

INDIAN UNION BUDGET

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The Indian Union Budget 2020 - Foreword

- The budget of 2020, the first year of new decade has been presented in the backdrop of a slowing down world economy and a new incurable virus threatening the lives of millions of people all over the world, the Coronavirus. The finance minister of India laboured hard to present the budget which could have been a game changer in the economic lives of the 1.25 billion people of India. The vision was vast, the detail was arduously presented but the people who heard her speech and then went back to read the fine print were not sure that this is the medicine that the economic life of the country needed to rejuvenate itself.
- Fiscal deficit was sought to be contained at 3.8% for 2019-20 and 3.5% for 2020-21 and for this deviation from the FRBM Act was sought by the FM.
- The four things which to my mind stand out in this budget's direct tax proposals and alarm bells are likely to ring in respect of the consequences of these all around the world where Indians live.

Number 1 : The dividend distribution tax is being replaced by the old system of taxing the recipient taxpayers in its respective tax rates. This tax is going to range from 5% to 42.43% as against the current tax of 20% to 31%. This is going to be a game changing tax levy and I suspect instead of revenue loss the revenue gain of this tax is going to be huge.

Number 2 : Change of definition of resident. An Indian citizen, living in a country which does not tax an individual on their income, would be become liable to tax in India on his world income, even if he has not been to India even for one day in the year and has no income or assets or estate in India.

Number 3 : Penalty on false entries or entry omitted to be made in order to avoid tax. The definition of this is far and wide and levies a harsh penalty not only on the taxpayer but also on all persons who are supposed to have enabled this to happen. This is a draconian penalty and its levy and use will leave many innocents in a financial mess.



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Number 4 : The Government keeping its commitment of BEPS implementation has proposed amendment in section 90(1)(b) and 90A(1)(b) in line with the Article 6 of Multilateral Instrument (MLI) aimed at aligning Double Taxation Avoidance Agreement (DTAA) with the MLI provisions which inter-alia ensures that the benefits provided in a treaty are not abused. The above amendment effectively nullifies the ruling of Hon'ble Apex court in case of **UOI v. Azadi Bachao Andolan** [263 ITR 706 (SC)] on treaty shopping.



- This Budget has however given some cheer to affordable housing sector. Other positives include extension of lower corporate tax rate @ 15% to new power generation companies, deferral of ESOP taxation in case of start-ups, provision for e-appeal among others. From a tax payer perspective, the positives of a friendly regime which honours honest and hardworking people are bit difficult to find. A new personal tax regime will find very few takers with so many riders to implement.
- I suspect that a taxpayer's charter to be prepared and notified by the tax gatherers and not by the taxpayers would not be able to put balm on the frayed nerves of the taxpayers of the country.

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Income Tax Rates for Individuals, HUF, AOP/BOI or artificial juridical person:-

A new and simplified personal income tax regime has been proposed for Individuals & HUF by inserting new section 115BAC in Finance Bill, 2020. This new tax regime shall be optional for the taxpayers.

A. Eligibility Criteria:

Individuals or HUFs are eligible to opt for new regime u/s 115BAC subject to certain conditions as prescribed therein.

B. Option to be exercised [section 115BAC(5)]

1. where such individual or HUF has no business income, the option is to be exercised in every previous year at the time of filing of return of income u/s 139(1);
2. In other cases, the option once exercised for a previous year shall be applicable to all subsequent assessment years.

C. Condition for Concessional Tax rate

An individual or HUF opting for taxation under the newly inserted section 115BAC (2) of the Act shall not be entitled to the following exemptions/ deductions:-

- i. LTC u/s 10(5), HRA u/s 10(13A), Other Allowance u/s 10(14), minor u/s 10(32);
- ii. Exemption for SEZ unit u/s 10AA;
- iii. Deduction u/s 16;
- iv. Losses under the head house property and interest on housing eligible u/s 24(b),
- v. Additional depreciation u/s 32(1)(iia) and other deductions under section 32AD, 33AB, 33ABA, 35(2AA), 35AD or section 35CCC;
- vi. Family pension u/s 57(iia);
- vii. 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 u/s 80CCD(2), 80JJAA can be claimed.



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Please note, where the option to follow the new regime is exercised, in the event of failure to satisfy the conditions, the option shall become invalid for subsequent assessment years and other provisions of this Act shall apply.

D. AMT shall not Applicable if new regime opted

- i. Section 115JC of IT Act proposed to amended to provide that the provisions relating to AMT shall not apply to such individual or HUF having business income.
- ii. Section 115JD of the Act, is also proposed to amended 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.

E. Consequences if Option exercises.

- i. An individual/HUF who has opted for this Option will not be eligible to claim deductions & exemption as mentioned under sub-section 2 of section 115BAC.
- ii. An individual/HUF having business income shall not be eligible to carry forward and set off of AMT credit.

F. Amendment in Income Tax Rules:-

- i. Finance Bills, 2020 proposed to carry out amendment of the Income-tax Rules, 1962 (the Rules) to allow only following allowances notified under section 10(14) of the Act to the Individual or HUF exercising option under the proposed section:
 - a. Transport Allowance granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty;



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- 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.
- ii. Rule 3 of the Rules proposed to amend 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

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

| Sl. No. | Total income | Rate of tax (old regime) | Rate of tax (new regime) | Saving (if new regime opted) | Cumulative Savings |
|---------|----------------------------------|--------------------------|--------------------------|------------------------------|--------------------|
| 1. | Upto Rs 2,50,000 | Nil | Nil | Nil | Nil |
| 2. | From Rs 2,50,001 to Rs 5,00,000 | 5 per cent. | 5 per cent. | Nil | Nil |
| 3. | From Rs 5,00,001 to Rs 7,50,000 | 20 per cent. | 10 per cent. | 25,000/- | 25,000/- |
| 4. | From Rs 7,50,001 to Rs 10,00,000 | 20 per cent. | 15 per cent. | 12,500/- | 37,500/- |

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| Sl. No. | Total income | Rate of tax (old regime) | Rate of tax (new regime) | Saving (if new regime opted) | Cumulative Savings |
|---------|-----------------------------------|--------------------------|--------------------------|------------------------------|--------------------|
| 5. | From Rs 10,00,001 to Rs 12,50,000 | 30 per cent. | 20 per cent. | 25,000/- | 62,500/- |
| 6. | From Rs 12,50,001 to Rs 15,00,000 | 30 per cent. | 25 per cent. | 12500/- | 75,000/- |
| 7. | Above Rs 15,00,000 | 30 per cent. | 30 per cent. | Nil | |

*Surcharge and Education Cess rate remains same for AY 2021-22.

For example, a person earning ₹ 15 lakh in a year and not availing any deductions etc. will pay only ₹, 1,95,000/- as compared to ₹, 2,73,000/- in the old regime. Thus his tax burden shall be reduced by ₹ 78,000 in the new regime. He would still be the gainer in the new regime even if he was taking deduction of ₹ 1.5 Lakh under various sections of Chapter- VI-A of the Income Tax Act under the old regime



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2. No change in Slabs, rates for taxation including surcharge & cess thereon under Old Tax Regime:-

- The slabs for personal taxation remain same along with the rate of taxes.
- The surcharge rate [excluding income u/s 111A & 112A (i.e. STCG & LTCG)] has laid down in Part III of First Schedule to the Finance No. 2 Act 2019 remains same for AY 2021-2020:-

| Total Income Slab | Rate of Surcharge | Effective Tax Rate (MMR) |
|--|-------------------|--------------------------|
| Exceeding Rs. 50 Lacs but less than Rs.1 Crore | 10% | 34.32% |
| Exceeding Rs. 1 Crore but less than Rs.2 Crore | 15% | 35.88% |
| Exceeding Rs. 2 Crore but less than Rs.5 Crore | 25% | 39.00% |

- The surcharge rate [including income u/s 111A & 112A (i.e. STCG & LTCG)] has laid down in Part III of First Schedule to the Finance No. 2 Act 2019 remains same for AY 2021-2020:-

| Total Income Slab | Rate of Surcharge |
|---|-------------------|
| Exceeding Rs. 50 Lacs but less than Rs.1 Crore. | 10% |
| Exceeding Rs.1 Crore. | 15% |

- The present levy of “Health and Education Cess” @ 4% remains same for FY 2019-20.



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Tax Rate of Co-operative Society:

No Change in the income slabs, rate of tax and surcharge applicable on co-operative society for the FY 2019-20.

However, 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 which provides for tax rate on total income of the resident co-operative society @ 22% subject to some conditions as specified in the aforesaid section failing which the benefit of this section shall become invalid for the relevant assessment year and subsequent years. This rate has been introduced to bring parity with rate of 22% declared for domestic companies as per section 115BAA.

AMT u/s 115JC would not be applicable to such co-operative societies.

Further such option shall be exercised by such person in such manner as may be prescribed on or before the due date of filing of the return and such option once exercised shall apply to subsequent years and cannot be withdrawn for the same or any other previous year.



Extension of time limit to avail benefit under section 80EEA

80EEA provides for deduction in respect of interest on loan up to one lakh fifty thousand availed from 1st April 2019 to 31st March 2020 for residential house property having stamp value of forty-five lakhs or less. Time for availing loans under this section has been increased by another year up to 31st March 2021.



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Rationalization of Tax Treatment of employer's contribution to RPF, Superannuation Funds and NPS

Provisions of Section 17(2)(vii) of the Act has been amended and shall take effect from AY 21-22 which will exempt the employer's contribution in the hands of employees to a maximum extent of Rs. 7.5 lakhs in a previous year if deposited in the following three funds:

- a. In recognised provident fund;
- b. In the scheme referred to in sub-section (1) of Section 80CCD; and
- c. In an approved superannuation fund

Earlier there was a single limit of exempted employer's contribution is Rs. 1.5 Lakhs only for superannuation fund under the said section.



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Rationalisation of Provisions of Start-ups

Relief in the provision of Section 80IAC

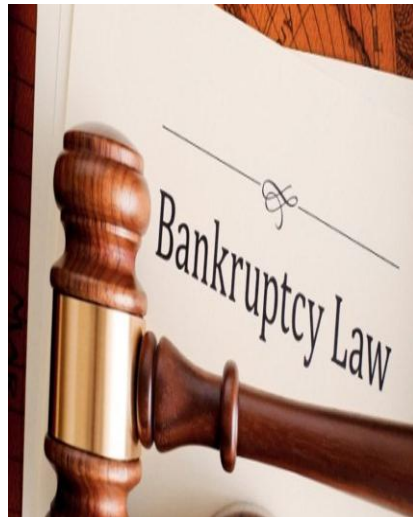
In order to provide further benefits to the eligible start-ups, it is proposed to amend the section 80IAC of the Act which provide that-

- i. The deduction u/s 80IAC shall be available to an eligible Start-up for a period of three consecutive assessment year out of ten year (**substituted for Seven year**) beginning from the year in which it is incorporated:
- ii. The deduction shall be available to an eligible start-up, if the total turnover of its business does not exceed 100 crore rupee (Previously 25 crore) in any of the previous year beginning from the year in which it is incorporated.

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

Deferring TDS or tax payment in respect of income pertaining to ESOP of start-ups

In order to reduce the Cash flow problem for the employees who do not sell the shares under ESOP immediately and continue to hold the shares for a long time, Sub-section (1C) inserted to amend section 192 of the act which provide that an eligible start-up responsible for paying any income to the assessee being perquisite specified u/s 17(2)(vi) in any previous year relevant to the assessment year 2021-22 or subsequent assessment year deduct or pay tax on such income within 14 days-



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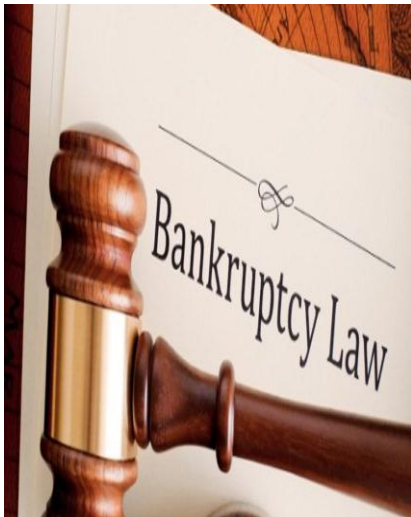
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- i. After the expiry of 48 months from the end of relevant assessment year or
- ii. From the date of sale of such specified security or sweat equity shares by the assessee or
- iii. From the date of which the assessee ceases to be the employee of the person

Whichever is 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 amendment have been carried out in section 191, 156 and 140A of the Act.

These amendment will take effect from 1st April 2020.



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Corporate Tax Rates



| | Domestic Company | | Domestic Company | | Domestic Company | New Domestic Manufacturing Company | Foreign Company | |
|---------------------------|--|---------------|---|---------------|------------------|------------------------------------|-----------------|---------------|
| | Total turnover or gross receipts > 400 Cr. in PY 2018-19 | | Total turnover or gross receipts <= 400 Cr. in PY 2018-19 | | 115BAA (1 & 2) | 115BAB (3 & 4) | | |
| Tax Rate | 30% | 30% | 25% | 25% | 22% | 15% | 40% | 40% |
| Surcharge Rate | | | | | | | | |
| Total Income | 1 -10 Cr . | >10 Cr . | 1 -10 Cr . | >10 Cr . | | | 1 -10 Cr . | >10 Cr . |
| Surcharge Rate | 7% | 12% | 7% | 12% | 10% | 10% | 2% | 5% |
| HEC | 4% | 4% | 4% | 4% | 4% | 4% | 4% | 4% |
| Effective Tax Rate | 33.38% | 34.94% | 27.82% | 29.12% | 25.17% | 17.16% | 42.43% | 43.68% |

In other case (including sub-section (2A) of section 92CE (secondary adjustments under Transfer Pricing provisions), section 115QA (tax on distributed income to shareholders), 115R (tax on distributed income to unit holders), 115TA (tax on distributed income to investors) or 115TD (tax on accreted income)), the surcharge shall be levied at the rate of **12%**.

¹ The above would be subject to the condition that the company does not avail any tax incentives or exemptions.
² This section was earlier introduced through Ordinance, 2019, now incorporated in Finance Act, 2020.
³ The above would be subject to the condition that the company does not avail any tax incentives or exemptions and commences production by 31st March, 2023.
⁴ This section was earlier introduced through Ordinance, 2019, now incorporated in Finance Act, 2020.

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Amendment in Section 115BAA

Earlier, for the purpose of section 115BAA(1), the total income of the company shall be computed without claiming the deductions under any provisions of Chapter VI-A under the heading “C-deduction in respect of certain incomes” other than the provisions of section 80JJAA. Now, section 80M shall also be added along with section 80JJAA. **In other words, the total income of the company shall be computed without claiming the deductions under any provisions of Chapter VI-A under the heading “C-deduction in respect of certain incomes” other than the provisions of section 80JJAA or section 80M.**



Amendment in Section 115BAB

1. Earlier, for the purpose of section 115BAB(1), the total income of the company shall be computed without claiming the deductions under any provisions of Chapter VI-A under the heading “C-deduction in respect of certain incomes” other than the provisions of section 80JJAA. Now, section 80M shall also be added along with section 80JJAA. **In other words, the total income of the company shall be computed without claiming the deductions under any provisions of Chapter VI-A under the heading “C-deduction in respect of certain incomes” other than the provisions of section 80JJAA or section 80M.**
2. The explanation is added after clause (c) of sub section 2 of section 115BAB which says that for the purpose of clause (b) of sub section 2 of section 115BAB, the word “business of manufacture or production of any article or thing” shall include **“the business of generation of electricity”**.

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Insertion of New Penalty Section 271AAD - Penalty for false entry, etc. in books of account

- In case it is found that in the books of account maintained by any person, there is—
 - (i) a false entry; or
 - (ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the AO is empowered to levy penalty equivalent to a sum equal to the aggregate amount of such false or omitted entry each on the taxpayer and the person causing such taxpayer to make false entry or to omit any entry.
- “False entry” includes 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 does not exist.’.
- From point (b) in the above explanation on False entry, major challenge is envisaged for international transactions of intra-group service payments, wherein the actual receipt of services from Associated enterprises to the assessee needs to be proved. Huge penalty exposure is expected for cost sharing and royalty payments, wherein the tangible benefits need to be demonstrated with documentary evidences.



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Amendment in section 55 of the Act of compute Cost of acquisition for Land & Building



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. In respect of an asset acquired before 1st April, 2001, the assessee has been given the option to either opt for the fair market value of the asset as on 1st April, 2001 or the actual cost of the asset as cost of acquisition.

It is proposed to amend the option, to limit the fair market value of land or building or both to the stamp duty value, wherever available, of such asset as on the 1st day of April, 2001.

These amendments will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years

Amendment of section 43CA, 50C and 56(2)(x) to provide concession to real estate transactions

It is proposed to increase the limit of tolerance from 105% to 110% u/s 43CA, 50C and 56(2)(x) for the difference between the value adopted by the authority for the purpose of payment of stamp duty and the consideration received or accruing as a result of the transfer.

The above amendment will take effect from 1st April 2021 and will apply from AY 2021-22.

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Option to the assessee for not availing deduction u/s 35AD for specified Business

As per section 35AD an assessee shall be allowed a deduction in respect of the whole of capital expenditure incurred, wholly exclusively for the purpose of any specified business carried on by him during the previous year in which such expenditure is incurred by him.

The amendment aims to make this deduction optional for the assessee. Once the option is exercised and granted, the same cannot be claimed under any other section of the Act.

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



Rationalisation of provisions relating to Tax Audit (Section 44AB)

It is proposed to increase the threshold limit relating to tax audits in case of a person carrying on business from 1cr to 5cr in case where,

- Aggregate of all receipts including sales, turnover or gross receipts in cash during PY does not exceed 5% of said receipt; and
- Aggregate of all payments including amount incurred for expenditure in cash during PY does not exceed 5% of said payment.

Tax Audit Report should be furnished by the persons having income from business or profession at least one month prior to the due date of Income Tax Return i.e. due date for filing of Tax Audit Report for financial year ending on March 2020 is 30th September, 2020 for due date of filing of ITR is 31st October, 2020 (where transfer pricing is not applicable).



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Amendment in Section 49 and sub section (42A) of section 2 in respect of segregated portfolios



In respect of segregated portfolio, a new sub-section (2AG) to be inserted in section 49 of the Act to provide that the cost of acquisition of a unit or units 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.

Also, another new sub section (2AH) to be inserted in sec 49 to provide the Cost of 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).

In view of above, sub section (42A) of section 2 of the act is amended that in case of a capital asset being a unit or units in a segregated portfolio referred to 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

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Modification in E-assessment scheme

- Vide Finance Act, 2018, Section 143 was amended to empower the government to notify a scheme for digitalisation of assessments. Using such powers, government notified E-assessment Scheme, 2019 dated 12th September 2019. Such scheme was applicable for Scrutiny assessment u/s 143(3) read with section 143(2) and not for Best Judgment Assessment u/s 144.
- The amendment has extended the scope of such powers to include Section 144 also i.e. ex-parte summary assessment in case of non-appearance or furnishing of incomplete information by the taxpayer.
- However, the scope of E-Assessment Scheme, 2019 (vide notification dated 12th September, 2019) is still restricted to Section 143(3) and not applicable to best judgment assessment u/s 144.
- As a consequence, Government will issue a separate notification for Best Judgment Assessment u/s 144, due to which the limit for issuing such notification is extended till 31st March 2022.
- This amendment will take effect from 1st April, 2020, i.e. AY 2020-21.



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Provisions w.r.t. E-appeals

- In order to promote faceless appeal and to eliminate human interface from the system, it is imperative that an e-appeal scheme be launched on the lines of e-assessment scheme. The Amendment empowers the Government to notify such scheme for hearing of appeals at CIT(A) level. After such step the complete procedure starting from Filing of appeals to Hearing of appeals has been digitalised. The notification has to be issued by the government by 31st March 2022.
- This amendment will take effect from 1st April, 2020, i.e. AY 2020-21.



Provisions w.r.t. E-penalty

- In order to promote faceless assessment and to eliminate human interface from the system, it is imperative that an e-penalty scheme be launched on the lines of e-assessment scheme. The Amendment empowers the Government to notify such scheme for imposing of penalties and hearing under penalty proceedings. After such step the complete procedure starting from e-assessment order (initiating penalty proceeding) to conclusion of such penalty proceedings has been digitalised. The notification has to be issued by the government by 31st March 2022.
- This amendment will take effect from 1st April, 2020, i.e. AY 2020-21.

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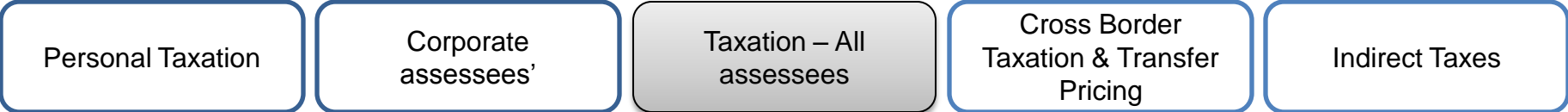


Newly inserted Section 285BB in place of 203AA

- The provisions with respect to Form 26AS have been rationalised by inserting a new Section 285BB in the Income Tax Act. Such step along with filing of Tax Audit Report and Form 3CEB, 1 month prior to due date of Return of Income promotes the use and viability of pre-filled returns on the Income Tax Portal.
- Thus all the information available with the Income Tax Department with respect to income of an assessee shall be reflected in such Annual Information Statement and will be pre-filled on the e-filing portal.
- The relevant information and Form will be prescribed under Rules.
- This amendment will take effect from 1st June, 2020.



Changes in the Tax laws – affecting Cross Border Transactions & Transfer Pricing



Amendment in Section 133A



This amendment will take effect from 1st April, 2020, i.e. AY 2020-21.

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CTT Provisions

Definition of Taxable commodities transaction u/s 116(7) to include:

- Transactions of “sale of option in goods” and “sale of commodity derivatives based on prices or indices of prices of commodity derivatives”
- The words “recognised association” have been substituted to “recognised stock exchange”.
- The following table has been substituted vide Finance Act, 2020 for payment of CTT in place of Section 117 which specifies a blanket rate of 0.01% on value of such transaction and such tax shall be payable by the seller.



| Sl. No. | Taxable commodities transaction | Rate | Payable by |
|---------|---|---------|------------|
| 1. | Sale of commodity derivative | 0.01% | seller |
| 2. | Sale of commodity derivatives based on prices or indices of prices of commodity derivatives | 0.01% | seller |
| 3. | Sale of option on commodity derivative | 0.05% | seller |
| 4. | Sale of option in goods | 0.05% | seller |
| 5. | Sale of option on commodity derivative, where option is exercised | 0.0001% | purchaser |
| 6. | Sale of option in goods, where option is exercised resulting in actual delivery of goods | 0.0001% | purchaser |
| 7. | Sale of option in goods, where option is exercised resulting in a settlement otherwise than by the actual delivery of goods | 0.125% | purchaser |

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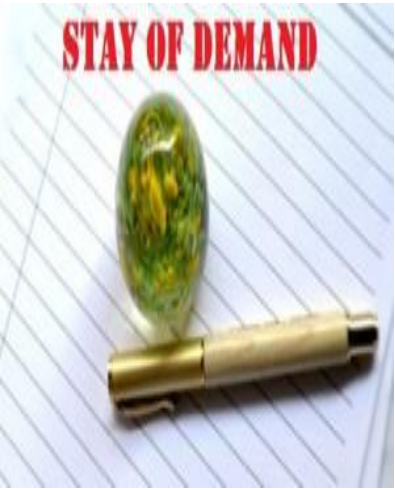
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Clarity on Stay by the ITAT

- The Assessee is now required to deposit not less than 20% of the amount of tax, interest, fee, penalty or any other sum payable under the provisions of this Act, or furnishes security of equal amount in order to make an appeal for stay of demand to the Tax Tribunal.
- In case, the assessee applies for further extension of stay period, no extension shall be granted if,
 - The delay in disposing of the appeal is attributable to the assessee, and
 - The assessee has not 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 furnishes security of equal amount.
- The effective date of this amendment is 1st April 2020.



Person Authorised to verify the return of income as per Section 140 of the Income Tax Act, 1961

The scope of Section 140 has been widened by including “Any other person” to be appointed by the Board for authorisation to verify the return of income in case of Company and LLP.

The effective date of this amendment is 1st April 2020.

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Appointment of Authorised Representative as per Section 288 of the Income Tax Act, 1961

The scope of Section 288 has been widened by including “Any other person” as appointed by the Board to be appointed as Authorised Representative to represent the assessee.

The effective date of this amendment is 1st April 2020.



Exemption to Non-Resident from filing of Income-Tax returns

- The benefit of section 115A (5) from exemption of filing the Income Tax Return has been extended from Interest and Dividends received by non-residents to incomes:
 - in the nature of Royalty or FTS income; which is not effectively connected with a PE, if any, of non-resident in India ; and
 - The TDS on such income has been deducted under the provisions of Chapter-XVII-B of the Act at the rates not lower than prescribed under 115A (1).
- The effective date of this amendment is 1st April 2020.

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Amendment of section 194LC to extend the period of concessional rate of withholding tax and to provide for the concessional rate to bonds listed in stock exchanges in IFSC

- In order to attract fresh investment, create jobs and stimulate the economy, it is proposed to amend section 194 LC to extend the period of concessional rate of TDS of 5% from 1st July 2020 to 1st July 2023, for interest paid by specified company or business trust on monies borrowed in foreign currency from outside India, borrowings by way of issue of long term bonds/ infrastructure bonds and monies borrowed from outside India by way of rupee denominated bond (RDB).
- Also it is provided 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 which is listed only on a recognised stock exchange located in any International Financials Service Centre (IFSC).
- This amendment will take effect from 1st April, 2020.



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.

- In order to attract fresh investment, create jobs and stimulate the economy, it is proposed to amend section 194 LD to extend the period of concessional rate of TDS of 5% from 1st July 2020 to 1st July 2023, for interest paid to Foreign Institutional Investors (FIIs) and Qualified Foreign Investor (QFIs) on investment in Govt. securities and Rupee Denominated Bond (RDB).
- Also it is provided that the concessional rate of TDS of 5% under the said section shall also apply on the interest payable, on or after 1st April, 2020 but before 1st July, 2023, to a FII or QFI in respect of the investment made in municipal debt security.
- This amendment will take effect from 1st April, 2020.

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Reducing the rate of TDS on fees for technical services (other than professional services)

- In order to reduce the 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, it is proposed to reduce rate for TDS in section 194J in case of fees for technical services (other than professional services) to two per cent from existing ten per cent. The TDS rate in other cases under section 194J would remain same at ten per cent.
- This amendment will take effect from 1st April, 2020.



Amending definition of “work” in section 194C of the Act

- In order to plug the leakage of revenue due to misuse of existing definition of “work”, it is proposed to amend 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.
- This amendment will take effect from 1st April, 2020.

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Interest other than "Interest on securities"



- In order to extend the scope of section 194A to interest paid by large co-operative society, it is proposed to amend this section 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 fifty crore rupees 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 fifty thousand rupees in case of payee being a senior citizen and forty thousand rupees, in any other case.
- This amendment will take effect from 1st April, 2020.



Widening the scope of TDS on E-commerce transactions through insertion of a new section 194O

- 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 at the rate of one per cent. Salient provisions of this new section is-

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1. 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.
 2. 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.
 3. 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 five lakh rupees and such e-commerce participant has furnished his Permanent Account Number (PAN) or Aadhaar number to the e-commerce operator.
 4. No tax deduction shall be made again from the transactions on which deduction has been made under this proposed section, except for payments received for hosting advertisements or providing any other services.
- 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 per cent. in non-PAN/ Aadhaar cases).
 - This amendment will take effect from 1st April, 2020.

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Modification of the definition of “business trust”

- In line with the notification of Security & Exchange Board of India to done away with mandatory listing requirements of business trust i.e. Infrastructure Investment Trust, 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. Thus private unlisted InvIT shall also be given pass thru tax treatment as per Sec 115UA.
- This amendment will take effect from 1st April, 2021, i.e. AY 2021-22.



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Rationalisation of provision relating to trust, institutions and funds

- **Exemption/approval valid for 5 years:-** In order to rationalise the exemption for trust registered u/s 12AA and 80G of the Act and association, universities, college, institution or company registered under sub clause (iv), (v), (vi) or (via) of Sec 10(23C) of the Act, the exemption/approval for trust, institutions, funds, universities and hospital etc. is now going to be valid for a limited period of 5 years. Earlier, exemption/approval granted once to be valid for a life time, unless revoked.
- A new registration is required in every 5 year and this new process of registration will be applicable as per Section 12(ac) of the Act in accordance with the procedure and period specified in section 12AB of the Act. Chart of time limit of making application and procedure & period of registration granted is as below:



| Entities making application as per 12(ac) of the Act. | Procedure of registration |
|---|---|
| Where application is made under clause (i) of Sec 12(ac) of the Act i.e. within 3 month from this clause come in force. | Approval/exemption granted to the trust or institution for the period of 5 years without detailed enquiry/satisfaction. |
| Where application is made under clause (ii) to (v) of Sec 12(ac) of the Act as per the prescribed time limited mentioned in the relevant clause. | Approval/exemption granted to the trust or institution for the period of 5 years after recoding satisfaction with relation to: <ul style="list-style-type: none"> - Genuineness of activities of trust. - Compliance of requirement of law in force. - Satisfaction of the objects of the trust. |
| Where application is made under clause (vi) of Sec 12(ac) of the Act i.e. at least 1 month prior to the commencement of previous year relevant to assessment year from which said registration is sought. | Provisional registering the trust for the period of 3 years from the assessment year from which registration is sought. |

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- **Provisional registration for New Trust:-** An entity making fresh application for registration u/s notified clauses (23C) of sec 10, Sec 12AA and Sec 80G of the Act, shall be provisionally approved for 3 years on the basis of application without detailed enquiry and then such trust has to apply again at least 6 months prior to the expiry of provisional registration or within 6 months of start of activities, whichever is earlier and such registration is effective from the date of provisional registration.
- **Filing of Statement:-** In order to follow the matching concept, the entities receiving donation/sum required to furnish the statement in prescribed form of reporting such donation and to issue a certificate to donor/payer and the claim for deduction to the donor/payee may be allowed on that basis. Thereby, donor/payee is eligible for deduction u/s 80G/80GGA if the donee furnish the statement.
Consequential amendment made in the penalty provisions and new section 271K inserted to ensure proper filing of such statement otherwise penalty of Rs. 10,000/- which may extend to Rs. 1,00,000/- for non-furnishing of such statement with in prescribed time.
- **Restriction of cash donation:-** Similar to 80G of the Act, deduction of cash donation to scientific research or rural development shall be restricted to Rs. 2,000/- only.
- **Exemption u/s 10(46) of the Act available for trust registered u/s 12A/12AA of Act:-** Earlier, as per the Sec 11(7) of the Act the exemption u/s 10 of the Act shall not be allowed to the entities registered u/s 12A/12AA of the Act except for the clauses (1) and (23C) of Sec 10 of the Act. Now, this exception has been extended to the clause (46) of section 10, thereby the exemption u/s 10(46) of the Act shall be allowed to an entity if it is registered u/s 12A/12AA of the Act subject to the condition that the registration u/s 12A/12AA become inoperative.

This amendment will take effect from 1st June, 2020

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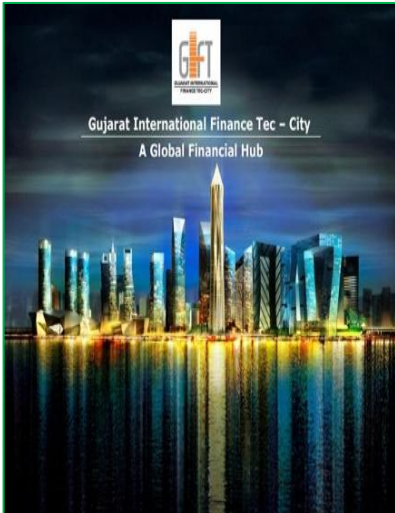
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Extension of time lime for approval of affordable housing project for availing deduction-Sec 80-IBA

- Currently section 80-IBA provides a deduction of 100% of profits of business of developing and building affordable housing projects if such projects are approved by the competent authority during the period from 1st June, 2016 to 31st March, 2020. In order to incentivise building affordable housing, the period of approval of the project by competent authority has been proposed to be extended to 31st March, 2021.



Extension of time limit for sanctioning of loan for affordable housing-deduction of interest upto ₹1.5 lacs-Sec 80EEA

- Currently section 80EEA provides a deduction of upto ₹1.5 lacs in respect of interest on loan taken from any financial institution sanctioned till 31st March, 2020 for affordable residential house. In order to continue promoting purchase of affordable housing, the period of sanctioning of loan is proposed to be extended to 31st March, 2021.

The above amendments in 80-IBA and 80EEA shall apply from AY 2021-22 and onwards.



Benefit of lower corporate tax rate @ 15% extended to electricity generation co's-Sec.115BAB

The Finance Bill, 2020 proposes to extend the benefit of lower corporate tax rate @ 15% which was initially provided to newly incorporated manufacturing companies, to electricity generation companies as well. The amendment has been made by expanding the definition of manufacturing or production to include generation of electricity. This amendment shall apply from AY 2020-21 and onwards.

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Modification of residency provisions-Sec.6 to prevent tax abuse



- At present, the Indian citizens or person of Indian origin (POI) outside India could enjoy the tax non-residential status in India if they visit India for less than 182 days for a particular year. In order to prevent misuse of this provision, the bill has proposed to reduce the number of stay in India from 182 days to 120 days. Therefore, Indian citizen or POI can only stay upto 119 days in a particular year to maintain the non residential tax status in India.
- Further in order to discourage the instances of double non-taxation by an Indian citizen not paying tax in any country, it is proposed that an Indian citizen who is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature shall be deemed to be tax resident in India and would be liable to pay tax in India and comply with all Indian tax laws on his world income even if he has not been to India even for one day in a year and has no income, assets or estate in India.
- Further, the provisions of section 6(6) have been amended to provide that an individual or HUF shall be said to be “not ordinarily resident” in India in a previous year, if the individual or the manager of HUF has been a non-resident in India in seven years (earlier nine years) out of ten previous years preceding that year.
- These amendments shall apply from AY 2021-22 and onwards.

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Roll Back of Dividend Distribution Tax (DDT)



- In order to bring uniformity in taxation of dividend as the dividend is income in the hands of shareholders so the tax incidence is also shifted to the hands of recipient.
- Similar amendment also takes place in Section 115R and Sec 10(35) i.e. taxability on dividend income will now shifted to the hands of unit holders not the Unit Trust of India (UTI).
- Similarly, dividend income of a business trust u/s 10(23FC) also required to pay taxes under new tax regime.
- It is also proposed to consequently amend Section 10(23FD) and 115UA (3) to tax the dividend income received by a unit holder from business trust.
- It is also propose to amend sec 57 to restrict the deduction to 20% of dividend income or income from units and only as interest expenditure.
- Consequential amendment also brought in Section 115BBDA to tax all the dividend income.
- Mutual Fund no longer required to pay additional tax u/s 10(23D).
- It is proposed to revive Section 80M to remove the cascading effect.
- It is also proposed to consequently amend Sec 194 so as to raise the threshold for deduction of TDS on dividend income paid by any mode of payment from `2500/- to `5000/- @ 10%.
- TDS u/s 194LBA in case of dividend paid by business trust paid to non -residents ha been increased from 5% to 10%.
- New section 194K inserted to provide TDS @10% for payment to a resident any income in respect of units of MF's/administrator of specified undertaking/specified company exceeding `5000.
- Now dividend paid to Non-Resident will also come under the ambit of Sec 195.
- Widening the scope of TDS on dividend income from foreign currency bonds/shares of Indian company u/s 196C/ Foreign Institutional Investor from securities u/s 196D.
- Specified Company as per Sec 10(35) required to deduct tax on payment of dividend Income by any mode paid to Non Resident in respect of units of MF's.

The above amendments will take effect from 1st April, 2020, i.e. AY 2021-22.

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 The effect of DDT on economy is explained through an example:



| CASES | PRESENT REGIME | NEW REGIME |
|--|--|--|
| CASE I: Dividend income upto 10,00,000 (115BBDA not applicable) | Let's assume Dividend distributed is 10,00,000 Grossing up of dividend $[10,00,000/85*100] = \text{INR } 11,76,471$ DDT @ 15% on 11,76,471 = 1,76,471 Surcharge @ 12% = 21,176 Education cess @ 4% = 7,899 Effective Tax = 2,05,546 Effective tax rate in the hands of payer is 20.56% Effective tax rate in hands of recipient is NIL. Total effective Tax Rate is 34.67% | With advent of technology and easy tracking system available makes collection of tax directly from the shareholder. The regressive to progressive tax rates are explained as per below table: |
| CASE II: Dividend income above 10,00,000 (115BBDA applicable) | Let's assume Dividend distributed is 10,00,00,000 DDT Rate paid by company = Same as Case I Tax rate paid by shareholder u/s 115BBDA= 10% on excess of 10,00,000= 1,41,05,520 Effective tax rate in the hands of payer is 20.56% Effective tax rate in hands of recipient is 14.11% Total effective Tax Rate is 34.67% | |

| Particular | 2.5Lacs<TI< 5 Lacs | 5 Lacs<TI <7.5lacs | 7.5Lacs<TI< 10 Lacs | 10 Lacs<TI < 12.5 Lacs | 12.5 Lacs <TI < 15 Lacs | TI> 15 Lacs | 50lacs< TI < 2 crores | 2 crores <TI <5 crores | TI> 5 crores |
|---|---|---|---|--|--|--|---|---|--|
| Effective Tax amount on dividend | (say dividend 5lacs) Tax amount = NIL [12,500-12,500 (REBATE U/S 87A)] | (say dividend 7.5lacs) Tax Amount 39,000 | (say dividend 10 lacs) Tax Amount = 78,000 | (say dividend 12.5 lacs) Tax Amount =1,30,000 | (say dividend 15 lacs) Tax Amount =1,95,000 | (say dividend 20 lacs) Tax Amount =3,51,000 | (say dividend 60 lacs) Tax Amount = $(1,87,500+13,50,000)+(1,87,500+13,50,000)*10%+(1,87,500+13,50,000+1,53,750)*4% = 17,58,900$ | (say dividend 4 crores) Tax amount = 1,17,75,000+ 29,43,750+ 588750 = 1,53,07,500 | (say dividend 10 crores) Tax Amount =4,24,23,420 |
| Effective Tax Rate | NIL | 5.2% | 7.8% | 10.4% | 13% | 17.55% | 29.315% | 38.268%  | 42.42%  |

PROGRESSIVE 

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Further relaxation to conditions for 'offshore funds'-Sec. 9A

Following conditions are proposed to be relaxed for 'offshore funds' from 'business connection' criteria:

- Currently the resident investors can participate or invest in the 'eligible offshore fund' only upto 5% of fund corpus-Sec. 9A(3)(c). The bill proposes to exclude contribution aggregating upto ₹25 crores made by resident eligible fund manager for initial 3 years from such 5% threshold.
- At present, the eligible offshore fund is required to maintain a minimum of monthly average of the corpus of the funds of ₹100 crores. In case of establishment of a new offshore fund during any financial year, the aforesaid condition needs to be fulfilled within 6 months from the last day of the month of establishment or by the end of such financial year, whichever is later. The Bill proposes a new time limit of 12 months from the last day of the month of establishment.
- These amendments shall apply from AY 2020-21 and onwards.



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Aligning DTAA with MLIs

The text of section 90 and 90A of the Act is proposed to be suitably amended in line with prescription of Article 6 of Multilateral Instrument (MLI) aimed at aligning Double Taxation Avoidance Agreement (DTAA) with the MLI provisions. The preamble text as inserted in section 90(1)(b) and 90A(1)(b) reads as under:

'for avoidance of double taxation of income under this Act and under 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 said agreement for the indirect benefit to residents of any other country or territory)'

The above amendment has far reaching consequences and effectively nullifies the ruling of Hon'ble Apex court in case of **UOI v. Azadi Bachao Andolan** [263 ITR 706 (SC)] on treaty shopping. This amendment shall apply from AY 2021-22 and onwards.

Relaxing thin capitalisation rules-Exclusion of interest paid to the branch of foreign bank for disallowance u/s 94B.

Currently interest expenses exceeding ₹1 crore paid by an Indian company or Indian PE of a foreign company to its associated enterprise(s) is restricted to 30% of its EBIDTA as per section 94B. It is proposed to amend the section 94B so as to provide that the above interest limitation would not apply to interest paid to a permanent establishment of a non-resident person engaged in the business of banking in India. This amendment shall apply from AY 2021-22 and onwards.



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Deferring significant economic presence (SEP) provisions

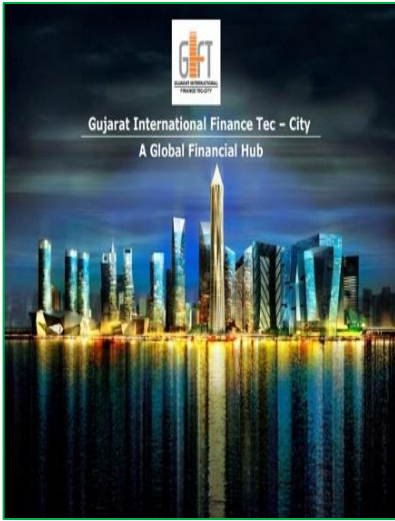
Finance Act, 2018 brought in provisions that significant economic presence of non-resident in India shall constitute the 'business connection' having regard to the threshold of amount of payment and number of users as may be prescribed. However since, discussion on this issue is till going on in G20-OECD BEPS project, these numbers have not been notified. Therefore, bill proposes to defer the applicability of SEP provisions to AY 2022-23 and onwards.

Further bill proposes to clarify that income from advertisement which targets Indian customers, or sale of data collected from India or sale of goods and services using such data shall be accounted as income attributable to India. This provision relating to source rule will apply from AY 2022-23 and onwards.



Royalty to include sale, distribution or exhibition of cinematographic films

The definition of royalty in section 9(1)(vi) is proposed to be expanded by omitting the exclusion relating to cinematographic films in the definition thereby making any consideration from sale, distribution or exhibition of cinematographic films to be part of royalty. This amendment shall apply from AY 2021-22 and onwards.



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Scope of Safe Harbour Rules and APA enhanced

- Determination of attribution of income / profits to PE is proposed to be covered within scope of Safe Harbour Rules (w.e.f. AY 2020-21) under Section 92CB and APA (for APA entered into on/after 1st April, 2020) under Section 92CC. Detailed rules are yet to be notified by the CBDT in this regard.



Amendment in Dispute Resolution Panel (DRP) Rules

- Section 144C is proposed to be amended to –
 - include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee within the ambit of Sec 144C; and
 - expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.
- Existing provision specifies eligible assessee to be foreign companies and any person in whose case TP-adjustment was made.
- This amendment will take effect from 1st April, 2020.



Change of due date for filing of Accountant's Report in Form No. 3CEB

- Due date for filing of Accountant's Report in Form No. 3CEB is proposed to be preponed to the date one month prior to the due date for furnishing the return of income under Section 139(1) for the relevant assessment year w.e.f. AY 2020-21.
- For AY 2020-21, the due date for filing of Form No. 3CEB is 31st October, 2020 and the tax return filing date in such cases is 30th November, 2020.



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Major GST Amendments brought in Finance Bill, 2020 to be effective from the date when the same will be notified

- It is proposed to amend clause (114) of section 2 of CGST Act, 2017 to update the definition of “Union territory” for bringing into force Jammu and Kashmir Reorganization Act, 2019 and the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories), Act, 2019
- It is proposed to amend section 10 of CGST Act, 2017, 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 ecommerce operator
- In order to expand the time duration for claiming Input tax credit on Debit Notes, it is proposed to amend section 16(4) of CGST Act, 2017 to reckon the time limit for claiming ITC from the date of issue of Debit Note instead of date of Issue of underlying Invoice.
- Benefit of cancellation of registration will also be available to the taxpayer who has opted for voluntarily registration as per section 25(3) of CGST Act, 2017
- Now, Jurisdictional tax authorities would have power to extend the date for application of revocation of cancellation of registration in deserving cases.
- It is proposed to remove the requirement of issuance of TDS Certificate by deductor and correspondingly no penal provision would be applicable on account of non-issuance of certificate.



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- Insertion of new sub-section (1A) in section 122 of CGST Act, 2017 to make the beneficiary of the transactions of passing on or availing fraudulent Input Tax Credit liable for penalty amounting to tax evaded or Input Tax Credit availed off or Passed in addition to the penalty leviable on the person who commits under mentioned offences:-
 - supply of goods or services without issuing invoices
 - issuing incorrect or false invoices
 - issues invoice without supply of goods or service
 - availing the benefit of utilizing or distributing input tax credit in a fraudulent manner
- Offence of fraudulent availment of input tax credit without an invoice or bill would now be a cognizable and non-bailable offence.
- Section 140 of the CGST Act is proposed to be amended w. e. f. 01.07.2017, to further prescribe the manner and time limit for taking transitional credit.
- Extension in provision for Order of removal of difficulty from three years to five years.

S.R. Dinodia & Co. LLP., Chartered Accountants

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