to mean a trust registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations made under the Securities and Exchange Board of India (SEBI) Act, 1992 and the units of which are required to be listed on a recognised stock exchange in accordance with the relevant regulations.

Representations have been received stating that private unlisted InvITs should be given the same status as public listed InvITs with regards to tax treatments provided under the Act. Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 vide notification No. SEBI/LAD-NRO/ GN/ 2019/10 has, *inter-alia*, done away with the mandatory listing requirement for InvITs. In light of this, the definition of business trusts under the Act is required to be aligned with the amended SEBI Regulations.

Therefore, it is proposed to amend clause (13A) of section 2 of the Act to modify the definition of “business trust” so as to do away with the requirement of the units of business trust to be listed on a recognised stock exchange.

This amendment will take effect from 1.4.2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

INDIRECT TAXES

CUSTOMS

Legislative Changes in Customs:

1. Major Amendments in the Customs Act, 1962:

S. No.	Amendment
A	For improving compliance
1.	A new Chapter VAA (a new section 28DA) is being incorporated in the Customs Act to provide enabling provision for administering the preferential tariff treatment regime under Trade Agreements. The proposed new section seeks to specifically provide for certain obligations on importer and prescribe for time bound verification from exporting country in case of doubt. Pending verification preferential tariff treatment shall be suspended and goods shall be cleared only on furnishing security equal to differential duty. In certain cases, the preferential tariff treatment may be denied without further verification.
B	For reducing litigation
1.	An explanation is being inserted in section 28 to explicitly clarify that any notice issued under the said section, prior to the enactment of the Finance Act, 2018, shall continue to be governed by the section 28 as it existed before the said enactment, notwithstanding order of any Appellate Tribunal, Court or any other law to the contrary.
C	Other enabling provisions
1.	Clause (f) of the section 11(2) empowers the Central Government, for prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver, to prohibit their import or export. This clause is being amended to include "any other goods" (in addition to gold and silver) in its ambit.
2.	A new section (section 51B) is being incorporated to provide for creation of an Electronic Duty Credit Ledger in the customs system. This will enable duty credit in lieu of duty remission to be given in respect of exports or other such benefit in electronic form for its usage, transfer etc. In this regard, enabling provisions for issuance of suitable regulations are also being inserted in section 157(2) of the Customs Act, 1962. The provisions for recovery of duties provided under section 28AAA of Customs Act, 1962 are also being expanded to include such electronic credit of duties.

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2. Amendments to the Customs Tariff Act, 1975:

S. No.	Amendment
A	Amendment in the Customs Tariff Act, 1975
1.	Section 8B of the Customs Tariff Act, 1975, which provided for imposition of safeguard duty as a trade remedy against surge in imports of a commodity, is being amended to make provisions for application of other safeguard measures such as Tariff Rate Quota and other safeguard measure as the Central Government may deem necessary to protect the domestic industry from injury due to significant surge in imports.
B	Amendment in the First Schedule of the Customs Tariff Act, 1975
1.	First Schedule to the Customs Tariff Act, 1975 is being amended to: <ul style="list-style-type: none"> (i) Create new tariff item 8414 51 50 for "Wall fans". The tariff rate for this item is 20% and BCD on wall fans is being increased from 7.5% to 20% (ii) Create new tariff item 8529 90 30 for "Open Cell of television set". The tariff rate for this item is 15%. However, these items will continue at 'Nil' BCD. (iii) Create tariff items 8541 40 11 for "Solar Cells, not assembled" and tariff item 8541 40 12 for "Solar Cells assembled in modules or made up into panels". The tariff rate for these items is 20%. However, these items will continue at 'Nil' BCD.

3. Amendment in Countervailing Duty Rules and Anti-Dumping Duty Rules:

These rules provide for manner and procedure for investigation into cases of imports of subsidized goods and cases of dumping of goods, respectively, that cause injury to domestic industry. Following amendments are being made in these rules:

S. No.	Rules	Amendment
1	Anti-Dumping Rules	Changes are being made in the Rules to strengthen the anti-circumvention measures by making them more comprehensive and wider in scope to take care of all types of circumventions of antidumping duty in line with best international practice. Certain other changes are being made in these Rules for bringing clarity in the scope of these rules.

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S. No.	Rules	Amendment
2	Countervailing Duty Rules	At present, there is no provision for investigation in case of circumvention of countervailing duties. A provision is being incorporated in the Countervailing Duty Rules to enable investigation into case of circumvention of countervailing duty for enabling imposition of such duty. Certain other changes are being made for bringing clarity in the Rules.

B. Review of Customs duty exemption for certain imported goods:

1. Customs exemption have been reviewed to weed out such entries that are redundant, outdated or have outlived their utility. On such review, 80 exemptions are being withdrawn by making suitable amendment/rescission of relevant notifications. The exemptions being pruned on review, inter-alia, include withdrawal of exemption/ concessional rates on the following goods, namely:

S. No.	Category of goods	Specific items
1.	Agro and animal based products	Tuna bait, skimmed milk and certain milk products, sugar beet seeds, raw sugar, certain alcoholic beverages, whey and isolated soya protein, soya fibre, etc.
2.	Items of Metal	a. Lead bars, rods and wire b. Zinc tubes, pipes and tubes c. Tin plates, sheets and strips
3.	Machinery	Machinery imported for use in certain projects such as specified electricity generation projects, specified Metro projects, certain other specified purposes; Specified goods required for construction of roads
4.	Electronic items	Copper and articles thereof used in manufacturing of specified electronic items; Parts for manufacture of printers, CD Writers, MP3 or MP4 or MPEG 4 players, pre-recorded cassettes, audio cassettes, colour television tubes, etc.

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S. No.	Category of goods	Specific items
5.	Miscellaneous	a. Peanut butter, preserved potatoes b. Instant print film, exposed cinematographic films c. A few redundant and outdated customs duty exemptions are being withdrawn. Further, a few exemptions are being re-aligned for consistency.

C. Changes in Customs duty for creating a level playing field for MSME and promoting MAKE IN INDIA:

1. Level playing field for domestic producers:

Customs duty is being increased on the following goods:

S. No.	Category of goods	Specific items	Rate of Duty	
			From	To
1.	Household goods and appliances	Tableware and kitchenware of porcelain or china, ceramic, clay, iron, steel, copper and aluminium, glassware, padlocks, brooms, hand-sieves, combs, vacuum flasks, etc.	10%	20%
2.	Electrical Appliances	Fans, food grinders/mixers, shavers and hair removing appliances, water heaters, hair/hand drying apparatus, ovens, cookers, toasters, coffee/tea makers, insect repellents, heaters, irons, etc.	10%	20%
3.	Footwear	a. Footwear b. Parts of footwear	25%	35%
4.	Furniture goods	Seats, articles of bedding including mattresses, lamps, lighting,	20%	25%

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S. No.	Category of goods	Specific items	Rate of Duty	
			From	To
		illuminated signs, and other articles of furniture		
5.	Stationery items	Filing cabinets, paper trays, binders, clips, staples, sign-plates, name plates, numbers and symbols etc. made from base metal	10%	20%
6.	Toys	Tricycles, scooters, scale models, dolls, etc.	20%	60%
7.	Machinery	a. Specified goods used in high voltage power transmission project	5%	7.5%
		b. Railway carriage fans	7.5%	10%
		c. Compressors of refrigerators and air conditioners	10%	12.5%
		d. Commercial freezers	7.5%	15%
		e. Welding and plasma cutting machine	7.5%	10%
		f. Rotary tillers/weeder	2.5%	7.5%
8.	Other miscellaneous items	a. Glass beads	10%	20%
		b. Artificial flowers		
		c. Bells, gongs, statuettes, trophies and like, statuettes, ornaments, photograph, frames, mirrors etc. of base metal.		

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2. Changes in Customs duty to promote MAKE IN INDIA under Phased Manufacturing Programme (PMP) for Electric Vehicles and Cellular Mobile Phones:

a.	Changes in customs duty under Phased Manufacturing Programme for Electric Vehicles	Rate of Duty	
		From	To
1.	Completely Built Units of Bus and Trucks (with effect from 01.04.2020)	25%	40%
2.	Semi Knocked Down (SKD) units of bus, trucks and two wheelers (with effect from 01.04.2020)	15%	25%
3.	Semi Knocked Down (SKD) units of passenger vehicles and three wheelers (with effect from 01.04.2020)	15%	30%
4.	Completely Knocked Down (CKD) units of passenger vehicles, three wheelers, two wheelers, bus and trucks (with effect from 01.04.2020)	10%	15%
b.	Changes in customs duty under Phased Manufacturing Programme for Cellular Mobile Phones		
1.	PCBA of Mobile phones (with effect from 01.04.2020)	10%	20%
2.	Vibrator/Ringer of Mobile phones (with effect from 01.04.2020)	Nil	10%
3.	Display Panel and Touch Assembly (with effect from 01.10.2020)	Nil	10%

3. Changes in Customs duty to promote MAKE IN INDIA in Electronics sector:

S. No.	Specific Items	Rate of Duty	
		From	To
1.	Motors like Single Phase AC motors, Stepper motors, Wiper Motors etc.	7.5%	10%
2.	Specified chargers and power adapters	Applicable Rate	20%
3.	Fingerprint readers for use in cellular mobile phones	Nil	15%
4.	Earphones and headphones	Applicable Rate	15%

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4. Reduction in Customs duty on raw materials and inputs imported by Domestic Manufacturers:

S. No.	Category of Inputs/ Raw materials	Specific Items	Rate of duty	
			From	To
1.	Fuels, Chemicals and Plastics	Very low sulphur fuel oil meeting ISO 8217:2017 RMG380 Viscosity in 220-400 CST standards/Marine Fuel 0.5% (FO)	10%	Nil
		Calcined Petroleum Coke	10%	7.5%
		Calendared plastic sheets used in manufacturing of smart cards	10%	5%
		Polyester Liquid Crystal Polymers for use in manufacture of connectors	7.5%	Nil
2.	Precious Metals	Platinum or Palladium used in manufacture of: a) Colloidal precious metals, inorganic or organic compounds of precious metal, amalgams of precious metals b) Catalyst with precious metal or precious metal compounds as the active substance	12.5%	7.5%
		Spent Catalyst or Ash containing precious metal, subject to specified conditions	12.5%	11.85%
3.	Machinery and Electronic Goods	Following parts of Microphone for use in manufacture of Microphone namely, a) microphone cartridge b) microphone holder c) microphone grill d) microphone body	10%	Nil
		Micro-fuse base, sub-miniature fuse base, Micro-fuse Cover and	7.5%	Nil

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S. No.	Category of	Specific Items	Rate of duty	
		sub-miniature fuse cover for use in manufacture of micro fuse and sub-miniature fuse.		
4.	Sports Goods	Willow is being included in the list of items allowed duty free import up to 3% of FOB value of sports goods exported in the preceding financial year	Applicable Rate	Nil
5.	Newsprint	a) Newsprint, when imported by importer registered with Registrar of Newspapers, India. b) Uncoated paper used for printing newspaper, when imported by importer registered with Registrar of Newspapers, India. c) Lightweight coated paper used for printing magazines subject to actual user condition.	10%	5%

5. Other changes in Customs duty:

S. No.	Category of Goods	Specific Items	Rate of Duty	
			From	To
1.	Food processing	Walnuts, shelled	30%	100%
2.	Chemicals and Plastics	Colloidal precious metals, inorganic or organic compounds of precious metal, amalgams of precious metals	7.5%	10%
		Butyl Acrylate	5%	7.5%
		Other prepared binders for foundry moulds or cores; Chemical products and preparations of the chemical or allied industries	10%	17.5%

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S.	Category of	Specific Items	Rate of Duty	
3.	Auto and auto parts	Catalytic converter	10%	15%
		Noble metal solutions and noble metal compounds used in manufacture of catalytic converter and its parts	5%	10%
		Platinum or Palladium used in manufacturing of catalytic converter and its parts	5%	Applicable Rate
		Parts and other specified inputs for manufacture of catalytic converters.	5%	7.5%
		Completely Built Units (CBUs) of commercial vehicles (other than electric vehicles) (with effect from 01.04.2020)	30%	40%

D Imposition of Health cess on specified medical equipment:

Health Cess at the rate of 5% is proposed to be imposed on the import of medical devices. This Health Cess shall be a duty of Customs. Health Cess shall not apply to medical devices which are exempt from BCD. Further, inputs/parts used in the manufacture of medical devices shall also be exempt from Health Cess. The proceeds of Health Cess shall be used for financing the health infrastructure and services.

E. Revocation of Anti-Dumping Duty on Purified Terephthalic Acid:

Revocation of Anti-dumping duty on import of Purified Terephthalic Acid originating in or exported from: -

1. South Korea and Thailand imposed vide notification No. 28/2019-Customs (ADD) dated 24.7.2019
2. China, Iran, Indonesia, Malaysia and Taiwan imposed vide notification No. 28/2016-Customs (ADD) dated 5.7.2016

F. Increase in National Calamity Contingent duty (NCCD) on Cigarettes and tobacco products:

National Calamity Contingent Duty is levied as a duty of excise on certain manufactured goods specified under the Seventh Schedule of Finance Act, 2001. NCCD is being proposed to be increased on tobacco products (except bidi) as detailed below:

1. On cigarettes, NCCD is being increased ranging from Rs. 200 – 735 per thousand, depending upon length of cigarette and on filter/non-filter basis.

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2. On smoking mixtures for pipes and cigarettes, NCCD is being increased from 45% to 60%.
3. On other forms of smoking tobacco (other than smoking mixtures for pipes and cigarettes) and forms of chewing tobacco, NCCD is being increased from 10% to 25%.
4. NCCD on Bidis remains unchanged.

Clause 115 of the Bill seeks to amend the First Schedule to the Customs Tariff Act so as to— (a) revise tariff rates in respect of certain tariff items in the manner specified in the Second Schedule; (b) create new tariff lines in the manner specified in the Third Schedule.

GOODS AND SERVICES TAX

Proposals involving change in provisions of Central Goods and Services Tax Act, 2017:

Amendments in the Central Goods and Services Tax Act, 2017 / Integrated Goods and Services Tax Act, 2017 / Union Territory Goods and Services Tax Act, 2017

Changes for facilitating trade or consumer

1. Input Tax Credit

Sub section (4) of the section 16 of the CGST Act is being amended to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.

2. Cancellation of Registration

Clause (c) of sub-section (1) of **section 29** of the CGST Act is being amended to provide for cancellation of registration which has been obtained voluntarily under sub-section (3) of section 25.

3. Revocation of Cancellation of Registration:

A proviso to sub-section 1 of **section 30** of the CGST Act is being inserted to empower the jurisdictional tax authorities to extend the date for application of revocation of cancellation of registration in deserving cases.

4. Tax Deduction at Source

Section 51 of the CGST Act is being amended to remove the requirement of issuance of TDS certificate by the deductor; and to omit the corresponding provision of late fees for delay in issuance of TDS certificate.

5. Power to issue Directions:

Section 168 of the CGST Act is being amended to make provisions for enabling the jurisdictional commissioner to exercise powers under sub-section (5) of section 66 and second proviso to sub-section (1) of section 143.

Amendments for improving compliance

1. Composition Levy.

Section 10 of the CGST Act is being amended, so as to exclude from the ambit of the Composition scheme certain categories of taxable persons, engaged in making-

- (i) supply of services not leviable to tax under the CGST Act, or
- (ii) inter-State outward supply of services, or
- (iii) outward supply of services through an e-Commerce operator.

2. Penalty for certain offences.

Section 122 of the CGST Act is being amended by inserting a new sub-section to make the beneficiary of the transactions of passing on or availing fraudulent Input Tax

Ravi Associates

Credit liable for penalty similar to the penalty leviable on the person who commits such specified offences.

3. Punishment for certain offences.

Section 132 of the CGST Act is being amended to make the offence of fraudulent availment of input tax credit without an invoice or bill a cognizable and non-bailable offence; and to make any person who commits, or causes the commission and retains the benefit of transactions arising out of specified offences liable for punishment.

Other changes

1. Definition of Union Territory:

The definition of “**Union territory**” in **clause (114) of section 2** of the CGST Act is being amended to update the definition of Union territory in view of the bringing into force of the Jammu and Kashmir Reorganization Act, 2019 and the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories), Act, 2019. Consequential changes are also being made in UTGST Act, 2017.

2. Tax Invoice:

Section 31 of the CGST Act is being amended to provide enabling provision to prescribe the manner of issuance of invoices in case of supply of taxable services.

3. Constitution of Appellate Tribunal

Section 109 of the CGST Act is being amended to bring the provision for Appellate Tribunal under the CGST Act in the Union territory of Jammu and Kashmir and Ladakh.

4. Transitional Arrangement for ITC

Section 140 of the CGST Act is being amended with effect from 01.07.17, to prescribe the manner and time limit for taking transitional credit.

5. Removal of Difficulties

Section 172 of the CGST Act is being amended to make provision for enabling issuance of removal of difficulties order for another 2 years, i.e. till five years from the date of commencement of the said Act.

Similar changes are also being made in the IGST Act, 2017 (section 25), the UTGST Act, 2017 (section 26) and the GST (Compensation to States) Act, 2017 (section 14).

6. Amendment in Schedule II of the CGST Act

Entries at 4(a) & 4(b) in Schedule II of the CGST Act is being amended with effect from 01.07.2017 to make provision for omission of supplies relating to transfer of business assets made without any consideration from Schedule II of the said Act.

The proposed changes in GST laws will come into effect from the date when the same will be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States & Union territories with legislature.

Retrospective Amendments under GST

Retrospective amendment in the Goods and Service Tax rate and refund provisions.

1. Fishmeal [HS 2301]

Exemption from Central Tax, Union Territory Tax and Integrated Tax is being given on fishmeal [HS 2301], for the period 01.07.2017 to 30.09.2019. However, GST paid on supply of fishmeal during the period shall not be refunded.

2. Pulley, wheels and other parts (falling under heading 8483)

Concessional 12% rate of Integrated Tax and 6% Central Tax and 6% Union Territory Tax during the period 01.07.2017 to 31.12.2018, on pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery of headings 8432, 8433, and 8436. However, GST paid at any other rate (higher than 12%) shall not be refunded.

3. Refund of accumulated credit of compensation cess on tobacco

The refund of accumulated credit of compensation cess on tobacco products arising out of inverted duty structure in Compensation Cess has been disallowed with effect from 1.10.2019 vide notification No. 3/2019- Compensation Cess (Rate) dated 30.9.2019. This notification is being given retrospective effect from 1.7.2017 onwards. Accordingly, no refund on account of inverted duty structure shall be admissible on tobacco products for any period.