



Seminar on India's Union Budget 2020
- *An insightful perspective*

3 February 2020

Personal tax

Rates of income tax for individuals & HUF

	Total taxable income (in INR)		Existing Regime			New Regime
			Age < 60	Age < 80	Age > 80	
Base Tax	Up to 2,50,000		Nil	Nil	Nil	Nil
	2,50,001 to 3,00,000		5% *	Nil	Nil	5%*
	3,00,001 to 5,00,000		5% *	5% *	Nil	5%*
	5,00,001 to 7,50,000		20%	20%	20%	10%
	7,50,001 to 10,00,000		20%	20%	20%	15%
	10,00,001 to 12,50,000		30%	30%	30%	20%
	12,50,001 to 15,00,000		30%	30%	30%	25%
	Above 15,00,000		30%	30%	30%	30%
	Surcharge	Total taxable income	Up to Rs. 50 lakhs	> 50 lakhs < 1 crore	> 1 crore < 2 crore	> 2 crore < 5 crore
Rate of tax		Nil	10%	15%	25%	37%

H&E Cess shall be levied at the rate of 4% on the amount of tax computed, inclusive of surcharge.

* No tax on individuals having taxable income up to Rs.5 lakhs as a result of rebate of Rs. 12,500

Exemptions which should be foregone to claim new tax regime (Typical items)

Salary

- ▷ House Rent Allowance
- ▷ Leave Travel Allowance
- ▷ Other allowances such as Hill Area Allowance , Underground Allowance
- ▷ Food and beverages vouchers upto value of Rs. 1500 per month (Rs. 50 per day)
- ▷ Standard deduction of Rs. 50,000
- ▷ Deduction for professional tax

Business Income

- ▷ Exemption for SEZ units under Section 10AA
- ▷ Additional Depreciation for manufacturing units
- ▷ Contribution for scientific research purposes
- ▷ Investment allowance for investment in state of Andhra Pradesh, Telangana, West Bengal, Bihar.
- ▷ Capital expenditure for specified businesses – Section 35AD

Common

- ▷ Interest of Rs. 2 lakhs for self-occupied property
- ▷ Loss of Rs. 2 lakhs for let out property cannot be set off against any other head of income but can be carried forward to be set off against future years' income from house property.
- ▷ Section 80C / 80CCD / 80D
- ▷ Section 80G - Donations
- ▷ Section 80TTA pertaining to Interest on Savings Bank upto Rs. 10,000

Common incentive/ provisions which would continue to be applicable

- ▷ Additional incentive for employment creation under Section 80JJAA
- ▷ Employer contribution to National Pension Scheme under Section 80CCD, Employer Contribution to Provident Fund subject to the cap stated in the subsequent slides
- ▷ Deduction for following allowances will continue to be available even in the new regime:-
 - a) Transport allowance to a divyang employee,
 - b) Conveyance allowance while on official duty,
 - c) Any allowance granted to meet cost of travel on tour or on transfer,
 - d) Daily allowance to meet charges on account of service other than the normal place of duty.
- ▷ Rebate under Section 87A – What has been denied is the deductions available from total income and not the rebate available from tax payable.
- ▷ Surcharge at applicable rates and Health and Education cess would continue to be applicable.

New regime vs old regime - illustrations

Situation 1

- Owns Property (Debt free)
- Invests in ELSS : 1.5 lakhs



Rs 15 lakhs

Particulars	Old Regime	New Regime
Salary income (net of SD)	14.5 lakhs	15 lakhs
Less: 80C	(1.5 lakhs)	NA
Gross total income	13 lakhs	15 lakhs
Tax payable	2.02 lakhs	1.88 lakhs



Situation 2

- Property on loan (Int : 2L)
- Invests in ELSS : 1.5 lakhs
- Medical : 0.25 lakhs
- 80G : 0.5 lakhs

Particulars	Old Regime	New Regime
Salary income (net of SD)	14.5 lakhs	15 lakhs
Less: 80C & 80D	(1.75 lakhs)	NA
Less: 80G	(0.5 lakhs)	NA
Less: IHP	(2 lakhs)	NA
Gross total income	10.25 lakhs	15 lakhs
Tax payable	1.20 lakhs	1.88 lakhs



New regime vs old regime - illustrations

Situation 1

- Owns Property (Debt free)
- Invests in ELSS : 1.5 lakhs



Rs 8.5 lakhs

Particulars	Old Regime	New Regime
Salary (net of SD)	8.0 lakhs	8.5 lakhs
Less: 80C	(1.5 lakhs)	NA
Gross total income	6.5 lakhs	8.5 lakhs
Tax payable	0.42 lakhs	0.53 lakhs



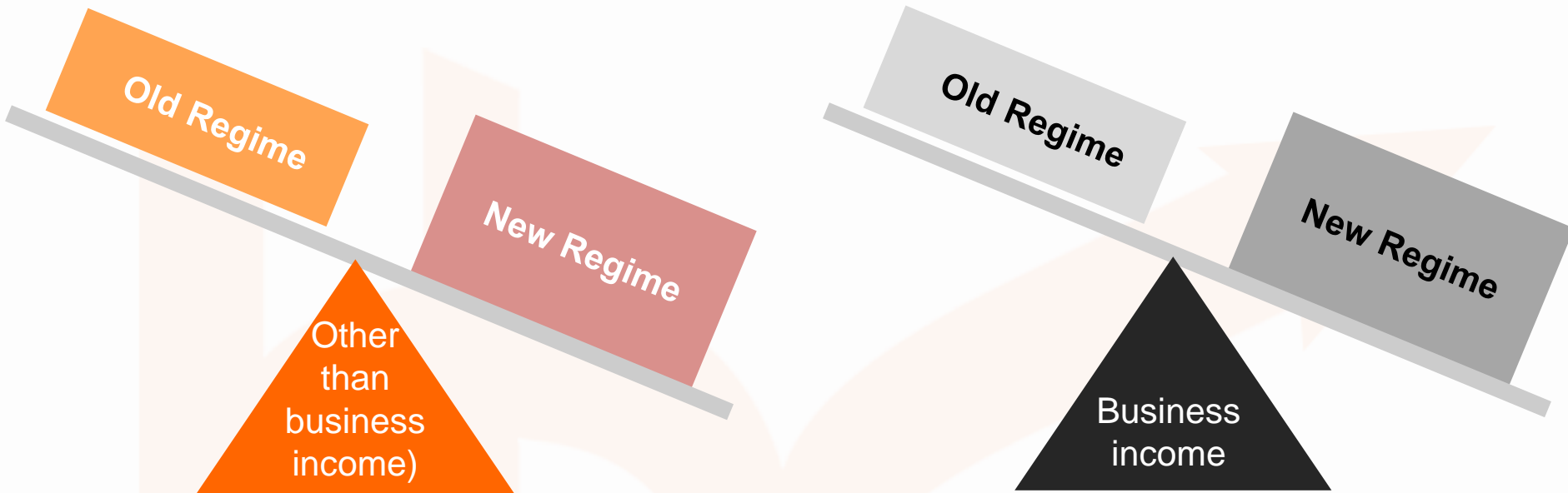
Situation 2

- Property on loan (Int : 2L)
- Invests in ELSS : 1.5 lakhs
- 80G : 0.5 lakhs

Particulars	Old Regime	New Regime
Salary (net of SD)	8.0 lakhs	8.5 lakhs
Less: 80C	(1.5 lakhs)	NA
Less: 80G	(0.5 lakhs)	NA
Less: IHP	(2 lakhs)	NA
Gross total income	4 lakhs	8.5 lakhs
Tax payable	0.08 lakhs	0.53 lakhs
Less: Rebate u/s 87A	(0.08 lakhs)	NA
Tax Payable after Rebate	NIL	0.53 lakhs



New regime vs old regime – Option



The individual can choose between either of the option every year.

Option to be exercised before filing of return of income

- The individual can choose new regime only once and once opted cannot switch to old regime.
- Option once exercised may be revoked once post which option under this section shall not be available.
- Option to be exercised before due date of filing of return of income

Exemptions on Employer's contribution – High contributors

Fund	Present	Proposed
Recognized Provident Fund	Employer's contribution exceeding 12% of salary is taxable as perquisite in the hands of employee	Combined annual upper limit of INR 7.5 Lakhs for employer's contribution. Excess employer's contribution to be treated as taxable in the hands of employee.
Approved Superannuation Fund	Employer's contribution exceeding INR 1.5 Lakhs is taxable as a perquisite in the hands of employee	
National Pension Scheme	Taxpayer is allowed a deduction for employer's contribution: <ul style="list-style-type: none"> • Upto 14% of salary contributed by the GOI • Upto 10% of salary contributed by other employers 	

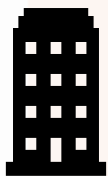
Residential status of individual

- ▷ Threshold for determining residential status of an Indian citizen or a person of Indian origin **visiting India** is proposed to be made stringent as below.

Present	Proposed
Comes on a visit to India for 182 days or more during the FY	Comes on a visit to India for 120 days or more during the FY
Has been in India for an overall period of 365 days or more within 4 years preceding that year.	



NRI stay in India > 120 days



- ▷ Indian citizen shall be deemed to be a resident in India 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.**
- ▷ Whether Indian citizens staying in countries like UAE which has no tax will be treated as residents of India even if they **do not visit** India or **visit for less than 60 days?**
 - ▷ **Memorandum** : Introduced to curb Stateless persons only.
 - ▷ **CBDT Clarification** (2 Feb 2020) : Not to bring income earned outside India within this ambit. Suitable amendments would be incorporated.

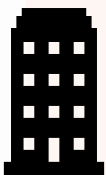
Residential status of individual

- ▶ The provisions for determining “Resident Not Ordinarily Resident (RNOR)” is proposed to be relaxed as under:-

Present	Proposed
Has been a Non-resident in India in 9 out of 10 preceding years or	Has been a non-resident in India in 7 out of 10 preceding years.
Has been in India for a period aggregating to 729 days or less in 7 preceding years	

- ▶ Hence the earlier provision of a person being treated as RNOR to ROR after a stay of 2 years would now be extended to 4 years.

Consequently, any overseas income other than income out of business controlled from India would not be taxable in India until the person becomes ROR (ie for a period of 4 years).



ESOP taxation – Relaxed for ‘Startups’

- ▷ Currently, ESOPs are taxed at the time of **exercise of shares** resulting in cash outflow in the hands of employees though no cash is earned by the employee until the shares are sold. In order to ease the said burden, the Bill proposes to **defer** the payment of tax on ESOP allotted by **Eligible Startups**. The aforesaid benefit is not eligible to other entities.
- ▷ The eligible startup is required to deduct/ pay tax **within 14 days** from the happening of any of the **below event** (whichever earlier):

Event	Proposed timing
Exercise of options	Expiry of 60 months (5 years) from the date of exercise
Sale of shares	Date of sale by individual taxpayer
Cessation	Date of cessation of employment

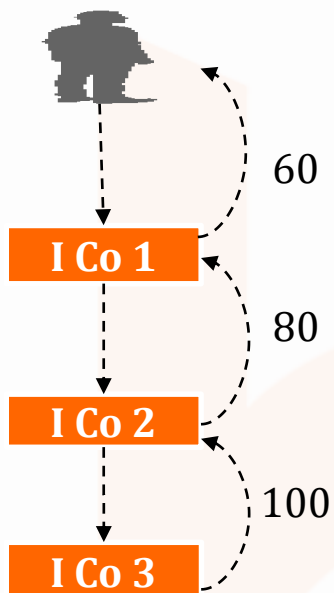
- ▷ Though the payment of tax is deferred subsequently, the computation is to be done in the year in which shares are exercised as per section 17(2)(vi).
 - ▷ In case the employers fails to deduct tax, the onus would fall on the employee.
- What if the start up loses its “eligibility tag” before exercise or after exercise but before above event?
 - What if the employee sells part of the shares?

Corporate tax

Dividend Distribution Tax (DDT) abolished !

- ▷ Domestic company or mutual funds are not required to pay DDT at 20.56%.
- ▷ Dividend income is **taxable in the hands of shareholders** / unit holders at applicable rate.
- ▷ Deduction will be allowed under **Section 80M** for the dividend received by one domestic company from another domestic company to the extent of dividends distributed. No deduction is allowed in case dividends are received from foreign companies.
- ▷ Companies opting for lower tax regime under Section 115BAA and 115BAB can also claim deduction under **Section 80M**.
- ▷ Deduction for **interest expense** is available against the dividend income, subject to a maximum of **20% of the dividend income**.
- ▷ TDS will be deducted at **10%** under **Section 194** for dividends paid to a **resident in India** exceeding **INR 5,000** in a year.
- ▷ If dividend is paid to a non-resident, Section 195 will apply and the withholding tax will be at 20% / treaty rate, whichever is more beneficial.

Effect of DDT amendment – Domestic investment

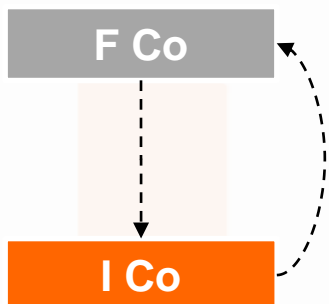


Person	Taxation
I Co 3	<ul style="list-style-type: none"> Withhold tax at 10% on Rs 100 distributed to ICo 2
I Co 2	<ul style="list-style-type: none"> Sec 80M deduction : Rs 80 Tax on net dividend of Rs 20 (100-80) at corporate tax rate Withhold tax at 10% on Rs 80 distributed to ICo 1
I Co 1	<ul style="list-style-type: none"> Sec 80M deduction : Rs 80 Tax on net dividend of Rs 20 (80-60) at corporate tax rate Withhold tax at 10% on Rs 60 distributed to individual
Ind	<ul style="list-style-type: none"> Dividend of Rs 60 taxed at applicable slab rate

Particulars**	Individual earning less than 10L div	Individual earning more than 10L div
Tax paid by company & individual (Pre)	21%	31%
Tax paid by company & individual (Post) – <i>assuming flow of Dividend within timeline prescribed</i>	30%	30%

** Excluding surcharge and cess & considering maximum slab rate of base tax

Effect of DDT amendment – Inbound investment



Particulars	US	Mauritius	Singapore	Korea	France
As per Act	20% (plus Surcharge & Cess)				
As per DTAA*	15%	5%	10%	15%	5%**

*Subject to participation exemption and **Principle Purpose Test (PPT)/ Preamble as per DTAA/ MLI.**

** MFN clause read with India-Slovenia DTAA

India – Mauritius (I-M) and India – USA (I-U) treaties are not Covered Tax Agreement (CTA). Hence, the MLI provisions do not apply to the said treaties. Section 90 has been amended to bring in the preamble language of MLI. Whether preamble test (as per domestic tax law) should be satisfied to claim treaty benefit (eg: I-M)?

View 1

- Preamble language in the I-M treaty is wider to include “*for the encouragement of mutual trade and investment*” (supported by decision of SC in **Azadi Bachao Andolan**) and hence treaty provision can be adopted as it is more beneficial.
- Sec 90(1)(b) & 90A(1)(b) : CG may **enter** into DTAA. I-M treaty is already entered

View 2

- Without satisfaction of preamble test in the Act, treaty benefit itself cannot be claimed.

Effect of DDT amendment – Inbound investment.. contd

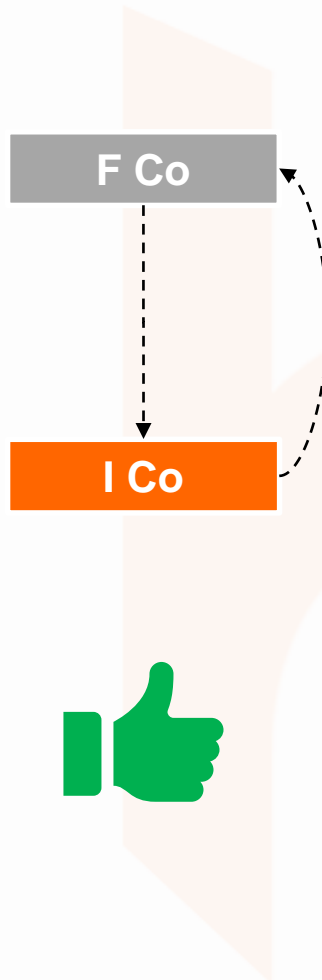
Particulars	Relevant Extract
Protocol to India – France Treaty	<i>In respect of articles 11 (Dividends)..... if under any Convention, Agreement or Protocol signed after 1-9-1989, between India and a third State which is a member of the OECD, India limits its taxation at source on dividends..... to a rate lower or a scope more restricted than the rate of scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items income shall also apply under this Convention.</i>
Article 10 of India – Slovenia treaty (OECD Country)	<i>Dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 5 % of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 % of the capital of the company paying the dividends.</i>

Other countries which has similar MFN clause which can adopt lower rate :

Netherlands	Sweden	Hungary	Switzerland	Finland
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Effect of DDT amendment – Inbound investment.. contd

New Manufacturing company



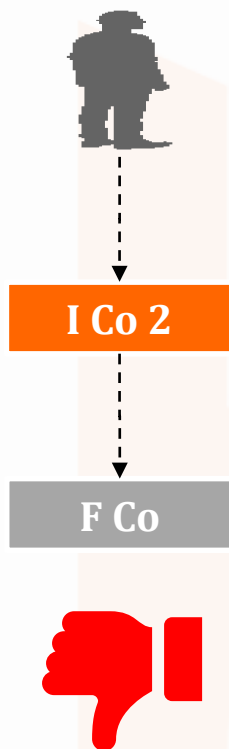
Particulars	US	Mauritius	Singapore	Korea	France & others **
Corporate tax by I Co	17.16%				
WHT on Div. by I Co	15%	5%	10%	15%	5%
Overall tax in India	29.59%	21.30%	25.44%	29.59%	21.30%

Corporate tax in respective countries	21%	15%	17%	10% - 25%	31% - 33.33%
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If foreign tax credit can be claimed in the F Co jurisdiction, then the WHT paid on Dividend by I Co would not be a cost to the Group.

** Other MFN treaties such as Netherlands, Sweden, Hungary, Finland, Switzerland

Effect of DDT amendment - Outbound investment



Particulars	Pre amendment*		Post amendment*	
	Sing/ Mau	Others	Sing/ Mau	Others
Rate of tax u/s 115BBD	15%	15%	15%	15%
UTC benefit available	Yes	No	Yes	No
Net tax payable	Marginal	15%	Marginal	15%
Cascading effect removed	Yes	Yes	No	No
Tax in the hands of ultimate shareholder	10%	10%	30%	30%
Overall tax impact	10%	25%	30%	45%

* Excluding surcharge and cess.

- 80M deduction is allowed only for dividend received from domestic company
- The significant tax effect is due to shift from tax regime in the hands of corporate (DDT) to tax regime in the hands of shareholder

Other impacts on account of DDT amendment

- ▷ Section 14A may no longer be relevant as dividend income is not exempt anymore. **However**, expenditure incurred against the dividend income would be limited to **interest expenses** and shall be restricted to **20% of Dividend Income** (Section 57).
 - ▷ The tax on **deemed dividend** would be in **par** with any other dividend income. Further, the issue of whom to tax in case of deemed dividend (ie shareholder or loan recipient) would be back as the 115-O amendment brought out in FA 2018 has been omitted.
 - ▷ For claiming deduction under section 80M, the dividend should be declared by the recipient before one month prior to the due date of filing of return of income.
 - ▷ For MAT computation, dividend income would not be excluded anymore ?
- Whether companies can set off the dividend income against losses ?
 - Where the company has not received dividend in earlier years but is litigated in Section 14A, can an argument be taken that the dividend is no more exempt and hence 14A (proportionate - notional disallowance) should not arise ?

New electricity Generating Co – Eligible for Section 115BAB (Lower tax of 15%)

Opt 1 : Existing Co



Existing Co
XYZ

❑ Rates of tax

- C Tax :30%/ 22% (115BAA)*
- D Tax : 30% [Slab rate - Ind]
- **Overall tax: 60% / 52%**



Opt 2 : New Co (115BAB)



Existing Co -
XYZ

New Co -
ABC

Type	XYZ	ABC
C Tax	30%/22%	15%
D Tax	30%	30% (Ind Slab)
Total	60%/ 52%	45%



Opt 3 : New LLP



LLP

❑ Rates of tax

- C Tax : 30%*
- D Tax : NA
- **Overall tax : 30%**



Is there any difference between Power & Electricity ? Erstwhile provisions used the word “Power” as against electricity.

*excluding Surcharge and cess

Removal of 80G deduction to donor

- ▷ In the Taxation Law Amendment Act introduced in 2019, the company was eligible to claim deduction under **section 80G** even if it opts for lower tax regime under section **115BAA and 115BAB**, as the restriction was only on Part C of Chapter VIA deduction and section 80G fell under Part B.
- ▷ However, in FA 2020, the restriction of **Part C** has been omitted thereby denying **all Chapter VIA** deduction including 80G and specifically excluding 80JJAA and 80M.
- ▷ The above amendment has been introduced **retrospectively from FY 2019-20**. Company's which have already made donation to Trust/ institution/ specified donors could revisit if such deduction is eligible.
- ▷ **Against the retrospective amendment**, one could argue that:
 - ▷ The said amendment is **substantive in nature** and hence cannot have retrospective effect.
 - ▷ It is well settled principle that **once a benefit is granted**, it cannot be taken away retrospectively.

What is the reason for retrospective deduction given for Section 80M when DDT is abolished only with effect from FY 2020-21?

Charitable trusts & institutions

- Charitable trusts & institution **already registered under section 12AA** are required to apply for **fresh registration** under **section 12AB** of the Act **within 3 months** from the date on which the aforesaid provisions come into force (ie 30 September 2020).
- Registration shall be granted for a period of **five years** (as against perpetuity) and renewable thereafter.
- In case of **New registrations**, the timeline for application and validity is as follows:
 - The application for fresh registration is required to be made at-least **one month prior to commencement** of the previous year for which the registration is sought. The trust/ institution shall be initially granted a **provisional registration** and the same shall be valid for a maximum of 3 years.
 - Such trusts shall apply for registration at least **six months** prior to expiry of the provisional registration or within 6 months from commencement of activities (whichever is earlier).
 - Subsequently, such trust shall apply fresh registration at least **six months** prior to expiry of the registration period.

Charitable trusts & institutions

Similar provisions have been introduced in **Section 10(23C)** which deals with educational institutions, university, hospital etc and **Section 80G** which deals with charitable institutions receiving donations

Additional compliance burden in respect of charitable donations

- Trusts (registered under section 80G) receiving donation shall be required to:
 - **File a statement** of the donation received within prescribed time-limit; and
 - **Issue a certificate** to donor within prescribed time-limit.
- The details of donation shall be pre-filled in the IT return of the donor directly. However, if the details are not reflected, then the donor may not be eligible to claim deduction under section 80G - **Similar to GST Credit (GSTR2A)**.
- Failure to furnish the statement / certificate would attract fees of **Rs 200 per day** till the delay continues under **section 234G**
- Further, penalty of **Rs. 10,000 to Rs. 100,000** shall be levied under section 271K for non-filing of the aforesaid statement.

Land & building transactions

- ▷ Currently, if the consideration value in respect of land and building transaction is less than stamp value by more than 5%, the difference is taxed in the hands of Seller under income from capital gains/ business profits (as the case may be) and in the hands of Buyer under income from other sources.
- ▷ The variance limit/ safe harbor limit has been increased from **5% to 10%**. The impact on the account of the above is explained as follows:

Particulars	Sale Consideration	Stamp Duty Value	Implications
Pre amendment	1.00 Cr	1.06 Cr	<ul style="list-style-type: none">• 0.6 Cr as additional consideration in the hands of seller under CG/ PGBP• 0.6 Cr as IOS u/s 56(2)(x)
Post amendment	1.00 Cr	1.06 Cr	No impact as variance is within 10%.

- ▷ Moreover, **Section 55(2)(b)(ii)** has been amended to provide that in case of land or building or both, the FMV of such assets on 1 April 2001 **shall not exceed the stamp duty value of such asset as on 1 April 2001 where such stamp duty value is available.**

Affordable Housing Projects & Startups

- ▷ **Sunset clause extension in relation to affordable housing projects:**
 - ▷ The sunset clause for obtaining **sanction of loan** for affordable housing to claim interest deduction under Section 80EEA has been **extended from 31 March 2020 to 31 March 2021**.
 - ▷ The sunset clause for obtaining completion certificate to claim **100% deduction of profits and gains** to an assessee engaged in the **business of developing and building affordable housing** has been **extended from 31st March 2020 to 31st March 2021**.
- ▷ **More relaxations in exemption to start-ups** : Section 80IAC is amended to provide:
 - ▷ Deduction on 100% of the profits and gains for eligible business carried on by eligible start ups for **3 consecutive years out of the first ten years** of incorporation (earlier 3 out of 7 years)
 - ▷ The turnover limit prescribed to claim deduction has been increased from **INR 25 crores to 100 crores**.

Litigations

VIVAD SE VISHWAS !!

- This scheme is to be introduced to **end pending litigation** in the Income-tax Act.
- The scheme would be applicable in case of all appeals pending at any level.
- Key highlights of the scheme (as per the budget speech*) is as follows:

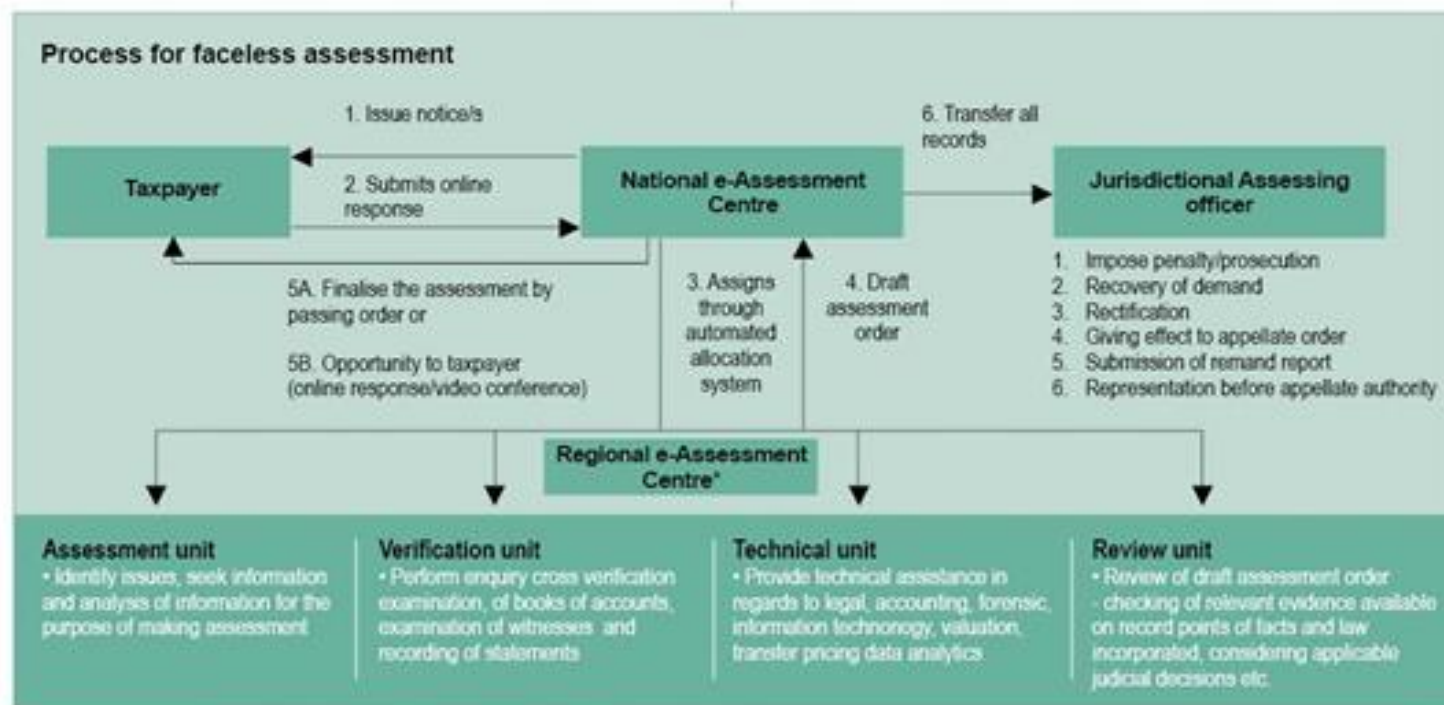
Situation	Amount of payment
If the scheme is opted for and the entire amount of tax is paid on or before 31 March 2020	<ul style="list-style-type: none">• Tax amount only• No interest & penalty
If the scheme is opted for and the entire amount of tax is paid after 31 March 2020 but before 30 June 2020	Tax (+) additional amount**
If the scheme is not opted or the payment is not made before 30 June 2020	Benefit of the scheme not available

* The Scheme is yet to be issued.

** Additional amount not specified

Faceless E-assessment

- Faceless assessment proceedings extended to **Best judgement assessment**
- CG shall make a scheme to extend E-assessment facility to **Commissioner (Appeals)** and **Penalty proceedings**.



*Eight ReC: Delhi, Mumbai, Chennai, Bengaluru, Kolkata, Ahmedabad, Hyderabad and Pune

Assessment & Appeals

➤ Stay of demand by Income Tax Appellate Tribunal (ITAT)

- Currently, ITAT can grant stay of demand for a period **upto 180 days** considering the merits of the case. In case the appeal is not disposed off within the stay period, the ITAT may extend the stay period subject to overall restriction of **365 days**, if the delay in disposing of the appeal is not attributable to the assessee.
- Finance Bill 2020 has introduced a **pre-condition** that the assessee should deposit at least **twenty per cent of the amount of tax** (including interest, penalty, etc.) or furnish security of equal amount for ITAT to grant stay under the above scenario.

➤ Penalty under section 271AAD

- To curb the practice of obtaining fake GST invoices, a new section 271AAD has been proposed to be inserted to levy a **penalty of an amount equal** to the aggregate amount of such **false entry in books of accounts** or omitted entry which is relevant for computation of total income of such person to evade tax liability.

Is it 20% before CIT(A) and 20% before ITAT or overall 20% ?

Assessment & Appeals

➤ Approval of CIT/Director is required to conduct survey (section 133A)

Power of survey has been proposed to be rationalized as under:

- Where **some 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 without obtaining prior approval of the Joint Director or the Joint Commissioner;
- In any **other case**, no survey can be conducted by income tax authority below the rank of Director or Commissioner without obtaining the approval of the Director or the Commissioner.

➤ Verification of return of income and appearance of authorized representative

- Section 140 & section 288 is proposed to be amended to provide that **Insolvency Professional** can verify the return / appear before any Income-tax Authority or the Appellate Tribunal on behalf of an assessee as its “authorised representative”, as the case may be.

Assessment & Appeals

➤ Reference to Dispute Resolution Panel (DRP)

- Option to appeal before DRP extended to all non-residents (which includes individual, firm, etc.) as against only to foreign company
- The provisions have been extended in respect of any variation as against restricted to the income/ loss returned.

➤ Advance Pricing Agreements (APA) & Safe Harbour Rules (SHR)

- Provisions have been introduced in the Act to enable a non-resident assessee to approach APA authorities to seek certainty around profit attribution.

International tax

Relaxation in income-tax filing for Foreign Companies

- Relaxation for filing of income-tax return has been **extended** to non-residents deriving income from **Royalty/ FTS** as against the income from dividend/ interest only (earlier). The amendment shall be made effective from **FY 2019-20**.
- Provided **taxes have been deducted at a rate not less than rate specified u/s 115A**.
- An illustration capturing the aforesaid amendment is tabulated below:

Particulars	Royalty/ FTS			Dividends/ Interest
	US	Germany/ Korea	Mauritius	
Rate as per Act	10.40%	10.40%	10.40%	20.80%
Rate as per DTAA	0% (Make Available Clause)	10%	15%	5%/ 10%
Rate applied (lower of both)	0%	10%	10.40%	5%/ 10%
ROI to be filed?	Yes	Yes	No	Yes

Would foreign companies covered above still have to file Form 3CEB?

International Tax amendments

- ▷ **Deferment of Significant Economic Presence (SEP) provisions to AY 2022-23.**
- ▷ **Amendments in Sec. 90/90A for alignment with MLI:** To align with the MLI, domestic provisions are amended to curb practices aimed at double non-taxation, reduced taxation through tax evasion or avoidance strategies, treaty-shopping arrangements aimed at the indirect benefit of third jurisdiction residents.
- ▷ **Expansion of Royalty definition:** The amended definition of “royalty” brings within scope the consideration for the **sale, distribution or exhibition of cinematographic films.**
- ▷ **FPI Indirect Tax Exemption:** Exception from source taxation provided to asset held by non-resident by way of investment in Category I & II FPIs under SEBI (FPI) Regulations 2014 is grandfathered. Under FB 2020, only **Category I FPI** would be exempted from indirect transfer.
- ▷ **Thin-cap exemption to PE of non-resident bank:** Section 94B to exclude interest payable to PE of a non-resident bank for the purpose of disallowance of interest under section 94B (**Foreign bank having Indian branch**)

International Tax amendments

- ▷ **Offshore funds exemption from “business connection”:** Certain relaxations have been made so that an offshore fund is not considered as constituting ‘business connection’.
 - ▷ Fund Manager investment upto 25 crore excluded during first 3 years
 - ▷ Monthly average of 100 crores should be fulfilled within 12 months

- ▷ **Attribution of advertisement income/ income through data :** Explanation 3A has been inserted to consider the following income as income attributable to operations carried out in India.
 - ▷ 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 shall be added to the income attributable to Indian operations.

Amendments have also been made to empower CBDT to make rules to provide manner and procedure for arriving at income in relation to the above.

How will attribution take effect until SEP provisions are brought into force?

Tax audit/ TDS/ TCS compliance

Changes related to tax audit and tax return filing

- ▷ Section 44AB amended to increase the threshold limit of sales / turnover for audit to **INR 5 crore** for persons carrying on business (other than professionals) whose:
 - Aggregate of **all receipts in cash including amount received for sales** during the previous year does not exceed **5% of the said amount; and**
 - Aggregate of **all payments in cash including amount incurred for expenditure** during the previous year does not exceed **5% of said payment.**
- ▷ For all other cases, the existing threshold limit shall continue to apply.
- ▷ Due date for tax audit and income tax return for FY 2019-20 onwards shall be

Particulars	Companies + Tax Audit case (No TP)	Companies + Tax Audit case (TP)
Tax Audit Report	30 September	31 October
Others reports & certificates	30 September	31 October (including Form 3CEB)
Income Tax Return	31 October	30 November

Changes related to tax audit and tax return filing

- ▷ The due date of filing ITR of 31 October shall be applicable to all partners of Firm / LLP subject to tax audit rather than only working partners.
- ▷ No changes made to Section 40(a) and 43B of the Act, which continues to be due date of filing return. Hence there would be difference in amounts reported in tax audit report and amount claimed as deduction in the income tax return, if certain payments are made during the intervening period (ie 30 Sep to 31 Oct or 31 Oct to 30 Nov, as the case may be). The auto filling of form shall throw up mismatch and it may result in queries / clarifications from department.
- ▷ Filing of form such as Form 29B (MAT), Form 56F one month before the due date of filing return of income would be challenging if the tax computation is not finalized as on the said date.

Tax Deducted at Source ('TDS') Amendments

Section	Proposed amendmnet
192 –Salaries	<p>Date of deduction of TDS on ESOP issued by eligible start-up u/s 80-IAC to its employees has been deferred to 14 days from the earliest of</p> <ul style="list-style-type: none">- expiry of 60 months from the end of relevant financial year (ie year of exercise) or- date of sale of such security or sweat equity share by assessee or- the date when assessee ceases to be employee of the person <p>However, TDS amount shall be computed based on the rates in force for financial year in which such securities are allotted or transferred (ie on exercise).</p>
194A – Interest other than Interest on securities	<p>Cooperative society having gross turnover of more than Rs. 50 crores in immediately preceding year is required to deduct tax at the rate of 10% on interest payment if:</p> <ul style="list-style-type: none">- The amount exceeds Rs. 50,000 in case of senior citizen; and- The amount exceeds Rs 40,000 in any other case.

Tax Deducted at Source ('TDS') Amendments

Section	Proposed amendmnet
194C – Payment to Contractors	<p>Contracts for manufacturing of goods based on the requirements / specification of a customer by using materials provided by customers or its associates will now be covered under the scope of work. Earlier only material provided by customer was covered and entities used related parties/ associates to circumvent aforesaid provisions.</p> <p>The term 'Associate' is referred to in Section 40A(2)(b).</p>
194 J – Fees for professional or technical services	<p>TDS on payments for fees for technical services has been reduced from 10% to 2%. Other payments such as professional fees, royalty, director remuneration would continue with the existing TDS rate of 10%.</p> <p><i>Deductor may have a challenge in differentiating between a technical services and professional services & technical consultancy included under professional services.</i></p>
194K – Income in respect of units	<p>Payment of any income to a resident in respect of units of mutual funds, units from administrator of the specified undertaking or units of specified company, shall be liable to TDS at the rate of 10%, if aggregate payment exceeds INR 5,000 during the financial year.</p>

Tax Deducted at Source ('TDS') Amendments

Section	Proposed amendmnet
194LC – Interest on loan / long term bond, etc	<ul style="list-style-type: none">• The benefit of lower rate of TDS at 5% has been extended for a further period of 3 years (ie upto 30 June 2023).• In respect of issue of <u>any long term bond or Rupee denominated bond</u> listed on a recognised stock exchange in any International Financial Services Centre (IFSC) on or after 1st April, 2020 but before 1st July 2023 shall have lower TDS rate of 4% as against 5% for other cases.
194LD – Interest to FII & QFI	<ul style="list-style-type: none">• Similar to Sec 194LC, the benefit of lower rate of TDS at 5% has been extended for a further period of 3 years (ie upto 30 June 2023).• Further, the lower rate of 5% has been extended to interest payable on municipal debt securities during the period 1 April 2020 to 30 June 2023.

Tax Deducted at Source ('TDS') Amendments

- ▷ **New Section 194-0:** TDS on payments **made** by e-commerce operator to e-commerce participant*.
- ▷ E-commerce operator shall deduct TDS @ 1% on amount payable to the ecommerce participant* on the sale of goods or services through its digital facility (at the time of payment/ credit, whichever is earlier).
- ▷ **Scenario 1:** Mr. A buys a laptop from Amazon (e-commerce operator) for Rs. 40,000 and makes an online payment to Amazon. Amazon while making the payment or credit to the account of XYZ (laptop seller), whichever earlier, deduct tax at the rate of 1% of transaction value.



*No deduction in case participant is an individual or HUF who has gross sales less than Rs 5 lakhs and has furnished PAN or Aadhaar

Tax Deducted at Source ('TDS') Amendments

- ▷ Payment made **directly** to the e-commerce participant by the purchaser of goods or services shall be deemed as if the payment was made by the e-commerce operator.
- ▷ **Scenario 2:**
For example, If in the previous example, Mr. A had made the payment directly to XYZ, then the payment shall be deemed to be paid by Amazon to XYZ and TDS shall be deducted @ 1%. There could be practical difficulty as the company will have to collect the TDS amount separately or adjust against other consideration due to XYZ.



Tax Deducted at Source ('TDS') Amendments

- ▷ Any transaction liable to TDS under this provision shall not be liable to tax under any other provisions of TDS, unless the same is not in connection with the transaction taken place.

- ▷ **Scenario 3:**

Mr. A utilizes the services of a doctor (assuming he is subject to section 44AB) through the online platform of Practo. In this case, Practo shall deduct TDS at the time of payment to doctor under Section 194-0. Since the transaction is covered under section 194-0, no separate deduction is required to be made by Mr A under Section 194J due to the specific exemption provided. However, it is important that Practo deducts TDS under section 194-0 and makes available the said information to Mr A (which could be practically difficult).

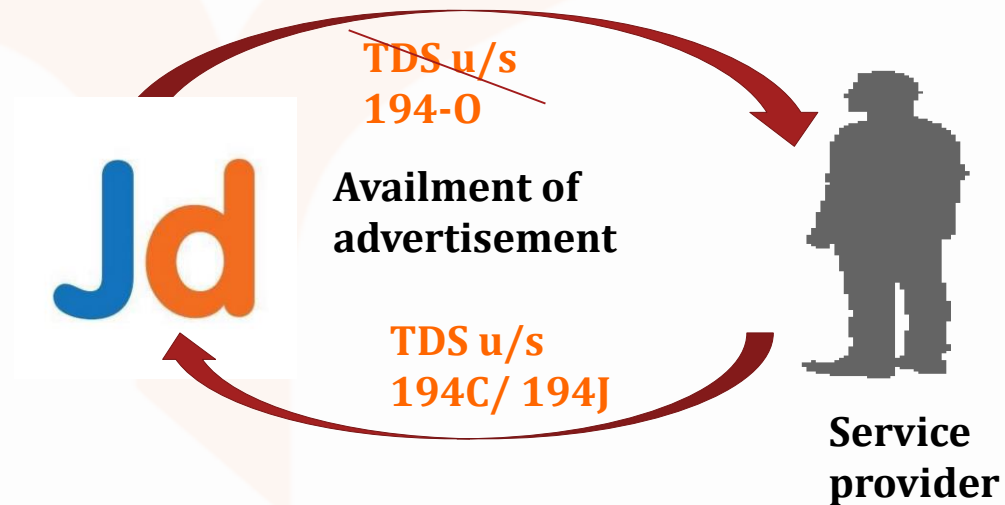


Tax Deducted at Source ('TDS') Amendments

- ▷ Exclusion provided in previous slide (Scenario 3) shall not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with sale of goods or services over the e-commerce platform.
- ▷ **Scenario 4:** If the service provider (ecommerce participant) avails advertisement services from JD then such advertisement would not fall under the aforesaid exclusion. Payment made by Service provider to JD would be subject to withholding tax under the relevant sections.



Mr. A

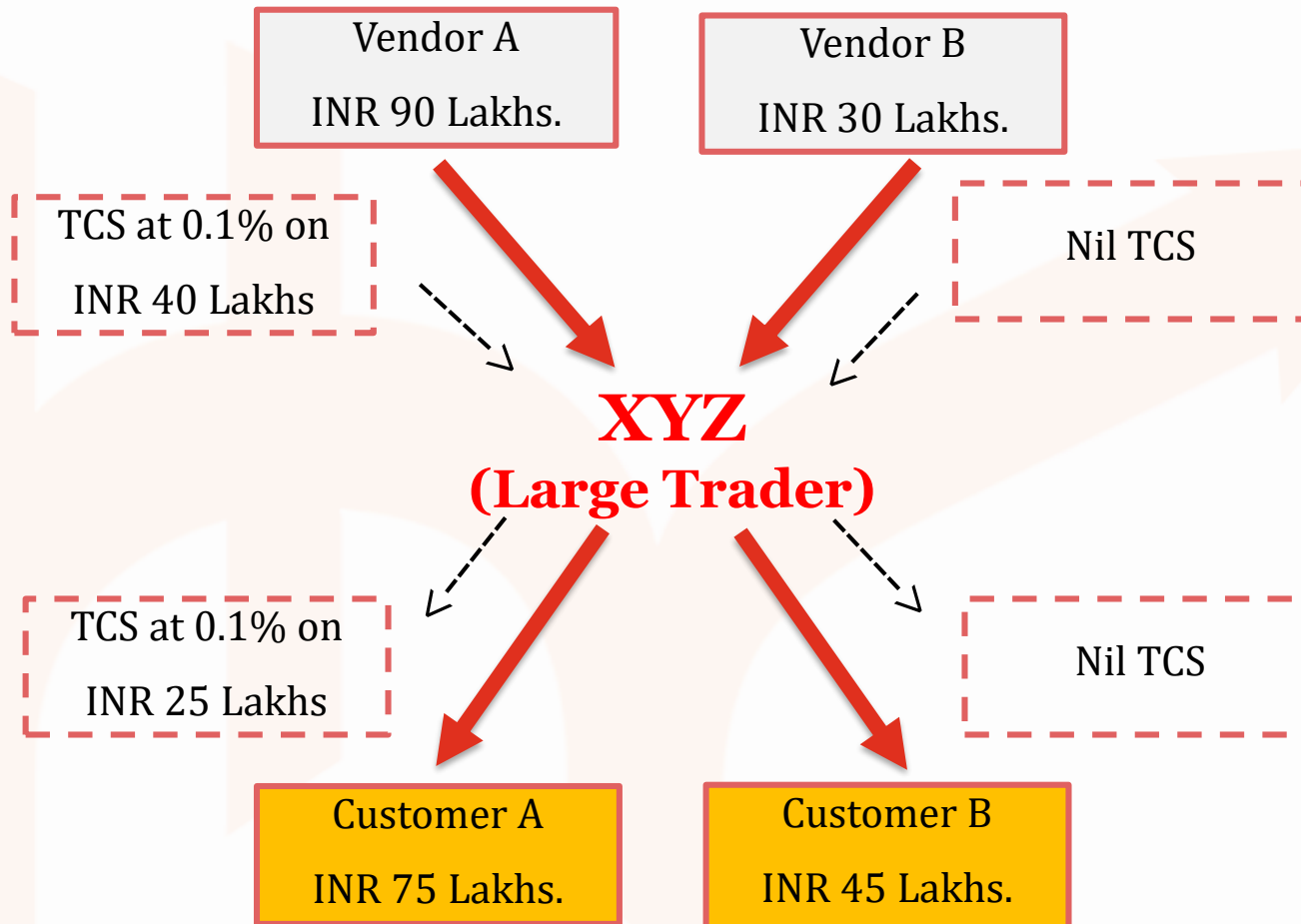


Tax Collected at Source ('TCS') Amendments

- ▷ TCS provision has been extended to cover additional transactions:

Person liable to Collect	Applicability	TCS Rate
Authorised Dealer	Receiving aggregate amount of <u>Rs. 7 lakh or more</u> in a financial year from a buyer for remittance out of India under the Liberalised Remittance Scheme (LRS) of the RBI.	Having PAN or Aadhar - 5% Not having PAN / Aadhar - 10%
Seller of overseas tour program package	Receives any amount from any buyer, being a person who purchases overseas tour program package. There is no limit/ amount prescribed,	
Seller of goods having turnover of more than Rs. 10 crores in the preceding financial year	Receives any amount as consideration for sale of goods of aggregate value exceeding Rs. 50 lakhs in a previous year, shall at the <u>time of receipt</u> of such amount from buyer, be liable to collect tax on sale consideration <u>exceeding Rs. 50 lakhs.</u>	Having PAN or Aadhar – 0.1% Not having PAN / Aadhar - 1%

Tax Collected at Source ('TCS') Amendments



Tax Collected at Source ('TCS') Amendments

- ▷ No TCS, if buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.
- ▷ Buyer shall not include government, embassy, high commission, consulate, local authority or any other notified person.
- ▷ **No exclusion for export of goods, shall lead to increased cost of exports.** *Clarification is expected as there is no income chargeable to tax in India for such customer in India.*
- ▷ Where the person responsible to collect TCS does not collect tax but the Buyer/ Recipient discharges the full tax, the same would still not absolve the person responsible to collect tax from being treated as assessee in default. The benefit of subsequent payment by buyer is not extended to New categories of TCS introduced in this Finance Bill.
- ▷ Individual / HUF whose total sales / turnover / gross receipts in the previous financial year from exceeds INR 1 crore (Business) or INR 50 lakh (Profession) shall be liable to deduct/ collect tax under all the relevant sections. Earlier, this limit was linked to the monetary limits specified under clause (a) or clause (b) of section 44AB.

Rationalisation of Form 26AS to include various other information

- ▷ As per existing provisions, section 203AA of the Act, inter-alia, requires 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.
- ▷ It is proposed that Form 26AS would be required to be extended beyond the information about tax deducted and accordingly a **new section 285BB** regarding annual financial statement shall be inserted in the Act.
- ▷ This section proposes to mandate the prescribed income-tax authority or the person authorised by such authority to upload in the registered account of the assessee a statement in such form and manner and setting forth such information, which is in the possession of an income-tax authority, and within such time, as may be prescribed. Consequently, section **203AA** is proposed to be **deleted**.
- ▷ These amendments will take effect from 1 June, 2020.

Other direct tax amendments

Other direct tax amendments

- ▷ **Widening of definition of business trust:** The definition of business trusts is aligned with the amended SEBI Regulations to do away with the requirement of the units of business trust to be listed on a recognized stock exchange.
- ▷ **Exemptions to Sovereign Wealth Funds and 100% Subsidiary of Abu Dhabi Investment Authority:** Dividend, interest and long-term capital gains arising from the investments in debt or equity of company, engaged in the business of infrastructure development is exempt provided investments are made before 31st March 2024 and held for a period of 3 years.
- ▷ **Allowing carry forward of losses and depreciation in certain amalgamations:** Section 72AA amended to extend the benefit in case of amalgamation of one or more corresponding new banks and in case of amalgamation of one or more government company engaged in general insurance business.

Other direct tax amendments

▷ **Cost of acquisition (CoA) of segregated mutual fund portfolios:**

- ▷ CoA of units in segregated portfolio shall be calculated as under:

$$\frac{\text{CoA of units in total portfolio} * \text{NAV of units transferred to segregated portfolio}}{\text{NAV of total portfolio immediately before segregation of portfolio}}$$

- ▷ CoA of units in main portfolio shall be calculated as under:

CoA of the original units (-) cost arrived at as provided above.

Indirect Tax Amendments

Goods & Services Tax amendments

- ▷ Delinks the date of issuance of debit note from the date of issue of original invoice for Input Tax Credit (ITC) u/s 16(4). The date of issue of debit note shall be relevant for considering the time period within which ITC can be availed.
- ▷ Powers for extension of period of returning goods sent on job work given to Jurisdictional Commissioner instead of Commissioner of Board.
- ▷ Retrospective amendment to Section 140 (transitional credit) imposing restrictions on availing credit in such time and manner as may be prescribed.
- ▷ The person retaining the benefit and at whose instance the offence relating to ITC had taken place, shall be liable to same penalty which the person who commits the offence is liable.
- ▷ The offence of fraudulent availment of ITC without an invoice has been made a cognizable and non-bailable offence.
- ▷ Person who commits the specified offence as well as the person who causes to commit & retain the benefit arising of such offence shall be subject to punishment.

Goods & Services Tax amendments

- ▷ Eligibility criteria under composition supply to apply equally for supply of goods as well as services. Presently services higher of 10% of T/O or 5 lakhs were allowed. (Outward supply of exempt supplies, inter-state supplies and supplies through E-Commerce Operator not allowed).
- ▷ Delay in application for revocation of cancellation of registration can be condoned for a cumulative period of 60 days
 - 30 days by Additional Commissioner / Joint Commissioner
 - Further 30 days by Commissioner
- ▷ Cancellation of registration to persons who have voluntarily registered under GST
- ▷ Empowers Government to prescribe time and manner of invoicing for specified categories of services.
- ▷ Removal of requirement for issuance of TDS certificates.
- ▷ Removal of Difficulties Order can now be issued up to 30.06.2022

Customs – Controls on Imports

- ▷ Empowers CG to restrict import or export of any goods to prevent injury of the economy by the uncontrolled import or export of such. (earlier only gold or silver were included).
- ▷ Empowers CG for application of safeguard measures including tariff rate quota, in order to curb increased quantity of imports of goods which causes or threatens to cause serious injury to domestic market.
- ▷ Anti-dumping rules made more comprehensive and wider in scope to strengthen the anti-circumvention measures.
- ▷ Countervailing duty rules amended to enable investigation into the case of circumvention of Countervailing Duty for enabling imposition of such duty.
- ▷ Administration of rules of origin under trade agreement:
 - Importer to possess information in relation to country origin criteria including regional value content, product specified criteria specified in free trade agreement, etc. Only Certificate of Origin shall not be sufficient.
 - Provision for time bound verification from exporting country in case of doubt
 - Preferential tax treatment may be suspended, pending verification or denied, without further verification.

Customs – Others

- ▷ Concept of Electronic Duty Credit Ledger u/s 51B for duty credit in lieu of remission of any duty or tax on export of goods.
- ▷ Levy of Health Cess at 5% on CIF Value of import of medical devices falling under headings 9018-9022. (inputs / parts excluded)
- ▷ Social Welfare Surcharge (SWS) exemption withdrawn in case of goods covered under Chapter 84, 85 & 90.
- ▷ SWS exemption on all commercial vehicles including electric vehicles, if imported in CBU.
- ▷ Increase in BCD in Footwear, household items, toys, stationeries, electric vehicles etc.

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Thank You !

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