The Finance Bill, 2020

Ek Samiksha...

विवाद से विश्वास की ओर

(For Private Circulation Only)

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CITIZEN'S CHARTER

A DECLARATION OF OUR COMMITMENT TO THE TAXPAYERS

INCOME TAX DEPARTMENT

GOVERNMENT OF INDIA

2014

The Citizen's Charter of the Income Tax Department is a declaration of its Vision, Mission and Standards of Service Delivery

VISION

To partner in the nation building process through progressive tax policy, efficient and effective administration and improved voluntary compliance

Mission

- To formulate progressive tax policies
- To make compliance easy
- To be accountable and transparent and act with honesty, in a fair and judicious manner
- To deliver quality services
- To continuously upgrade skills and build a professional and motivated workforce

We Believe in

- Equity and transparency ;
- Promoting taxpayer awareness and encouraging and assisting them towards voluntary compliance;
- Effective deterrence against tax evasion;
- Continuous research as the foundation of tax policy and administration; and
- Adopting technology as an enabler for improved service delivery.

Service Delivery Standards

We aspire to provide the following key services within specified timelines :

S. No.	Key Services	Timelines (From the end of the month in which return/ application is received/cause of action arises)
1.	Issue of refund alongwith interest under section 143(1) of the I.T. Act (a) In case of electronically filed returns (b) Other returns	 6 months 9 months
2.	Issue of refund including interest from proceedings other than section 143(1) of the I.T. Act	1 month
3.	Decision on application for rectification	2 months
4	Giving effect to appellate/revision order	1 month
5.	Acknowledgement of communication received through electronic media or by hand	Immediate
6.	Decision on application seeking extension of time for tax payment or for grant of installment	1 month
7.	Issue of Tax Clearance Certificate under section 230 of the I.T. Act	Within 3 working days from the date of receipt of application
8.	Decision on application for recognition/approval to provident fund/superannuation fund/gratuity fund	3 months
9.	Decision on application for grant of exemption to institutions (University, School, Hospital etc.) under section 10(23C) of the I.T. Act	12 months
10.	Decision on application for approval to a fund under section 10 (23AAA) of the I. T. Act	3 months
11.	Decision on application for registration of charitable or religious trust or institution	4 months
12.	Decision on application for approval of hospitals in respect of medical treatment of prescribed diseases	3 months
13.	Decision on application for grant of approval to institution or fund under section 80G(5)(vi) of the I. T. Act	4 months
14.	Decision on application for no deduction of tax or deduction of tax at lower rate	1 month
15.	Redressal of grievance	2 months
16.	Decision on application for transfer of case from one charge to another	2 months

The above timelines will apply to cases where return/application is complete in all respects.

Expectations from Taxpayers

We expect our taxpayers :

- To be truthful and prompt in meeting all legal obligations;
- To pay taxes in time;
- To obtain PAN and quote it in all documents and correspondence;
- To obtain TAN and quote it in all documents and correspondence;
- To quote correct tax payment/deduction particulars in tax returns;
- To verify credits in tax credit statements;
- To file complete and correct returns, within the due dates and in appropriate tax jurisdictions;
- To quote correctly Bank Account Number, MICR/IFSC Code and other Bank details in the returns of income;
- To intimate change of address to the tax authorities concerned;
- To intimate any change in PAN particulars to designated agency;
- To quote PAN of all deductees in the TDS statements; and
- To respond promptly to the communication from the Department.

We Endeavour

- To promote voluntary compliance;
- To educate taxpayers and citizens about tax laws;
- To provide information, forms and other assistance at the facilitation counters and also on website **www.incometaxindia.gov.in**;
- To continuously improve service delivery;
- To induct state-of-the-art and green technology with a user friendly interface;
- To inculcate a healthy tax culture where the taxpayers and the tax collectors discharge their obligations with a sense of responsibility towards nation building;
- To promptly deal with taxpayers' grievances arising on account of technological issues; and
- To adhere to the schedule of appointments with taxpayers.

Grievance Redressal

- All grievances received will be redressed within two months from the end of the month of their receipt;
- Petitions on un-redressed grievances filed before next higher authority will be decided within 15 working days of receipt;
- The taxpayers can approach the Income-tax Ombudsman in case of un-redressed grievances;
- The grievance redressal mechanism including contact details of public grievance officers are available on the website **www.incometaxindia.gov.in.**

This is existing Citizen's Charter and not the "Tax Charter" which will be notified soon.

Date: 6th February, 2020

Dear Madam/Sir,

Namaste!!

Smt. Nirmala Sitharaman tabled Union Budget 2020-21 in the Lok Sabha on February 1st, 2020. She continued with the 'bahi khata' tradition by carrying the budget papers in the red bag with national emblem. This is the second budget of BJP led National Democratic Alliance. This year's Union Budget centres around three ideas — i) Aspirational India, ii) Economic development, iii) A Caring Society.

A roadmap has been laid. In the words of Hon'ble FM, **"I will slowly move to a regime devoid of any exemptions... I will cut the rate substantially. To start with, a few exemptions will be there and gradually we will go on reducing the rate and removing exemptions."**

The proposals under direct tax laws are greatly influenced by advancement in digital technology and also tax changes in global scenario. In her speech Madam Finance Minister indicated amendments to company law and introduction of dispute resolution scheme under direct tax which will see the light of the day in due course.

As like all these years, we restrict our notes on finance bill direct tax proposal. A basket of proposals have been introduced in the finance bill, which according the finance minister are - Lowest, simplest and smoothest. Madam FM promised that a "Taxpayers Charter" clearly enumerating their rights would soon be made part of the statute. According to Madam FM, the purpose of the charter is to establish trust between taxpayer and administration.

This Study Note of ours titled "The Finance Bill, 2020 - Ek Samiksha" is enclosed herewith. After you had an opportunity to go through the same, we may discuss this further at your convenience.

Happy Reading!

With Regards,

Yours Truly,

Team - S. S. Jhunjhunwala & Co.

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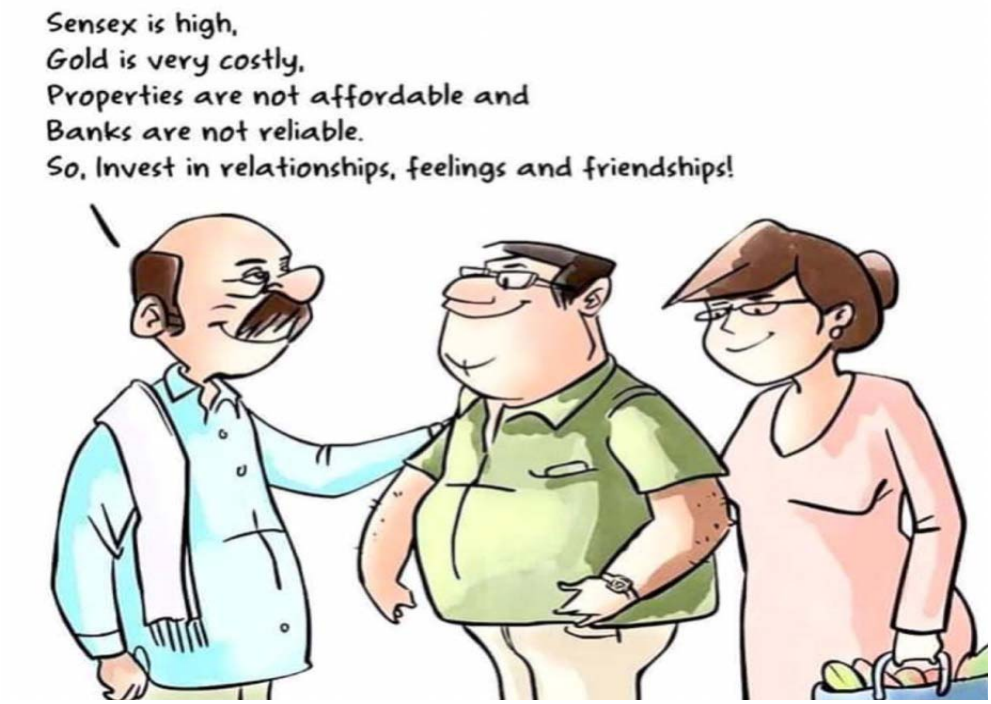
In this note an attempt has been made to summarize various proposals of The Finance Bill, 2020. Specific guidance may be obtained before acting on the proposals and provisions.

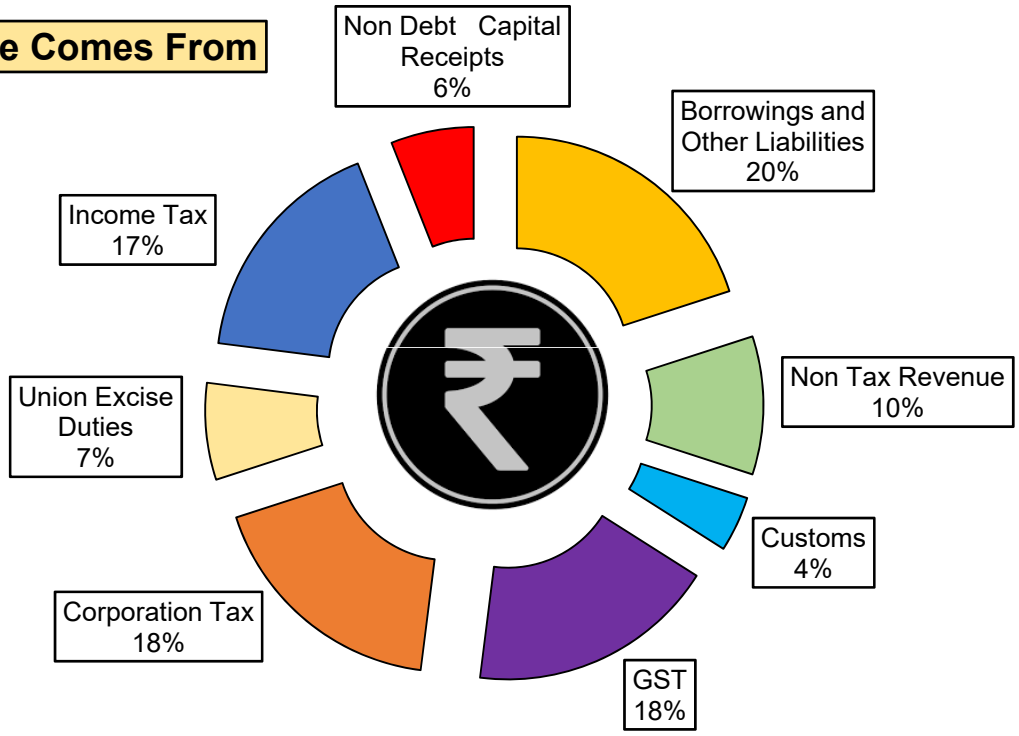
It should be noted that the Finance Bill, 2020 will be discussed in the Parliament and is subject to any amendments that may be made pursuant to such discussion.

Now a days, two trends are seen, roll back of certain proposals and putting some new proposals at the time of enactment of the Bill. So when the Bill is enacted please have a relook at it to see changes between "Bill" and "Act"

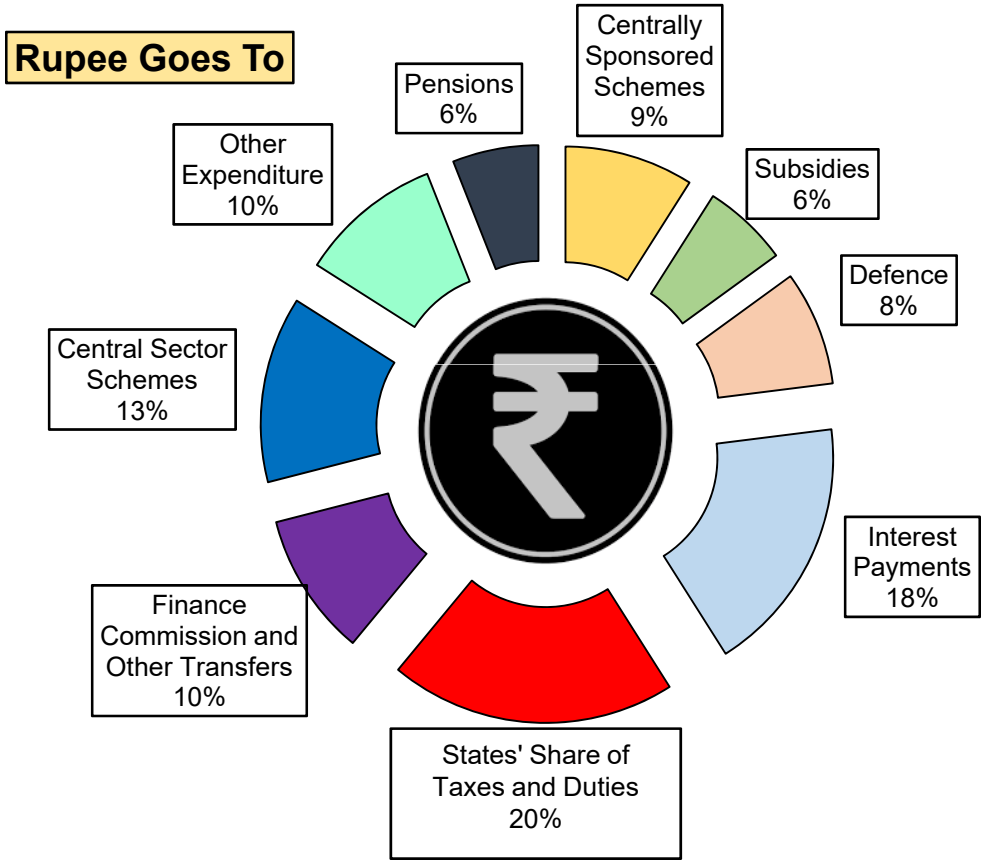


Budget at a Glance

Rupee Comes From



Rupee Goes To

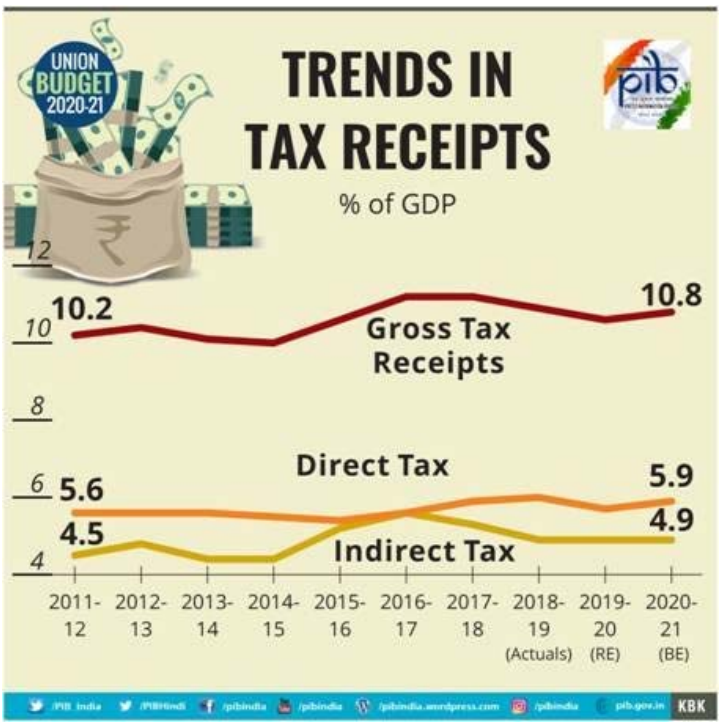


TAX RECEIPTS

The statement below summarized, by broad categories, the estimates of tax revenue receipt over a period. The estimates include the effect of budget proposals.

(Rs. in Crores)

	2018-19 Actual	2019-20 Budget	2019-20 Revised	2020-21 Budget
Gross Tax Revenue	**2080465.43**	**2461194.93**	**2163423.00**	**2423020.00**
Corporation Tax	663571.62	766000.00	610500.00	681000.00
Taxes on Income	473002.86	569000.00	559500.00	638000.00
Wealth Tax	40.86	---	---	---
Customs	117812.85	155904.00	125000.00	138000.00
Union Excise Duties	231981.90	300000.00	248012.00	267000.00
Service Tax	6903.62	---	1200.00	1020.00
GST	581559.3	663343.00	612327.00	690500.00
- CGST	457534.01	526000.00	514000.00	580000.00
- IGST	28944.58	28000.00	---	---
- GST Compensation Cess	95080.71	109343.00	98327.00	110500.00
Taxes on Union Territories	5592.42	6947.93	6884.00	7500.00
Less: NCCD transferred to the NCCF/NDRF	**1800.16**	**2480.00**	**2790.00**	**2930.00**
Less: State's share	**761454.15**	**809133.02**	**656046.07**	**784180.87**
Centre's Net Tax Revenue	**1317211.12**	**1649581.91**	**1504586.93**	**1635909.13**



FINANCE BILL, 2020 – AN INTRODUCTION

Finance Bill

The proposal of the government for levy of new taxes, modification of the existing tax structure or continuance of the existing tax structure beyond the period approved by the Parliament are submitted to the Parliament through this bill. It is the key document as far as taxes are concerned.

The provisions of Finance Bill, 2020 relating to direct taxes seek to amend the Income-tax Act, 1961 (hereafter referred to as 'the Act'), to continue to provide momentum to the buoyancy in direct taxes through tax-incentives, reducing tax rates for co-operative society, individual and Hindu undivided family (HUF), deepening and widening of the tax base, removing difficulties faced by taxpayers, curbing tax abuse and enhancing the effectiveness, transparency and accountability of the tax administration.

INCOME TAX PROVISIONS

In this chapter, we have dealt with the proposed amendments to Income Tax Act, 1961 (hereinafter referred to as "the Act") by Finance Bill, 2020 (hereinafter referred to as "Bill"). We have made references from Notes on Clauses and Memorandum explaining the provisions of the Bill.

In this study note, we have made an attempt to put related amendments under one topic head and reference of the same is given at appropriate places.

1. Effective Dates:

- The amendments in income tax provisions are proposed to be effective from 1st April, 2021 relevant to the Assessment Year 2021–2022 unless otherwise specified.

- The amendments proposed in procedural section are effective for the proceedings taken on or after the date as specified.

- The amendments made in substantive sections are effective from the first day of the Assessment Year from which it is proposed to be effective.

2. Rates of Taxes:

a) For individual / HUF an alternate tax calculation regime has been proposed (please see Para 27). Individual / HUF are given an option whether to follow old regime or go for new regime. Subject to this, there is no other change in basic limit and/or slab rates for the financial year 2020-21 relevant to assessment year 2021-22.

For Individual and HUF:-

Existing		Proposed	
Taxable income	**Rate of tax**	**Taxable income**	**Rate of tax**
Upto Rs. 2,50,000	NIL	**No Change**	
Rs. 2,50,001 to Rs. 5,00,000	5% on amount exceeding 2,50,000		
Rs. 5,00,001 to Rs. 10,00,000	Rs. 12,500/- + 20% on amount exceeding Rs. 5,00,000/-		
Above Rs. 10,00,000	Rs. 1,12,500/- + 30% on the amount exceeding Rs. 10,00,000/-		

Individual who is of the age of 60 years or more but less than 80 years:-

Existing		Proposed	
Taxable income	**Rate of tax**	**Taxable income**	**Rate of tax**
Upto Rs. 3,00,000	NIL	**No Change**	
Rs. 3,00,001 to Rs. 5,00,000	5% on amount exceeding 3,00,000		
Rs. 5,00,001 to Rs. 10,00,000	Rs. 10,000/- + 20% on amount exceeding Rs. 5,00,000/-		
Above Rs. 10,00,000	Rs. 1,10,000/- + 30% on the amount exceeding Rs. 10,00,000/-		

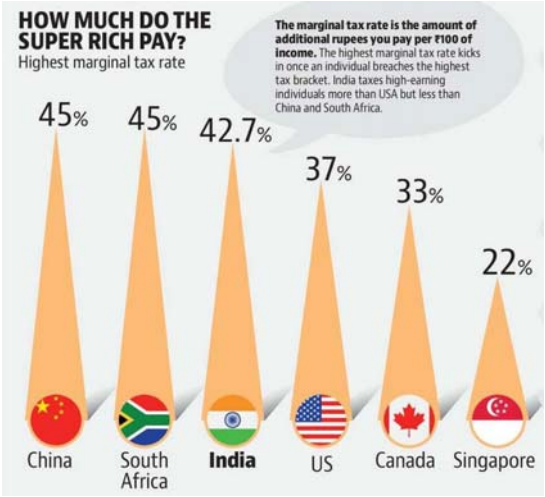
Individual who is of the age of 80 years or more:-

Existing		Proposed
Taxable income	**Rate of tax**	
Upto Rs. 5,00,000	NIL	**No Change**
Rs. 5,00,001 to Rs. 10,00,000	20% on amount exceeding Rs. 5,00,000/-	
Above Rs. 10,00,000	Rs. 1,00,000/- + 30% on the amount exceeding Rs. 10,00,000/-	

b) The rate of surcharge on individual and HUF remain unchanged and they are same for financial year 2020-21 relevant to assessment year 2021-22. The rates of surcharge are as under:

Existing			Proposed	
Type of Tax Payer	**Income at which surcharge is leviable**	**Rate of Surcharge**	**Income at which surcharge is leviable**	**Rate of Surcharge**
Individual, HUF, AOP, BOI	Above Rs. 50 Lakhs but upto Rs. 1 crore	10%	**No Change**	
	Above Rs. 1 crore but upto Rs. 2 crore	15%		
	Above Rs. 2 crore but upto Rs. 5 crore	25%		
	Above Rs. 5 crore	37%		

The above rate of surcharge is applied on the tax amount. Provisions for marginal relief are provided. The surcharge is leviable on the total tax on crossing of the threshold of the total income provided. Thus, if an individual has a total income above Rs. 5 crores, surcharge at the rate of 37% is on the total tax on the income irrespective of different slabs of surcharge at different level.



c) Surcharge will also be levied at the appropriate rates in cases where the tax is payable u/s 115JC of the Act (Alternate Minimum Tax – AMT is applicable to non-corporate taxpayers).

d) The Health and Education Cess shall continue to be levied at the rate of 4% of income tax including surcharge wherever applicable.

e) **Effective rate of tax for Individuals: Tax liability computed as per the slabs above would be increased by the following surcharge and cess:**

Individuals having Total Income	**F.Y. 2019-20**		**F.Y. 2020-21**	
	Rate of Surcharge	**Effective tax rate**	**Rate of Surcharge**	**Effective tax rate**
Above Rs. 10 lakhs upto Rs. 50 lakhs	Nil	31.20%	No Change	
Above Rs. 50 lakhs upto Rs. 1 crore	10%	34.32%		
Above Rs. 1 crore upto Rs. 2 crore	15%	35.88%		
Above Rs. 2 crore upto Rs. 5 crore	25%	39.00%		
Above Rs. 5 crore	37%	42.74%		

Note: The effective rate of tax for income upto Rs. 10 lakhs will be as per slabs and also age of the Taxpayer.

f) Rate of tax for Co-operative Societies:

Like individual / HUF, even for Co-operative Societies, an alternate tax calculation regime has been proposed (please refer para 28).

Co-operative Societies are given an option whether to follow old regime or go for new regime. Subject to this, there is no other change in basic limit and/or slab rates for the financial year 2020-21 relevant to assessment year 2021-22.

Total Income	**Income tax**	**Surcharge**	**Health Education cess**	**Proposed Effective Rate**	**Existing effective rate**
	%	**%**	**%**	**%**	**%**
Co-operative Societies not opting for Section 115BAD: (As existing)					
i) For income upto Rs. 10,000/-	10	Nil	4	10.40	10.40
ii) For income exceeding Rs. 10,000/- but not exceeding Rs. 20,000/-	20	Nil	4	20.80	20.80
iii) For income exceeding Rs. 20,000/- but not exceeding Rs. 1 crore	30	Nil	4	31.20	31.20
iv) For income exceeding Rs. 1 crore	30	12	4	34.94	34.94

Resident Co-operative Societies opting for Section 115BAD: (Refer Note below)					
i) For income not exceeding Rs. 1 crore	22	Nil	4	22.88	NA
ii) For income exceeding Rs. 1 crore	22	10	4	25.17	NA

Note: Subject to conditions referred in Section 115BAD of the Bill.

g) **Rate of tax for Firms, LLP, Local authorities continues to be the same. The effective rates for Financial Year 2020-21 (Assessment Year 2021-22) are as under:**

	Income tax %	**Surcharge** %	**Health and Education cess** %	**Proposed Effective Rate** %	**Existing effective rate** %
Firm, LLP and Local authorities:					
For income upto Rs. 1 crore	30	Nil	4	31.20	31.20
For income exceeding Rs. 1 crore	30	12	4	34.94	34.94

h) **Rate of tax for Company - domestic and Company – foreign: The effective rates for Financial Year 2020-21 (Assessment Year 2021-22) are as under:**

Changes have been made by Taxation Laws (Amendment) Act, 2019.

Company – Domestic:					
	Income tax %	**Surcharge** %	**Health and Education cess** %	**Proposed Effective Rate** %	**Existing effective rate** %
i) For Companies incorporated on or after 01.03.2016 subject to conditions by					

Finance Act, 2016 specified u/s 115BA [refer note (A) and (B) below]					
a) For income upto Rs. 1 crore	25	Nil	4	26.00	26.00
b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	25	7	4	27.82	27.82
c) For income exceeding Rs. 10 crore	25	12	4	29.12	29.12
ii) Option of reduced rate of tax on giving up prescribed exemptions / deduction / benefits as per section 115BAA as inserted by Taxation Laws (Amendment) Act, 2019 [refer note (A) and (C) below]	22	10	4	25.168	25.168
iii) Manufacturing company set up and registered on or after 1st October, 2019, as per conditions laid down by Taxation Laws (Amendment) Act, 2019 specified u/s 115BAB [refer note (A) and (D) below]	15	10	4	17.16	17.16
iv) For Companies where total turnover or gross receipts of the **previous year 2017-18 does not exceed Rs. 400 crore**					
a) For income upto Rs. 1 crore	25	Nil	4	N.A.	26

b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	25	7	4	N.A.	27.82
c) For income exceeding Rs. 10 crore	25	12	4	N.A.	29.12
v) For Companies where total turnover or gross receipts of the **previous year 2018-19 does not exceed Rs. 400 crore**					
a) For income upto Rs. 1 crore	25	Nil	4	26	N.A.
b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	25	7	4	27.82	N.A.
c) For income exceeding Rs. 10 crore	25	12	4	29.12	N.A.
vi) Others					
a) For income upto Rs. 1 crore	30	Nil	4	31.20	31.20
b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	30	7	4	33.38	33.38
c) For income exceeding Rs. 10 crore	30	12	4	34.94	34.94

	Income tax **%**	**Surcharge** **%**	**Health and Education cess** **%**	**Proposed Effective Rate** **%**	**Existing effective rate** **%**
Company – Foreign					
For income upto Rs. 1 crore	40	Nil	4	41.60	41.60

For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	40	2	4	42.43	42.43
For income exceeding Rs. 10 crore	40	5	4	43.68	43.68

In case of Firm, LLP, Companies, applicable tax rate will be applied on total income and no slab wise calculation is required to be made.

Company claiming benefit of reduced rates under sections 115BA, 115BAA and 115BAB of the Act has to fulfill following conditions while computing total income

(A) Cannot claim the following deductions (common for all the three sections):

i) Section 10AA - Special provisions in respect of newly established Units in Special Economic Zones
ii) Section 32(1)(iia) – Additional Depreciation
iii) Section 32AD - Investment in new plant or machinery in notified backward areas in certain States
iv) Section 33AB - Tea development account, coffee development account and rubber development account
v) Section 33ABA – Site Restoration Fund
vi) Section 35(1)(ii)/35(1)(iia)/35(1)(iii)/35(2AA)/35(2AB) – Expenditure on Scientific Research
vii) Section 35AD – Deduction in respect of expenditure on specified business
viii) Section 35CCC – Expenditure on Agricultural Extension Project
ix) Section 35CCD - Expenditure on Skill Development Project
x) Chapter VI-A – Part C – Other than provisions of section 80JJA

Depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.

(B) Company claiming benefit of reduced rates under section 115BA of the Act has to fulfill following additional conditions while computing total income:

✓ cannot claim the following deductions:

i. Section 32AC – Investment in new plant and machinery
ii. Section 35AC – Expenditure on eligible projects or schemes

✓ without set off of any loss carried forward from any earlier assessment year, if such loss is attributable to any of the deductions referred to in clause (i);

(C) Company claiming benefit of reduced rates under section 115BAA of the Act has to fulfill following additional conditions while computing total income:

- ✓ cannot claim deduction under any Part of Chapter VI-A other than section 80JJA and 80M
- ✓ without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);
- ✓ without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(D) Company claiming benefit of reduced rates under section 115BAB of the Act has to fulfill following additional conditions while computing total income:

- ✓ cannot claim deduction under any Part of Chapter VI-A other than section 80JJA and 80M
- ✓ without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

Thus, a domestic company has to answer following check list in order to determine applicable rate of tax to it.

Sr. No.	Particulars	Do you comply with this – Yes / No	Basic Rate of Tax
i)	Are you a new manufacturing company set up and register on or after 1st October, 2019 (u/s 115BAB)		15%
ii)	Are you willing to give up all exemptions / deduction / benefits under the tax (u/s 115BAA)		22%
iii)	Whether your gross turnover / receipt for the financial year 2018-19 was upto Rs. 400 crores		25%
iv)	Any other		30%

i) **Rate of MAT / AMT**

The existing MAT of 15% and AMT of 18.5% continues to be same for Financial Year 2020-21. The effective rates under the MAT and AMT for the Financial Year 2020-21 relevant to Assessment Year 2021-22 would be as under:

Particulars	Basic Rate %	Sur-charge %	Cess %	Proposed Effective Rate %	Existing effective rate %
Firm, LLP, Local Authority (AMT)					
For income upto Rs. 1 crore	18.5	Nil	4	19.24	19.24
For income exceeding Rs. 1 crore	18.5	12	4	21.55	21.55
Domestic Company (MAT) not opting for provisions of section 115BAA or 115BAB:					
For income upto Rs. 1 crore	15	Nil	4	15.6	15.6
For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	15	7	4	16.692	16.692
For income exceeding Rs. 10 crore	15	12	4	17.472	17.472
Company – Foreign (MAT)					
For income upto Rs. 1 crore	15	Nil	4	15.6	15.6
For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	15	2	4	15.912	15.912
For income exceeding Rs. 10 crore	15	5	4	16.38	16.38

If the Company is opting for rate of tax u/s 115BAA or 115BAB of the Act, then provisions of MAT are not applicable.

Co-operative Society not opting for provisions of Section 115BAD					
For income upto Rs. 1 crore	18.5	Nil	4	19.24	19.24
For income exceeding Rs. 1 crore	18.5	12	4	21.55	21.55

If the Co-operative Society is opting for rate of tax u/s 115BAD of the Act, then provisions of AMT is not applicable.

Individual, HUF, AOP, BOI, Artificial Juridical Person (AMT) not opting for provisions of section 115BAC					
For income upto Rs. 50 lakhs	18.5	Nil	4	19.24	19.24
Above Rs. 50 Lakhs but upto Rs. 1 crore	18.5	10	4	21.16	21.16
Above Rs. 1 crore but upto Rs. 2 crore	18.5	15	4	22.12	22.12
Above Rs. 2 crore but upto Rs. 5 crore	18.5	25	4	24.05	24.05
Above Rs. 5 crore	18.5	37	4	26.36	26.36

Individual and HUF opting for rate of tax u/s 115BAC of the Act, then provisions of AMT are not applicable.

j) **Rate of Tax Deduction at Source ('TDS'):**

Under the scheme of deduction of tax at source provided in the Act, every person responsible for payment of specified sum to any person is required to deduct tax at source at the prescribed rate and deposit it with the Central Government within specified time. However, no deduction is required to be made if the payments do not exceed prescribed threshold limit.

Below are the sections under which there are amendments proposed or sections which are proposed to be newly inserted:

Particulars	**TDS Rates (in %) (AY 2020-21)**	**TDS Rates (in %) (AY 2021-22)**
Section 194J: Payment for fees for Technical services, Professional services or royalty etc. **(Monetary Limit – Rs. 30,000 p.a.)**		
a) Fee for technical services (not being a professional services)	10	2 (w.e.f. 01/04/2020)
b) Fee in other all cases as per Section 194J **Note:** With effect from 1st June, 2017 the rate of TDS would be 2% in case of payee engaged in business of operation of call center.	10	10
Section 194K: Payment of any income in respect of a) Units of a Mutual Fund as per Section 10(23D) b) Units from the administrator c) Units from specified company **(This Section is inserted by Finance Act, 2020 which is applicable from 01/04/2020)***	N.A.	10
Section 194-O: Applicable for E-Commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform. **(This Section is inserted by Finance Act, 2020 which is applicable from 01/04/2020)**	N.A.	1
Section 194: Dividend	10 **(Monetary Limit – Rs. 2,500)**	10 **(Monetary Limit – Rs 5,000) (w.e.f. 01/04/2020)**

* It is clarified by Press Release dated 4th February, 2020, that under the proposed section, a mutual fund shall be required to deduct TDS at the rate of 10% only on dividend payment and no tax shall be required to be deducted by the mutual fund on income which is in the nature of capital gains.

Also refer Paras 38, 41 and 11 below.

There is no other change in rate of TDS and/or threshold limits.

The surcharge and cess would continue to be payable on payments to the Non-resident tax payers.

In the case of a resident taxpayers including domestic company, no surcharge and cess would be levied on the amount of tax deducted at source. However, surcharge and health and education cess would be applicable on tax deducted at source in the case of salary payments.

Effective Date:
These amendments will take effect from 1st April, 2020.

3. Securities Transaction Tax ('STT'):

There is no change proposed in the rate of STT for the Financial Year 2020-21 relevant to Assessment Year 2021-22.

4. Definition of Business Trust [Sections 2(13A) and 115UA]:

Section 2(13A) of the Act defines "business trust" to mean a trust registered as an Infrastructure Investment Trust (InvITs) under the Securities Exchange Board of India (Infrastructure Investment Trusts) Regulation, 2014 or a Real Estate Investment Trust under the Securities Exchange Board of India (Real Estate Investment Trusts) Regulation, 2014 made under the Securities and Exchange Board of India Act, 1992, whose units are required to be listed on a recognized stock exchange in accordance with the aforesaid regulations.

The definition of the term "business trust" includes requirement of listing on a recognized stock exchange.

Section 115UA of the Act provides for a taxation regime applicable to business trusts. Under the said regime, the total income of the trust, excluding capital gains income is charged at the maximum marginal rate. Further, the income by way of interest and rent, received by the business trust from a Special Purpose Vehicle (SPV) is accorded pass through treatment i.e. there is no taxation of such interest or rental income in the hands of the trust and no withholding tax at the level of SPV. The business trusts are also required to furnish return of income and adhere to other reporting requirements.

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

It is therefore, proposed to amend the definition of business trust so as to omit the long line relating to the requirement of listing of the business trust from recognized stock exchange in accordance with the regulations made by the Securities Exchange Board of India.

Effective Date:
These amendments will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

5. Period of holding and cost in respect of segregated portfolio [Section 2(42A), 49]:

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.

Following amendments are proposed -

5.1) Section 2(42A) of the Act provides definition of the Short Term Capital Asset. The Explanation 1 provides for determination of period of holding of the capital asset by the assessee in a specified situation.

It is proposed to add clause (hh) to the Explanation 1 in definition of Short Term Capital Asset. The newly inserted clause (hh) provides as under:

> "(hh) in the case of a capital asset, being a unit or units in a segregated portfolio referred to in sub-section (2AG) of section 49 of the Act, there shall be included the period for which the original unit or units in the main portfolio were held by the assessee;".

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

5.2) Section 49 of the Act provides for cost of acquisition for the capital asset which became the property of the taxpayer under certain situations.

It is proposed to add two more sub-sections (2AG) and (2AH) to the section.

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

segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios.

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

This is on same principle as in case of calculation of cost of shares in case of issue of shares on demerger.

For definition of the terms "main portfolio", "segregated portfolio" and "total portfolio" reference be made to meaning assigned to them in the circular dated 28th December, 2018 issued by SEBI.

Effective Date:
This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

6. Change in residency test [Section 6]:

Three important amendments are proposed in this section:

6.1) Sub-section (1) of section 6 of the Act provide for situations in which an individual shall be resident in India in a previous year. Two tests have been prescribed -

a) He is in India in the previous year for a period of 182 days or more;
OR
(b) Has been in India for an overall period of 365 days or more within four years preceding that year and is in India for an overall period of 60 days or more in that year.

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

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

The following amendments are proposed:

The exception provided in clause (b) of Explanation 1 of sub-section (1) to section 6 of the Act for visiting India in that year be reduced to 120 days from existing 182

days. *Please note the exception provided in clause (a) in respect of citizen of India, who leaves India any previous year for the purposes of employment outside India, the relaxation of condition of stay in India of 182 days continuous to apply.* The amendment is proposed only in respect of clause (b) which relates to a citizen of India or person of Indian origin who comes on visit to India in any previous year. Also, the first requirement of a person to be in India for a period of 182 days or more remains as it is.

Revenue Secretary has on record stated that between the two tax regimes, none will be worse off.

6.2) Further, Sub-section (6) of the said section provides for situations in which a person shall be "not ordinarily resident" in a previous year. Clause (a) thereof provides that if the person is an individual who has been non-resident in nine out of the ten previous years proceeding that year, or has during the seven previous years proceeding that year been in India for an overall period of 729 days or less. Clause (b) thereof contains similar provision for the HUF.

This category of persons has been carved out essentially to ensure that a non-resident is not suddenly faced with the compliance requirement of a resident, merely because he spends more than specified number of days in India during a particular year.

The following amendments are proposed:

An individual or an HUF shall be said to be "not ordinarily resident" in India in a previous year, if the individual or the manager of the HUF has been a non-resident in India in seven out of ten previous years preceding that year. This new condition will replace the existing conditions in clauses (a) and (b) of sub-section (6) of section 6 of the Act.

The rational given in the Memorandum is that the conditions specified in the present law in respect of this carve out have been the subject matter of disputes, amendments and further disputes. Further, due to reduction in number of days, as proposed, for visiting Indian citizen or person of Indian origin, there would be need for relaxation in the conditions.

6.3) Another important amendment proposed is in respect of residency of stateless person.

The issue of stateless persons has been bothering the Government for quite some time. It is possible for an individual to arrange his affairs in such a fashion that he is not liable to tax in any country or jurisdiction during a year. This arrangement is typically employed by high net worth individuals to avoid paying taxes to any country/ jurisdiction on income they earn. Tax laws should not encourage a situation where a person is not liable to tax in any country. Such a circumstance is certainly not desirable, particularly in the light of current development in the global tax environment where avenues for double non-taxation are being systematically closed.

It is, therefore, proposed to insert clause (1A) in said section after clause (1) thereof so as to provide that notwithstanding anything contained in that sub-section, an

individual, being a citizen of India, shall be deemed to be resident in India in any previous year, if he 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.

It is clarified by the Press Release dated 2nd February, 2020 that -

> "The new provision is not intended to include in tax net those Indian citizens who are bonafide workers in other countries. In some section of the media the new provision is being interpreted to create an impression that those Indians who are bonafide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India on the income that they have earned there. This interpretation is not correct.
>
> In order to avoid any misinterpretation, it is clarified that in case of an Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession. Necessary clarification, if required, shall be incorporated in the relevant provision of the law."

Effective Date:
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.

7. Income deemed to accrue or arise in India and Power to make Rules [Sections 9 and 295]:

The proposed amendments under section 9 of the Act are divided in four broad sub-heads and also a supplementary amendment is proposed in section 295 of the Act:

7.1) **Deferring Significant Economic Presence (SEP) proposal [Section 9]:**

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

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

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

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

(a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

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

Therefore, for the purposes of determining SEP of a non-resident in India, threshold for the aggregate amount of payments arising from the specified transactions and for the number of users were required to be prescribed in the Rules.

However, since discussion on this issue is still going on in G20-OECD BEPS project, these numbers have not been notified yet. G20-OECD report is expected by the end of December 2020. In the circumstances, it is proposed to defer the applicability of SEP to starting from assessment year 2022-23. Certain drafting changes have also been made while deferring the proposal.

Effective Date:
The current SEP provisions shall be omitted from assessment year 2021-22 and the new provisions will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

7.2) **Extending source rule [Section 9]:**
Further, as per the discussion going on in international forum, countries generally agree that income from advertisement that targets Indian customers or income from sale of data collected from India or income from sale of goods and services using such data collected from India, needs to be accounted for in Indian revenue . Hence, it is proposed to amend the source rule to clarify this position.

It is proposed to insert a new Explanation 3A so as to declare that the income attributable to operations carried out in India, as referred to in Explanation 1 of clause (i) of sub-section (1) of said section, shall include income from—

(i) such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;

(ii) sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India; and

(iii) sale of goods and services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.

It is also proposed to insert a proviso to Explanation 3A to provide that the provisions of the said Explanation shall also apply to the income attributable to the transactions or activities referred to in Explanation 2A.

Effective Date:
This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years. The proviso to Explanation 3A will apply from 1st April 2022 and will, accordingly, apply in relation to the assessment year 2022-23.

7.3) **Aligning exemption from taxability of Foreign Portfolio Investors (FPIs), on account of indirect transfer of assets, with amended scheme of SEBI [Section 9]:**
The Finance Act, 2012, inter alia, had inserted Explanation 5 to said clause to clarify that an asset or capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. Second proviso to said Explanation, inserted through the Finance Act, 2017, provides that the Explanation shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 [SEBI (FPI) Regulations, 2014].

Vide Gazette Notification No. SEBI/LAD-NRO/GN/2019/36, SEBI has notified Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [SEBI (FPI) Regulations, 2019] and repealed the SEBI (FPI) Regulations, 2014. The difference between these two regulations pertinent in the present context is that the SEBI has done away with the broad basing criteria for the purposes of categorization of portfolios and has reduced the categories from three to two. In view of the same, necessary modification needs to be made in the proviso so inserted.

Hence, it is proposed that the exception from said Explanation 5 provided to an asset or a capital asset, held by a non-resident by way of investment in erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014 may be grandfathered. Further, similar exception may be provided in respect of investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.

It is proposed to amend the said proviso so as to provide that the exemption provided therein shall continue to apply to such investments prior to repeal of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.

It is further proposed to insert a third proviso to the said Explanation so as to provide that provisions contained therein shall not apply to an asset or a capital asset, held by a non-resident by way of investment, directly or indirectly, in Category-I foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, made under the Securities and Exchange Board of India Act, 1992.

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

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

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

Effective Date:
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.

The proposed amendment will overrule the decision of Hon'ble Income Tax Appellate Tribunal, Mumbai in the case of ADIT v. Warner Brother Pictures Inc (TMum) (ITA No. 3160/Mum/2010), wherein Hon'ble Tribunal held that consideration received by non-resident assessee from Indian company, for granting exclusive rights of distribution of cinematographic films, not taxable as royalty u/s 9(1)(vi) or Article 12(2) of Indo-US DTAA; Consideration not taxable as business income either, in absence of a PE in India.

7.5) **Power of Board to make rules [Section 295]:**
Sub-section (1) provides that the Central Board of Direct Taxes may, subject to the control of the Central Government, by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes the Act. Sub-section (2) of said section enumerates the matters for which the rules made under sub-section (1) may provide for. Clause (b) of said sub-section (2) provides the matter, which the rules made by the Board may provide, to be the manner in which and the procedure by which the income shall be arrived at in certain cases.

It is proposed to amend said clause (b) by way of insertion of following two sub-clauses to provide for the manner in which and the procedure by which the income shall be arrived at in the case of,-

(iia) operations carried out in India by a non-resident; and

(iib) transaction or activities of a non-resident.

Effective Date:
The amendment at clause (iia) will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. The amendment at clause (iib) will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

8. Modification in conditions for offshore funds' exemption from "business connection"[Section 9A]:

Section 9A of the Act provides for a special regime in respect of offshore funds by providing them exemption from creating a "business connection" in India on fulfilment of certain conditions. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. The benefit under section 9A of the Act is available subject to the conditions as provided in sub-sections (3), (4) and (5) thereof. Sub-section (3) of section 9A of the Act provides the conditions for eligibility of the fund.

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

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

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

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

(i) for the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during first three years up to twenty-five crore rupees shall not be accounted for; and

(ii) if the fund has been established or incorporated in the previous year, the condition of monthly average of the corpus of the fund to be at one hundred crore rupees shall be fulfilled within twelve months from the last day of the month of its establishment or incorporation.

Effective Date:
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.

9. Amendment proposed in the case of charitable trusts, institution and funds, university, hospital etc [Sections 10(23C), 10(46), 11, 12, 12A, 12AA, 12AB, 80G and other sections]:

Section 11 of the Act provides for grant of exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act. Similarly, Sub clause (iv), (v), (vi) and (via) of clause (23C) of section 10 of the Act contains provisions related to registration of other trusts, funds, institutions, university or other educational institutions, hospitals, etc.

The existing as well as a new charitable trust/institution needs one or more of the following registration under the Act:

- Section 12A (organizations registered prior to 1996)
- Section 12AA
- Section 10(23C)
- Section 80G

Once a charitable institution is registered under any of the aforesaid sections, such an approval/registration remains valid perpetually till the prescribed income tax authority granting such approval/registration cancels the same.

Following amendments are proposed-

9.1) The process of registration is proposed to be substantially changed. All existing charitable trusts/institutions are also required to obtain re-registration / approval under the Act.

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

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

It is therefore proposed that fresh application needs to be made after passing of the bill within the specified time.

Sr. No.	**Scenario**	**Time Limit for making application**	**Time limit for passing order granting/rejecting application by CIT/PCIT**	**Period of approval**
1	Charitable Institutions that are already registered under pre-amended provisions of Sections 12A/12AA	Three months from the date on which this amendment comes into force	Three months from the end of the month in which application for approval was received	Five years
2	Charitable Institutions that are registered under new Section 12AB	Six months prior to the expiry of the registration	Six months from the end of the month in which application for approval was received	Five years
3	Charitable Institutions applying for fresh registration	One month prior to the previous year relevant to the assessment year from which approval is sought	One month from the end of the month in which application for approval was received	Three years provisional approval beginning with assessment year following the financial year in which application was made.

4	Charitable Institutions granted provisional approval would be required to apply for final approval	Six months prior to expiry of approval or commencement of activities, whichever is earlier	Six months from the end of the month in which application for approval was received	Five years, beginning with the assessment year from which provisional approval was granted
5	Adoption / Modifications of the objects not conforming to the conditions of registration	Within thirty days from date of said adoption or modification	Six months from the end of the month in which application for approval was received	Five years

The new section 12AB is proposed to be inserted which deals with procedure for fresh registration. It is proposed that –

a) In case of existing charitable trusts / institutions holding registration u/s 12A/12AA of the Act, an order in writing granting it approval for a period of five years shall be passed by the Authority. Although it is not specifically stated but an inference can be drawn that in such cases the first registration for five years will be granted without any further enquiry.

b) In case of other trusts, the authority may call for such documents or information from it or make such inquiries as he thinks necessary in order to satisfy himself about, the genuineness of activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution and the compliance of such requirements of any other law for the time being in force by it as are material for the purpose of achieving its object; and after satisfying himself about the objects and the genuineness of its activities, pass an order in writing, granting its approval for a period of five years;

   If he is not so satisfied, pass an order in writing, rejecting such application and also cancelling its approval after affording it a reasonable opportunity of being heard.

c) In case of first application for registration for a new charitable trusts / institutions pass an order in writing granting it approval provisionally for a period of three years from the assessment year from which the registration is sought.

d) In case of an existing registered trust, at the time of renewal for next five years the procedure as per clause (b) above will be followed.

The implications of the above amendments are as under:

i) The Government will create a national register of all the charitable and religious institutions. Currently the registration is issued and recorded locally.

ii) The Income Tax Department shall issue an Unique Identification Number to all the charitable and religious institutions.

iii) The exercise of revalidation of all the charitable institutions will enable the Government to weed out all the inactive and defunct charitable institutions as well as those who are not performing genuine activities.

iv) The renewal of both 12A and 12AA, every five years, will provide an opportunity to withdraw the exemptions without going through the complicated cancellation provisions.

v) It may be noted that an organization can be denied renewal even for violations under other laws as may be deemed material for the purpose of achieving its objectives.

Also, procedure has been laid down for renewal of approval u/s 80G of the Act. The re-approvals will be valid for a period of 5 years and thereafter approval for 80G has to be again applied for at least 6 months prior to the validity period.

Effective Date:
These amendments will take effect from 1st June, 2020.

An Alert for existing registered Trust:
If the existing registered trust misses to make application within the prescribed time and makes application after that, then it will loose exemption for the financial year 2020-21 and fresh exemption will be granted from financial year 21-22. This belated application may be treated as fresh application and it may have to undergo stricter scrutiny as provided in the proposed procedure.

Please ensure that Application under new procedure is made immediately on passing of the Bill.

9.2) **Only one registration will be valid – 12A / 12AA or 10(23C) and 10(46):**
An organization cannot simultaneously enjoy exemptions under two provisions. By amendment in Section 11 it is clarified that if the benefit of approval u/s.12A/12AA is opted for, then the other approval if any i.e. under section 1023(C)/10(46) shall becomes inoperative and vice-versa. Hence only one approval is effective at a time. It may be noted all organization should apply for re-validation of either or 12A/12AA or 10(23C)/10(46), otherwise if multiple application for re-validation are made then the 12A/12AA registration will become inoperative.

Following two provisos are proposed to be inserted in section 11(7) of the Act:

- Proviso to Section 11(7) of the Act to provide that the registration under section 12AA or 12A or 12AB of the Act shall become inoperative if the

entity obtains approval under section 10(23C) or section 10(46) of the Act or the date on which the proviso comes into force, whichever is earlier. The proviso has been inserted with a view to ensure that even in those cases where registration under section 12AA or 12A remains in force, only one mode of exemption is available to the entity.

- It has been further proposed to insert second proviso to Section 11(7) of the Act to provide that entities claiming exemption under section 10(23C) or section 10(46) of the Act may apply to get their registration operative in the future under section 12AB of the Act by filing an application. In order to ensure that switching is not allowed more than once, it is further proposed that approval under section 10(23C) or section 10(46) of the Act shall cease to have effect from date of the registration becoming operative.

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

Charitable trusts / institutions take donations from various donees. At present, there is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum. With the advancement in technology, it is now feasible to standardize the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the taxpayer. This standardization may be similar to the provisions relating to the tax collection/ deduction at source, which already exist in the Act. Therefore, the entities receiving donation/ sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed on that basis only.

Accordingly, amendments have been proposed u/s 35 of the Act, 80G of the Act and 80GGA of the Act.

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"जिंदगी के साथ भी, जिंदगी के बाद भी"

On a serious note, one pair of your eyes after your life, can give light to two lives and lifetime happiness to all those to whom they relate.
A sincere request, don't burn your precious eyes, Please Donate.

9.4) In order to ensure proper filing of the statement, levy of a fee is provided in cases where there is failure to furnish the statement. A new section 234G is proposed to be inserted for levy of a fee of Rs. 200/- per day during which the failure continuous. It also provides that the amount of the fee will not exceed the amount in respect of which the failure referred therein has occurred. The fee has to be paid before filing of the Statement.

9.5) Similarly, a new section 271K is proposed to levy penalty for failure to furnish statement. The penalty proposed is Rs. 10,000/- to Rs. 1,00,000/-.

9.6) Similar to section 80G of the Act, deduction of cash donation under section 80GGA of the Act shall be restricted to Rs 2,000/- only.

9.7) It is also proposed that audit report u/s 12A(b) of the Act be filed one month prior to filing of the due date of return of income of the charitable trusts / institutions.

Effective Date:
The amendment will take effect from 1st June, 2020.

10. Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund [Section 10(23FE)]:

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

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

In order to be eligible for exemption, the investment is required to be made on or before 31st March, 2024 and is required to be held for at least three years.

Effective Date:
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.

11. Removing dividend distribution tax (DDT) and moving to classical system of taxing dividend in the hands of shareholders/unit holders [Sections 10(34), 10(35), 115-O, 115-R, 194, 194K and host of other sections]:

Currently, the Company declaring dividend is paying Dividend Distribution Tax (DDT) under Section 115-O of the Act. The income received by the shareholders is exempt in their hands subject to section 115BBDA of the Act. Section 115BBDA of the Act provides that, if the dividend income received by a shareholder (other than the company and trusts) is more than 10 lakhs a year, the shareholder will pay tax at the rate of 10% plus applicable surcharge and cess on the amount of dividend received in excess of Rs. 10 lakhs. The effective rate of DDT is 20.56%.

Similarly under section 115R of the Act, specified companies and Mutual Funds are liable to pay additional income-tax at the specified rate on any amount of income

distributed by them to its unit holders. Such income is then exempt in the hands of unit holders under clause (35) of section 10 of the Act. Unlike section 115BBDA (in the case of dividend from the Company) no additional tax is payable by the unit holder on dividend income received from the Mutual Fund irrespective of any amount.

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

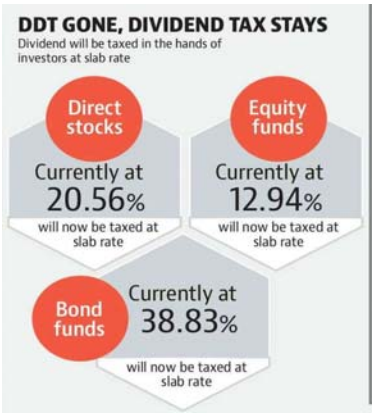
In view of above, it is proposed to carry out amendments so that dividend or income from units are taxable in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT. It is also proposed to provide that the deduction for expense under section 57 of the Act shall be maximum 20 per cent of the dividend or income from units. Therefore, it is proposed to amend section 115-O, 115-R, 10(34), 10(35), 115BBDA and host of other sections wherein there is reference of either of these sections-

(i) amend section 115-O of the Act to provide sunset clause by providing that dividend declared, distributed or paid after 1st April, 2003, but on or before 31st March, 2020 shall only be covered under the provision of this section.

(ii) amend clause (34) of section 10 of the Act to provide that the provision of this clause shall not apply to any income, by way of dividend, received on or after 1st April, 2020.

(iii) amend section 115R of the Act to provide that the income distributed on or before 31st March, 2020 shall only be covered under the provision of this section.

(iv) amend clause (35) of section 10 of the Act to provide that the provision of this clause shall not apply to any income, in respect of units, received on or after 1st April, 2020.



(v) amend clause (23FC) of section 10 of the Act so that all dividends received or receivable by business trust from a special purpose vehicle is exempt income under this clause.

(vi) amend clause (23FD) of section 10 of the Act to exclude dividend income received by a unit holder from business trust from the exemption so that the dividend income is taxable in the hand of unit holder of the business trust.

(vii) amend sub-section (3) of section 115UA of the Act to delete reference to sub-clause (a) so that distributed income of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act shall be deemed to be income of the unit holder and shall be charged to tax as income of the previous year. Thus dividend income distributed by a special purpose vehicle to business trust would be taxed in the hands of unit holder.

(viii) remove reference of section 115-O of the Act dividend income in various sections like section 57, section 115A, section 115AC, section 115ACA, section 115AD and section 115C of the Act.

(ix) remove the opening line of clause (23D) of section 10 of the Act, as mutual fund no longer required to pay additional tax.

(x) insert new section 80M of the Act as it existed before its removal by the Finance Act, 2003 to remove the cascading affect, with a change that set off will be allowed only for dividend distributed by the company one month prior to the due date of filing of return, in place of due date of filing return earlier.

(xi) amend section 115BBDA of the Act which taxes dividend income in excess of ten lakh rupee in the hands of shareholder at ten percent, to only dividend declared, distributed or paid by a domestic company on or before the 31st day of March, 2020.

(xii) amend section 57 of the Act to provide that no deduction shall be allowed from dividend income, or income in respect of units of mutual fund or specified company, other than deduction on account of interest expense and in any previous year such deduction shall not exceed twenty percent of the dividend income or income from units included in the total income for that year without deduction under section 57 of the Act.

(xiii) amend section 194 of the Act to include dividend for tax deduction. At the same time the rates of ten percent is proposed to be prescribed and threshold is proposed to be increased from Rs 2,500/- to Rs 5,000/- for dividend paid other than cash. Further, at present the mode of payment is given as “an account payee cheque or warrant”. It is proposed to change this to ‘any mode’.

(xiv) amend section 194LBA to provide for tax deduction by business trust on dividend income paid to unit holder, at the rate of ten percent for resident. For non-resident, it would be 5 per cent for interest and ten percent for dividend.

(xv) insert a new section 194K to provide that any person responsible for paying to a resident any income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or units from the administrator of the specified undertaking or units from the specified company shall at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax there on at the rate of ten percent It may also be provided for threshold limit of Rs 5,000/- so that income below this amount does not suffer tax deduction. It is also proposed to define "Administrator", "specified company", as already defined in clause (35) of section 10 of the Act. It is also proposed to define "specified undertaking" as in clause (i) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. It is also proposed to provide that where any income is credited to any account like suspense account, in the books of account of the person liable to pay such income, the liability for tax deduction under this section would arise at that time.

(xvi) amend section 195 to delete exemption provided to dividend referred to in section 115-O.

(xvii) amend section 196A to revive its applicability on TDS on income in respect of units of a Mutual Fund. It is also proposed to substitute "of the Unit Trust of India" with "from the specified company defined in Explanation to clause (35) of section 10"and "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

(xviii) amend section 196C to remove exclusion provided to dividend under section 115-O. It is also proposed to substitute "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

(xix) amend section 196D to remove exclusion provided to dividend under section 115-O. It is also proposed to substitute "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

Effective Date:
Amendments at clause (i) to (xii) above will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. Amendments at clause (xiii) to (xix) will take effect from 1st April, 2020.

We will now deliberate on some of the proposed amendments as discussed above:

A) These amendments will definitely help the taxpayer in lower tax brackets as earlier regime they were mandatorily paying tax at the effective rate of 20% which otherwise they would not have been liable to pay on their current income. This will also help corporate and Mutual Fund to maintain their networth and cash flow. The non-resident investor is mainly benefited by this as now they will get credit for the tax withheld under the Act on this dividend income. Earlier, they were not getting credit for dividend distribution tax from the tax payable in the resident country.

Hon'ble Finance Minister in her budget speech has said -

> "Further, non-availability of credit of DDT to most of the foreign investors in their home country results in reduction of rate of return on equity capital for them. In order to increase the attractiveness of the Indian Equity Market and to provide relief to a large class of investors, I propose to remove the DDT and adopt the classical system of dividend taxation under which the companies would not be required to pay DDT. The dividend shall be taxed only in the hands of the recipients at their applicable rate."
>
> "This is another bold move which will further make India an attractive destination for investment."

On the other hand super rich will be adversely affected. A super rich person having income more than Rs. 5 crore has to pay surcharge at the rate of 37%. The surcharge is payable on tax amount. In current tax scheme, 20% tax was paid by the company and he was paying only 10% of tax u/s 115BBDA of the Act and that to on dividend income in excess of Rs. 10 lakhs. Thus, on the dividend income of first Rs. 10 lakh there was no tax payable by the super rich. The surcharge of 37% was on only 10% component and not on 20% which was paid by the Company as DDT. Now he will be required to pay surcharge of 37% on entire 30% of the tax. Let us consider following example:

For example,

A super rich person having income other than dividend of Rs 600 lacs. At different level of dividend the tax on dividend income at pre amendment position and post amendment will be as under:-

(Amount in Lacs)

Particulars	**Dividend 20 Lacs**		**Dividend 50 Lacs**		**Dividend 100 Lacs**	
	Pre	**Post**	**Pre**	**Post**	**Pre**	**Post**
Dividend Income:	20.00	20.00	50.00	50.00	100.00	100.00
DDT@ 20.56%	4.11	-	10.28	-	20.56	-
Income tax @ 14.25% (10%+37%+4%) (exceeding Rs. 10 lacs)	1.43		5.70		12.83	
Total	5.54		15.98		33.39	
Income tax @ 42.74% (30%+37%+4%)		8.55		21.37		42.74
Effective Rate of tax on dividend	27.68%	42.74%	31.96%	42.74%	33.39%	42.74%

As the amount of dividend increases, the gap between effective rate pre and post amendment reduces but in any case the substantial gap remains.

B) It is proposed that against the dividend income only interest will be allowed as a deduction and this deduction of interest is also restricted to 20% of the dividend income. No other expenses will be allowed. Even the direct expenses such as, demat expenses, transaction expenses, etc. will not be allowable. The point is when it was matter of calculation of disallowance u/s 14A of the Act, originally, the following expenses were considered from A.Y. 2008-09:

a) All expenses which were direct in nature, including direct interest;
b) Common interest on proportionate basis;
c) Estimated expenses out of administrative and other expenses (0.5% of average investment);

From A.Y. 2017-18, the disallowance was revised, to be computed considering –

a) All expenses which were direct in nature, including direct interest;
b) Estimated expenses including interest and out of administrative and other expenses (1% of monthly average investment);

Now when it comes to allowance of expenses, it is restricted to only interest and that to upto 20% of dividend income. This is great hardship. No doubt, the future litigation u/s 14A on this issue will come to an end but it is going to lead to another round of litigation for allowance / disallowance of expenses u/s 57 and/or 36 and 37 of the Act. It is also not clear whether, interest referred to in proposed allowance of expenses under section 57 is only direct nexus interest or even proportionate common interest is claimable.

If shares on which dividend is received are held as stock-in-trade, can the taxpayer claim interest expense u/s 36(1)(iii) of the Act which falls under the scheme of Profits and Gains of Business or Profession? The restriction of 20% is sought to be provided u/s 57 of the Act but no such proposal is made for section 36 of the Act.

Please note when there is no dividend received in a year, no interest expenses and/or other expenses will be allowed as deduction in that year.

C) A welcome provision is reintroduction of section 80M of the Act. The proposed section 80M of the Act provides deduction in respect of inter corporate dividends as under:

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

Sub-section (2) of the said section provides that where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under

sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

It is further proposed to clarify the expression "due date" to mean the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139 of the Act.

Now as per proposal dividend will be taxed in the hands of shareholders. When a subsidiary declares dividend, the receiving holding company will pay tax on such income and then, when holding company declares dividend to its shareholders, the share holders will again pay the tax. To reduce this cascading effect, section 80M of the Act is proposed. It was exiting earlier also when dividend was taxable in the hands of receiver.

For example,

i) Company A hold shares in Company B;

ii) Company B declares dividend of INR 100 in financial year 2020-21;

iii) Company A declares dividend of INR 110 / INR 80 on 30th June, 2021 (before 30th September, 2021 i.e. one month prior to the due date of filing return of income);

iv) In computation of income of Company A, it will be entitled to deduction under proposed section 80M of the Act as under:

Amount of Dividend Received from Company B and included in total income	INR 100	INR 100
Less: Deduction u/s 80M		
(equal to / lesser than the amount of dividend received from Company B)		
Dividend declared INR 110 / INR 80; deduction restricted to	INR 100	INR 80
Dividend income included in Total Income	NIL	INR 20

The shareholder of Company A will pay tax on dividend received from Company A during the financial year 2021-22 relevant to A.Y. 2022-23.

This is to save cascading effect of paying tax twice by the shareholder. This will help in non-levy of double tax in case of inter company holding.

Please note-

- Deduction u/s 80M of the Act will not be available on dividend received on units of Mutual Funds.

- Dividend income will be credited to profit and loss account, therefore, it will be subject to MAT u/s 115JB even if deduction u/s 80M is claimed.

- Deduction u/s 80M is not applicable in respect of dividend received from a foreign company.

D) In the recent past, many promoters have engaged in the exercise of succession planning and have moved their shareholding into a discretionary trust. With the proposed amendment, now the dividend income will be taxed in the hands of such Trust at maximum marginal rate, which is as high as 42%. There will be a need to review the shareholding structure and a re-evaluation as to whether a corporate holding structure, LLP or a trust is the more appropriate vehicle.

E) Dividends received by foreign shareholders would be subject to applicable treaty rates and, therefore, potentially they would be much better off. However, the applicability of tax treaty would depend on the new provisions which do not permit benefits in the case of treaty shopping.

Further the lower tax under Tax Treaty are usually available to beneficial owner of the income. Thus the question of beneficial ownership of dividend income will become more significant and may result into some litigation.

F) Because of very high rate of tax on dividend income, the super rich investors may choose to shift to mutual fund with growth option. This will give them capital gains instead of dividend. On the other hand the small income investors who shifted to growth because of high DDT rate may now go for dividend option. One needs to study and decide.

G) Consequential changes have been made in TDS provisions. Dividend will now be subject to TDS. Please refer Para 2(j) above.

12. Exemption in respect of certain income of Indian Strategic Petroleum Reserves Limited [Section 10(48C)]:

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

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

Effective Date:
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.

13. Tax treatment of employer's contribution to recognized provident funds, superannuation funds and national pension scheme exceeding prescribed limit [Section 17]:

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

Therefore, it is proposed to provide a combined upper limit of seven lakh and fifty thousand rupee in respect of employer's contribution in a year to NPS, superannuation fund and recognised provident fund and any excess contribution is proposed to be taxable. Consequently, it is also proposed that any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme may be treated as perquisite to the extent it relates to the employer's contribution which is included in total income.

Effective Date:
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.

14. Providing an option to the tax payer for not availing deduction in respect of specified business [Section 35AD]:

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

Therefore, it is proposed to amend sub-section (1) of section 35AD of the Act to make the deduction there under optional. It is further proposed to amend sub-section (4) of

section 35AD of the Act to provide that no deduction will be allowed in respect of expenditure incurred under sub-section (1) in any other section in any previous year or under this section in any other previous year, if the deduction has been claimed by the taxpayer and allowed to him under this section.

Effective Date:
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.

15. Recognized Stock Exchange [Section 43]:

Section 43 of Act deals with definitions of certain terms relevant to compute income from profits and gains of business or profession.

It is proposed to amend clause (5) of the said section so as to substitute the words "recognized stock exchange" for the words "recognized association" wherever they occur. It is also proposed to substitute clause (iii) in Explanation 2 of the said clause relating to definition of the expression "recognized stock exchange".

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

16. Special provision for full value of consideration in certain cases [Section 43CA, 50C and 56(2)(x)]:

Where the consideration declared to be received or accruing as a result of the transfer of land or building or both, (capital asset) is less than the value adopted or assessed or assessable by stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration and capital gains shall be computed on the basis of such consideration under section 48 of the Act. This section was amended with effect from AY 2019-20 to further provide that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48 of the Act, be deemed to be the full value of the consideration.

Section 50C of the Act deals with cases where the asset is a capital asset and section 43CA of the Act deals with such cases when the asset is other than capital asset i.e. business asset. The taxing provisions and safe harbour provision of 5 percent are similar in both the sections.

Clause (x) of sub-section (2) of section 56 of the Act, inter alia, provides that where any person receives, in any previous year, from any person or persons on or after 1st April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "income from other sources". This section was amended with effect

from AY 2019-20 to also provide that where the taxpayer receives any immovable property for a consideration and the stamp duty value of such property exceeds five per cent of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "Income from other sources".

The Hon'ble Finance Minister in her budget speech has said that –

> "Currently, while taxing income from capital gains, business profits and other sources in respect of transactions in real estate, if the consideration value is less than circle rate by more than 5 percent, the difference is counted as income both in the hands of the purchaser and seller. In order to minimize hardship in real estate transaction and provide relief to the sector, I propose to increase the limit of 5% to 10%."

Accordingly, it is proposed to increase the safe harbour of 5 percent provided in all the three sections to 10 percent of the consideration value. If the difference between circle rate and transaction value exceeds safe harbour of 10%, it will continue to be taxed in the hands of both – seller [under section 43CA/50C of the Act] and purchase [under section 56(2)(x) of the Act].

Effective Date:
This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Similar view has been taken by the Hon'ble Income Tax Appellate Tribunal, Mumbai in the case of John Fowler India Pvt Ltd. v. DCIT (TMum) (ITA No. 7545/Mum/2014). The Hon'ble Tribunal deleted the addition made u/s. 50C, ruled that since the difference between valuation adopted by Stamp Valuation Authority and declared by assesse was less than 10%, AO must adopt the valuation of sale consideration as declared by the assessee. Thus the decision of the Hon'ble Mumbai Tribunal is confirmed by the amendment made to section 43CA, 50C and 56(2)(x) of the Act. Similar decisions have been passed by other Benches of Hon'ble Appellate Tribunal.

17. Audit of accounts of certain persons carrying on business or profession [Section 44AB]:

Following amendments are proposed in this section and consequently changes have been made in host of sections, details of which are discussed hereinafter.

17.1) Section 44AB of the Act deals with audit of accounts of certain cases carrying on business or profession.

Clause (a) of the said section provides that every person carrying on business shall get his accounts of any previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be

prescribed if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year.

It is proposed to increase the threshold limit for audit of a person carrying on business from one crore rupees to five crore rupees in cases where,-

(i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and

(ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

(Both the conditions are cumulative)

It is stated that the amendments are proposed to reduce compliance burden on small retailers, traders, shopkeepers who comprise the MSME sector and also to boost less cash economy.

This amendment was overdue. The provisions of tax audit was introduced in 1984 with a threshold of Rs. 40 lakhs, which was increased to Rs. 60 lakhs and then Rs. 100 lakhs by Finance Act, 2012. As compared to threshold of Rs. 40 lakhs in 1984, the prevailing threshold of Rs. 100 lakhs is too low and it is a welcome proposal as it will be beneficial to small time traders. Such small businesses does not have a full fledge infrastructure for maintaining proper accounting and documentation and it leads to increase in unnecessary cost on them.

One more step in this direction needs to be taken. Under the different statute threshold for audit is different. Say for example, under GST Law the threshold for audit is Rs. 200 lakhs, under LLP Act it is Rs. 40 lakhs, etc. It is better that the threshold for audit is made one under all the statutes. A small time trader though may not liable for audit under the Income Tax Act, may still be liable for audit under GST Law and/or LLP Law and, therefore, he is not fully relieved from compliance burden.

No amendments have been proposed in threshold limit in respect of Tax Audit for professionals and also in respect of presumptive tax under sections 44AD, 44ADA, 44AE, 44BB and 44BBB of the Act.

17.2) Clause (ii) of the Explanation to the said section defines the expression “specified date” in relation to the accounts of the taxpayer of the previous year relevant to an assessment year as due date for furnishing the return of income under sub-section (1) of section 139 of the Act.

It is also proposed to amend the Clause (ii) of the Explanation to provide that the specified date will mean one month prior to the due date for furnishing the return of income under sub-section (1) of section 139 of the Act. Thus, the requirement of filing tax audit report one month prior to due date will not only apply to tax audit of the business, it will also apply to tax audit in respect of professionals and also preemptive tax referred to in 44AD, 44ADA, 44AE, 44BB and 44BBB of the Act. The preponement of filing the audit report one month prior to due date also applies to audits prescribed under other sections of the Act. The amendments have been

proposed in the respective sections for the same, for which please refer the table below.

The specified date is proposed to be preponed by one month to enable pre-filing of the returns in case of such persons having income from business or profession.

The tax payer and the professionals now need to sit together to make the compliance chart, considering due date of filing return of income (refer Para 31), due date of filing of audit report, generation of UDIN and in case of corporate entities due date for audit under Companies Act.

Under following sections it is proposed to file audit report one month prior to due date of filing of the return:

Sr. No.	Section	Particulars
i)	10(23C)	Related to exemption in respect of trust covered under this section.
ii)	10A	Special provision in respect of newly established undertaking in free trade zone, etc.
iii)	12A(b)	Trust Audit Report in Form 10B
iv)	32AB	Investment Deposit Account
v)	33AB	Tea Development Account, Coffee Development Account and Rubber Development Account
vi)	33ABA	Site Restoration Fund
vii)	35D	Amortization of Preliminary Expenses
viii)	35E	Relating to deductions for expenditure on prospecting etc of certain minerals.
ix)	44DA	Special provision for computing income by way of royalties, etc. in case of non-resident
x)	50B	Special provision for computation of Capital Gains in case of slump sale.
xi)	80-IA	Deduction in respect of profit and gains from industrial undertaking or enterprises engaged in infrastructure development.
xii)	80-IB	Deduction in respect of Profit and gains from certain industrial undertakings other than infrastructure development undertakings.
xiii)	80JJAA	Deduction in respect of employment of new employees.
xiv)	92F	Specified date for filing Transfer Pricing Report
xv)	115JB	Provision for payment of tax under MAT
xvi)	115JC	Provision for payment of tax under AMT
xvii)	115VW	Maintenance and Audit of Accounts under Tonnage Tax Scheme

Effective Date:
This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years. Please

note this is effective for ongoing financial year relevant to assessment year 2020-21 accordingly will apply to audit reports for the year ending March 2020.

Points for consideration:

- Section 43B of the Act provides deduction for certain expenses on payment basis. Section provides for allowance of an expense referred to therein if it is paid on or before the due date of filing the return of income. The details of such expenses - allowable and disallowable are given in Tax Audit Report. Now as per proposed amendment, tax audit report has to be prepared and efiled one month before the due date of filing of the return of income and therefore, it will capture only the details of payments made upto date of filing of the tax audit report (upto 30th September of the assessment year). What will happen to the payments made between the period of efiling of the tax audit report and filing of the return of income (31st October of the assessment year). To that extent it will show mismatch and more and more queries will be raised in under 143(1) of the Act proceeding.

- An interesting point has come out. It seems it is just missed and a clarification is expected soon. Section 44AD deals with presumptive taxation and is applicable to cases where the gross turnover / gross receipt is upto Rs. 2 crores. The Tax Audit is now proposed at gross turnover / receipt of Rs. 5 crore. What provision will apply for taxpayers having gross turnover / receipt between Rs. 2 crores to Rs. 5 crores. As of now neither presumptive tax applies nor tax audit.

18. Provision relating to carry forward and set-off of accumulated loss and unabsorbed depreciation allowance in scheme of amalgamation of banking company in certain cases [Section 72AA]:

Originally, section 72AA of the Act has been inserted with effect from the assessment year 2005-06 to provide for carry forward and set off of accumulated business loss and unabsorbed depreciation allowance of a banking company against the profits of a banking institution under a scheme of amalgamation sanctioned by the Central Government.

Section 72AA of the Act provided that if the following conditions are satisfied, viz,

There is an amalgamation of a "banking company" with any other "banking institution". Banking company for this purpose means a company which transacts the business of banking in India. A banking institution for this purpose means any banking company and includes State Bank of India or a schedule bank;

The amalgamation is sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act, 1949;

The accumulated business loss and unabsorbed depreciation of the amalgamating banking company shall be deemed to be the business loss or the allowance for

depreciation of the banking institution for the previous year in which the scheme of amalgamation is brought into force.

The amendment is proposed to enlarge its scope and address issue faced by amalgamated public sector banks and public sector General Insurance Companies.

It is proposed to substitute new section 72AA with enlarged scope. The proposed new section also deals with and provides for similar treatment of accumulated loss and unabsorbed depreciation for following entities:

(i) one or more banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949; or

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

(iii) one or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government under section 16 of the General Insurance Business (Nationalization) Act, 1972,

It provides that in case of amalgamation of above entities the accumulated loss and the unabsorbed depreciation of such banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company (insurance company) or companies shall be deemed to be the loss or, as the case may be, allowance for depreciation of such banking institution or amalgamated corresponding new bank or amalgamated Government company for the previous year in which the scheme of amalgamation was brought into force and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

The various terms are defined in Explanation to the above section as under –

(a) “corresponding new bank” shall have the meaning assigned to it in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or, as the case may be, clause (b) of section (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;

(b) “general insurance business” shall have the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalization) Act, 1972;

(c) “Government company” means a Government company as defined in clause (45) of section 2 of the Companies Act, 2013, which is engaged in the general insurance business and which has come into existence by operation of section

4 or section 5 or section 16 of the General Insurance Business (Nationalization) Act, 1972;

The terms "accumulated loss", "banking company", "banking institution" and unabsorbed depreciation" are defined on similar lines as in the exiting section 72 AA.

Effective Date
This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

19. Extending time limit for sanctioning of loan for affordable housing for availing deduction [Section 80EEA]:

The existing provisions of section 80EEA of the Act provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. The deduction allowed is up to one lakh fifty thousand rupees and is subject to certain conditions. One of the conditions is that loan has been sanctioned by the financial institution during the period from 1st April, 2019 to 31st March, 2020.

In order to continue promoting purchase of affordable housing, the period of sanctioning of loan by financial institution is proposed to be extended to 31st March, 2021.

Effective Date:
This amendment will take effect from the 1st day of April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

20. Provisions for Start-ups [Section 80-IAC]:

Two amendments are proposed in this section.

The existing provisions of section 80-IAC of the Act provide for a deduction of an amount equal to one hundred per cent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of seven years, at the option of the taxpayer, subject to the condition that the eligible start-up is incorporated on or after 1st April, 2016 but before 1st April, 2021 and the total turnover of its business does not exceed twenty-five crore rupees.

In order to further ease the availing of deduction by start-ups, it is proposed to amend section 80-IAC of the Act so as to provide that-

(i) the deduction under the said section 80-IAC of the Act 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 it is incorporated;

(ii) the deduction under the said section shall be available to an eligible start-up, if the total turnover of its business does not exceed one hundred crore rupees in any of the previous years beginning from the year in which it is incorporated.

Effective Date:
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.

21. Extending time limit for approval of affordable housing project for availing deduction [Section 80-IBA]:

The existing provisions of section 80-IBA of the Act, inter alia, provide that where the gross total income of an taxpayer includes any profits and gains derived from the business of developing and building affordable housing projects, there shall, subject to certain conditions specified therein, be allowed a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business. The conditions contained in the section, inter alia, prescribe that the project is approved by the competent authority during the period from 1st June, 2016 to 31st March, 2020.

The date of approval by the competent authority is proposed to be extended to 31st day of March, 2021.

Effective Date:
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.

22. Aligning purpose of entering into DTAA with Multilateral Instrument (MLI) [Sections 90 and 90A]:

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

(a) granting relief in respect of —

(i) income on which tax has been paid both, in India and that foreign country or territory, or

(ii) income-tax chargeable under the laws of both, India and that foreign country or territory, to promote mutual economic relations, trade and investment.

(b) avoidance of double taxation of income under the laws of both, India and that foreign country or territory,

(c) exchange of information for prevention of evasion or avoidance of income-tax chargeable under the laws of both India and that foreign country or territory, or investigation of cases of such evasion or avoidance, or

(d) recovery of income-tax under the laws of both India and that foreign country or territory.

Section 90A of the Act contains provision similar to section 90 of the Act so as to empower the Central Government to adopt and implement an agreement between a specified association in India and any specified association in specified territory outside India for granting relief, avoidance of double taxation, exchange of information and recovery of income-tax.

India has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (commonly referred to as MLI) along with representatives of many countries, which has since been ratified. India has since deposited the Instrument of Ratification to OECD, Paris along with its Final Position in terms of Covered Tax Agreements (CTAs), Reservations, Options and Notifications under the MLI, as a result of which MLI has entered into force for India on 1st October, 2019 and its provisions will be applicable on India's DTAAs from FY 2020-21 onwards.

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

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

> "Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions),"

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

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

without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of any other country or territory).

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

Effective Date:
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.

23. Amendment for providing attribution of profit to Permanent Establishment in Safe Harbour Rules and in Advance Pricing Agreement [Sections 92CB and 92CC]:

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

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

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

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

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

Effective Date:
With respect to section 92CB of the Act, the amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

With respect to section 92CC of the Act, the amendment will take effect from 1st April, 2020 and therefore will apply to an APA entered into on or after 1st April, 2020.

Attribution of profits to a permanent establishment of a foreign enterprise is a complex topic and results in disputes. Extension of advance pricing agreement (APA) regime and Safe Harbour Rules to it would lead to more certainty to foreign companies.

Earlier, only foreign companies (except transfer pricing cases) could approach the DRP. Now option of DRP has been extended to all non-residents as well as a foreign company.

24. Excluding interest paid or payable to Permanent Establishment of a non-resident Bank for the purpose of disallowance of interest [Section 94B]:

Section 94B of the Act, inter alia, provides that deductible interest or similar expenses exceeding one crore rupees of an Indian company, or a permanent establishment (PE) of a foreign company, paid to the associated enterprises (AE) shall be restricted to 30 percent of its earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to AE, whichever is less. Further, a loan is deemed to be from an AE, if an AE provides implicit or explicit guarantee in respect of that loan. AE for the purposes of this section has the meaning assigned to it in section 92A of the Act. This section was inserted in the Act through the Finance Act, 2017 in order to implement the measures recommended in final report on Action Plan 4 of the Base Erosion and Profit Shifting (BEPS) project under the aegis of G-20-Organisation of Economic Co-operation and Development (OECD) countries to address the issue of base erosion and profit shifting by way of excess interest deductions.

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

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

Effective Date:
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.

25. Exempting non-resident from filing of Income-tax return in certain conditions [Section 115A]:

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

(a) certain dividend or interest income;

(b) royalty or fees for technical services (FTS) received from the Government or Indian concern in pursuance of an agreement made after 31st March 1976, and which is not effectively connected with a PE, if any, of the non-resident in India.

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

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

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

(i) his or its total income consists of only dividend or interest income as referred to in clause (a) of sub-section (1) of said section, or royalty or FTS income of the nature specified in clause (b) of sub-section (1) of section 115A of the Act; and

(ii) the TDS on such income has been deducted under the provisions of Chapter XVII-B of the Act at the rates which are not lower than the prescribed rates under sub-section (1) of section 115A of the Act.

Effective Date:
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.

Does this mean, if tax is deducted at lower rate or NIL rate considering the articles of DTAA, the exemption from filing return of income will not be available to the Non-Resident? The answer seems to be “yes”. In such cases, the Non-Resident is expected to file return of income, so that Assessing Officer can examine applicability of DTAA and the rate mention therein.

26. Modification of concessional tax schemes for domestic companies [Sections 115BAA and 115BAB]:

Taxation Law (Amendment) Act, 2019 (TLAA) inserted section 115BAA and section 115BAB in the Act to provide domestic companies an option to be taxed at concessional tax rates provided they do not avail specified deductions and incentives. Some of the deductions prohibited are 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 of the Act. Following Amendments are now proposed.

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

26.2) Section 115BAB of the Act provides that new manufacturing domestic companies set up on or after 1st October, 2019, which commence manufacturing or production by 31st March, 2023 and do not avail of any specified incentives or deductions, may opt to pay tax at a concessional rate of 15 percent.

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

Thus, it is proposed to include generation of electricity as manufacturing and, therefore eligible for concessional rate of tax.

Effective Date
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.

27. Incentives to Individual and HUF [Sections 115BAC, 115JC and 115JD]:

Concessional rate of tax has been provided for Corporates and proposed for co-operative societies. Some benefits are also proposed for non-residents.

So, something is now proposed for individuals and HUFs, (How far it is beneficial, we will analyze little later but firstly let us understand the proposal). A new section 115BAC is proposed to be inserted.

This new regime is available to all taxpayers irrespective of their level of income. It is available from A.Y. 2021-22. If one is having business income then, option once selected can be changed only once thereafter and once the option is withdrawn, the taxpayer can never opt for this concessional regime again till he/she ceases to receive

the business income. In all other cases decision of whether or not to opt for the concessional regime can be taken year on year.

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

Total Income (Rs.)	Rate
Upto 2,50,000/-	Nil
From 2,50,001/- to 5,00,000/-	5%
From 5,00,001/- to 7,50,000/-	10%
From 7,50,001/- to 10,00,000/-	15%
From 10,00,001/- to 12,50,000/-	20%
From 12,50,001/- to 15,00,000/-	25%
Above 15,00,000/-	30%

The applicable surcharge and cess will be added on the same.

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

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

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

(a) without any exemption or deduction;

(b) without set off of any loss,-

(i) carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (a) above; or

(ii) under the head house property with any other head of income;

(c) by claiming the depreciation, if any, under section 32 of the Act, except clause (iia) of sub-section (1) thereof, determined in such manner as may be prescribed; and

(d) without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.

(v) the loss and depreciation referred to in (ii)(b) above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year so however, that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1st April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2020 in the prescribed manner, if the option is exercised for a previous year relevant to the assessment year beginning on 1st April, 2021;

(vi) the concessional rate shall not apply unless option is exercised by the individual or HUF in the form and manner as may be prescribed,-

(a) where such individual or HUF has no business income, along with the return of income to be furnished under sub-section (1) of section 139 of the Act; and

(b) in any other case, on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the return of income for any previous year relevant to the assessment year commencing on or after 1st April, 2021 and such option once exercised shall apply to subsequent assessment years;

(vii) if the individual or HUF has a Unit in the International Financial Services Centre [clause (zc) of section 2 of the Special Economic Zones Act, 2005], as referred to in sub-section (1A) of section 80LA, the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that section; and

(viii) the option can be withdrawn only once where it was exercised by the individual or HUF having business income for a previous year other than the year in which it was exercised and thereafter, the individual or HUF shall never be eligible to exercise option under this section, except where such individual or HUF ceases to have any business income in which case, option under para (vi)(a) above shall be available.

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

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

While exemption from AMT for Individuals opting to be taxed under section 115BAC is a welcome move, the accumulated AMT credit which may not be utilized by them may become an important factor in deciding whether the option to be taxed under section 115BAC shall be exercised or not.

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

(i) Leave travel concession as contained in clause (5) of section 10;

(ii) House rent allowance as contained in clause (13A) of section 10;

(iii) Some of the allowance as contained in clause (14) of section 10;

(iv) Allowances to MPs/MLAs as contained in clause (17) of section 10;

(v) Allowance for income of minor as contained in clause (32) of section 10;

(vi) Exemption for SEZ unit contained in section 10AA;

(vii) Standard deduction, deduction for entertainment allowance and employment/professional tax as contained in section 16;

(viii) Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23.
(Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);

(ix) Additional deprecation under clause (iia) of sub-section (1) of section 32;

(x) Deductions under section 33AB, 33ABA and 32AD,;

(xi) Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;

(xii) Deduction under section 35AD or section 35CCC;

(xiii) Deduction from family pension under clause (iia) of section 57;

(xiv) Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub-section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme) and section 80JJAA (for new employment) can be claimed.

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

(a) Transport Allowance granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty

(b) Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office;

(c) Any Allowance granted to meet the cost of travel on tour or on transfer;

(d) Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.

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

The above allowable allowances are not prescribed under the statute but are given in the Memorandum. Thus, it can safely be assume that a clarification/amendment in the rule will be brought out soon.

Effective Date:
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.

The benefit proposed is not very large. However, it may be beneficial to some and may not be beneficial to others. A lot has been said whether the new regime is beneficial or not. Newspaper, media and whatsapp massages are full of examples and comments on this.

We have also tried to do some exercise and our conclusion is as under:

There are two main parameters which determine whether tax under new regime is better or under old regime is better:
(a) Level of Total Income and
(b) Amount of Deductions

It is submitted that –
- When Income is low, Old Regime is better
- As deductions increases, Old Regime is better

(Table below helps us to understand this proposition)

(Rs. in lacs)

Gross Total Income	Deductions	Total Income under Old Regime	Total Income under New Regime	Total Tax under Old Regime	Total Tax under New Regime	Old / New Regime, which is better
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	
7.50	1.50	6.00	7.50	0.34	0.39	Old
10.00	1.50	8.50	10.00	0.86	0.78	New
40.00	1.50	38.50	40.00	10.06	9.75	New
75.00	1.50	73.50	75.00	23.08	22.74	New
7.50	4.00	3.50	7.50	0	0.39	Old
10.00	4.00	6.00	10.00	0.34	0.78	Old
40.00	4.00	36.00	40.00	9.28	9.75	Old
75.00	4.00	71.00	75.00	22.22	22.74	Old

This expects a Taxpayer to work his/her tax liability under both the options year-on-year and decide which is better. It is little complex exercise but good for professionals and in couple of weeks software will come which will do the calculation.

YOUR TAX LIABILITY UNDER THE NEW SYSTEM

Tax saving is more in the old system if one utilises all deductions, but the new system leaves more cash in hand

For people under 60 (with ₹1.5 lakh deductions)

Gross salary	Deductions	Tax under old regime	Tax under new regime	Savings
750000	150000	33800	39000	-5200
1000000	150000	85800	78000	7800
1500000	150000	226200	195000	31200
2000000	150000	382200	351000	31200
2500000	150000	538200	507000	31200
3000000	150000	694200	663000	31200

For senior citizens (above 60 years of age)

Gross salary	Deductions	Tax under old regime	Tax under new regime	Savings
750000	300000	0	39000	-39000
1000000	300000	52000	78000	-26000
1500000	300000	176800	195000	-18200
2000000	300000	332800	351000	-18200
2500000	300000	488800	507000	-18200
3000000	300000	644800	663000	-18200

For people under 60 (with ₹3lakh deductions)

Gross salary	Deductions	Tax under old regime	Tax under new regime	Savings
750000	300000	0	39000	-39000
1000000	300000	54600	78000	-23400
1500000	300000	179400	195000	-15600
2000000	300000	335400	351000	-15600
2500000	300000	491400	507000	-15600
3000000	300000	647400	663000	-15600

For very senior citizens (above 80 years of age)

Gross salary	Deductions	Tax under old regime	Tax under new regime	Savings
750000	300000	0	39000	-39000
1000000	300000	41600	78000	-36400
1500000	300000	166400	195000	-28600
2000000	300000	322400	351000	-28600
2500000	300000	478400	507000	-28600
3000000	300000	634400	663000	-28600

In today's scenario which class of person will not have insurance or other modes of savings for tax purposes. This will be mainly the person who have retired and now

not eligible for insurance and may be cash flow does not permit it. The saving in some tax outflow may not necessarily increase in consumption but result in saving as the retired people are more about taking care of their expenses in case of contingency.

Be it so, the Chairman of CBDT Mr. Mody has categorically said that

> "Further, this option (of switching) is available to you on a year-on-year basis – that's a very interesting proposition."
>
> "If I feel availing a certain deduction this particular year, my old set-up is better, I opt for that. But if a new regime offers me a better rate, I can opt for it."

It is stated that the tax department is developing an app to facilitate Taxpayers to make such calculation.

28. Incentives to resident co-operative societies [Section 115BAD]:

Taxation Laws (Amendment) Act, 2019 (TLAA), introduced section 115BAA in the Act so as to provide that an existing domestic company may opt to pay tax at 22 percent, if it does not claim any incentive and deduction as provided in said section.

It was also provided that such company shall not be subjected to Minimum Alternate Tax (MAT) under section 115JB of the Act and that, the carry forward and set off of MAT credit, if any, under section 115JAA of the Act would not be allowed.

Representations have been received from the stakeholders requesting to provide for concessional rate of tax in case of resident co-operative society on similar lines. In view of the above, it is proposed to insert a new section 115BAD in the Act to provide that,-

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

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

(a) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or under any provisions of Chapter VI-A;

(b) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (a) above; and

(c) by claiming the depreciation, if any, under section 32, except clause (iia) of sub-section (1) thereof, determined in such manner as may be prescribed;

(iii) the loss and depreciation referred to in (ii)(b) above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year. However, where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1st April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2020 in the prescribed manner, if the option is exercised for a previous year relevant to the assessment year beginning on 1st April, 2021;

(iv) the concessional rate shall not apply unless option is exercised by the co-operative society in the prescribed manner on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after 1st April, 2021 and such option once exercised shall apply to subsequent assessment years;

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

(vi) the option so exercised cannot be withdrawn;

(vii) The surcharge applicable to such co-operative society shall be levied at 10 percent.

It is further proposed to amend section 115JC of the Act so as to provide that the provisions relating to Alternate Minimum Tax (AMT) shall not apply to such co-operative society.

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

Effective Date:
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.

29. Insertion of Taxpayer's Charter in the Act [Section 119A]:

The Hon'ble Finance Minister in budget speech has emphasized on creating a trust between taxpayer and tax administration. To quote -

> "Any tax system requires trust between taxpayers and the administration. This will be possible only when taxpayer's rights are clearly enumerated. Towards this end, and with the objective of enhancing the efficiency of the delivery system of the Income Tax Department, I propose to amend the provisions of the Income Tax Act to mandate the Central Board of Direct Taxes (CBDT) to adopt a Taxpayers' Charter. The details of the contents of the charter shall be notified soon."

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

Effective Date:
This amendment will take effect from 1st April, 2020.
In an interview post budget the Hon'ble Finance Minister has stated that -

> **"What is the rationale for the tax charter?**
> Only three countries have it, US, Canada and Australia. Ultimately, it gives a sense of confidence to a taxpayer. Some of the things which will be part of the charter are something she can seek for comfort. (Anything) being done is as per protocol. Anyone's personal whims and fancies don't govern it and at the end of the day, when a (tax) matter gets closed, it gets closed completely."

The Chairman of CBDT Mr. Mody in another interview has stated as under:

> "**Q 5. Taxpayers' rights will now be within the statute. How will this work, seeing the tax department sometimes faces charges of high-handedness?**
>
> Taxpayers' rights were always there in the form of a citizens' charter, but that was more of an administrative mechanism. It has now been given statutory recognition and, by virtue of being recognised in the statute, (has more) enforceability. This should give a psychological boost to the taxpayer — that I am entitled to certain standards, certain timeframes and it is the responsibility of the tax administration to deliver it within that time. It's a big step forward. We are one of the few nations to do it.
>
> As for the charge of being highhanded, there may have been cases in the past but now, with all the electronic submission of queries or raising of queries, I'm sure it will be a thing of the past. We have had a faceless assessment, which is not only randomised, but also automated and team-based. Whatever objectivity we could try and instil in this system, we have attempted, and that is the way forward."

Let us wait for the Tax Charter to be notified.

30. Providing check on survey operations [Section 133A]:

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

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

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

(B) in any other case, no income-tax authority below the rank of Commissioner or Director, shall conduct any survey under the said section without prior approval of the Commissioner or the Director, as the case may be.

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

31. Due date for filing Return of Income [Section 139(1)]:

Clause (a) of Explanation (2) of sub-section (1) of the Section 139 of the Act provides for due date of furnishing of return of income for certain persons (assessee required to carry on audit under an Income Tax Act or any other Act) and working partner of the specified firm as the 30th day of September of the assessment year.

It is proposed to amend this due date as under:

a) The due date for 30th September is amended to 31st October every year.

b) For all the partners of the firm whose accounts are required to be audited under the Income Tax Act or under any other law, would be 31st October.

Thus, for all the audit returns the due date for filing is now 31st October and not 30th September. Similarly, for all the partners (working as well as non-working) of the firm whose accounts are required to be audited, the due date for filing return of income is 31st October and not 30th September.

There is no change in other due dates of filing return of income. This proposed amendment should be read along with amendment in section 44AB of the Act whereby all the audit reports are required to be filed one month before the due date of filing of return of income i.e., 30th September in most of the cases.

Once the accounts are audited and audit reports are finalized, it may not take much time to fill up the ITR and file the return unless CBDT is thinking of changing the ITR materially and asking for too many particulars other than what is reported in tax audit and other reports. Please refer para 17 above.

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

The due dates for filing return of income is as under:

Company	**Due date for filing audit report and return of income under current law**	**Proposed due date for filing return**	**Proposed due date for filing audit report**
1) Where the company is required to furnish a Transfer Pricing report in Form 3CEB under section 92E pertaining to international transactions and specified domestic transactions.	30th November	30th November	31st October
2) Any other company	30th September	31st October	30th September
Other than Company			
1) Accounts required to be audited under any law – LLP Act, Public Trust Act, Tax Audit under Income Tax Act, etc.	30th September	31st October	30th September
2) Where taxpayer is a working partner in a firm whose accounts are required to be audited under any law and she/he is getting remuneration from the firm.	30th September	31st October	N.A.
3) Where the taxpayer is non-working partner in a firm whose accounts are required to be audited under any law and she/he is getting remuneration from the firm.	31st July	31st October	N.A.
4) In any other cases	31st July	31st July	N.A.

32. Verification of the return of income [Section 140]:

Section 140 of the Act provides that in case of company the return is required to be verified by the Managing Director (MD) thereof. Where the MD is not able to verify for any unavoidable reason or where there is no MD, any director of the company can

verify the return. It is also provided that in case of a company in whose case application for insolvency resolution process has been admitted by the Adjudicating Authority (AA) under the Insolvency and Bankruptcy Code, 2016 (IBC), the return has to be verified by the insolvency professional appointed by such AA. Similarly, in case of a Limited Liability Partnership (LLP), the return has to be verified by the designated partner of the LLP or by any partner, in case there is no such designated partner.

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

Effective Date:
These amendments will take effect from 1st April, 2020.

33. Deferring Tax Deduction or tax payment in respect of income pertaining to Employee Stock Option Plan (ESOP) of start-ups [Section 140A, 156, 191 and 192]:

ESOPs have been a significant component of the compensation for the employees of start-ups, as it allows the founders and start-ups to employ highly talented employees at a relatively low salary amount with balance being made up via ESOPs. Currently ESOPs are taxed as perquisites under section 17(2) of the Act read with Rule 3(8)(iii) of the Rules. The taxation of ESOPs is split into two components:

i) Tax on perquisite as income from salary at the time of exercise.

ii) Tax on income from capital gain at the time of sale.

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

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

(i) after the expiry of forty eight months from the end of the relevant assessment year (i.e. 5 years from end of relevant Previous Year); or

(ii) from the date of the sale of such specified security or sweat equity share by the taxpayer; or

(iii) from the date on which the taxpayer ceasing to be the employee of the person;

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

There is no amendment in Section 17 of the Act. Thus, the liability crystallises on exercise of the stock option only but the payment of tax is proposed to be postponed to ease out cash flow.

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

Effective Date:
These amendments will take effect from 1st April, 2020.

34. Modification of e-assessment scheme (Faceless Assessment) [Section 143]:

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

Sub-section (3A) of section 143 of the Act provides that the Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the taxpayer under sub-section (3) of section 143 of the Act so as to impart greater efficiency, transparency and accountability by certain means specified therein. Accordingly, E-assessment Scheme, 2019 was notified under sub-section (3A) of Section 143 of the Act. In sub-section (3B) it is stated that no direction will be issued after 31st March, 2020.


Face Less Assessment

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

(i) expand the scope so as to include the reference of section 144 of the Act relating to best judgment assessment in the said sub-section;

(ii) provide that Central Government may issue any direction under sub-section (3B) of the said section upto 31st March, 2022.

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

35. Reference to Dispute Resolution Panel (DRP) [Section 144C]:

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

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

(A) include cases, where the AO proposes to make any variation which is prejudicial to the interest of the taxpayer, within the ambit of section 144C of the Act;

(B) expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.

Thus, the proposed position would be as under:

In the case of an taxpayer who is	Particulars
Resident	Where there is transfer pricing adjustment
Non-Resident (including foreign company)	For any variation which is prejudicial to him/it.

Effective Date:

This amendment will take effect from 1st April, 2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.

It will be interesting to study the following decisions of the Income Tax Appellate Tribunal on the subject:

a) **Mausmi SA Investments LLC v. ACIT (TMum) (ITA No. 7026/Mum/2018)**

Mumbai Tribunal quashed AO's assessment order invoking Sec.144C during AY 2014-15 absent any variation in the income or loss returned, which is prejudicial to the interests of the assessee. Further, Tribunal noted that in the instant case the AO did not change the interest income returned by the assessee, therefore, there was no variation of income returned. Tribunal had rejected Revenue's contention that the expression “variation in the income or loss returned which is prejudicial to the interest of such assessee” used in Sec.144C(1) shall include the variation in tax also. This decision has now been overruled by the amendment to section 144C of the Act.

b) **Mosbacher India LLC v. ADIT (TChennai) (ITA No 1085/Chny/2015)**
Chennai Tribunal had held DRP route is inapplicable absent income variation and that change in tax rate was irrelevant. Tribunal upheld AO's action of directly issuing the assessment order u/s 143(3) without issuing a draft assessment order u/s 144C despite assesse being an 'eligible assessee' (i.e. a foreign company) u/s 144C as no variation vis-a-vis income returned by the assessee was proposed by the AO. This decision has now been overruled by the amendment to section 144C of the Act.

c) **Maquet Holdings B.V. & Co. KG v. DCIT (TMum) (ITA No 2572/Mum/2017)**
Mumbai Tribunal held foreign LLP as not "eligible assessee" u/s 144C(15)(b), allowed assessee's additional ground. Tribunal found that assessee [limited liability partnership incorporated in Germany] cannot be termed as an "eligible assessee" u/s 144C(15)(b) and therefore quashed draft & final assessment order passed by AO for AY 2013-14. This decision has now been overruled by the amendment to definition of eligible assessee u/s.144C(15) of the Act.

d) **Mitsui Marubeni Corporation v. DDIT (TDel) (ITA No 5658/Del/2010)**
Delhi Tribunal had held AOP of Japanese MNCs not 'foreign company' and hence, doesn't qualify as 'eligible assessee' u/s 144C(15). Tribunal had quashed draft as well as final assessment order passed by AO for AY 2007-08 in case of Mitsui Marubeni ('assessee', an AOP), not being 'eligible assessee' as defined u/s. 144C(15). This decision has now been overruled by the amendment to definition of eligible assessee u/s.144C(15) of the Act.

36. Tax deduction on interest income by co-operative society [Section 194A]:

Section 194A of the Act governs interest other than interest on securities. Sub-section (1) thereof provides that any person not being individual or HUF who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall deduct income-tax at the rates in force.

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

In order to extend the scope of this section to interest paid by large co-operative society, it is proposed to amend sub-section (3) and insert proviso to provide that a co-

operative society referred to in clause (v) or clause (viia) 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.

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

37. Amending definition of "work" [Section 194C]:

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

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

Therefore, to bring clarity in the section and plug the leakage, it is proposed to amend the definition of "work" under section 194C of the Act to provide that in a contract manufacturing, the raw material provided by the taxpayer or its associate shall fall within the purview of the 'work' under section 194C of the Act. 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 taxpayer under the provisions contained in clause (b) of sub-section (2) of section 40A of the Act.

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

The proposed amendment is supported by the decision of Hon'ble Karnataka High Court in the case of CIT v. Nova Nordisk Pharma India Ltd. (Kar HC) (341 ITR 451). The Hon'ble Karnataka High Court held that payment by Nova Nordisk Pharma India to Torrent India for manufacturing on exclusive basis based on raw material provided

by Group company attracts TDS u/s 194C; Transaction in the nature of works contract and not contract for sale; HC considered real nature of transaction based on conjoint reading of interlinked agreements between parties and held that CBDT circular No. 681 dated 8.3.1994 was not applicable. This decision has now been confirmed by the amendment to the definition of "work" u/s. 194C of the Act. However, the decision of the Hon'ble Karnataka High Court had been set aside by the Hon'ble Supreme Court for rehearing as the assessee had not been heard in the Original appeal before the Hon'ble Karnataka High Court.

38. Reducing the rate of TDS on fees for technical services (other than professional services) [Section 194J]:

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

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

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

Therefore to reduce litigation, it is proposed to reduce rate for TDS in section 194J of the Act 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 of the Act would remain same at ten percent.

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

39. TDS on interest to a non-resident by a specified company or business trust [Section 194LC]:

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

i) Monies borrowed under a loan agreement at any time on or after 1st July, 2012 and before 1st July, 2020;

ii) Borrowings by way of issue of any long-term infrastructure bond at any time on or after 1st July, 2012 and before 1st July, 2014;

iii) Borrowings by way of issue of long-term bond including long-term infrastructure bonds at any time on or after 1st of October 2014 and before 1st July, 2020;

The concessional rate of TDS of five per cent is also applicable in respect of monies borrowed by a specified company or a business trust from a source outside India by way of issue of rupee denominated bond (RDB) before 1st July, 2020, to the extent such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf. Representations have been received for extension of the time limit and also for a further concessional rate of TDS on interest payment against borrowings through issues of long-term bonds and RDB which are listed only on a recognized stock exchange in any IFSC.

In order to attract fresh foreign investment, it is proposed to; -

i) extend the period of said concessional rate of TDS of five per cent to 1st July, 2023 from 1st July, 2020;

ii) provide that the rate of TDS shall be four per cent on the interest payable to a non-resident, in respect of monies borrowed in foreign currency from a source outside India, by way of issue of any long term bond or RDB on or after 1st April, 2020 but before 1st July, 2023 and which is listed only on a recognised stock exchange located in any IFSC.

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

40. Interest on certain bonds and government securities [Section 194LD]:

Section 194LD of the Act provides for lower TDS of five per cent in case of interest payments to Foreign Institutional Investors (FII) and Qualified Foreign Investors (QFIs) on their investment in Government securities and RDB of an Indian company subject to the condition that the rate of interest does not exceed the rate notified by the Central Government in this regard. The section further provides that the interest should be payable at any time on or after 1st June, 2013 but before 1st July, 2020.

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

In order to attract fresh foreign investment, it has been proposed to amend section 194LD to-

(i) extend the period of rate of TDS of five per cent under the said section to 1st July, 2023 from the existing 1st July, 2020;

(ii) provide that the concessional rate of TDS of five per cent 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.

Effective Date:

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

41. Widening the scope of TDS on E-commerce transactions through insertion of a new section [Sections 194-O, 197 and 206AA]:

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 percent with the following key points:

- The TDS is to be paid by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;

- E-commerce operator is required to deduct tax at the time of credit of amount of sale or service or both to the account of e-commerce participant or at the time of payment thereof to such participant by any mode, whichever is earlier.

- The tax at one per cent is required to be deducted on the gross amount of such sales or service or both.

- Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant shall be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sales or services for the purpose of deduction of income-tax.

- The sum credited or paid to an e-commerce participant (being an individual or HUF) by the e-commerce operator shall not be subjected to provision of this section, if the gross amount of sales or services or both of such individual or HUF, through e-commerce operator, during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number (PAN) or Aadhaar number to the e-commerce operator.

- A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to deduction under the exemption discussed in the previous bullet, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Act. This is to provide clarity so that same transaction is not subjected to TDS more than once. However, it has been clarified that this exemption will not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in

connection with the sale of goods or services referred to in sub-section (1) of the proposed section.

- "e-commerce operator" is defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is a person responsible for paying to e-commerce participant.

- "e-commerce participant" is defined to mean a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.

- "electronic commerce" is defined to mean the supply of goods or services or both, including digital products, over digital or electronic network.

- "services" is defined to include fees for technical services and fees for professional services, as defined in section 194J of the Act.

- Consequential amendments are being proposed in section 197 of the Act (for lower TDS), in section 204 of the Act (to define person responsible for paying any sum) and in section 206AA of the Act (to provide for tax deduction at 5 percent in non-PAN/ Aadhaar cases).

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

42. Replacing Form 26AS with new Annual Financial Statement [Sections 203AA and 285BB]:

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

The Form 26AS as prescribed in the Rules, contains the information about tax collected or deducted at source. However, with the advancement in technology and enhancement in the capacity of system, multiple information in respect of a person such as sale/purchase of immovable property, share transactions etc. are being captured or proposed to be captured. In future, it is envisaged that in order to facilitate compliance, this information will be provided to the taxpayer by uploading the same in the registered account of the taxpayer on the designated portal of the Income-tax Department, so that the same can be used by the taxpayer for filing of the return of income and calculating his correct tax liability.

As the mandate of Form 26AS would be required to be extended beyond the information about tax deducted, it is proposed to introduce a new section 285BB in the Act regarding annual financial statement. This section proposes to mandate the prescribed income-tax authority or the person authorised by such authority to upload in the registered account of the taxpayer 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.

The registered account is defined in the Explanation to proposed section 285BB of the Act as under:

> "For the purposes of this section, "registered account" means the electronic filing account registered by the assessee in designated portal, that is, the web portal designated as such by the prescribed income-tax authority or the person authorized by such authority."

On insertion of proposed new section 285BB, the existing section 203AA is proposed to be deleted.

The position regarding verification of TDS from Form 26AS, reconciliation of TDS and income, was getting settled over the period and now it is proposed to be changed to new form of information. This will again require facing of teething issues and also learning and working on new information on registered account.

This new Annual Financial Statement is outcome of successful working of E-Platform developed by tax department name as "Project Insight". This will provide 360 degree profile of each Taxpayer.

One thing is sure, henceforth no taxpayer need to feel lonely anytime. Whether your family, relative and friends are with you are not, rest assured, Tax Department is constantly watching you.

Effective Date:
These amendments will take effect from 1st June, 2020.

43. Meaning of "Person responsible for paying" [Section 204]:

Section 204 of the Act defines "person responsible for paying".

It is proposed to insert a new clause in the said section so as to provide that in the 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 of the Act shall also be included within the meaning of the definition of the expression "person responsible for paying" under the said section.

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

44. TCS on foreign remittance through Liberalised Remittance Scheme (LRS) and on selling of overseas tour package as well as TCS on sale of goods over a limit [Section 206C]:

Section 206C of the Act provides for the collection of tax at source (TCS) on business of trading in alcohol, liquor, forest produce, scrap etc. Sub-section (1) of the said

section, provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of certain goods, a sum equal to specified percentage, of such amount as income-tax.

In order to widen and deepen the tax net, it is proposed to amend section 206C of the Act 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 seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of five per cent. In non-PAN/Aadhaar cases the rate shall be ten percent [Section 206C(1G)(a) of the Act].

- 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 the rate of five per cent. In non-PAN/ Aadhaar cases the rate shall be ten percent [Section 206C(1G)(b) of the Act].

- The above TCS provision shall not apply if the buyer is,-

    a) liable to deduct tax at source under any other provision of the Act and he has deducted such amount.

    b) the Central Government, a State Government , an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified in that notification.

- "authorised dealer" is proposed to be defined to mean a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security.

- "Overseas tour program package" is proposed to be defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.

Further, in order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on sale of any goods above specified limit, as under [Section 206C(1H)]:

- A seller of goods is liable to collect TCS at the rate of 0.1 per cent on consideration received from a buyer in a previous year in excess of fifty lakh rupees. In non-PAN/ Aadhaar cases the rate shall be one percent.

- Only those seller whose total sales, gross receipts or turnover from the business carried on by it exceed ten crore rupees during the financial year immediately preceding the financial year, shall be liable to collect such TCS.
- Central Government may notify person, subject to conditions contained in such notification, who shall not be liable to collect such TCS.

- No TCS is to be collected from the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification.

- No such TCS is to be collected, if the seller is liable to collect TCS under other provision of section 206C or the buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.

It is also proposed to amend the first proviso to subsection (6A) of the said section so as to provide that any person who is responsible for collecting tax in accordance with the provisions of sub-section (1) and sub-section (1C), fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee, shall not be deemed to be an assessee in default in respect of such tax, if such buyer or licensee or lessee has furnished his return of income under section 139 and has taken into account such amount for computing income in such return of income and the person has paid the tax due on the income declared by him in such return of income and the person has furnished a certificate to this effect from an accountant in such form as provided by rules.

Effective Date:
These amendments will take effect from 1st April, 2020.

Please note the amount of TCS will be allowed as a credit in the return of the Taxpayer.

The proposed two items have no element of income, so whether levy of TCS is justified:

This section refers to sum received by an authorised dealer from a buyer (taxpayer) for remittance out of India. However, under the LRS Scheme an individual is allowed to remit funds outside India for any purpose. There is no clarification in this regard whether all types of remittances will be covered or only those towards purchase of goods. If remittances for other than purchase are covered, it may not involve any element of income. Thus can collection be made for transfer of money from one

account to the other? Another issue will be in which year the credit towards the TCS will be received?

In answer to a question Chairman of CBDT Mr. Mody has said that

> "**Q 6. Some have criticised tax collected at source on transfers under liberalised remittance...**
> In certain areas, concerns have been expressed that remittances are out of tax-paid money. But, empirical evidence in many cases shows otherwise — where remittances made do not match the returns profile of the taxpayer. With TCS, there would be some sort of a link between the two. It's just TDS, not tax paid on tax-paid money. It is just withholding of tax and adjustable against final liability. I don't think there's any cause for concern."

45. Provision for e-appeal and e-penalty [Sections 250 and 274]:

With the advent of the e-assessment scheme, most of the functions/ processes under the Act, including of filing of return, processing of returns, issuance of refunds or demand notices and assessment, which used to require person-to-person contact between the taxpayer and the Income-tax Department, are now in the electronic mode. All these processes are now faceless. Now a taxpayer can manage to comply with most of his obligations under the Act without any requirement for physical attendance in the offices of the Department.

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

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

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

- Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.

- Optimizing utilization of the resources through economies of scale and functional specialisation.

- Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

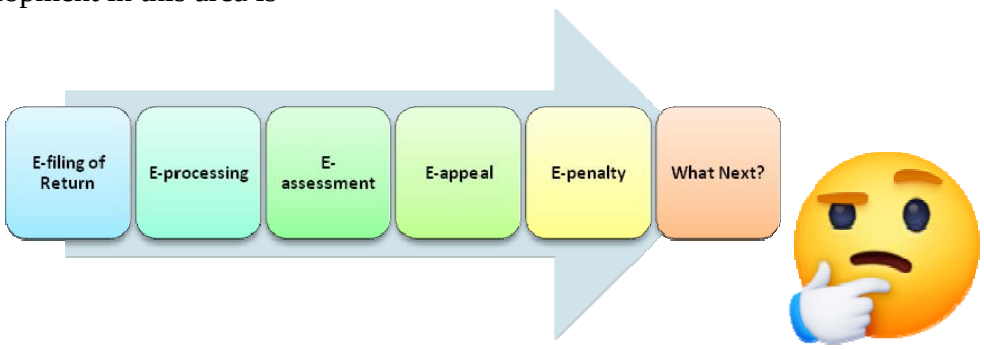
It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, by notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31st March 2022. It is proposed that every notification issued shall be required to be laid before each House of Parliament.

On similar line proposals have been made for e-penalty:

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

This is on similar lines of e-appeal scheme proposed under section 250 of the Act.

The development in this area is -



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

46. Clarity on stay by the Income Tax Appellate Tribunal (ITAT) [Section 254]:

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

expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the taxpayer.

It is proposed to provide that ITAT may grant stay under the first proviso subject to the condition that the taxpayer deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.

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

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

The proposed amendment will overrule the decision of Hon'ble Supreme Court and many more High Courts who have held on similar lines. Hon'ble Supreme Court in the case of PCIT v. LG Electronics India Pvt Ltd. (SC) (Civil Appeal No 6850 of 2018) had clarified that CBDT's office memorandum ('OM') dated July 31, 2017 regarding stay of demand does not interfere with AO's power to grant stay on deposit of a lesser amount, pursuant to Revenue's appeal challenging Delhi HC judgment in LG Electronics India Pvt. Ltd.'s ('assessee') case; SC had given credence to Additional Solicitor General Vikramjit Banerjee's submission before it that the said administrative Circular of the CBDT will not operate as a 'fetter' on the Commissioner, since it is a quasi-judicial authority; Disposing off Revenue's appeal, SC clarifies that "in all cases…it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal." Thus the impact of the decision is in a way neutralized by changes in the proviso to section 254(2A) of the Act.

47. Penalty for fake invoice [Section 271AAD]:

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

Therefore, it is proposed to introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant

for computation of total income of such person has been omitted to evade tax liability. The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It is also propose to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry. The false entries is proposed to include use or intention to use –

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

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

(c) invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

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

Point for consideration:
A buyer of goods / services in the normal course of business takes the services from the suppliers. The supplier issues an invoice. The buyer has actually received the goods or consumed the services for which payment is made and the supplier has issued a proper invoice to him. If the supplier issues the invoice from one of his concern, which is only a paper entity (for whatever reasons he may have) in that case, there is a possibility that not only the seller, even it can be said that in a books of buyer the entry is false and therefore, even buyer is liable for penalty under this proposed section to the extent of the amount of purchase.

How does a buyer in the normal case of business can do KYC of every supplier?

48. Appearance of authorized representative [Section 288]:

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

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

Effective Date:
These amendments will take effect from 1st April, 2020.

49. Allowing deduction for amount disallowed under section 43B, to insurance companies on payment basis [First Schedule to the Act]:

Section 44 of the Act provides that computation of profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or a co-operative society shall be computed in accordance with the rules contained in the First Schedule to the Act.
Section 43B of the Act provides for allowance of certain deductions, irrespective of the previous year in which the liability to pay such sum was incurred by the taxpayer according to the method of accounting regularly employed by the taxpayer, only in the previous year in which such sum is actually paid.

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

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

Effective Date:
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.

50. Vivad se Vishwas

In her Budget Speech Hon'ble Finance Minister referred to notify No Dispute but Trust Scheme – 'Vivad Se Vishwas Scheme'

It is stated that -

> "Sir, in the past our Government has taken several measures to reduce tax litigations. In the last budget, Sabka Vishwas Scheme was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases.

Currently, there are 4,83,000 direct tax cases pending in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax Sabka Vishwas for reducing litigations even in the direct taxes.

Under the proposed 'Vivad Se Vishwas' scheme, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays by 31st March, 2020. Those who avail this scheme after 31st March, 2020 will have to pay some additional amount. The scheme will remain open till 30th June, 2020.

Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.

I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process."

The Direct Tax Vivad Se Vishwas Bill, 2020 is notified on 5th February, 2020.

The chairman of CBDT Mr. Mody has made following observations in respect of this scheme:

"Q 1. What will the structure of the proposed scheme to settle disputes be?

We want to reduce litigation and disputes. Taking a step in that direction, we raised monetary limits for filing of appeal at various appellate fora. We also issued circulars to reduce litigation. Continuing with that exercise, we have taken this step to give a one-time window to taxpayers to settle disputes pending at the Commissioner (Appeals), the Income Tax Appellate Tribunal, high courts or the Supreme Court.
More than 4.8 lakh cases are pending at this juncture. The broad thinking is that whoever comes forward, only pays tax. Interest and penalty is waived. There is no prosecution either. If a dispute is around interest or penalty, the taxpayer has to pay 25%. The time limit is March 31. The taxpayer can also pay in the next quarter, (but) 10% more.

Q 2. Will this be a separate legislation? How soon is it likely?

This would be a separate law and will be introduced soon.

Q 3. Will the scheme cover cases gone into international arbitration?

Why not? If they wish to settle their dispute… whether it is in arbitration or judicial fora, they would be welcome. They can be done with it and start with a clean slate.

Q 4. Will it cover search cases where taxpayers have appealed?

No. Such cases will be excluded."

The scheme could be attractive where a matter is pending in dispute for a long time and one has a potential interest liability substantially in excess of the tax liability."

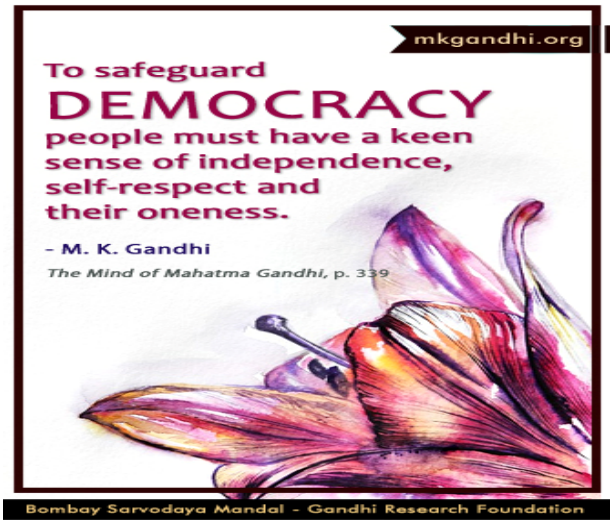
51. Relaxation in prosecution provisions under Company Law:

The Hon'ble Finance Minister in her Budget Speech has made very important announcement regarding relaxation in prosecution provisions. To quote –

> "There has been a debate about building into statutes, criminal liability for acts that are civil in nature. Hence, for Companies Act, certain amendments are proposed to be made that will correct this. Similarly, other laws would also be examined, where such provisions exist and attempts would be made to correct them."

We have to await the amendment in law. However, whether similar relaxation is also expected under Income Tax Act? The views of the Chairman Mr. Mody are as under:

> **"Q 7. What does the proposed plan of decriminalisation entail?**
>
> We have already come out with beneficial circulars on prosecution. We're interested in pursuing cases of habitual defaulters or (those) with very high revenue implications. The whole thrust of the tax administration now is to trust the taxpayers, let them come forward and discharge their obligations voluntarily and in a fair manner.
>
> **Q 8. There are number of provisions for prosecutions. Will they stay?**
>
> The provisions are there but certain inbuilt restrictions are also there. We're further trying administratively to see that only habitual offenders are looked at in a different manner, along with cases where the revenue implications are more."



Year on year 3C A are increasing –

Complexities

Compliance

Computerisation

Accountability

How do we cope up with this?

Answer is:

Multitasking human resources.

Let Taxpayers and professionals combine their Multitasking human resources to meet the "Challenges" entrusted on all.

GUPSHUP

Khush — Did you hear the new Budget guidelines for Charitable Trusts? All Trusts now need to apply for Certificate and it will be valid for 5 years and every 5 years one need to apply for renewal.

Rasmalai — What Certificate? What do you mean by Charitable organisations?

Anay — Buddhu !  Charitable organizations mean such people, who gather together to work for welfare of other people and society at a large. They may work in any area like providing medical facilities, education etc at no cost or at low cost. They really help lot of people in various ways.

Taniji — Like Infosys Foundation, Reliance Foundation, Birla Foundation, Tata Trust, Being Human, Make a Wish foundation etc, as well as smaller trust with annual spending on charitable objects of couple of lakhs.

Rasmalai — Didi, these are for good causes. They are nice people. These people are helping the government. I am sure that is why they will be given a certificate of appreciation of service every five years now, for doing what government should have done and helping the government to do their unfinished work, thereby helping the nation as such.

Rasgulla — Hahahaha! it's not the certificate of appreciation Dumbo. The charitable organizations are now supposed to get a certificate every 5 years from the Income Tax authorities that they are still falling under and carrying on genuine charitable objects and that tax exemption should be extended to them and someone who helps these organization monetarily. They now have to repeat this process every 5 years.

Barbie — Repeat it every 5 years!! Seriously !! Why? Doesn't the government trust those who are helping them to provide facilities nor their own officials, who have earlier issued these certificate to these organisations? Strange.

Khush — Over and above this, the assessing officer will continue to scrutinize the accounts of such trust year on year.

Taniji — I wonder why someone would come forward to do such kind of activities and bear the hassles then. More so when in most of the Charities, people work honorary.

Rasgulla — Just because few tax chors misuse benefits, everyone is sought to be  the law and take undue tax taken for a task.

Anay — Do Punish the Defaulters, but let the Genuine people work.

JAI HO!!