



ECONOMIC  
LAWS  
PRACTICE  
ADVOCATES & SOLICITORS

# UNION BUDGET

UNION  
BUDGET  
2020  
AN ANALYSIS



## DIRECT TAX

### INCOME TAX RATES

#### For individuals, HUF, AOP, BOI

No changes proposed in the slabs of personal tax rate. Accordingly, the rate of tax as applicable for AY 2021-22 is as under:

Income (INR)	Existing and Proposed Rates (%)		
	Individuals (Age < 60 years) and HUF, BOI, AOP	Individual senior citizens (Age > 60 years < 80 years)	Individual super senior citizens (Age > 80 years)
0 – 2,50,000	NIL	NIL	NIL
250,001 – 300,000	5	NIL	NIL
300,001 – 500,000	5	5	NIL
500,001 – 1,000,000	20	20	20
1,000,001 and above	30	30	30

An alternative conditional personal income-tax regime has been proposed. This would be available as an option to the above existing tax regime. The rate of tax applicable under the proposed regime are as under:

Income (INR)	Proposed Rates (%)
	Individuals and HUF
0 - 250,000	NIL
250,001 - 500,000	5
500,001 - 750,000	10
750,001 - 1,000,000	15
1,000,001 - 1,250,000	20
1,250,001 – 1,500,000	25
1,500,001 and above	30

#### Rebate, Surcharge & Cess

Sr. No.	Particulars	Existing & Proposed
1	Rebate	<ul style="list-style-type: none"> <li>INR 12,500 – If total income does not exceed INR 500,000</li> </ul>
2	Surcharge (for income other than Capital Gains)	<ul style="list-style-type: none"> <li>10% - If total income &gt; INR 5 million but ≤ INR 10 million</li> <li>15% - If total income &gt; INR 10 million, but ≤ INR 20 million</li> <li>25% - If total income &gt; INR 20 million, but ≤ INR 50 million</li> <li>37% - If total income &gt; INR 50 million</li> </ul>
3	Surcharge (for Capital Gains – i.e. Section 111A & 112A of the IT Act)	<ul style="list-style-type: none"> <li>10% - If total income &gt; INR 5 million but ≤ INR 10 million</li> <li>15% - If total income &gt; INR 10 million</li> </ul>
4	Cess - Health and Education cess	<ul style="list-style-type: none"> <li>4%</li> </ul>

5	AMT (including surcharge and cess)	<ul style="list-style-type: none"> <li>19.24% - If adjusted total income &gt; INR 2 million, but ≤ INR 5 million</li> <li>21.16% - If adjusted total income &gt; INR 5 million, but ≤ INR 10 million</li> <li>22.13% - If adjusted total income &gt; INR 10 million, but ≤ INR 20 million</li> <li>24.05% - If adjusted total income &gt; INR 20 million, but ≤ INR 50 million</li> <li>26.36% - If adjusted total income &gt; INR 50 million</li> </ul>
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Below is a comparative analysis of these alternative regimes:

Particulars	Existing	Proposed	Existing	Proposed
	Total Income > INR 1 million	Total Income > INR 1 million	Total Income > INR 1.5 million	Total Income > INR 1.5 million
Total Income (assumed)	1,000,000	1,000,000	2,500,000	2,500,000
Deduction under Section 80C	(1,50,000)	-	(1,50,000)	-
Net total Income	8,50,000	1,00,000	23,50,000	2,50,000
Total Tax payable (as per slab rates)	82,500	75,000	5,17,500	4,87,500
Add: Health & Education Cess (@4%)	3,300	3,000	20,700	19,500
<b>Total tax payable</b>	<b>85,800</b>	<b>78,000</b>	<b>5,38,200</b>	<b>5,07,000</b>
<b>Effective tax rate (i.e. total tax payable/ total income)</b>	<b>8.58%</b>	<b>7.80%</b>	<b>21.53%</b>	<b>20.28%</b>

#### For Companies, Firms, LLP

Sr. No.	Description	Existing rates (%) (Including surcharge & Cess)			Proposed rates (%) (Including surcharge & Cess)		
		Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore
(A)	Domestic Companies						
1	Turnover or gross receipts in previous year 2017-18 ≤ INR 400 crore (base rate – 30%)	26.00	27.82	29.12	26.00	27.82	29.12

<b>2</b>	Covered under Section 115BA (base rate – 25%)	26.00	27.82	29.12	26.00	27.82	29.12
<b>3</b>	Covered under Section 115BAA (base rate – 22%)	25.17			25.17		
<b>4</b>	Covered under Section 115BAB (base rate – 15%)	17.16			17.16		
<b>5</b>	Any other Company having turnover or gross receipts in previous year 2017-18 > INR 400 crore	31.20	33.38	34.94	31.20	33.38	34.94
<b>6</b>	MAT under Section 115JB for companies other than that covered under Section 115BAA and 115BAB (Rate to be applied on book profits – base rate 15%)	15.60	16.69	17.47	15.60	16.69	17.47
<b>7</b>	BBT under Section 115QA (base rate - 20%)	23.30			23.30		
<b>8</b>	DDT under Section 115-O (without grossing up; base rate – 15%)	17.47			Nil		

(B)	Foreign Companies	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore
1	Regular tax (base rate – 40%)	41.60	42.43	43.68	41.60	42.43	43.68
(C)	Firms and LLP	Net income ≤ INR 1 crore		Net income > INR 1 crore	Net income ≤ INR 1 crore		Net income > INR 1 crore
1	Regular tax (base rate – 30%)	31.2		34.94	31.2		34.94
		Adjusted total income ≤ INR 1 crore		Adjusted total income > INR 1 crore	Adjusted total income ≤ INR 1 crore		Adjusted total income > INR 1 crore
2	AMT (base rate – 18.5%)	19.24		21.55	19.24		21.55

**Surcharge and Cess**

Particulars	Existing & Proposed
Other domestic companies	<ul style="list-style-type: none"> <li>NIL - If total income ≤ INR 1 crore</li> <li>7% - If total income &gt; INR 1 crore, but ≤ INR 10 crore</li> <li>12% - If total income &gt; INR 10 crore</li> </ul>
For Domestic companies covered under Section 115BAA and Section 115BAB of the IT Act	<ul style="list-style-type: none"> <li>10% - Irrespective of the amount of total income</li> </ul>
For Foreign companies	<ul style="list-style-type: none"> <li>NIL - If total income ≤ INR 1 crore</li> <li>2% - If total income &gt; INR 1 crore, but ≤ INR 10 crore</li> <li>5% - If total income &gt; INR 10 crore</li> </ul>
For Firms and LLP	<ul style="list-style-type: none"> <li>12% - If total income &gt; INR 1 crore</li> </ul>
Cess - Health and Education cess	<ul style="list-style-type: none"> <li>4%</li> </ul>

**BASIS OF CHARGE****Amendment to Section 2(13A) – Definition of ‘business trust’ amended**

- The definition of ‘business trust’ under Section 2(13A) is proposed to be amended to include trusts registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations and units of which are not listed on a recognised stock exchange.



- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

- 'Business trust' is presently defined to include trusts registered as InvITs or REITs whose units are listed on a recognised stock exchange. Vide recent amendments to the SEBI (Infrastructure Investment Trusts) Regulations, the mandatory listing requirement for InvITs was done away with.
- The proposed amendment is with a view to align the IT Act with the amended SEBI Regulations.

### Amendment to Section 6 of the IT Act

- Presently, as per Section 6(1) of the IT Act, an individual is treated as resident in India if one of the following conditions are satisfied -
  - Period of stay in India is 182 days or more in a FY; **OR**
  - Period of stay in India is 60 days or more during a FY **AND** 365 days or more during 4 previous FY immediately preceding the FY.
- Explanation 1 to Section 6(1) of the IT Act provides that if such individual is an Indian citizen or person of Indian origin, period of stay for satisfying the residency condition would be 182 days instead of 60 days.
- The aforesaid condition of 182 days is proposed to be reduced to 120 days.
- A new non-obstante clause (1A) is proposed to be inserted under Section 6 of the IT Act to provide that an individual, being a citizen of India, shall be deemed to be resident in India in any FY, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other similar criterion.
- These amendments are proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

The amendment to Explanation 1 to Section 6(1) of the IT Act and insertion of clause (1A) in Section 6 of the IT Act shall curb the practices adopted by certain Indian citizens who arrange their affairs in such a manner that they are not liable to tax in any country or jurisdiction during a year leading to double non-taxation and revenue leakage.

One of the key conditions for Section 6(1A) to be attracted is that the Individual 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. The Mumbai ITAT in the case of Bhagwan T. Shrivani (20 taxmann.com 821) has held that the expression "liable to tax" does not necessarily imply that person to be resident of contracting State should actually be liable to tax in that contracting State; it is enough if other contracting State has right to tax such person, whether or not such a right is exercised.

Therefore, even though no tax is payable in the other country or territory by such individual, it may still be possible to take a position that such Indian citizen will not be deemed to be resident in India.

- Presently, as per Section 6(6) of the IT Act, individuals and HUF are treated as R-NOR in India if such individual/manager of HUF -
  - Are non-resident in India in 9 FYs out of 10 FYs preceding the FY; **OR**
  - Has been in India for less than or equal to 729 days during 7 FYs preceding the FY.
- The above conditions are proposed to be replaced with a singular test of whether the individual/manager of HUF are non-resident in India in 7 out of 10 FYs preceding that FY.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

### Amendments to Section 9 for deferring SEP proposal

- Clause (a) of Explanation 1 to Section 9 provides that in case where a business connection is constituted in India, the income deemed to accrue or arise in India will be only such part of the income as is reasonably attributable to such business connection. Within this provision, a specific carve-out is proposed to be made for businesses having business connection in India on account of SEP.
- This amendment is proposed will take effect from the April 1, 2022 and will, accordingly, apply in relation to the assessment year 2022-2023 and subsequent assessment years.
- Explanation 2A, which stipulates the meaning of SEP is proposed to omit the said Explanation with effect from the April 1, 2021 and will, accordingly, be omitted from the assessment year 2021-2022 and subsequent assessment years.
- A new Explanation 2A is proposed to replace the present Explanation 2A, while making the following changes to the thresholds prescribed therein:

Thresholds	Present position	Proposed amendment
Based on local revenue	This threshold covered 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 prescribed amounts.	The language of this threshold is proposed to be amended to include transaction in respect of any goods, services or property carried out by a non-resident <b>with any person</b> 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 prescribed amounts.
Based on number of users	The solicitation of user threshold is at present limited to interactions with the prescribed numbers of users in India through digital means.	This threshold is proposed to be extended, by omitting the words “digital means”, to include all interactions with users in India, either through digital means or otherwise.

#### ELP COMMENTS:

The discussions on the provisions relating to SEP are still ongoing in G20-OECD BEPS project and it is expected that a global consensus would be reached by December, 2020. Accordingly, it has been proposed that the applicability of the SEP provisions under the IT Act be deferred to assessment year 2022-23. Thus, the current SEP provisions is proposed to be omitted from assessment year 2021-22 and the new provisions are proposed to take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

### Amendment to Section 9A

- Presently, Section 9A of IT Act provides that in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager shall not constitute business connection in India of the said fund.
- Further, some of the condition for eligibility of the fund are as under:
  - The aggregate participation or investment in the fund by the persons resident in India does not exceed 5% of the corpus of the fund;
  - The monthly average of the corpus of the fund shall not be less than INR 100 crore except where the fund has been established in the FY in which case the corpus of the fund shall not be less than INR 100 crore at the end

of a period of six months from the last day of the month of its establishment or at the end of such FY, whichever is later

- The following amendments are proposed to the above conditions:
  - For the purposes of calculation of the aggregate participation or investment in the fund, any contribution made by the eligible fund manager during the first three years of operation of the fund, not exceeding twenty-five crore rupees, shall not be taken into account;
  - The monthly average corpus of the fund shall be fulfilled within twelve months from the last day of the month of its establishment.

#### ELP COMMENTS:

This amendment is welcome a measure, considering the founders put a substantial part of his net worth in the fund as “skin in the game” to create reputation to attract investment.

## INCOME NOT FORMING PART OF TOTAL INCOME

### Section 10(45) of the IT Act proposed to be omitted

- Exemption to notified allowance or perquisite paid to the serving/retired chairman or members of Union Public Service Commission is proposed to be withdrawn.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

### Section 10(23FE) of the IT Act proposed to be inserted

- In order to promote investment of sovereign wealth fund, including the wholly owned subsidiary of Abu Dhabi Investment Authority, an exemption is proposed to be provided to 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 Section 80-IA(4)(i) of the IT Act or such other business as may be notified.
- In order to be eligible for exemption, the investment is required to be made on or before March 31, 2024 and is required to be held for at least three years.
- For the purpose of this exemption, “specified person” is defined to mean
  - A wholly owned subsidiary of the Abu Dhabi Investment Authority, which is a resident of the United Arab Emirates and makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates
  - A sovereign wealth fund which is wholly owned and controlled by Government of a foreign country and meets other prescribed conditions.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

The above proposal will promote investment in infrastructure sector from sovereign wealth funds.

It may be noted that Abu Dhabi Investment Authority has already signed an investment agreement with National Investment and Infrastructure Fund committing to invest USD 1 billion in India.

The above proposal will provide an exemption to such sovereign wealth funds earning dividend, interest or long-term capital gains from investments made in infrastructure sector in India.



### Proposed insertion of Section 10(48C)

- It is proposed to exempt to any income accruing or arising to Indian Strategic Petroleum Reserves Limited, 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 the 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.
- This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

## SALARY INCOME

### Amendment to Section 17 of the IT Act

- It is proposed to insert clause (vii) under Section 17(2) of IT Act to provide an aggregate upper threshold limit with respect to any contribution made to the account of the employee by the employer in relation to a recognised provident fund, national pension scheme and approved superannuation fund. It is proposed that the aggregate of the amounts in relation to the above funds to the extent it exceeds INR 7.5 lakhs in a FY shall be regarded as a perquisite under Section 17(2) of the IT Act.
- Clause (viia) is proposed to be inserted in Section 17(2) of the IT Act to provide that the 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 referred to in sub-clause (vii) to the extent it relates to the employer's contribution which is included in total income shall be regarded as a perquisite under Section 17(2) of the IT Act.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

Currently, the threshold limit has been provided with respect to contributions made to recognized provident fund, approved superannuation fund, national pension scheme etc, on standalone basis. Any contribution over and above such individual threshold is taxable. However, there is no upper threshold limit which has been suggested on an aggregate basis. With the proposed amendment, the aggregate threshold has also been introduced.

## INCOME FROM BUSINESS AND PROFESSION

### Amendment to Section 35AD of the IT Act

- Section 35AD of the IT Act is proposed to be amended to make the deduction optional in the hands of the assessee.
- This amendment is proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

#### ELP COMMENTS:

Typically, the deduction provisions do not permit assessee to opt out of prescribed deductions and are mandatory in nature. The concessional corporate tax rate provision under Section 115BAA and Section 115BAB were introduced provided no deduction was claimed by the assessee. However, a legal interpretation had arisen wherein even though deduction under Section 35AD was not claimed by the assessee, the concessional rate of corporate tax could have been denied. This amendment now clarifies the position.

### Amendment to Section 43 of the IT Act

- Section 43(5) of the IT Act is proposed to be amended to replace the words “recognised association” wherever they occur, with the words “recognised stock exchange”. The recognised stock exchange would mean same as that referred to in Securities Contracts (Regulation) Act, 1956 and fulfils such conditions as may be prescribed.

### Amendment to Section 44AB of the IT Act – rationalization of the audit provisions

- It is proposed to increase the threshold limit for audit of a person carrying on business from INR 10,000,000 to INR 50,000,000 in cases where:
  - Aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt; and
  - Aggregate of all payments in cash during the previous year does not exceed 5% of such payment.
- Further, the term “specified date” means the due date for furnishing of the return of income under Section 139(1).
- It is also proposed to amend the definition of “specified date” for the purpose of Section 44AB of the IT Act shall mean the date one month prior to the due date for furnishing of the return of income under Section 139(1).
- On account of the proposed amendment to the due date of for filing of the audit report, corresponding amendments have been proposed to Section 10, Section 10A, Section 12A, Section 32AB, 33AB, 33ABA, 35D, 35E, 44DA, 50B, 80-IA, 80-IB, 80JJAA, 92F, 115JB, 115JC and 115VM, which mandates filing of the audit report in the respective forms.
- Section 139 of the IT Act, which deals with the filing of the return of income, is also proposed to be amended to change the due date from September 30 of the assessment year to October 31 of the assessment year. Further, the same due date is at present also applicable to a “working partner” of a firm whose accounts are required to be audited. The word “working” is proposed to be omitted.
- These amendments are proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.
- Corresponding amendments have also been proposed to tax withholding provisions such as Section 194A, 194C, 194H, 194I, 194J and 206C as these provisions fasten liability of withholding on certain categories of person, if the gross receipts of business or profession exceeds certain thresholds under Section 44AB of the IT Act. These amendments are proposed to take effect from April 1, 2020.

#### ELP COMMENTS:

The above proposal would reduce compliance burden on qualifying small & medium enterprises and also promote digital economy.

## CAPITAL ASSETS & CAPITAL GAINS

### Amendment to Section 43CA, 50C and 56 of the IT Act – increase in safe harbour limit

- Section 43CA, 50C, 56 are proposed to be amended to increase the safe harbour limit from 105% to 110%.
- Section 43CA was introduced to deem the stamp duty value as consideration of assets, being land or building, other than capital assets. Section 50C was introduced to deem the stamp duty value as full value of consideration in case of transfer of a capital asset being land or building while computing taxable income in the hands of the seller. 56(2)(x) was introduced to deem stamp duty value in case of immovable property, while computing taxable income in the hands of the buyer.

#### ELP COMMENTS:

Increase in the safe harbor limit is a welcome relief in case of real estate transactions.

### Cost of acquisition, period of holding in respect of segregated portfolios

- Sub-section 42A of Section 2 of the IT Act is proposed to be amended to provide that in case of capital assets being unit(s) in a segregated portfolio, the period for which the original unit(s) in the main portfolio were held by the assessee shall be included for determination of period of holding of the said capital asset.
- A new sub-section (2AG) is proposed to be inserted under Section 49 to provide that the cost of acquisition of unit(s) in segregated portfolio shall be calculated as: Cost of acquisition of units in Total Portfolio x [NAV of assets transferred to the segregated portfolio] / [NAV of total portfolio immediately before the segregation]. Further, the cost of acquisition of original units in the main portfolio 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 expressions “main portfolio”, “segregated portfolio” and “total portfolio” shall have the meaning assigned to them in the SEBI circular dated December 28, 2018.
- This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

#### ELP COMMENTS:

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.

The proposed amendment seeks to rationalize the provisions of Section 49 and clause (42A) of Section 2 of the IT Act to deal with capital gains in respect of segregated portfolios.

### INCOME FROM OTHER SOURCES

#### Amendment to Section 55 of the IT Act

- A new proviso under Section 55 of the IT Act is proposed to be inserted to provide that in case of a capital asset, being land or building or both, the fair market value of such an asset on 1st April, 2001 shall not exceed the stamp duty value of such asset as on 1st April, 2001 where such stamp duty value is available.

### SET OFF OR CARRY FORWARDS AND SET OFF

#### Proposed substitution of Section 72AA

- Section 72AA of the IT Act currently 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 under the relevant provisions of the Banking Regulation Act, 1949. The said Section is proposed to be amended so as to extend the said benefit even to mergers pertaining to specified corresponding new banks as well as merger of public sector general insurance companies.
- Thus, the benefit is sought to be extended to a corresponding new bank, 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. Similarly, the benefit is also proposed to be extended to a government company, as defined under Section 2(45) of the Companies Act, 2013, which is 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.
- This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

## DEDUCTIONS

### Amendment to Section 80EEA of the IT Act

- Section 80EEA of the IT Act pertains to deduction in respect of interest on loan taken for residential house property (stamp duty value not exceeding INR 4,500,000) from any financial institution up to INR 150,000. Further, the said deduction is available for the loan sanctioned by the financial institution during the period beginning on April 1, 2019 and ending on March 31, 2020.
- It has been proposed to amend Section 80EEA of the IT Act to extend the deduction to loan sanctioned upto March 31, 2021.
- This amendment will take effect from the April 1, 2021, and accordingly would apply in relation to the AY 2021-2022 and thereafter.

#### ELP COMMENTS:

Section 80EEA of the IT Act aims to incentivize first time home buyers purchasing affordable residential house property. In order to continue promoting purchase of affordable housing, it is proposed to extend the period of loan sanctioned to March 31, 2021.

### Amendment to Section 80-IAC of the IT Act

- Section 80-IAC of the IT Act is proposed to be amended to provide that:
  - The deduction of an amount equal to 100% of the profits and gains derived from an eligible business shall be available to an eligible start-up for a period of three consecutive assessment years out of ten years beginning from the year in which the eligible start-up is incorporated;
  - The total turnover of its business should not exceed one hundred crore rupees in the previous year relevant to the assessment year for which deduction under Section 80-IAC of the IT Act is claimed.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

Section 80-IAC of the IT Act was introduced vide Finance Act, 2016, for promoting and boosting “start-up” ecosystem in India. Accordingly, tax holiday benefit was provided to eligible “start-up” for 3 years out of 7 years having total turnover less than INR 25 Crores.

Subsequently, DPIIT vide Notification No. G.S.R. 127(E) dated 19.02.2019 has widened the definition of eligible “start-up” which considers an entity as “start-up” for a period of 10 years and has a turnover upto INR 100 Crores.

The above proposal is a welcome move and brings in much needed parity with the DPIIT notification.

### Amendment to Section 80-IBA of the IT Act

- Section 80-IBA of the IT Act provides tax holiday benefit of 100% of the profits and gains derived from affordable housing projects; fulfilling certain conditions including that the project is approved by the competent authority during the period from June 1, 2016 to March 31, 2020.
- It is proposed to extend the period of approval of the project by the competent authority to March 31, 2021.
- This amendment will take effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

**ELP COMMENTS:**

In order to give an impetus to the 'Housing for All by 2022' mission, tax holiday benefit under Section 80-IBA of the IT Act available to eligible "affordable housing projects" has been extended to the projects obtaining approval till March 31, 2021.

**SPECIAL PROVISIONS****Aligning purpose of entering DTAA's with MLI - Amendment to Section 90 and 90A of the IT Act**

- Section 90 of the IT Act empowers the Central Government to enter DTAA's with foreign countries or specified territories. Clause (b) of sub-section (1) of Section 90 provides that DTAA's can be entered into *inter-alia* for avoidance of double taxation of income under the IT Act and corresponding law in force in the foreign country or specified territory.
- The said clause (b) is proposed to be amended by inserting that the purpose of avoidance of double taxation shall 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 the said agreement for the indirect benefit of residents of any other country or territory).
- Similar amendment is proposed under Section 90A which contains provisions analogous to Section 90 for an agreement between a specified association in India and any specified association in specified territory outside India for avoidance of double taxation etc.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

**ELP COMMENTS:**

India has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (commonly referred to as MLI), which is an outcome of the G20-OCED's BEPS project. The MLI seeks to tackle tax planning strategies that exploit gaps and mismatch in tax rules to artificially shift profits to low or no tax jurisdictions.

The provisions of MLI will be applicable to India's DTAA's from FY 2020-21 onwards. The above amendment seeks to incorporate the language of Article 6 of the MLI into Section 90 and 90A to align the purpose of entering into DTAA's with the purpose of MLI. The said language is suggested to be included in the preamble of a covered tax agreement.

**Filing of statement of donation by donee to cross-check claim**

- As per the provisions of IT Act, a person, on making donation or certain sum to an exempt entity, gets deduction in the computation of his income. Currently, there is no reporting obligation by the exempt entity receiving donation or certain sum.
- It is proposed 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. The same is akin to the provisions relating to the tax collection/ deduction at source existing under the provisions of the IT Act. Accordingly, it is proposed that the entities receiving donation/ certain sum would furnish a statement in respect thereof, and would issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer to be allowed on that basis.
- Accordingly, the following amendments are proposed to the provisions of the IT Act:
  - Deduction under Section 80G/ 80GGA of the IT Act to a donor shall be allowed only if a statement is furnished by the donee in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.



- Similar to Section 80G of the IT Act, deduction of cash donation under Section 80GGA shall be restricted to INR 2,000 only.
- These amendments are proposed to come into effect from June 1, 2020.

### Rationalisation of registration/ approval process

- The following amendments are proposed for rationalisation of registration and approval process of the exempt entities under the provisions of the IT Act:
  - Exemption under Section 10(46) of the IT Act shall be allowed to an entity even if it is registered under Section 12AA of the IT Act 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 Section 10(46) of the IT Act from the date on which the registration becomes operative. The condition of inoperability is with the purported objective that only one mode of exemption is made available. Further, the switching may be allowed only once so that such switching is not done routinely, and it remains efficient to be administered.
  - An entity approved, registered or notified under Section 10(23C), Section 12AA or Section 35 of the IT 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, to be calculated from April 1, 2020. Similarly, an entity already approved under Section 80G of the IT Act shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the said entity shall be valid for a period not exceeding five years at one time. These proposed amendments are with the purported objective that the approval or registration or notification for exemption should be for a limited period which would act as a check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption.
  - An entity making fresh application for approval under Section 10(23C) of the IT Act or for registration under Section 12AA of the IT Act or 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.
  - 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. This is with the stated objective of standardising the process of one-to-one matching between what is received by the donee and what is claimed as deduction by the donor.
  - Application for approval under Section 80G of the IT Act shall be made to Principal Commissioner or Commissioner.
- These amendments are proposed to come into effect from June 1, 2020.

### Amendment relating to Dividend Distribution Tax (Section 115-O, 115BBDA)

- Section 115-O of the IT Act 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 dividend shall be charged to additional income-tax, known as DDT. The tax so paid by the company 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 section 10(34) of the IT Act.
- Further, Section 115BBDA of the IT act provides for taxing dividend income in excess of INR 1 million in the hands of shareholder at 10% to only dividend declared, distributed or paid by a domestic company on or before the March 31, 2020.
- The above provisions of Section 115-O of the IT Act pertaining to levy of DDT are proposed to be abolished for dividend declared, distributed or paid on or after April 1, 2020. This amendment will take effect from April 1, 2021 and will, accordingly, apply in relation to the AY 2021-2022 and subsequent AYs. Similarly, Section 115BBDA are proposed to be amended to limit its application only on dividend declared, distributed or paid on or before March 31, 2020.

- Additionally, following Sections are proposed to be consequentially amended -
  - Dividend declared, distributed or paid by a domestic company is proposed to now be subject to deduction of tax at source under Section 194 of the IT Act. Such tax shall be deducted at the rate of 10% on dividend falling within the ambit of Section 2(22) of the IT Act;
  - Further, Section 195 of the IT Act is also proposed to be amended in order to delete the exemption provided to dividend referred to in Section 115-O
  - Section 196C: Dividend distributed under Section 115-O, which was excluded from applicability of TDS, is now proposed to be included
  - Section 196D: Dividend distributed under Section 115-O, which was excluded from applicability of TDS, is now proposed to be included
  - Section 10(34) and Section 10(35) has been proposed to be amended to provide that exemption under said Sections should not be available on income by way of dividend received on or after April 1, 2020
  - Section 10(23FC) is proposed to be amended to exempt dividend received by business trust from a special purpose vehicle
  - Section 10(23FD) is proposed to be amended to exclude exemption to dividend income received by a unit holder from business trust, so that dividend income is taxable in the hand of unit holder of the business trust
  - Section 115UA(3) is proposed to be amended to exclude distributed income of the nature as referred to in clause (23FC) or clause (23FCA) of Section 10 and the same 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

#### ELP COMMENTS:

Ever since introduction of DDT vide Finance Act 1997, DDT provisions have witnessed multiple revisions and amendments, including rate changes (from the 10% introductory rate to the present rate of 15%) and shifting of burden from domestic company to shareholder and vice versa. In terms of the Budget Speech, the abolition of DDT is driven by dual objective of lowering tax burden for select class of shareholders as well as availability of credit to foreign investors, which is at present unavailable on account of the burden of discharging DDT being on the domestic company. Apart from being taxed to DDT in India, such dividend income is also taxable in the foreign shareholders place of residence (depending upon its local tax laws).

The proposed amendment is likely to benefit the dividend received by foreign shareholders as it would be eligible for respective tax treaty benefits, which is currently not available. In other words, unlike the present regime, such dividend income will be offered to tax only once, consequently leading to a substantial reduction in the tax costs which is at present faced by foreign shareholders investing in India. From another perspective, the present amendment will also lead to reduction in litigation under Section 14A of the IT Act.

OECD, in its report of Corporate Tax Statistics 2019 First Edition had earmarked India as the jurisdiction with the highest statutory tax rate of 48.3%, which included DDT. Now with abolition of DDT, effective corporate tax rate could be as low as 15% (excluding surcharge and cess). This would go a long way in changing the global perception of Indian tax laws and attracting higher foreign investments in India. However, while the abolition of DDT in the hands of domestic company would be a welcome step, similar facilitation could have been extended to 'buyback tax' which will continue to be taxable in the hands of the domestic company.

#### Insertion of new Section 80M and Amendment to Section 115BAA and Section 115BAB

- Finance Bill 2020 proposes to insert a new Section 80M in the IT Act to provide that where the gross total income of a domestic company in any FY includes any income by way of dividend from any other domestic company, such domestic company shall be allowed a deduction of dividend received from such other domestic company as does not exceed the amount of dividend distributed by such first mentioned domestic company one month before the due date of filing return of income under Section 139(1) of the IT Act.

The proposed Section 80M further provides that where any such deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed in any FY, no deduction shall be allowed in respect of such amount in any other FY.

- Additionally, Section 115BAA and Section 115BAB are proposed to be amended to provide deduction under proposed Section 80M.
- This amendment will take effect from April 1, 2021 and will, accordingly, apply in relation to the AY 2021-2022 and subsequent assessment years.

#### ELP COMMENTS:

This amendment seeks to provide relief from cascading effect in respect of inter-corporate dividend and is similar to the provisions of Section 80M that existed before its removal by the Finance Act, 2003.

### Amendment to Section 115A, 115AC, 115AD

- Following provisions of the IT Act are proposed to be amended to also cover within its ambit dividend referred to in Section 115-O of the IT Act. Earlier, dividend referred to in Section 115-O were omitted from said Sections. Effective from AY 2021-2022, all dividend income is taxed in the hands of non-resident (not being a company) or a foreign company in terms of said Sections.
  - Section 115A: Tax on dividend in the hands of non-resident or foreign company
  - Section 115AC: Tax on income from bonds or Global Depository Receipts purchased in foreign currency for non-residents
  - Section 115ACA: Section 115AC: Tax on income from bonds or Global Depository Receipts purchased in foreign currency for individual resident being an employee of Indian Company engaged in specified knowledge based industry
  - Section 115AD: Tax on income of foreign institutional investors from securities or capital gains arising from their transfer
  - Section 115C: Definition of 'investment income' to also include dividend referred in Section 115-O
- Further, if the total income of the non-resident consists only of income in the nature of dividend or interest, then exemption from furnishing return of income under Section 139(1) was available. Now such exemption is also available if total income consists of royalty or fee for technical services. This relaxation is available subject to the condition that tax has been deducted as per the provisions of Part B of Chapter XVII, at rates which are not less than the rate specified under clause Section 115A.
- This amendment is proposed to be made effective April 1, 2021 and will, accordingly, apply in relation to the AY 2021-2022 and subsequent AY.

### Amendment to Section 115R

- Similar to Section 115O, Section 115R pertaining to tax on distributed income to unit holders is proposed to be amended to limit its applicability on any amount distributed up to March 31, 2020.
- Consequential amendment has been proposed to Section 196A to provide that income distributed to unit holder, which was excluded from applicability of TDS, is now included. Further, Section 196A has been extended to cover payment in any mode. Further, 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".

### Amendment to Section 196C and Section 196D

- Section 196C pertains to TDS on income by way of interest or dividend in respect of bonds or Global Depository Receipts and Section 196D pertain to TDS on income in respect of securities referred to in clause (a) of sub-section

(1) of section 115AD, not being income by way of interest referred to in section 194LD. The said sections have been amended to also include dividend referred to under Section 115-O within its ambit. Further, the said Sections has also been proposed to be amended to allow credit of income or payment thereof by any mode.

## PROVISIONS IN RELATION TO ADMINISTRATION AND ASSESSMENT

### Taxpayer's Charter

#### Insertion of Section 119A

- A new Section 119A is proposed to be inserted to empower the CBDT to adopt and declare a Taxpayer's Charter and issue orders, instructions, directions or guidelines to other income-tax authorities for the administration of such Charter.
- This amendment is proposed to come into effect from 1<sup>st</sup> April, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

*ELP Comment: In past also, the CBDT has put up the Citizen's Charter of the income tax department, which set out inter alia the timelines which ought to be adhered to by the income tax department in relation to key services such as issue of refunds, issue of tax clearance certificates etc. While such Citizen's Charter had no legal enforceability per se, the proposed amendment would perhaps result in CBDT making these objectives and timelines mandatory. One will have to wait for the final Taxpayer's Charter to be declared to understand the exact guidelines sought to be stipulated and the extent of enforceability of such guidelines.*

### Check on Survey Operations

#### Amendment to Section 133A

- The proviso after sub-section (6) of Section 133A is proposed to be substituted with a new proviso, with an intention to provide further checks on survey operations carried out by income-tax authorities. The effect of the proposed amendment is summarized as under:

Parameter	Present position	Proposed amendment
Upon receipt of information from prescribed authorities	To undertake surveys, Assistant Directors, Deputy Directors, Assessing Officers, Tax Recovery Officer or Inspectors of Income-tax were merely required to obtain approval of Joint Director or Joint Commissioner.	Assistant Directors, Deputy Directors, Assessing Officers, Tax Recovery Officer or Inspectors of Income-tax can undertake surveys upon satisfaction of two conditions, viz. (a) Receipt of information from prescribed authorities, <b>and</b> (b) Approval from the Joint Director or Joint Commissioner
Without receipt of information from prescribed authorities	<b>There was no requirement of receiving any information from prescribed authorities.</b>	Surveys without receipt of information from prescribed authorities, can be undertaken by Joint Directors, Assistant Directors, Deputy Directors, Assessing Officers, Tax Recovery Officer or Inspectors of Income-tax only upon obtaining a specific approval from the Director or Commissioner

- This amendment is proposed to come into effect from 1<sup>st</sup> April, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

*ELP Comment: This proposal is aligned towards the Government's recent moves, such as e-assessment and proposed e-appeal, to minimize the interface between the income-tax authorities and the assessee.*

## Extension of due date to file return of income

### Amendment to Section 139

- Clause (a) of Explanation(2) of sub-section (1) of Section 139 which provides for the due date for filing of return of income for specified persons (including a company and a person whose accounts are required to be audited) as 30<sup>th</sup> September of the assessment year, is proposed to be changed to 31<sup>st</sup> October of the assessment year.
- Further, the said due date is at present applicable to a “working partner” of a firm whose accounts are required to be audited. The word “working” is proposed to be omitted.
- These amendments are proposed to come into effect from 1<sup>st</sup> April, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

## Amendment in relation to verification of return of income

### Amendment to Section 140

- Clause (c) and (cd) Section 140 is proposed to be amended to provide that 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.
- These amendments are proposed to come into effect from 1<sup>st</sup> April, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

*ELP Comment: At present, a return of income can be verified only by specified personnel such as a Managing Director, or in his absence any director of a company or in designated partner, or in his absence any partner of an LLP. The proposed amendment can thus be seen as a facilitative measure to allow other persons to also verify the return of income.*

## Modification of E-assessment Scheme

### Amendment to Section 143

- Sub-section (3A) of Section 143 which was inserted in the last budget, provides that the Central Government may notify a scheme for the purposes of making assessment 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 last year under the said sub-section.
- It is proposed to expand the scope of the said sub-section to include the reference of section 144 of the Act relating to best judgement assessment in the said sub-section.
- It is also proposed to provide that Central Government may issue any direction under sub-section (3B) of the Section 143, in relation to non-applicability of any provisions of the IT Act relating to assessment to the E-assessment Scheme by March 31, 2022. At present, such direction can be issued by March 31, 2020.
- These amendments are proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

## Amendment in DRP

### Amendment to Section 144C

- Section 144C of the IT 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 IT Act, the 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.
- It is proposed that under sub-section (1) of Section 144C, the words “in the income or loss returned” is be omitted. This amendment is proposed to 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;



- It is further proposed to expand the scope of the said section by defining eligible assessee to include a non-resident, not being a company.

*ELP Comment: The proposed amendment would therefore allow for reference to DRP even in situations where the return of income has not been filed. Further, while at present, “eligible assessee” includes a foreign company and it is now proposed to extend to even cover other non-resident persons.*

## NEW TAX REGIMES

- In line with the recently introduced income-tax regime for corporates under Section 115BAA and Section 115BAB of the IT Act, it has been proposed to provide a similar option to individuals and HUFs under Section 115BAC of the IT Act and resident co-operative societies under Section 115BAD of the IT Act.

### Section 115BAC – Incentives to Individuals and HUF

- The rate of tax applicable under the proposed regime are as under:

Income (INR)	Proposed Rates (%)
0 - 250,000	NIL
250,001 - 500,000	5
500,001 - 750,000	10
750,001 - 1,000,000	15
1,000,001 - 1,250,000	20
1,250,001 – 1,500,000	25
1,500,001 and above	30

- The key mechanics of the proposed regime are as under:
  - The proposed regime is applicable only to Individuals and HUF;
  - Individuals and HUFs opting for the new regime will not be chargeable to AMT under Section 115JC of the IT Act;
  - Where the total income of such Individuals and HUFs does not include business income, the option under the proposed regime will have to be exercised every year while filing the return of income;
  - Where the total income of such Individuals and HUFs includes business income, the option once exercised, shall be applicable for every year thereafter;
  - The said tax regime will be subject to the below mentioned exemptions and deductions under the IT Act:

Exemptions and deductions not allowable	Exemptions and deductions allowable
Leave travel concession under Section 10(5)	Deduction under Section 80CCD(2) (i.e. employer contribution on account of employee in notified pension scheme), Section 80JJAA (i.e. for new employment)
House rent allowance under Section 10(13A)	Transport allowance granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty
Certain allowance under Section 10(14)	Conveyance allowance granted to meet the expenditure on conveyance in performance of duties of an office
Allowances to MPs/MLAs under Section 10(17)	Any allowance granted to meet the cost of travel on tour or on transfer
Allowance for income of minor under Section 10(32)	Daily allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty

Exemption for SEZ unit under Section 10AA	Deduction under Section 80LA (provided such Individual or HUF has a Unit in IFSC subject to fulfilment of the conditions contained in that Section)
Standard deduction, deduction for entertainment allowance and employment/professional tax under Section 16	
Interest under Section 24 in respect of self-occupied or vacant property referred to in Section 23(2) (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)	
Additional depreciation under Section 32(1)(iia)	
Deductions under section 32AD, 33AB, 33ABA	
Various deduction for donation for or expenditure on scientific research contained under Section 35(1)(ii), Section 35(1)(iia), Section 35(1)(iii), Section 35(2AA)	
Deduction under Section 35AD, Section 35CCC	
Deduction from family pension under Section 57(iia)	
Any deduction under chapter VIA (viz. 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)	

- The option under the new regime can be withdrawn only once by such Individual and HUF and where the option is withdrawn, such Individual and HUF will not be eligible for the new regime.
- The new regime will become invalid if any of the above conditions are not fulfilled.
- The proposed amendment will take effect from April 1, 2021 and will accordingly apply in relation to AY 2021-22 and subsequent AYs.

#### ELP COMMENTS:

India has been reeling with slowest GDP growth rates in over a decade. In order to provide an impetus to the economy, the Government made a bold move of reducing the corporate tax rates to 22% / 15% (for new manufacturing companies), which is lowest in the history of India. However, reduction in the corporate tax rates failed to give the desired effect of boosting up consumption.

Many economists reasoned that a reduction in personal tax rate is required for boosting consumption, as against corporate tax rate, as more money in the hands of consumer will directly result in increased demand.

Accordingly, the Finance Minister has proposed a new regime for individuals and HUFs providing an option to avail beneficial tax rate if they forgo availing certain deductions and exemptions. While the new taxation regime for corporates was lucrative (since it reduced effective tax rates by around 10%), the new regime for individuals and HUFs may not be that attractive. However, the scheme will provide much greater relief to some of the Individuals and HUFs taxpayers, not availing exemptions and deductions.

## Section 115BAD – Incentives to resident co-operative societies

It has been proposed to insert Section 115BAD under the IT Act to provide for an option to co-operative societies on similar lines with Section 115BAA of the IT Act. The key mechanics of the optional tax regime is as under:

- Such regime is applicable only to resident co-operative societies;
- Co-operative societies availing such option to be taxed @22%;
- Such option will be available subject to fulfilment of the following conditions:
  - (i) Such co-operative societies will not be eligible to avail deduction under Section 10AA or Section 32(1)(iia) or Section 32AD or Section 33AB or Section 33ABA or Section 35(1)(ii), Section 35(1)(iia), Section 35(1)(iii), Section 35(2AA) or Section 35AD or Section 35CCC or any provisions of Chapter VI-A;
  - (ii) Such co-operative societies will not be eligible to set off of any loss carried forward or depreciation from any earlier AY, if such loss or depreciation is attributable to any of the aforesaid deductions;
  - (iii) Such co-operative societies will be eligible to claim depreciation under Section 32 (except as specified under Section 32(1)(iia) of the IT Act);
  - (iv) Such co-operative societies will have to opt for the new regime on or before filing the return of income for the year and such option once exercised, shall apply to subsequent AYs. Such option once exercised, cannot be withdrawn;
  - (v) Such co-operative societies will be eligible for deduction under Section 80LA (provided such co-operative societies has a Unit in IFSC subject to fulfilment of the conditions contained in that section);
- The surcharge applicable to such co-operative societies will be 10%, irrespective of the amount of total income;
- Co-operative societies opting for the new regime will not be chargeable to AMT under Section 115JC of the IT Act. Consequently, the provisions of Section 115JD (i.e. credit of AMT) will not be applicable to such co-operative societies.
- The proposed amendment will take effect from April 1, 2021 and will accordingly apply in relation to AY 2021-22 and subsequent AYs.

## PROCEDURAL ASPECTS

### Introduction of e-appeal scheme

- Section 250 of the IT Act which deals with procedure in appeal before the CIT(A) has been proposed to be amended to insert sub-section 6B, 6C and 6D as under:
  - Section 6B is proposed to be inserted to empower the Central Government to notify an e-appeal scheme for the purposes of disposal of appeals by CIT(A) so as to impart greater efficiency, transparency and accountability by:
    - Eliminating the interface between the CIT(A) and the Appellant in the course of appellate proceedings;
    - Optimizing utilisation of resources;
    - Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more CIT(A).
  - For the purpose of giving effect to the e-appeal scheme proposed under sub-section 6B, sub-section 6C empowers the Central Government to issue notifications to direct that any of the provisions of the IT Act relating to jurisdiction and procedure for disposal of appeals by CIT(A) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. The said direction ought to be issued on or before March 31, 2022.
  - Sub-section 6D provides that every notification issued under sub-section 6B or sub-section 6C be laid down before each House of the Parliament.
- The amendment to Section 250 of the IT Act will take effect from April 1, 2020.

**ELP COMMENTS:**

In line with the e-assessment scheme, the Government also desires to launch an e-appeal scheme for disposal of appeal. The said scheme is proposed to be launched with the objective of imparting greater efficiency, transparency and accountability while facilitating hassle-free proceedings. The said scheme aims at eliminating human interface to the extent feasible, optimum utilization of the resources through economies of scale and introduction of appellate system with dynamic jurisdiction.

**Appeal against order passed under Section 12AB of the IT Act**

- Section 253 of the IT Act which deals with appeals to the Appellate Tribunal is proposed to be amended to allow filing of appeal before the ITAT against any order passed by a Principal Commissioner or Commissioner under proposed Section 12AB of the IT Act which deals with procedure for fresh registration.
- The amendment shall be effective from April 01, 2020.

**Amendment to stay provisions by ITAT**

- Section 254 of the IT Act which deals with orders of ITAT is proposed to be amended to allow stay in any proceedings relating to the appeal filed under Section 253(1) of the IT Act for a period not exceeding 180 days 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 the IT Act, or furnishes security of equal amount in respect thereof.
- It is also proposed to amend the ITAT's powers for extension of stay to provide that no extension of stay shall be granted by ITAT where such appeal is not so disposed within the period of stay as specified in the order of stay unless the following conditions are fulfilled:
  - The assessee makes an application for stay,
  - Where the ITAT is satisfied that 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 the IT Act or furnish security of equal amount in respect thereof.
- The aggregate of the original and extended stay granted by ITAT cannot exceed 365 days.
- The amendment shall be effective from April 01, 2020.

**ELP COMMENTS:**

It is pertinent to note that Instruction No, 1914 dated December 2, 1993 as amended by CBDT Office Memorandum dated February 29, 2016 and further by CBDT Office Memorandum dated July 31, 2017 made it mandatory for the tax officer to grant stay of balance demand once the taxpayer pays 20% of the disputed demand, while the appeal is pending before the Commissioner of Income Tax (Appeals), unless the case falls in any of the specified categories.

The Hon'ble Supreme Court in the case of PCIT Vs. LG Electronics India Pvt. Ltd. (Civil Appeal No. 6850 of 2018) inter alia held that it will be open for the tax authorities to grant deposit orders of an amount lesser than 20% of the disputed demand and stay of balance amount on the basis of the facts of the individual cases.

However, the recent amendment seeks to make pre-deposit of 20% of the disputed demand a pre-requisite to granting stay of the balance demand in all appeals pending before the ITAT without any exceptions.

This may cause hardships and increase the taxpayer's burden. The deposition of 20% is proposed to be a pre-requisite even in covered matters or other genuine cases where the Assessing Officer is willing to grant stay.

It would be interesting to note that the Hon'ble Supreme Court in case of Pepsi Foods (P.) Ltd [2017] (246 Taxman 223) dismissed SLP against High Court's ruling by observing that Tribunal has power to grant extension of stay beyond 365 days in deserving cases where delay in disposing of appeal is not attributable to assessee.

## WITHHOLDING TAX PROVISIONS

### Amendment to Sections 191 and 192 of the IT Act

- Sub-section (1C) is proposed to be inserted under Section 192 to provide that an eligible start-up paying perquisite in the nature of specified security or sweat equity shares as specified under Section 17(2)(vi) should deduct or pay tax within 14 days of the earliest of the following:
  - Expiry of 48 months from the end of the relevant assessment year; or
  - Sale of such specified security or sweat equity shares by the assessee; or
  - Date on which the assessee ceases to be the employee of the employer.
- Rates in force in the financial year in which the said specified security or sweat equity shares are allotted or transferred shall be applicable.
- Section 191 (applicable for assessee who directly pay tax in case where tax is not deducted at source), Section 156 (for notice of demand) and Section 140A (for calculating self-assessment) are proposed to be amended on similar lines as aforesaid.
- These amendments are proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

#### ELP COMMENTS:

ESOPs form a significant component of the compensation for employees of start-ups. Taxation of ESOPs is split into two components:

- (i) Tax on perquisites as income from salary at the time of exercise; and
- (ii) Tax on income from capital gains at the time of sale.

Requirement to pay tax on perquisites at the time of exercising of option as mentioned above, leads to a cash flow issue at present, since the benefit accrues only in kind at that stage. The proposed amendments will ease this burden as the liability to deduct or pay tax will stand deferred.

### Amendment to Section 194A of the IT Act

- Scope of TDS under Section 194A is proposed to be extended to cover interest paid by large co-operative societies with:
  - (a) Total sales, gross receipts or turnover exceeding INR 500,000,000 in the financial year immediately prior to interest being credited or paid; and
  - (b) 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 INR 50,000 in case of payee being a senior citizen and INR 40,000 in any other case.
- The proposed amendment will apply to incomes referred to in clause (v) and clause (viia) of Section 194A(3) which cover:
  - 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;
  - 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.
- These amendments are proposed to come into effect from April 1, 2020.

### Amendment to Section 194J of the IT Act

- TDS rate under Section 194J in case of Fees for Technical Services (other than professional services) is proposed to be reduced from 10% to 2%.



- The TDS rate in other cases under Section 194J (royalty, professional fees, etc.) would remain the same at 10%.
- These amendments are proposed to come into effect from April 1, 2020.

**ELP COMMENTS:**

The proposed amendment seeks to reduce litigation on the issue of short deduction of tax where the assessee deducts tax at 1% or 2% under Section 194C by treating the payment as being made for carrying out work in pursuance of a contract, while tax officers claim that tax should have been deducted at 10% under Section 194J considering the payment as towards FTS.

**Proposed new Section 194-O of the IT Act**

- Section 194-O is proposed to be inserted to provide for TDS at 1% on payment of certain sums by e-commerce operators to e-commerce participant.
- TDS is to be deducted in following manner:
  - By e-commerce operator in respect of sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;
  - At the time of credit of amount for 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;
  - On the gross amount of such sales or service or both;
  - 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;
  - 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 INR 5,000,000 and such e-commerce participant has furnished his PAN or Aadhaar number to the e-commerce operator.
  - For transactions dealt with under this Section, there shall be no further TDS liability under Chapter XVII-B of the IT Act.
  - This provision 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
  - The following terms are proposed to be defined for the purposes of this Section 194-O:
    - “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 proposed to be made in Section 197 (for lower TDS), Section 204 (to define person responsible for paying any sum) and Section 206AA (to provide for tax deduction at 5% in non-PAN/ Aadhaar cases).
  - These amendments are proposed to come into effect from April 1, 2020.

**Amendment to Section 206C of the IT Act**

- Section 206C of the IT Act which provides for TCS on specified transactions is proposed to be amended 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 INR 700,000 or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to TCS at 5%, and in non-PAN / Aadhaar cases at 10%;
- 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 at 5%, and in non-PAN / Aadhaar cases at 10%;
- The said TCS provision shall not apply if the buyer is:
  - liable to TDS under any other provision of the IT Act and has deducted such amount.
  - 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 Section 10(20) or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified therein.
- Further, it is proposed to levy TCS on sale of goods above specified limit, as under:
  - A seller on consideration received from a buyer in a previous year in excess of INR 5,000,000 at 0.1% and in non-PAN / Aadhaar cases at 1%
    - Only those sellers whose total sales, gross receipts or turnover from the business carried on by it exceed INR 100,000,000 during the financial year immediately preceding the financial year, shall be liable to collect such TCS
    - The Central Government may notify persons, subject to conditions contained in such notification, who shall not be liable to collect such TCS.
- These amendments are proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

**ELP COMMENTS:**

The idea of the Budget 2020 was to promote ease of doing business in India and to simplify direct taxation. However, with this proposed amendment to 206C imposing TCS on foreign remittance, selling overseas tour packages and sale of goods in excess of INR 5,000,000 will only further increase compliance.

**Section 203AA of the IT Act proposed to be omitted**

- Section 203AA of the IT Act is proposed to be omitted. The said Section requires the person authorised to prepare and deliver to every person from whose income, tax has been deducted or in respect of whose income, tax has been paid, a statement / certificate within the prescribed time after the end of each financial year.
- This amendment is proposed to come into effect from June 1, 2020.

**Amendment to Section 204 of the IT Act**

- Section 204, which defines 'person responsible for paying tax' is proposed to be amended to include, in case of a person not resident in India, the person himself or any person authorized by such person or the agent of such person in India including any person treated as an agent under Section 163.
- This amendment is proposed to come into effect from April 1, 2020.

**PENALTIES****Penalty for false entry, etc. in books of account**

- Section 271AAD of the IT Act is proposed to be inserted so as to empower the assessing officer to impose penalty on any person, where there is a false entry or an omitted entry which is relevant for computation of total income in the books of accounts maintained by such person. The penalty so proposed would be equal to the aggregate amount of such false or omitted entry.

- The said Section also empowers levy of penalty on any other person, who causes the person referred above, in any manner, to make a false entry or omits or causes to omit any entry.
- This amendment is proposed to be effective from April 01, 2020.

### Penalty for failure to furnish statements, etc.

- Section 271K of the IT Act is proposed to be inserted so as to prescribe a penalty ranging from ten thousand rupees to one lakh rupees on the specified institutions, companies, funds, research associations, etc., for failure to deliver or cause to be delivered a statement or furnish a donor certificate within the stipulated time in terms of the proposed amendment to Section 35 and Section 80G.
- This amendment is proposed to be effective from June 01, 2020.

#### ELP COMMENTS:

In line with the amendments proposed under Section 35 and Section 80G, penalty provisions have been inserted to ensure that the statement and donor certificates are furnished by the specified institutions within the stipulated time.

### Amendment to Section 274

- Section 274 lays down the procedure for imposition of penalty in case of non-compliance with the provisions of IT Act.
- New sub-sections are proposed to be inserted to Section 274 so as to enable the Central Government to notify an e-penalty scheme for the purposes of imposing penalty in line with the E-assessment Scheme, 2019 and the proposed e-appeal scheme under Section 250 of the IT Act.
- For the purposes of giving effect to the proposed e-penalty scheme, it also empowers the Central Government to issue notifications to direct that any of the provisions of the IT Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.
- It also provides that that every such notification so issued be laid down before each House of the Parliament.
- The proposed amendment shall be effective from April 01, 2020.

#### ELP COMMENTS:

In line with the e-assessment scheme, the Government also desires to launch an e- scheme for imposition of penalty. The said scheme is proposed to be launched with the objective of imparting greater efficiency, transparency and accountability while facilitating hassle-free proceedings. The said scheme aims at elimination of human interface to the extent feasible, optimum utilization of the resources through economies of scale and introduction of appellate system with dynamic jurisdiction.

## OTHERS

### Furnishing of Annual financial statement

- Section 285BB of the IT Act is proposed to be inserted regarding annual financial statement. Section 285BB proposes to mandate the prescribed income-tax authority or the person authorized 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.
- This amendment is proposed to take effect from June 1, 2020.

### Amendment to Section 288

- Section 288 of the IT Act which *inter alia* provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee, as its “authorized representative”, in connection with any proceedings under the IT Act is proposed to be amended to include any other person as may be prescribed to appear as an authorized representative.
- This amendment is proposed to take effect from April 1, 2020.

## TRANSFER PRICING

### Amendment to Section 92CB of the IT Act

- Section 92CB of the IT Act contains enabling provisions for safe harbour rules by virtue of which a taxpayer may opt for safe harbour in respect of international transactions and specified domestic transactions.
- Section 92CB of the IT Act is proposed to be amended to extend the scope of safe harbour rules to income referred in Section 9(1)(i) of the IT Act (i.e. 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).

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

### Amendment to Section 92CC of the IT Act

- Section 92CC of the IT Act is proposed to be amended to extend the scope of APA to income referred in Section 9(1)(i) of the IT Act or specifying the manner in which the said income is to be determined as is reasonably attributed to the operations carried out in India by or on behalf of a non-resident person.
- With this proposal, the following consequential amendments are also proposed in Section 92CC of the IT Act:
  - The manner of such determination may include methods provided by the rules made under the IT Act with such adjustments or variations as may be necessary.
  - Income, in respect of which APA has been entered into, shall be determined in accordance with APA.
  - APA in respect of income referred in Section 9(1)(i) of the IT Act may provide for determining such income during any period not exceeding four previous years preceding the first of the previous year referred to in Section 92CC(4) of the IT Act.

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

#### ELP COMMENTS:

**Ambit of APA is proposed to be expanded to include in its scope, determination of income in India for assesseees having business connection in India. This is a welcome amendment as it gives the stakeholder an option to determine the income attributable to India, thereby ensuring certainty and reduction in future litigation.**

### Amendment to Section 92F of the IT Act

- The definition of “specified date” provided under Section 92F(iv) of the IT Act is proposed to be amended to provide that specified date means the date one month prior to the due date of furnishing the return of income under Section 139(1) of the IT Act for the relevant AY.

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

**ELP COMMENTS:**

Section 92E of the IT Act requires furnishing of report from an accountant (i.e. Form 3CEB) by persons entering into international transactions or specified domestic transaction before the specified date. The existing provisions of the Section 92F(iv) define “specified date” as due date of furnishing return of income prescribed under Section 139(1) of the IT Act. With the proposed amendment, the due date of furnishing Form 3CEB is proposed to be preponed to one month before the due date of filing return under Section 139(1) of the IT Act.

**Amendment to Section 94B of the IT Act**

- Section 94B(1) of the IT Act provides limitation to the extent of interest deduction permissible in computation of income under the head “Profits and gains of business or profession” to an Indian company or permanent establishment of a foreign company in India, being the borrower, in respect of debt issued by a non-resident associated enterprise.
- Section 94B of the IT Act is proposed to be amended to provide that the provisions of Section 94B(1) of the IT Act shall not apply to interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident person engaged in the business of banking.

This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

**ELP COMMENTS:**

Non-resident person engaged in banking business, in India, can now claim deduction of interest paid to head office without any cap.



## VIVAD SE VISHWAS SCHEME OR DIRECT TAX AMNESTY SCHEME

### GENERAL

- The FM has proposed a “Vivad Se Vishwas” scheme allowing taxpayers to achieve a fast track closure of pending appeals concerning direct taxes.
- While the detailed contours of the scheme have not yet been made public, it is noted that the taxpayers in whose case appeals are pending, at any level, would be eligible to avail benefits of the scheme.
- The scheme would allow a complete waiver of interest and penalty provided the taxpayer pays entire disputed tax amount by March 31, 2020. Further, the scheme would be available till June 30, 2020. However, if taxpayers opt for the scheme from April 1, 2020 onwards, higher amount will be required to be paid to avail the benefit.

### CURRENT PENDENCY

The public domain data suggests following current pendency, of direct tax appeals, at various levels:

Sr. No.	Authority/ Forum	Pendency (No. of Cases in '000)
1	Commissioner (Appeals)	~340
2	Income Tax Appellate Tribunal	~93
3	High Court	~44
4	Supreme Court	~6
	<b>Total</b>	<b>~483</b>

Several news reports suggest that the total amount involved in these litigations may be in excess of INR 10 Lakh crores.

It may be observed that the pendency is on the rise, especially in past few years. When compared vis-à-vis pendency position as at end of FY16, the matters in pending appeals presently are up by ~47%.

#### ELP COMMENTS:

Various schemes have been introduced under direct tax laws since 1951. Most of these, however, pertained to declaration of undisclosed income. A dispute resolution scheme is, thus, a welcome move.

The FM suggested that the Vivad Se Vishwas Scheme is likely to be similar to Sabka Vishwas (Legacy Dispute Resolution) Scheme legislated in 2019 *qua* indirect taxes (i.e. “indirect tax amnesty scheme”). However, it may be noted that, the key to success of the indirect tax amnesty scheme was due to (a) relief it granted vis-à-vis the disputed tax amount per se being as high as 70% in some cases; and (b) the time allowed to the taxpayers to consider & decide for the amnesty scheme. *Prima facie*, the Vivad Se Vishwas Scheme does not appear to be in consonance with the indirect tax amnesty scheme on either of these parameters.

The scheme details would also be awaited to decode the following:

Sr. No.	Issue	Likelihood
1	Foreclosure of eligible proceedings partially	Unlikely
2	Immunity from prosecution proceedings	Likely
3	Refund of excess paid amount, if any	Unlikely
4	Adjustment of pre-deposits/ under-protest payments towards final settlement under the scheme	Likely

It is expected that the clarity on aforesaid issues shall emerge in due course.

The detailed Budget book can be accessed [here](#)



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