Overview on changes in Income Tax Act [by Finance Act, 2020]

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Amendments under Direct Taxes in the Finance Act, 2020

A. Rates of Income-tax

B. Tax incentives

C. Removing difficulties faced by taxpayers

D. Measures to provide tax certainty

E. Widening and deepening of tax base

F. Revenue mobilisation measures

G. Improving effectiveness of tax administration

H. Preventing tax abuse

I. Rationalisation of provisions of the Act

J. Amendment in the Income Tax Act by the FA, 2020 (not proposed in the Bill)

Note: The applicable date being 01.04.2021 and 01.04.2020 denotes the amendment is applicable w.e.f. A.Y. 2021-22 and AY 2020-21 respectively.

A. Rates of Income-tax

For A.Y. 2021-22

Brief Impact:

A. Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person.

I. The rate of income tax is same. Tax slab and rates remain unchanged under old tax regime.

Total income	New tax rate* (AY 2021-22)	Existing tax rate* (AY 20-21)
Up to INR 250,000**	Nil	Nil
INR 250,001 to INR 500,000	5%	5%
INR 500,001 to INR 1,000,000	20%	20%
Above INR 1,000,000	30%	30%

* Health & Education cess and surcharge as applicable.

** Basic exemption limit for resident individuals above 60 years but less than 80 years of age (i.e. Senior Citizen) at any time during the FY is INR 300,000 and for resident individuals 80 years of age or more (i.e. Super Senior Citizen) is INR 500,000 (unchanged).

2. **For the AY 2021-22,Individual & HUF have an option to opt for taxation under newly inserted section 115BAC of the Act**

II. The amount of income-tax computed in accordance with the preceding provisions shall be increased by a surcharge at the rate of: **(as amended by Finance Act, 2020)**

Particulars	Surcharge
Taxable income < INR 50 lacs	-
INR 50 lacs < taxable income < INR 1 crore	10%*
INR 1 crore < taxable income < INR 2 crore	15%*
INR 2 crore < taxable income < INR 5 crore	25%**
Taxable income > INR 5 crore	37%**

****For A.Y. 2021-22 the total income of the Assessee including the income in accordance with the Provisions of the section 111A and 112A of the Act.***

*****The above surcharge rate is applicable only if the total income of the assessee excluding the income in accordance with the provision of the section 111A and 112A of the Act. But if the total income of the Assessee included the income in accordance with section 111A and 112A of the income tax Act, the rate of the surcharge does not exceed 15% on the income***

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III. Health and Education cess is @ 4% of income tax plus surcharge.

Rebate u/s 87A :

1. **Maximum Rebate u/s 87A - Rs. 12,500**
2. **If total Income does not exceed Rs. 5,00,000**

Note: Rebate u/s 87A is available only to Individual assessees, being resident in India if his total income does not exceed Rs. 5,00,000. **The amount of rebate shall be 100% of income-tax or Rs. 12,500, whichever is less**.

B. Co-operative Societies (for A.Y. 2021-22)

I. The rates of income-tax will continue to be the same as those specified for Assessment Year 2020-21.

Total income	Tax rate*
Up to Rs. 10,000	10%
Rs. 10,000 to Rs. 20,000	20%
Above Rs. 20,000	30%

II. Surcharge of 12% would continue to be applicable where the total income of firm exceeds Rs 1.00 Crore. [Subject to Marginal Relief]

III. Health & Education cess as applicable i.e. **4% of income tax plus surcharge.**

IV **For AY 2021-22, resident corporative Society have an option to opt new taxation under newly inserted section 115 BAD**

C. Partnership Firms (for A.Y. 2021-22)

The rates of income-tax will continue to be the same as those specified for Assessment Year 2020-21 i.e. **a partnership firm (including LLP) is taxable at 30%.**

Add:

I. Surcharge of 12% would continue to be applicable where the total income of firm exceeds Rs 1.00 Crore. **[Subject to Marginal Relief]**

II. Health & Education cess as applicable i.e. **4% of income tax plus surcharge.**

D. Local Authority (for A.Y. 2021-22)

The rates of income-tax will continue to be the same as those specified for Assessment year 2020-21 i.e. **a local authority is taxable at 30%**

Add:

I. Surcharge of 12% would continue to be applicable where the total income of Local Authority exceeds Rs. 1.00 Crore **[Subject to Marginal Relief]**

II. Health & Education cess as applicable i.e. **4% of income tax plus surcharge.**

E. Domestic Company (for A.Y. 2021-22)

I. Paragraph E of Part III to the First Schedule: In the case of domestic companies the rate of income-tax shall be @ 25% (plus applicable surcharge and health & education cess) of the total income **where the total turnover or gross receipts of previous year 2018-2019 does not exceed Rs. 400.00** crore and in all other cases the rate of income-tax shall be 30% (plus applicable surcharge and health & education cess) of the total income (Unchanged).

A. For a domestic company having total turnover/ gross receipts in the previous year (2018-19) not exceeding INR 400 Crores:

Particulars	Taxable income < INR 1 crore	Taxable income >INR 1 crore and < INR 10 crore	Taxable income > INR 10 crore
Corporate tax	25%	25%	25%
Surcharge	-	7%	12%
Corporate tax + surcharge	25%	26.75%	28%
Health & Education cess	4%	4%	4%
Effective tax rate	26%	27.82%	29.12%

B. For a domestic company having total turnover/ gross receipts in previous year 2018-19 exceeding INR 400 Crores

Particulars	Taxable income < INR 1 crore	INR 1 crore < taxable income < INR 10 crore	Taxable income > INR 10 crore
Corporate tax	30%	30%	30%
Surcharge	-	7%	12%
Corporate tax + surcharge	30%	32.10%	33.60%
Health & Education cess	4%	4%	4%
Effective tax rate	31.20%	33.38%	34.94%

1. For the AY 2021-22, Domestic company opting for **section 115BA**, rate of tax is **25 percent** , if the conditions contained in that section specified.
2. For the AY 2021-22, Domestic company has an option to opt for Taxation under section 115BAA or Section 115BAB of the income tax Act, where rate of tax is **22 percent in section 115BAA** and **15 percent in section 115BAB.** ***Surcharge is 10 per cent in both cases.***

F. Foreign Company (for A.Y. 2021-22)

I. The rates of income-tax will continue to be the same as those specified for assessment year 2020-21 i.e. **a foreign company is taxable at 40%** *[Health & Education cess and surcharge as applicable]*.

Particulars	Taxable income < INR 10 million	INR 10 million < taxable income < INR 100 million	Taxable income > INR 100 million
Corporate tax	40%	40%	40%
Surcharge	-	2%	5%
Corporate tax + surcharge	40%	40.80%	42.00%
Health & Education cess	4%	4%	4%
Effective tax rate	41.60%	42.43%	43.68%

New Section 115 BAC : Incentive to Individual & HUF

A New section 115BAC of the Income-tax Act, has been inserted with effect from the 1st day of April 2020. This section provides the new income tax slab rates for the individual and HUF if the Individual or HUF shall satisfied the certain condition. An individual and HUF from the AY 2021-22 onwards have an option to pay tax at the following rates mentioned below:

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Total income	Rate of tax
Up to Rs 2,50,000	Nil
From Rs 2,50,001 to Rs 5,00,000	5 per cent.
From Rs 5,00,001 to Rs 7,50,000	10 per cent.
From Rs 7,50,001 to Rs 10,00,000	15 per cent.
From Rs 10,00,001 to Rs 12,50,000	20 per cent.
From Rs 12,50,001 to Rs 15,00,000	25 per cent.
Above Rs 15,00,000	30 per cent.:

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This option shall be available if the Individual or HUF fulfil the following Condition:

(1)The Assessee shall not avail following exemption or deduction prescribed under following section

Section	Clause	Name
10	*5*	*Leave Travel concession*
10	*13A*	*House rent allowance*
10	*14*	*Allowances*
10	*17*	*Allowances to MPs/MLAs*
10	*32*	*Allowance for income of minor*
10AA		*Exemption for SEZ*
16		*Deductions from Salaries*
24	*(b)*	*Interest in respect of self-occupied or vacant property*
32(1)	*iia*	*Additional Depreciation*
57	*iia*	*Deduction from family pension*

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Section	Clause	Name
32AD		Investment in new plant or machinery in notified backward areas in certain states
33AB		Tea development account
33ABA		Site restoration Fund
35(1)	(ii)(iia) (iii)	Expenditure on Scientific Research
35(2AA)		Expenditure on Scientific Research
35AD		Deduction in respect of expenditure on specified business
35CCC		Expenditure on Agricultural extension project
80JJAA		Deduction in respect of employment of new employees

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Further, The Assessee shall not claim any deduction as specified under Chapter VI-A of the Income tax Act. However Assessee can claim exemption of Section 80CCD(2) and 80JJAA of the chapter VI -A

(2) The assessee shall not have right to set off any loss under the head "Income from the House Property" or 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);

(3)The Assessee shall claim the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the Section 32, determined in such manner as may be prescribed; and

(4) The assessee shall not take any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.

(5) All of the carried forwarded losses and unabsorbed depreciation shall be deemed to be provided for, on exercise of the option provided in this section. However, in case any depreciation allowance pending to be allowed to the assessee on 01.04.2020 and the assessee exercise the said option, the amount of such depreciation allowance pending to be allowed **shall be added to the value of block of assets as on 01.04.2020. [Proviso to 115BAC(3)]**

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Manner of Exercising of the Option

(a) In case assessee having income from business or profession, the option shall be exercised before the due date specified under section 139(1) of the Act. The option once exercised shall be valid for subsequent assessment year also. Also, the option by such assessee's once exercised for any previous year can be withdrawn only once for a previous year other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise option under this section, except where such person ceases to have any income from business or profession in which case, option under clause (b) shall be available.

(b) In case of the Individual or HUF having no income from business or profession, such option can be exercised for every previous year before filling return of income.

Note: *The words above in red, were earlier not inserted in this section by finance bill, 2020, presented on 01-02-2020 however, the same are now inserted in the finance Act 2020 passed on 27.03.2020, to clear the ambiguity that the taxpayers having income from profession shall also get only one time option to opt for new tax regime. The taxpayers earning business income or professional income are now at par as far as this provision is concerned*

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Points to be noted:

1. In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under this section, the conditions contained in sub-section (2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfillment of the conditions contained in the said section.
2. Further section 115JC of the Act is also amended so as to provide that the provisions relating to AMT shall not apply to such individual or HUF who have exercised the option covered u/s 115BAC (i.e. New Tax Regime).
3. Section 115JD of the Act is amended 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 who have exercised the option covered u/s 115BAC.

TAX EFFECT OF SECTION 115BAC

	Example 1		Example 2	
	OLD (GTI = 10L)	**NEW (GTI = 10L)**	**OLD (GTI = 15L)**	**NEW (GTI = 15L)**
Salary	10,00,000.00	10,00,000.00	15,00,000.00	15,00,000.00
Less: Standard Deduction	50,000.00		50,000.00	
Taxable Income (A)	**9,50,000.00**	**10,00,000.00**	**14,50,000.00**	**15,00,000.00**
Deduction				
U/s 24 - Interest on Home Property	2,00,000.00	-	2,00,000.00	-
80C - LIC/NSC/PPF etc.	1,50,000.00	-	1,50,000.00	-
80CCD – NPS	50,000.00	-	50,000.00	-
80D – Mediclaim				
Self	25,000.00	-	25,000.00	-
Parents	25,000.00	-	25,000.00	-
Total Deduction (B)	**4,50,000.00**	**-**	**4,50,000.00**	**-**

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	Example 1		Example 2	
	OLD (GTI = 10L)	**NEW (GTI = 10L)**	**OLD (GTI = 15L)**	**NEW (GTI = 15L)**
Total Taxable Income (A-B)	5,00,000.00	10,00,000.00	10,00,000.00	15,00,000.00
Computation of Tax				
Upto 2.5 Lac	-	-	-	-
2.5Lac - 5Lac	12,500.00	12,500.00	12,500.00	12,500.00
5Lac - 7.5Lac	-	25,000.00	50,000.00	25,000.00
7.5Lac - 10Lac	-	37,500.00	50,000.00	37,500.00
10Lac - 12.5Lac	-	-	-	50,000.00
12.5Lac - 15Lac	-	-	-	62,500.00
15Lac Above	-	-	-	-
Total Tax	12,500.00	75,000.00	1,12,500.00	1,87,500.00
(less) Rebate u/s 87A	(12,500.00)	-	-	-
ADD: Cess @ 4%	-	3,000.00	4,500.00	7,500.00
Total Tax Liability	**-**	**78,000.00**	**1,17,000.00**	**1,95,000.00**

TAX EFFECT OF SECTION 115BAC

	Example 3		Example 4	
	OLD (GTI = 20L)	**NEW (GTI = 20L)**	**OLD (GTI = 25L)**	**NEW (GTI = 25L)**
Salary	20,00,000.00	20,00,000.00	25,00,000.00	25,00,000.00
Less: Standard Deduction	50,000.00		50,000.00	
Taxable Income (A)	**19,50,000.00**	**20,00,000.00**	**24,50,000.00**	**25,00,000.00**
Deduction				
U/s 24 - Interest on Home Property	2,00,000.00	-	2,00,000.00	-
80C - LIC/NSC/PPF etc.	1,50,000.00	-	1,50,000.00	-
80CCD – NPS	50,000.00	-	50,000.00	-
80D – Mediclaim				
Self	25,000.00	-	25,000.00	-
Parents	25,000.00	-	25,000.00	-
Total Deduction (B)	**4,50,000.00**	**-**	**4,50,000.00**	**-**

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	Example 3		Example 4	
	OLD (GTI = 20L)	**NEW (GTI = 20L)**	**OLD (GTI = 25L)**	**NEW (GTI = 25L)**
Total Taxable Income (A-B)	15,00,000.00	20,00,000.00	20,00,000.00	25,00,000.00
Computation of Tax				
Upto 2.5 Lac	-	-	-	-
2.5Lac - 5Lac	12,500.00	12,500.00	12,500.00	12,500.00
5Lac - 7.5Lac	50,000.00	25,000.00	50,000.00	25,000.00
7.5Lac - 10Lac	50,000.00	37,500.00	50,000.00	37,500.00
10Lac - 12.5Lac	75,000.00	50,000.00	75,000.00	50,000.00
12.5Lac - 15Lac	75,000.00	62,500.00	75,000.00	62,500.00
15Lac Above		1,50,000.00	1,50,000.00	3,00,000.00
Total Tax	2,62,500.00	3,37,500.00	4,12,500.00	4,87,500.00
(less) Rebate u/s 87A	-	-	-	-
ADD: Cess @ 4%	10,500.00	13,500.00	16,500.00	19,500.00
Total Tax Liability	**2,73,000.00**	**3,51,000.00**	**4,29,000.00**	**5,07,000.00**

MODIFICATION OF CONCESSIONAL TAX SCHEMES FOR DOMESTIC COMPANIES

Tax on Income of certain Domestic Companies SECTION-115BAA (Clause-51)

Amendment in section 115BAA w.e.f. 1st day of April 2020:-

Substitution in sub-section 2, clause (i)

(2) For the purposes of sub-section (1), the total income of the company shall be computed,—

(i) 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) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of ~~**Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA**~~**; Chapter VI-A other than the provisions of section 80JJAA or section 80M**

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Brief Impact:

TLAA (Tax Laws Amendment Act, 2019) inserted section 115BAA 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.

It is now amended that the provisions of section 115BAA 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.

Tax on Income of New Manufacturing Domestic Companies SECTION 115BAB (Clause 52)

Amendment in section 115BAB w.e.f. 1st day of April 2020:-

Substitution in sub-section 2, clause (c), sub-clause (i)

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

(i) 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) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of ~~Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA~~; Chapter VI-A other than the provisions of section 80JJAA or section 80M.

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Brief Impact:

TLAA inserted 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.

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

New Section 115 BAD : Incentive to Resident Co-operative Societies

(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, the income-tax payable in respect of the total income of a person, being a co-operative society resident in India, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, shall, at the option of such person, be computed at the rate of twenty-two per cent., if the conditions contained in sub-section (2) are satisfied:

Provided that where the person fails to satisfy the conditions contained in sub-section (2) in computing its income in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years

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(2) For the purposes of sub-section (1), the total income of the co-operative society shall be computed,—

- (i) 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 of the provisions of Chapter VI-A other than the provisions of section 80JJAA;
- (ii) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i); and
- (iii) by claiming the depreciation, if any, under section 32, other than clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

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(3) The loss and depreciation referred to in clause (ii) of sub-section (2) 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:
Provided 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 the 1st day of April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2020 in such manner as may be prescribed, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2021.

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

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(5) Nothing contained in this section shall apply unless option is exercised by the person in such manner as may be prescribed on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2021 and such option once exercised shall apply to subsequent assessment years.

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

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Brief Impact:

- A New section 115BAD of the Income-tax Act, has been inserted with effect from the 1st day of April,2020. This section will provide the new and lower income tax slab rates for resident co-operative societies if they satisfy the certain conditions.
- Section 115JC of the Act is further amended so as to provide that the provisions relating to Alternate Minimum Tax (AMT) shall not apply to such co-operative society
- 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.
- **The surcharge applicable to such co-operative society shall be levied at 10 per cent instead of 12%.**
- Section 115JD of the Act is amened 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

Withdrawal of exemption on certain perquisites or allowances provided to UPSC Chairman and members and Chief Election Commissioner and Election Commissioners

[Clause 7]

As per provisions of Section 10(45) of the act, serving Chairman and members of UPSC, retired Chairman and members of UPSC, Chief Election Commissioner and other Election Commissioners were availing exemptions in respect of various allowances and perquisites including the value of rent-free residence, conveyance facilities, sumptuary allowance, medical facilities etc. received by them.

Now these exemptions have been withdrawn by w.e.f. 01.04.2021 i.e. Assessment Year 2021-22 by omission of the clause 45 of section 10 of the Act.

B. TAX INCENTIVES

B. Tax Incentives

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
1.	Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and sovereign wealth fund.	Section 10	Clause 7	01-04-2021
2.	Exemption in respect of certain income of Indian Strategic Petroleum Reserve Limited.	Section 10	Clause 7	01-04-2020
3.	Rationalization of provisions of start-ups.	Section 80-IAC	Clause 36	01-04-2021
4.	Extending time limit for approval of affordable housing project for availing deduction under section 80-IBA of the Act.	Section 80-IBA	Clause 38	01-04-2021

B. Tax Incentives

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
5.	Extending time limit for sanctioning of loan affordable housing for availing deduction under section 80EEA of the Act.	Section 80EEA	Clause 32	01-04-2021
6.	Modification in conditions for offshore funds' exemption from "Business Connection".	Section 9A	Clause 6	01-04-2020
7.	Amendment of section 115BAB of the Act to include generation of electricity as manufacturing.	Section 115BAB	Clause 52	01-04-2020

B. Tax Incentives

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
8.	Amendment of section 194LC of the Act to extend the period of concessional rate of withholding tax and also to provide for the concessional rate to bonds listed in stock exchanges in IFSC.	Section 194LC	Clause 82	01-04-2020
9.	Amendment of section 194LD of the Act to extend the period of concessional rate of withholding tax and also to extend this concessional rate to municipal debt securities.	Section 194LD	Clause 83	01-04-2020

1. Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign wealth fund [Clause 7]

Insertion of clause (d) in section 10 of the Income-tax Act, w.e.f. 01.04.2021 [Clause 7]

(d) after clause (23FD), the following clause shall be inserted, namely:—

"(23FE) 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, if the investment—

(i) is made on or after the 1st day of April, 2020 but on or before the 31st day of March, 2024;

(ii) is held for at least three years; and

(iii) is in -

a) a business trust referred to in sub-clause (i) of clause (13A) of section 2; or

b) a company or enterprise or an entity carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA or such other business as the Central Government may, by notification in the Official Gazette, specify in this behalf; or

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(c) a Category-I or Category-II Alternative Investment Fund regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992, having hundred per cent. investment in one or more of the company or enterprise or entity referred to in item (b):

Provided that if any difficulty arises regarding interpretation or implementation of the provisions of this clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty:

Provided further that every guideline issued under the first proviso, shall be laid before each House of Parliament and shall be binding on the income-tax authority and the specified person:

Provided also that where any income has not been included in the total income of the specified person due to the provisions of this clause, and subsequently during any previous year the specified person fails to satisfy any of the conditions of this clause so that the said income would not have been eligible for such non-inclusion, such income shall be chargeable to income-tax as the income of the specified person of that previous year.

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Explanation.—For the purposes of this clause, "specified person" means—

(a) a wholly owned subsidiary of the Abu Dhabi Investment Authority which—

(i) is a resident of the United Arab Emirates; and

(ii) makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates;

(b) a sovereign wealth fund which satisfies the following conditions, namely:—

(i) it is wholly owned and controlled, directly or indirectly, by the Government of a foreign country;

(ii) it is set up and regulated under the law of such foreign country;

(iii) the earnings of the said fund are credited either to the account of the Government of that foreign country or to any other account designated by that Government so that no portion of the earnings inures any benefit to any private person;

(iv) the asset of the said fund vests in the Government of such foreign country upon dissolution;

(v) it does not undertake any commercial activity whether within or outside India; and

(vi) it is specified by the Central Government, by notification in the Official Gazette, for this purpose;"

Contd....

(c) a pension fund, which—

(i) is created or established under the law of a foreign country including the laws made by any of its political constituents being a province, state or local body, by whatever name called;

(ii) is not liable to tax in such foreign country;

(iii) satisfies such other conditions as may be prescribed; and

(iv) is specified by the Central Government, by notification in the Official Gazette, for this purpose;';

Note: New section 10(23FE) was introduced by Finance bill, 2020, to attract investment and promote infrastructure facilities in India by providing the Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign wealth fund. However, the Scope of Section 10(23FE) is expanded by the Finance Act, 2020 whereby exemption shall be available even if investment in infrastructure companies is made through AIFs.

The words in red above in the section are now inserted by the finance act, 2020. The amended provision also provides that investment should be made during the period between 01-04-2020 to 31-03-2024. This amendment is made to clarify that no exemption shall be available in respect of income arising from investment made before 01-04-2020.

Contd...

Brief Impact:

In aiming to promote investment of sovereign wealth fund and the wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA), a new clause in section 10 is inserted so as to provide the 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 during the period between 01.04.2020 to 31.03.2024 and is required to be held for at least three years. It is also inserted to widen the types of securities listed in said clause by empowering the Central Government to notify other securities for the purposes of this clause.

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.

2. Exemption in respect of certain income of Indian Strategic Petroleum Reserves Limited [Clause 7]

Insertion of Clause (48C) in section 10 of the Income-tax Act, w.e.f. 01.04.2020 [Clause 7]

(III) after clause (48B), the following clause shall be inserted, namely:—

"(48C) any income accruing or arising to the Indian Strategic Petroleum Reserves Limited, being a wholly owned subsidiary of the Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of arrangement for replenishment of crude oil stored in its storage facility in pursuance of directions of the Central Government in this behalf:

Provided that nothing contained in this clause shall apply to an arrangement, if the crude oil is not 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;"

Contd....

Brief Impact:

In order 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 first time from the storage facility.

It is provided in the clause that no exemption shall be available where the replenishment process was not carried out within 3 years from the end of the financial year in which the crude oil was first time removed from storage facility. No such condition was there to avail the exemption in existing clause 48A & 48B relevant to crude oil storage facility.

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.

3. Rationalization of provisions of start-ups [Clause 36]

Amendment in section 80-IAC of the Income-tax Act, w.e.f. 01.04.2021

Substitution in sub-section 2 of section 80-IAC

(2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any three consecutive assessment years out of ~~***seven***~~ ***Ten years*** *beginning from the year in which the eligible start-up is incorporated.*

Substitution in explanation of sub-section 4 of section 80-IAC

(ii)(b) the total turnover of its business does not exceed ~~***twenty-five***~~ ***one hundred crore rupees*** *[in the previous year relevant to the assessment year for which deduction under sub-section (1) is claimed]; and*

Brief Impact:

The existing provisions of section 80-IAC of the Act provide for a deduction of 100% of the profits derived from an eligible business of eligible start-up for 3 consecutive assessment years out of 7 years, subject to some specified conditions.

In order to further rationalize the provisions relating to start-ups, Section 80-IAC of the Act amended so as to provide the deduction for a period of 3 consecutive AYs out of **ten years** beginning from the year in which it is incorporated, 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.

4. Extending time limit for approval of affordable housing project for availing deduction in section 80-IBA [Clause38]

Amendment in Section 80-IBA of the Income-tax Act, w.e.f. 01.04.2021

*"In section 80-IBA of the Income-tax Act, in sub-section (2), in clause (a), for the figures "**2020**", the figures "**2021**" shall be substituted with effect from the 1st day of April 2021."*

Brief Impact:

In order to incentivize building affordable housing to boost the supply of such houses, the period of approval of the project by the competent authority is extended to 31st March, 2021.

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.

5. Extending time limit for sanctioning of loan for affordable housing for availing deduction in Section 80-EEA [Clause 32]

Amendment in section 80-EEA of the Income-tax Act, w.e.f. 01.04.2021

*"In section In section 80EEA of the Income-tax Act, in sub-section (3), in clause (i), for the figures "**2020**", the figures "**2021**" shall be substituted with effect from the 1st day of April, 2021."*

Brief Impact:

In the existing provisions, there is one condition is that loan has been sanctioned by the financial institution during the period from 1st April, 2019 to 31st March, 2020. The said deduction is aimed to incentivize first time buyers to invest in residential house property whose stamp duty does not exceed forty-five lakh rupees.

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

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.

6. Modification in the conditions for offshore funds' exemption from "business connection" [Clause 6]

Amendment in Section 9A of the Income-tax Act, w.e.f. 01.04.2020 [Clause 6]

"In section 9A of the Income-tax Act, in sub-section (3),—

(a) in clause (c), the following proviso shall be inserted, namely:—

"Provided that for the purposes of calculation of the said aggregate participation or investment in the fund, any contribution made by the eligible fund manager during the first three years of operation of the fund, not exceeding twenty-five crore rupees, shall not be taken into account;

(b) ***In clause (j)***

"(j) the monthly average of the corpus of the fund shall not be less than one hundred crore rupees:

Provided that if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees ***[at the end of a period of*** ~~***six months from the the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later]***~~ ***"twelve months from the last day of the month of its establishment or incorporation."***

Contd....

Brief Impact:

According to an existing condition for eligibility, 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 favored.

Accordingly, Section 9A of the Act is amended 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.

7. Amendment of section 115-BAB to include generation of electricity as manufacturing [Clause 52]

Amendment in Section 115-BAB of the Income-tax Act, w.e.f. 01.04.2020 [Clause 52]

- *Substitution in Section 115BAB of the Income-tax Act, in sub-section (2) clause (c), sub-clause (i):-*

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

(i) 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) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of ~~***Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA***~~***; Chapter VI-A other than the provisions of section 80JJAA or section 80M".***

Contd....

- *After clause (c), the following Explanation shall be inserted, namely:—*

"Explanation.—For the purposes of clause (b), the "business of manufacture or production of any article or thing" shall include the business of generation of electricity."

Brief Impact:

An explanation is inserted under section 115BAB of the Act to include the business of generation of electricity as manufacturing, which otherwise may not amount to manufacturing or production of an article or thing. Accordingly, it is amended to explain that, for the purposes of this section, manufacturing or production of an article or thing shall include generation of electricity.

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.

8. Amendment of Section 194LC to extend the period of concessional rate of withholding tax & to provide for the concessional rate to bonds listed in stock exchange in IFSC [Clause82]

Amendment in Section 194LC of the Income-tax Act, w.e.f. 01.04.2020:-

"In section 194LC of the Income-tax Act,—

(i) in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that in case of income by way of interest referred to clause (ib) of sub-section (2), the income-tax shall be deducted at the rate of four per cent."

(ii) in sub-section (2),—

*(a) in clause (i), in sub-clause (a) and sub-clause (c), for the figures "**2020**", the figures "**2023**" shall be substituted;*

*(b) in clause (ia), for the figures and word "**2020**, and", the figures and word "**2023**, or" shall be substituted;*

(c) after clause (ia), the following clause shall be inserted, namely:—

"(ib) in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre, and"

(iii) In the Explanation, after clause (b), the following clauses shall be inserted, namely:—

"(c) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005;

(d) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43."

Contd....

Brief Impact:

In order to attract offshore fresh investment, create jobs and stimulate the economy, the section is amended 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 exchang located in any IFSC.

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

9. Amendment of Section 194LD to extend the period of concessional rate of withholding tax & also to extend this concessional rate to Municipality Debt Securities [Clause83]

Amendment in section 194LD of the Income-tax Act, w.e.f. 01.04.2020

- Substitution of Sub section (2) of Section 194LD, namely:-

"(2) The income by way of interest referred to in sub-section (1) shall be the interest payable,–

(a) on or after the 1st day of June, 2013 but before the 1st day of July, 2023 in respect of the investment made by the payee in —

(i) a rupee denominated bond of an Indian company; or

(ii) a Government security;

(b) on or after the 1st day of April, 2020 but before the 1st day of July, 2023 in respect of the investment made by the payee in municipal debt securities:

Provided that the rate of interest in respect of bond referred to in sub-clause (i) of clause (a) shall not exceed the rate as the Central Government may, by notification in the Official Gazette, specify.";

(ii) in the Explanation, after clause (b), the following clause shall be inserted, namely:—

'(ba) "municipal debt securities" shall have the meaning assigned to it in clause (m) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015 made under the Securities and Exchange Board of India Act, 1992"

Brief Impact:

Similarly to Clause 82 i.e. similar to amendment in section 194LC, this clause is inserted in order to attract offshore fresh investments, create jobs and stimulate the economy. Amendment in section 194LD is made to-

(i) extend the period of rate of TDS of 5% till 1/6/2023 (earlier it was till 01/6/2020)

(ii) provide that the concessional rate of TDS of 5% shall also apply on the interest payable, on or after 1/4/2020 but before 1/7/2023 to FIIs or QFIs in respect of the investment made in municipal debt security.

C. REMOVING DIFFICULTIES FACED BY TAXPAYERS

C. Removing difficulties faced by taxpayers

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
1.	Excluding interest paid/payable to PE of a NR Bank for the purpose of disallowance of interest u/s 94B	Section 94B	Clause 46	01-04-21
2.	Increase in safe harbour limit of 5% u/s 43CA, 50C and 56 of the Act to 10%	Section 43CA, 50C & 56(2)(x)	Clause 22,27 & 29	01-04-21
3.	Providing an option to the assessee for not availing deduction u/s 35AD	Section 35AD	Clause 18	01-04-20
4.	Exempting NR from filing of ITR in certain conditions	Section 115A	Clause 47	01-04-20

C. Removing difficulties faced by taxpayers

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
5.	Deferring TDS or tax payment in respect of income pertaining to ESOP of start- ups	Section 192,191,156 & 140A	Clause 68,71,72 & 73	01-04-20
6.	Allowing carry forward of losses or depreciation in certain amalgamations	Section 72AA	Clause 31	01-04-20
7.	Modification of the definition of "business trust"	Section 115UA	Clause 62	01-04-21

1. Excluding interest paid/payable to PE of a NR Bank for the purpose of disallowance of interest u/s 94B (Clause 46)

Amendment in Section 94B w.e.f. 1st day of April, 2021 –

After Subsection (1) the following sub-section shall be inserted namely:—

"(1A) Nothing contained in sub-section (1) shall apply to interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking."

Brief Impact:

According to the existing provisions a branch of the foreign company in India is a NR. As per the definition of AE in Section 92A, two enterprises will be deemed to be AE if during the PY a loan is advanced by one enterprise to the other enterprise is 50% or more of the book value of the total assets of the other enterprise.

Thus, the interest paid or payable in respect of loan from the branch of a foreign bank was attracting provisions of interest limitation in this section.

Hence, for removing this difficulty, new sub-section (*1A*) is inserted that the provisions of interest limitation **would not apply to interest paid in respect of a debt issued by a lender which is a Permanent Establishment in India of a NR Bank.**

2. Increase in safe harbour limit of 5% u/s 43CA, 50C and 56 of the Act to 10% (Clause 22,27 & 29)

- **Amendment in Section 43CA w.e.f. 1st day of April, 2021 –**

  Substitution in Proviso to Section 43CA(1):-

  "[provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ~~*five per cent*~~ ***Ten Percent*** *the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.]"*

- **Amendment in Section 50C w.e.f. 1st day of April, 2021 –**

  Substitution in Third Proviso to Section 50C(1):-

  "[Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ~~*five per cent*~~ ***Ten Percent*** *of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.]"*

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- **<u>Amendment in Section 56(2)(x) w.e.f. 1st day of April, 2021 -</u>**

Substitution in Sub-clause (b), in item (B), in sub-item (ii):-

"(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

[(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ~~***five per cent***~~ ***Ten Percent*** *of the consideration:]"*

Brief Impact:

For Section 43CA & 50C:-

Where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted/assessed/ assessable by stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted/assessed/assessable shall be deemed to be the full value of the consideration for the purpose of computing profits and gains or capital gains.

Further, the said sections also provide that where the value adopted/assessed/ assessable by the stamp valuation authority does not exceed one hundred and **Five Percent** of the consideration received or accruing as a result of the transfer, the consideration so received/accruing as a result of transfer shall for the purposes of computing profits or gains or for Section 48, be deemed to be the full value of the consideration.

For Section 56(2)(x):-

The provision provides that if any person receives in any PY from any person(s) on or after 1/4/17, any immovable property, for a consideration which is less than SDV of the property by an amount exceeding fifty thousand rupees, the SDV of such property as exceeding such consideration shall be charged to tax u/h income from other sources.

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Further, this section [56(2)(x)] also provides if the assessee receives any immovable property for a consideration and SDV of such property exceeds **Five Percent** of the consideration or fifty thousand rupees, whichever is higher, the SDV of such property as exceeding such consideration shall be charged to tax under IFOS.

Thus, the present provisions of section 43CA, 50C and 56 of the Act provide for safe harbour of five per cent. **Therefore, these sections are amended to increase the limit to ten per cent.**

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.

3.Providing an option to the assessee for not availing deduction u/s 35AD (Clause 18)

Amendment in Section 35AD w.e.f. 1st day of April, 2020:-

Substitution in Sub-section (1) & (4):-

"(1) ~~An assessee shall,~~ ***An assessee shall, if he opts*** *be allowed a deduction in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him:"*

Insertion in Sub-section (4)-

"(4) No deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section in any previous year or under this section in any other previous year, ***if the deduction has been claimed or opted by the assessee and allowed to him under this Section."***

Brief Impact:

As per Sub-section (1) of Section 35AD a deduction of 100% of the capital expenditure is allowable during the PY in which the expenditure on specified business has been incurred. Further, Sub-section (4) provides that no deduction is allowable under any other Section in respect to the above expenditure.

Therefore, in the existing situation assessee does not have any option of not availing the incentive under said section. This has not been the intention of the statute. Hence, the amendment in sub-section (1) & (4) to the section made claiming of the **deduction optional** as per the will of the assessee.

4. Exempting non-resident from filing ITR in certain conditions (Clause 47)

- **Amendment in Section 115A w.e.f 1st day of April, 2020:-**

  ❑ Omission in Sub-section (1):-

"(1) Where the total income of—

(a) a non-resident (not being a company) or of a foreign company, includes any income by way of—

(i) dividends ~~***other than dividends referred to in section 115-O***~~ *; or*

(ii) interest received from Government or an Indian concern on monies borrowed or debt incurred by Government or the Indian concern in foreign currency not being interest of the nature referred to in sub-clause (iia) or sub-clause (iiaa); or

(iia) interest received from an infrastructure debt fund referred to in clause (47) of section 10; or

(iiaa) interest of the nature and extent referred to in section 194LC; or

(iiab) interest of the nature and extent referred to in section 194LD; or

(iiac) distributed income being interest referred to in sub-section (2) of Section 194LBA;

(iii) income received in respect of units, purchased in foreign currency, of a mutual fund specified under clause (23D) of section 10 or of the unit trust of india,
the income-tax payable shall be aggregate of—
(A) the amount of income-tax calculated on the amount of income by way of dividends ~~***other than dividends referred to in section 115-O***~~*, if any, included in the total income, at the rate of twenty per cent.....”*

- Substitution in Sub-section (5) Clause (a):-

“(5) It shall not be necessary for an assessee referred to in sub-section (1) to furnish under sub-section (1) of section 139 a return of his or its income if—
(a) his or its total income in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in ~~***clause (a)***~~ ***clause (a) or clause (b)*** *of sub-section (1); and*

- Substitution of Sub-section (5) Clause (b):-

~~*(b) the tax deductible at source under the provisions of chapter XVII-B has been deducted from such income.*~~

CONTD....

"*(B)* the tax deductible at source under the provisions of part B of chapter XVII has been deducted from such income and the rate of such deduction is not less than the rate specified under clause *(a)* or, as the case may be, clause *(b)* of sub-section *(1)*."

Brief Impact:

In order to extend the benefit of exempting NR whose total income consists only of the income by way of royalty or FTS from filing of ITR just like in the case of certain dividend or interest income amendment in Section 115A is as such:-

A non-resident, shall not be required to file return of income under sub-section (1) of section 139 of the Act if, -
his or its total income consists of only dividend or interest income as referred to in clause (a) of sub-section (1) of said section, or royalty or FTS income of the nature specified in clause (b) of sub-section (1) of section 115A; and 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

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In the long line, for clause (ba), the following clause shall be substituted, namely:—

"(ba) the amount of income-tax calculated on the amount of income by way of interest referred to in,—

(i) sub-clause (iia), if any, included in the total income, at the rate of five per cent.;

(ii) sub-clause (iiaa) or sub-clause (iiab) or sub-clause (iiac), if any, included in the total income, at the rate provided in the respective sections referred to in the said sub-clauses;";

Brief Impact:

The above amendment is introduced in the Income Tax Act by Finance Act, 2020, however the same was not proposed earlier by Finance Bill, 2020.

Clause (BA) of Section 115A provides that the following incomes received by a non-resident person shall be taxable at the rate of 5%: a) Interest received from an infrastructure debt fund as referred to in section 10(47); b) Interest of the nature and extent as referred to in section 194LC or section 194LD; c) Interest paid by a business trust under section 194LBA(2).

So now, the Finance Act, 2020 excludes the Interest income as referred to in section 194LC, Section 194LD and 194LBA(2), from the purview of 5% taxation, which shall now be taxable at the rate provided in the respective sections. This amendment is applicable from A.Y 2020-21.

5. Deferring TDS/Tax payment in respect of income pertaining to ESOP of start- ups (Clause 68, 71, 72 & 73)

Amendment in Section 192 w.e.f 1st day of April, 2020:-

Insertion of sub-section (1C) after sub-section *(1B)*:-

"*(1C)* for the purposes of deducting or paying tax under sub-section *(1)* or sub-section *(1A)*, as the case may be, a person, being an eligible start-up referred to in section 80-IAC, responsible for paying any income to the assessee being perquisite of the nature specified in clause *(vi)* of sub-section *(2)* of section 17 in any previous year relevant to the assessment year, beginning on or after the 1st day of April, 2021, 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; or**

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

***(iii)* from the date of the assessee ceasing to be the employee of the person, whichever is the earliest, on the basis of rates in force for the financial year in which the said specified security or sweat equity share is allotted or transferred."**

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Amendment in section 191 w.e.f 1st day of April, 2020:-

Renumbering of section 191 as sub-section (1) & after sub-section *(1)* as so renumbered, the following sub-section shall be inserted, namely:—

"*(2)* for the purposes of paying income-tax directly by the assessee under sub-section *(1)*, if the income of the assessee in any assessment year, beginning on or after the 1st day of April, 2021, includes income of the nature specified in clause *(vi)* of sub-section *(2)* of section 17 and such specified security or sweat equity shares referred to in the said clause are allotted or transferred directly or indirectly by the current employer, being an eligible start-up referred to in section 80-IAC, the income-tax on such income shall be payable by the assessee within fourteen days –

(i) after the expiry of forty-eight months from the end of the relevant assessment year; or

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

(iii) from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity share,

whichever is the earliest."

Amendment in Section 156 w.e.f 1st day of April, 2020:-

Renumbering of section 156 as sub-section (1) & after sub-section *(1)* as so renumbered, the following sub-section shall be inserted, namely:—

"*(2)* where the income of the assessee of any assessment year, beginning on or after the 1st day of april, 2021, includes income of the nature specified in clause *(vi)* of sub-section *(2)* of section 17 and such specified security or sweat equity shares referred to in the said clause are allotted or transferred directly or indirectly by the current employer, being an eligible start-up referred to in section 80-IAC, the tax or interest on such income included in the notice of demand referred to in sub-section *(1)* shall be payable by the assessee within fourteen days–

(i) after the expiry of forty-eight months from the end of the relevant assessment year; or

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

(iii) from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity share,

whichever is the earliest."

CONTD....

- **Amendment in Sub-section (1) of Section 140A w.e.f 1st day of April, 2020:-**

  ❑Omission in Clause (iv):-

  "(*iv*) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; ~~**and"**~~

  ❑Substitution in Clause (v):-

  "(*v*) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or ~~**section 115JD,**~~ **section 115JD; and"**

  ❑Insertion of Clause (vi):-

  "(*vi*) any tax or interest payable according to the provisions of sub-section (*2*) of section 191."

Brief Impact:

As per the existing provisions, the tax on ESOP is required to be paid as a perquisite at the time of exercising of the option which may lead to cash flow problem as this benefit of ESOP is in kind.

Brief Impact:

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, Section 192 of the Act is amended and sub-section (1C) is inserted therein to clarify that for the purpose of deducting or paying tax under sub-sections (1) or (1A) thereof, as the case may be, a person, being an eligible start-up referred to in section 80-IAC, responsible for paying any income to the assessee being perquisite of the nature specified in clause (vi) of sub-section (2) of section 17 of the Act, in any previous year relevant to the A.Y. 2021-22 or subsequent assessment year, deduct or pay, as the case may be, tax on such income within fourteen days —

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

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

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

6. Allowing carry forward of losses or depreciation in certain amalgamations (Clause 31)

Substitution of Section 72AA w.e.f. 1st day of April, 2020:-

"72AA. Notwithstanding anything contained in sub-clauses *(i)* to *(iii)* of Clause *(1B)* of section 2 or section 72A, where there has been an amalgamation of—

(*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 (nationalisation) Act, 1972,

CONTD....

The accumulated loss and the unabsorbed depreciation of such banking company or companies or amalgamating corresponding new bank or banks or amalgamating government 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.

Explanation.—For the purposes of this section,—

(i) "accumulated loss" means so much of the loss of the amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating government company or companies under the head "profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating banking company or companies or amalgamating

Corresponding new bank or banks or amalgamating government company or companies, would have been entitled to carry forward and set off under the provisions of section 72, if the amalgamation had not taken place;

(ii) "banking company" shall have the meaning assigned to it in clause *(c)* of section 5 of the banking regulation act, 1949;

(iii) "banking institution" shall have the meaning assigned to it in sub-section *(15)* of section 45 of the banking regulation act, 1949;

(iv) "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;

(v) "general insurance business" shall have the meaning assigned to it in clause *(g)* of section 3 of the general insurance business (nationalisation) act, 1972;

(vi) "government company" means a government company as defined in clause *(45)* of section 2 of the Companies Act, 2013,

CONTD....

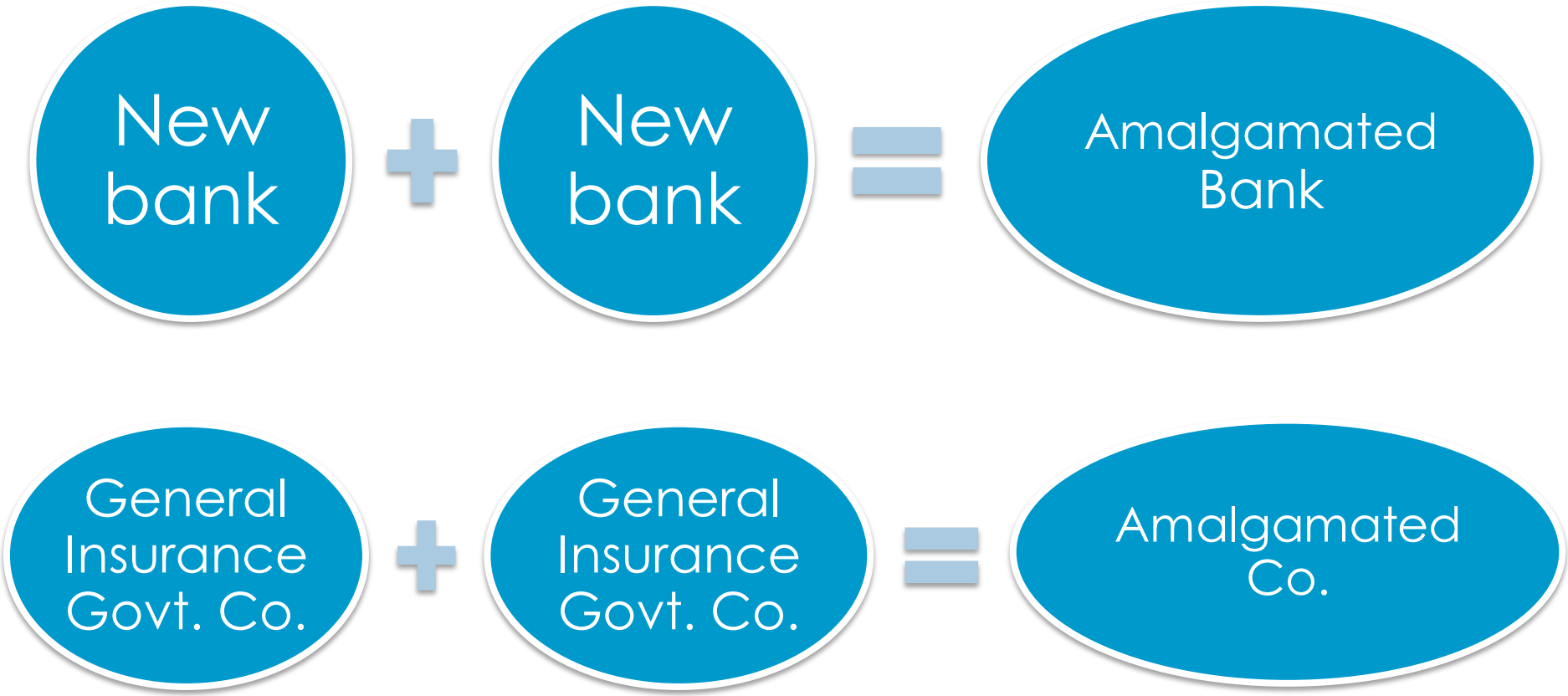
Which is engaged in the general insurance business and which has come into existence by operation of section 4 or section 5 or section 16 of the general insurance business (nationalisation) act, 1972;

(vii) "unabsorbed depreciation" means so much of the allowance for depreciation of the amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating government company or companies which remains to be allowed and which would have been allowed to such banking company or companies or amalgamating corresponding new bank or banks or amalgamating government company or companies, if the amalgamation had not taken place."

Brief Impact:

As per existing Section 72AA carry forward of accumulated losses and unabsorbed depreciation is allowed in the case of amalgamation of banking company with any other banking institution and to extend the benefit of this section to **public sector banks** and public sector **General Insurance Companies** the following amendment has been made:-

Brief Impact:



7. Modification of the definition of "business trust" (Clause 62)

Omission in Section 115UA w.e.f. 1st day of April, 2021:-

(3) If in any previous year, the distributed income or any part thereof, received by a unit holder from the business trust is of the nature as referred to in ~~**sub-clause (*a*)**~~ of clause (*23FC*) or clause (*23FCA*) of section 10, then, such distributed income or part thereof shall be deemed to be income of such unit holder and shall be charged to tax as income of the previous year.

Brief Impact:

In order to give the same status to private unlisted InvITs as public listed InvITs with regards to tax treatments under the Act & that SEBI has done away with the mandatory listing requirement for InvITs, the definition of business trusts under the Act is required to be aligned with the amended SEBI Regulations.

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

Brief Impact:

In section 2 of the income-tax act,—

(i) in clause *(13A)*, with effect from the 1st day of april, 2021,—

(a) in sub-clause *(ii)*, the word "and" occurring at the end shall be omitted;

(b) the long line shall be omitted;

(ii) in clause *(42A)*, in *explanation* 1, in clause *(i)*, after sub-clause *(hg)*, the following sub-clause shall be inserted, namely:—

"*(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, there shall be included the period for which the original unit or units in the main portfolio were held by the assessee;".

D. Measure to Provide Tax Certainty

D. Measure to Provide Tax Certainty

S. No.	Brief	Section / Schedule	Clause No.	Effective date [i.e. w.e.f.]
1.	Amendment for providing attribution of profit to Permanent Establishment in Safe Harbour Rules under section 92CB and in Advance Pricing Agreement under section 92CC	Section 92CB & 92CC	43 & 44	01-04-2020
2.	Allowing deduction for amount disallowed under section 43B, to insurance companies on payment basis.	Rule 5 of Schedule 1	106	01-04-2020
3.	Reducing the rate of TDS on fees for technical services (other than professional services)	Section 194J	79	01-04-2020

1. Amendment for providing attribution of profit to Permanent Establishment in Safe Harbour Rules under section 92CB and in Advance Pricing Agreement under section 92CC [Clause 43 & 44]

Amended section 92CB of the Income-tax Act, in sub section (1), w.e.f. 01/04/2020 [Clause 43]

92CB ~~(1) The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules~~.

(A) *(1) The determination of—*

(a) income referred to in clause (i) of sub-section (1) of section 9; or

(b) arm's length price under section 92C or section 92CA, shall be subject to safe harbour rules.

(B) ***In sub-section (2), in the Explanation, for the words "the transfer price declared by the assessee", the words, brackets and figures "the transfer price or income, deemed to accrue or arise under clause (i) of sub-section (1) of section 9, as the case may be, declared by the assessee" shall be substituted.*

Note: **new words are introduced to widen the scope of the section by Finance Bill, 2020*

*** The consequential amendments to section 92CB by the Finance Act, 2020 to expand the meaning of safe harbour.*

Contd....

- **Amended section 92CC of the Income-tax Act, in sub section (1), w.e.f. 01/04/2020 [Clause 44]**

92CC.~~(1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.~~

"(1) The Board, with the approval of the Central Government, may enter into and advance pricing agreement with any person, determining the—

(a) arm's length price or specifying the manner in which the arm's length price is to be determined, in relation to an international transaction to be entered into by that person;

****(b) income referred to in clause (i) of sub-section (1) of section 9 or specifying the manner in which said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident.***

***Note:** new words are introduced as given in bold to widen the scope of the section*

Contd....

- **Amended section 92CC of the Income-tax Act, in sub section (2) w.e.f. 01/04/2020 [Clause 44]**

92CC.~~(2) The manner of determination of arm's length price referred to in sub-section (1), may include the methods referred to in sub-section (1) of section 92C or any other method, with such adjustments or variations, as may be necessary or expedient so to do.~~

(2) The manner of determination of the arm's length price referred to in ***clause (a) or the income referred to in clause (b) of*** *sub-section (1), may include the methods referred to in sub-section (1) of section 92C* ***or the methods provided by rules made under this Act, respectively,*** *with such adjustments or variations, as may be necessary or expedient so to do.*

Note: *new words are introduced as given in bold to widen the scope of the section*

Contd....

- **Amended section 92CC of the Income-tax Act, in sub section (3) w.e.f. 01/04/2020 [Clause 44]**

92CC. ~~(3) Notwithstanding anything contained in section 92C or section 92CA, the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered~~

(3) Notwithstanding anything contained in section 92C or section 92CA **or the methods provided by rules made under this Act,** the arm's length price of any international transaction **or the income referred to in clause (b) of sub-section (1)**, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered

***Note:** new words are introduced as given in bold

Contd....

- **Amended section 92CC of the Income-tax Act, in sub section (9A) w.e.f. 01/04/2020 [Clause 44]**

92CC.~~(9A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm's length price of such international transaction shall be determined in accordance with the said agreement.~~

(9A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the—

(a) arm's length price or specify the manner in which the arm's length price shall be determined in relation to the international transaction entered into by the person;

****(b) income referred to in clause (i) of sub-section (1) of section 9, or specifying the manner in which the said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident,***

during any period not exceeding four previous years preceding the first of the previous years referred to in sub-section (4), and the arm's length price of such international transaction or the income of such person shall be determined in accordance with the said agreement."

***Note:** *new words are introduced as given in bold*

Brief Impact:

Section 92CB: As per Explanation to the section 92CB of the Act the term "safe harbour" means circumstances in which the Income-tax Authority shall accept the transfer price declared by the assessee. At present, the Arms Length Price **(ALP)** determined u/s 92C or 92CA of the Act shall be subject to the safe harbor rules **(SHR)** made by CBDT u/s 92CB of the Act. This section was inserted in the Act by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009 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. SHR provides tax certainty for relatively smaller cases for future years on general terms.

Section 92CC: This section empowers CBDT to enter into an advance price 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)**

Contd....

Brief Impact:

Currently, there are numbers cases where disputes are related to attribution of profits to the PE of a non-resident under clause (i) of sub-section (1) of section 9 of the Act. To reduce the number of disputes that are related to attribution of profits to the PE of a non-resident the attribution of income in case of a non-resident person to the PE, should also be covered under the provisions of the SHR and the APA.

In view of the above, the provisions of section 92CB and section 92CC of the Act are amended to cover determination of attribution to PE within the scope of SHR and APA.

With respect to section 92CB, 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.

2. Allowing deduction for amount disallowed under section 43B, to insurance companies on payment basis. [Clause-106]

- **<u>Amended Rule 5 of the First Schedule to the Income-tax Act, w.e.f 01.04.2020 i.e. A.Y. 2020-21 onwards [Clause 106]</u>**
- Insertion of proviso after clause (C) of the rule 5 of the First Schedule to the Act :-

"Provided that any sum payable by the assessee under section 43B, which is added back in accordance with clause (a) of this rule, shall be allowed as deduction in computing the income under the said rule in the previous year in which such sum is actually paid."

Brief Impact:

As per section 43B of the Act, certain expenditure incurred by the assessee are only allowed as deduction on actual payment of such expenditure irrespective of accounting method followed by the assessee i.e. insurance companies.

As per rule 5 of First Schedule to the Act, while computing the profits and gains from business for insurance companies other than life insurance, 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. Thus there was no provision in Rule 5 to allow the deduction of the expenditure which was earlier disallowed u/s 43B and subsequently paid by assessee.

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

3. Reducing the rate of TDS on fees for technical services (other than professional services) [Clause-79]

- **Amended section 194J of the Income-tax Act, in sub section (1) w.e.f. 01/04/2020 [Clause 79]**

  In section 194J of the Income-tax Act, in sub-section (1),—

  In the long line, for the words "ten per cent. of such sum", the words and brackets ***"two per cent. of such sum in case of fees for technical services (not being a professional service, or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films and ten per cent. of such sum in other cases,"*** *shall be substituted*

- **Amended section 194J of the Income-tax Act, in second proviso w.e.f. 01/04/2020 [Clause 79]**

  In the second proviso, for the words, brackets, letters and figures "the monetary limits specified under clause (a) or clause (b) of section 44AB", the words ***"one crore rupees in case of business or fifty lakh rupees in case of profession"*** *shall be substituted.*

***Note:** New words inserted as given in bold in section 194J and the words in red above are inserted by finance act, 2020 which were not proposed earlier in the Bill.*

Brief Impact:

At present, section 194J provides that any person other then individual or a HUF paying any sum to resident by way of fee for professional service, fee for technical service, any remuneration or fee or commission, royalty and any sum referred to in clause (va) of section 28 Shall deduct an amount equal to 10% as Income Tax.

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

To reduce such litigation, TDS rate of 10% is reduce to 2% in case of fees for technical services (other than professional services or royalty where such royality is in the nature of consideration for sale, distribution or exhibition of cinematographic films. Now the TDS rate u/s 194J is as under

Brief Impact:

Now after the amendment in section 194J, TDS rates are as under:

S. No	Nature of Payment	Rate of TDS
1.	Fee for Professional Service	10%
2.	**Fee for Technical Service**	**2%**
3.	Any Remuneration or Fee or Commission	10%
4.	Royalty (other than covered under S. No. 5)	10%
5.	**Royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films**	**2%**
6.	Any sum Referred to in clause (va) of section 28	10%

E. WIDENING AND DEEPENING OF TAX BASE

E. Widening and deepening of Tax base

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
1.	TDS on payment/ credit of interest to resident by specified persons.	194A	75	01.04.2020
2.	TDS on payment made to E-Commerce participant by an E-Commerce provider	194O	85	01.04.2020
3.	TCS by unauthorized dealer and seller of an overseas tour program package	206C	95	01.10.2020

TDS on payment/ credit of interest to resident by specified persons. Section 194A of the Act (Clause 75)

Amendment w.e.f. – 1st day of April 2020

Cooperative societies including primary agriculture credit society, primary credit society, cooperative land mortgage bank, cooperative land development bank having turnover exceeding Rs. 50 crore during the Financial Year immediately preceding the financial Year during which interest is paid or credited, shall be liable to deduct income tax on interest exceeding Rs. 40,000 (in case of senior citizen, Rs. 50,000)

TDS on payment made to E-Commerce participant by an E-Commerce provider - Section 194O (Clause 85)

New Section – 194-O has been inserted w.e.f. 1st Day of April 2020, to provide for deduction of tax from the payment made by an e-commerce operator to e-commerce participant for the sale of goods or provision of services through a digital or electronic facility or platform facilitated by it.

194-O. (1) Notwithstanding anything to the contrary contained in any of the provisions of Part B of this Chapter, where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such e-commerce operator shall, at the time of credit of amount of sale or services or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant by any mode, whichever is earlier, deduct income-tax at the rate of one per cent. of the gross amount of such sales or services or both.

Explanation.—For the purposes of this sub-section, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of income-tax under this sub-section.

Contd....

(2) No deduction under sub-section (1) shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of an e-commerce participant, being an individual or Hindu undivided family, where the gross amount of such sale or services or both during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number or Aadhaar number to the e-commerce operator.

(3) Notwithstanding anything contained in Part B of this Chapter, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall not be liable to tax deduction at source under any other provision of this Chapter:

Provided that the provisions of this sub-section shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services referred to in sub-section (1).

(4) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

Contd....

(5) Every guideline issued by the Board under sub-section (4) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the e-commerce operator.

(6) For the purposes of this section, e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.

Explanation.—For the purposes of this section,—

(a) "electronic commerce" means the supply of goods or services or both, including digital products, over digital or electronic network;

(b) "e-commerce operator" means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

(c) "e-commerce participant" means 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;

(d) "services" includes ''fees for technical services'' and fees for ''professional services'', as defined in the Explanation to section 194J.'

***Note:** The section was proposed in finance bill, 2020, however, the words in red above are inserted by finance act,2020 which were not proposed earlier in the Bill.*

Please Note:

Insertion of section 194-O was proposed in the Finance Bill, 2020, for deduction of tax from the payment made by an e-commerce operator to e-commerce participant for the sale of goods or provision of services through a digital or electronic facility or platform facilitated by it.

Whereas to remove this ambiguity, clause (4) to (6) of this section is inserted by the Finance Act, 2020. Also, the CBDT has been empowered to issue guidelines for removing the difficulties arising in giving effect to the provisions of section 194-O.

Brief Impact:

E-commerce operator (who owns, operates or manages digital or electronic platform for supply of goods and services or both including digital products over digital or electronic network and is responsible for paying to e-commerce participant consideration for supply of goods or services or both shall deduct income tax @ 1% of the gross amount of sales or services or both made on digital or electronic facility or platform managed by E-Commerce operator.

Contd....

- Payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of income-tax under this subsection.
- No deduction if payment made to an individual/ HUF where the gross amount of such sale or services or both during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number or Aadhaar number to the e-commerce operator.
- Notwithstanding anything contained in Part B of Chapter XVII-B, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall not be liable to tax deduction at source under any other provision of this Chapter

Contd....

- The provisions of this sub-section shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services.
- E-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.
- the CBDT has been empowered to issue guidelines for removing the difficulties arising in giving effect to the provisions of section 194-O. Each such guideline shall be binding on the Income-tax authorities and the e-commerce operator.
- Proviso to section 206AA(1) of the act added to reduce the rate of TDS from 20% to 5% in case of non furnishing of PAN or Aadhar by deductee in respect of the receipt falling under provisions of section 194O of the act.
- Further, consequential amendments are being made in section 197 (for lower TDS), in section 204 (to define person responsible for paying any sum).
- This amendment will take effect from 1st April, 2020

TCS by unauthorized dealer and seller of an overseas tour program package Section 206C (Clause 95)

Amendment w.e.f. 01.10.2020 *(earlier, it was proposed in the finance bill w.e.f. 1st Day of April 2020)*

Clause (1G) to section 206C of the act inserted to bring following transactions in purview of TCS:

(a). An **authorized dealer**, who receives an amount, or an aggregate of amounts, of **seven lakh rupees or more in a financial year** for remittance out of India **from a buyer**, **being a person remitting such amount** out of India under the Liberalized Remittance Scheme of the Reserve Bank of India;

(b). A **seller of an overseas tour program package**, who receives any amount **from a buyer**, being the person who purchases such package,

shall, at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier, **Collect from the buyer**, a sum equal to **five percent of such amount as TCS**

Contd....

To remove this ambiguity and to widen the scope, following provisos are inserted in the clause, vide finance act, 2020:

Provided that the authorised dealer shall not collect the sum, if the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year and is for a purpose other than purchase of overseas tour programme package:

Provided further that the sum to be collected by an authorised dealer from the buyer shall be equal to five per cent. of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, where the amount being remitted is for a purpose other than purchase of overseas tour programme package:

Provided also that the authorised dealer shall collect a sum equal to one half per cent. of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education:

Provided also that the authorised dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller:

Contd....

- Definition of Authorised Dealer:

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

- Definition of Overseas Tour program Package:

  "overseas tour program package" means 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 expenditure of similar nature or in relation thereto.

- Exclusion to section 206C (1G)
  - liable to deduct tax at source under any other provision of this Act and has deducted such amount;
  - the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the 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 such conditions as may be specified therein.

Brief Impact:

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

- Under **Liberalised Remittances Scheme**, 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**, 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 per cent. **Tax to be collected at a lower rate of 0.5%, if foreign currency is remitted towards loan repayment to financial institutions notified by the Central Government for section 80E, for the purpose of pursuing any education.**

- 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 per cent.

Contd....

Clause (1H) to section 206C of the act inserted to bring following transactions in purview of TCS:

Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than:

- **the goods being exported out of India (inserted by Finance Act, 2020, earlier was not proposed in the bill)**
- those already covered under the TCS provisions under **206C(1)**
- Consideration for sale of a motor vehicle of the value exceeding Rs. 10 lakh; **[206C(1F)]**
- Remittance out of India of an aggregate amount of Rs. 7 lakh or more; **[206C(1G)(a)]**
- Sale consideration of an overseas tour program package **[206C(1G)(b)]**

– shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent (5% in case of no PAN/ Aadhaar). of the sale consideration exceeding fifty lakh rupees as TCS.

– The provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act and has deducted such amount.

Contd....

- Definition of Buyer:

  "buyer" means a person who **purchases any goods**, but does not include-

  - The Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State.
  - A local authority as defined in the Explanation to clause (20) of section 10.
  - Any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

- Definition of Seller:

  "Seller" means a **person whose total sales, gross receipts or turnover from the business** carried on by him **exceed ten crore** rupees during the **financial year immediately preceding** the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Contd....

S. No	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]	Remarks
1.	the words, brackets, figures and letter "sub-section (2) or sub-section (1C)" is proposed to be substituted with the words "this section".	206C (2)	93	01.10.2020 *(earlier, it was proposed in the finance bill w.e.f. 01-04-2020)*	Consequential Effect of insertion of subsection 1G or 1H
2.	the words, brackets, figures and letter "sub-section (3) or sub-section (1C)" is proposed to be substituted with the words "this section".	206C (2)	93	01.10.2020 *(earlier, it was proposed in the finance bill w.e.f. 01-04-2020)*	Consequential Effect of insertion of subsection 1G or 1H

Contd....

Section	Nature of Payment	Threshold (in Rs.)	Rate	Rate if no. PAN/ Aadhaar	Person liable to deduct tax	From whom tax is collected
206C(1G)(a)	Remittance out of India	6,99,999*	5% / 0.5%	10%	Authorized Dealer	Person Remitting such amount
206C(1G)(b)	Overseas tour program package	Nil	5%	10%	Seller of such tour package	Buyer of such tour package
206C(1H)	Receives any amount as sale consideration of **Goods**	50,00,000*	0.1%	5%	Seller of goods whose turnover in last year > 10CR	Buyer of Goods

* Aggregate for Previous Year

F. REVENUE MOBILIZATION MEASURES

F. Revenue Mobilization Measures

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
1.	Widening the definition of perquisite	17(2)	13	01.04.2021
2.	Widening the definition of taxable commodities transaction	117 of Finance Act 2013	149 of Finance act, 2020	01.04.2020

Widening the definition of perquisite Section 17(2) of the Act (Clause 13)

Amendment w.e.f. 1st Day of April 2021

- The term perquisite is widened by including:
  - the amount or the aggregate of amounts of any contribution made to the account of the assessee by the employer—
    - (a) in a recognized provident fund;
    - (b) in the scheme referred to in sub-section (1) of section 80CCD; and
    - (c) in an approved superannuation fund,
  - to the extent it exceeds seven lakh and fifty thousand rupees in a previous year;
- the annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme referred above in any previous year computed in such manner as may be prescribed.

Widening the definition of taxable commodities transaction Section 117 of Finance Act 2013

(Clause 149 of Finance Act,2020)

S.No.	Taxable Commodities Transaction	Rate	Payable by	Remarks
1	Sale of commodity derivative	0.01 %	seller	Old
2	Sale of commodity derivatives based on prices or indices of prices of commodity derivatives	0.01 %	seller	New Insertion
3	Sale of option on commodity derivative	0.05 %	seller	Old
4	Sale of option in goods	0.05 %	seller	New Insertion
5	Sale of option on commodity derivative, where option is exercised	0.0001%	purchaser	Old
6	Sale of option in goods, where option is exercised resulting in actual delivery of goods	0.0001%	purchaser	New Insertion
7	Sale of option in goods, where option is exercised resulting in a settlement otherwise than by the actual delivery of goods	0.125%	purchaser	New Insertion

G. IMPROVING EFFECTIVENESS OF TAX ADMINISTRATION

G. IMPROVING EFFECTIVENESS OF TAX ADMINISTRATION

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
1.	Modification of e-assessment scheme	143	69	01-04-2020
2.	Amendment in Dispute Resolution Scheme (DRP)	144C	70	01-04-2020
3.	Provision for e-appeal	250	97	01-04-2020
4.	Providing check on survey operations under S 133A of the Act	133A	65	01-04-2020

IMPROVING EFFECTIVENESS OF TAX ADMINISTRATION

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
5.	Clarity on stay by the Income Tax Appellate Tribunal (ITAT)	254	99	01.04.2020
6.	Provision for e-penalty	274	102	01.04.2020
7.	Insertion of Taxpayer's Charter in the Act	119A	64	01.04.2020

1. Modification of e-assessment scheme [Clause 69]

Amendment in section 143 of the Income-tax Act, w.e.f. 01/04/2020,—

(a) In sub-section (*3A*), after the word, brackets and figure "sub-section (3)", **the words and figures "or section 144" shall be inserted;**

(b) In sub-section *(3B*), in the proviso, for the figures, letters and words "31st day of March, 2020", **the figures, letters and words "31st day of March, 2022" shall be substituted.**

Brief Impact:

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

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

Therefore, sub-section (3A) of section 143 of the Act is amended to,-
expand the scope so as to include the reference of section 144 of the Act relating to best judgement assessment in the said sub-section AND provide that Central Government may issue any direction under sub-section (3B) of the said section upto 31st March, 2022.

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

2. Amendment in Dispute Resolution Scheme (DRP) [Clause 70]

In section 144C of the Income-tax Act,—Amendment of section 144C

a) in sub-section *(1)*, **the words "in the income or loss returned" shall be omitted;**

b) in sub-section *(15)*, in clause *(b)*, for sub-clause *(ii)*, **the following sub-clause shall be substituted, namely:-**

"*(ii)* any non-resident not being a company, or any foreign company.".

Brief Impact:

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, AO is required to forward a draft assessment order to the eligible assessee, if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee. Such eligible assessee with respect to such variation may file his objection to the DRP.

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

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

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

3. Provision for e-Appeal

[Clause 97]

In section 250 of the Income-tax Act, after sub-section *(6A)*, the following sub-sections **shall be inserted**, namely:—

"*(6B)* The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;

(b)optimising utilisation of the resources through economies of scale and functional specialisation;

3. Provision for e-Appeal

Contd..

(c)introducing an appellate system with dynamic jurisdiction in which appeal 5 shall be disposed of by one or more Commissioner (Appeals).

(6C) The Central Government may, for the purposes of giving effect to the scheme made under sub-section *(6B)*, by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by Commissioner (Appeals) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(6D) Every notification issued under sub-section (6B) and sub-section (6C) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.".

Brief Impact:

The filing of appeals before Commissioner (Appeals) has already been enabled in an electronic mode. **However, the process that follows after filing of appeal is neither electronic nor faceless. It is imperative that an e-appeal scheme be launched on the lines of e-assessment scheme.**

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

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

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

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

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

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

4. Providing check on survey operations under S 133A of the Act [Clause 65]

Under the existing provisions of section 133A of the Act, an income-tax authority is empowered to conduct survey at the business premises. To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso to sub-section (6) in the said section was inserted. It is amended to substitute the proviso to sub-section (6) of section 133A w.e.f. 01.04.2020 that,-

"Provided that-

(aa) ***in a case where the information has been received from such authority****, as may be prescribed,* ***no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner****, as the case may be;*

(bb) ***in any other case, no action under sub-section (1)*** *shall be taken by* ***Joint Director or a Joint Commissioner or an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Director or the Commissioner****, as the case may be."*

5. Clarity on stay by the Income Tax Appellate Tribunal (ITAT) [Clause 99]

In section 254 of the Income-tax Act, in sub-section *(2A)*,— "subject to the condition that the assessee deposits not less than twenty per cent of:

a) in the first proviso, after the words "from the date of such order", the words **"the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof" shall be inserted;**

b) for the second proviso, the following proviso shall be substituted, namely:—

Clarity on stay by the Income Tax Appellate Tribunal (ITAT) [Contd....]

"Provided further that no extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as 30 specified in the order of stay, unless the assessee makes an application and has complied with the condition referred to in the first proviso and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that the aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:".

Brief Impact:

It is amended to provide that **ITAT may grant stay under the first proviso subject to the condition that the assessee 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 amended 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.

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

6. Provision for e-penalty

[Clause 102]

In section 274 of the Income-tax Act, after sub-section *(2)*, **the following sub-sections shall be inserted, namely:—**

"(2A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of imposing penalty under this Chapter so as to impart greater efficiency, transparency and accountability by—

a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;

b) optimising utilisation of the resources through economies of scale and functional specialisation;

c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

6. Provision for e-penalty

Contd....

(2B) The Central Government may, for the purposes of giving effect to the scheme made under sub-section *(2A)*, by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(2C) Every notification issued under sub-section *(2A)* and sub-section *(2B)* shall, as soon as may be after the notification is issued, be laid before each House of Parliament.".

Contd....

Brief Impact:

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.

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

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

7. Insertion of Taxpayer's Charter in the Act [Clause 64]

After section 119 of the Income-tax Act, the following section shall be inserted, namely:—

"Section 119A - The Board shall 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 such Charter.".

Contd....

Brief Impact:

It is amended 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.

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

H. PREVENTING TAX-ABUSE

H. PREVENTING TAX-ABUSE

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
1.	Modification of Residency Provisions	6	4	01.04.2021
2.	Amending definition of 'work' in section 194C of the Act	194C	76	01.04.2020
3.	Penalty for fake invoice	271AAD	100	01.04.2020

1. Modification of Residency Provisions [Clause 4]

In section 6 of the Income-tax Act, with effect from the 1st day of April, 2021,—

(a) in clause (1), in Explanation 1, in clause (b), for the words "substituted" occurring at the end, the words *"substituted and in case of the citizen or person of Indian origin having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year," for the words "sixty days" occurring therein, the words "one hundred and twenty days"* had been substituted;

Brief Impact:

The Finance Bill, 2020 proposed to that the exception provided in clause (b) of Explanation 1 of sub-section (1) to section 6 be decreased to 120 days from existing 182 days for determining the residential status of an Indian citizen and a person of Indian origin who visits India during the year. **However, the Finance Act, 2020 restricted the exception only to Indian Citizens and Person of Indian Origin visiting India whose total income other than income from foreign sources, exceeds Rs. 15 lakhs during the previous year.**

Modification of Residency Provisions [Contd..]

In section 6 of the Income-tax Act, with effect from the 1st day of April, 2021,—

b) after clause (1), the following clause shall be inserted, namely:—

"(1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that 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;

Brief Impact:

- The Finance Bill, 2020 proposed that an Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India. Such provision was proposed after noticing the Instances 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.

Contd....

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

- Such a circumstance is certainly not desirable; particularly in the light of current development in the global tax environment where avenues for double non-taxation are being systematically closed. **In the light of above, the said amendment was proposed.**

However, to avoid the hardship and to give benefit to genuine persons working in abroad, the Finance Act, 2020 restrict the applicability of the Provision of 'Deemed Resident' only to the Indian citizen who is not liable to tax in any other country or territory and have total income other than income from foreign sources, exceeds Rs. 15 lakhs during the previous year.

Modification of Residency Provisions [Contd..]

In section 6 of the Income-tax Act, with effect from the 1st day of April, 2021,—

b) In clause (6), in sub-clause (b), for the words ''days or less'' occurring at the end, the following shall be substituted, namely:—

''days or less; or

(c) a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, as referred to in clause (b) of Explanation 1 to clause (1), who has been in India for a period or periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty-two days; or

(d) a citizen of India who is deemed to be resident in India under clause (1A).

Explanation.—For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

Contd....

Brief Impact:

The Section 6(6) of the Act defines the conditions in case of "Non ordinary resident" which was earlier proposed to substituted by the Finance Bill, 2020, to make the provision more liberalized. However, that proposed amendment has been withdrawn and therefore, the existing conditions would continue along with the new conditions/amendment made by the Finance Act, 2020, wherein a resident person is deemed to be 'Not Ordinarily Resident' in India:

a) An Indian Citizen or a person of Indian origin whose total income (other than income from foreign sources) exceeds Rs. 15 lakhs during the previous year and who has been in India for a period of 120 days or more but less than 182 days;

b) b) An Indian Citizen who is deemed to be resident in India as per new Section 6(1A).

This amendment will take effect from 1st April, 2021.

2. Amending definition of 'work' in section 194C of the Act [Clause 76]

In section 194C of the Income-tax Act, in the *Explanation*,–

I) in clause *(i)*, in sub-clause *(l)*, in item *(B)*, for the words, brackets, letters and figures "is liable to audit of accounts under clause *(a)* or clause *(b)* of section 44AB", **the words "has total sales, gross receipts or turnover from business or profession carried on by him exceeding one crore rupees in case of business or fifty lakh rupees in case of profession" shall be substituted;**

II) in clause *(iv)*,— *(i)* for sub-clause *(e)*, **the following sub-clause shall be substituted, namely:—**

"*(e)* manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person placed similarly in relation to such customer as is the person placed in relation to the assessee under the provisions contained in clause *(b)* of sub-section *(2)* of section 40A,";

(ii) in the long line, after the words "other than such customer", **the words "or associate of such customer" shall be inserted.**

Contd....

Brief Impact:

It has been noted that some assessees are using the escape clause of Section 194C (deduction of tax on payments made to contractors) 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, **the definition of "work" under section 194C is amended to provide that in a contract manufacturing, the raw material provided by the assessee or its associate shall fall within the purview of the 'work' under section 194C. Associate is amended to be defined to mean a person who is placed similarly in relation to the customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A of the Act.**

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

3. Penalty for fake invoice [Clause 100]

After section 271AAC of the Income-tax Act, **the following section shall be inserted, namely:—**

'271AAD. *(1)* Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—

i) a false entry; or

ii)) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Penalty for fake invoice [Contd...]

(2) Without prejudice to the provisions of sub-section *(1)*, the Assessing Officer may direct that any other person, who causes the person referred to in sub-section *(1)* in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Explanation.—For the purposes of this section, "false entry" includes use or intention to use—

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

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

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

Brief Impact:

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 amended to introduce a new provision in the Act to provide for a levy of penalty u/s 271AAD for fake invoice by way of penalty of sum equal to the aggregate amount of such false or omitted entry.

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

I. RATIONALISATION OF PROVISIONS OF THE ACT

I. RATIONALISATION OF PROVISIONS

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
1.	Aligning purpose of entering into Double Taxation Avoidance Agreements (DTAA) with Multilateral Instrument (MLI)	90 & 90A	41 & 42	01-04-2021
2.	Deferring Significant Economic Presence (SEP) proposal, Extending source rule, Aligning exemption from taxability of Foreign Portfolio Investors (FPIs), on account of indirect transfer of assets, with amended scheme of SEBI, and rationalising the definition of royalty	9 & 295	5, 105	01-04-2020, 01-04-2021, 01-04-2022

I. RATIONALISATION OF PROVISIONS

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
3.	Removing dividend distribution tax (DDT) and moving to classical system of taxing dividend in the hands of shareholders/unit holders.	10, 115-O, 115-R, 115-UA, 80M, 57, 115BBDA, 194, 194LBA, 194K, 195, 196A, 196C, 196D	7,30,40,47,48,49,50,54,55,59,60,62,74,80,81,86,87,88 & 89	01-04-2020, 01-04-2021
4	Rationalization of provisions of section 55 of the Act to compute cost of acquisition	55	28	01-04-2021
5	Rationalisation of provisions relating to trust, institution and funds	10, 11, 12A, 12AA, 12AB, 80G, 80GGA, 234G, 271K	7,9,11,12,17, 33,34,61,96, 98 & 101	01-06-2020

I. RATIONALISATION OF PROVISIONS

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
6.	Expanding the eligibility criteria for appointment of member of Adjudicating Authority under the Prohibition of Benami Property Transaction Act, 1988	9	145	01-04-2020
7.	Rationalisation of provisions relating to tax audit in certain cases	10, 10A, 12AA, 32AB, 32ABA, 44AB, 33AB, 44DA, 50B, 80-IA, 80-IB, 80JJAA, 115JB, 115JC, 115VW, 35D, 35E, 92F, 139, 194A, 194C, 194H, 194I, 194J, 206C	7,8,10,14, 15,16,19, 20,23,24, 26,35,37, 39,45,56, 57,63 & 66, 75, 76, 77,78,79 & 95	01-09-2020

I. RATIONALISATION OF PROVISIONS

S. No.	Brief	Section	Clause No.	Effective date [i.e. w.e.f.]
8.	Rationalisation of provision relating to Form 26AS	203AA, 285BB	92, 103	01.06.2020
9.	Rationalisation of the provisions of section 49 and clause (42A) of section 2 of the Act in respect of segregated Portfolios	49, 2(42A)	3, 25	01-04-2020
10.	Amendment in the provisions of Act relating to verification of the return of income and appearance of authorized Representative	140, 288	67, 104	01-04-2020

1. Aligning purpose of entering into Double Taxation Avoidance Agreements (DTAA) with Multilateral Instrument (MLI) *[Clause 41 & 42]*

Amendment of Section 90 w.e.f. 1st day of April, 2021

In section 90 of the Income-tax Act, in sub-section (1), in clause (b), after the words "as the case may be,", the words and brackets "*without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement 10 for the indirect benefit to residents of any other country or territory)*," [Clause 41]

Amendment of Section 90A w.e.f. 1st day of April, 2021

In section 90A of the Income-tax Act, in sub-section (1), in clause (b), after the words "specified territory outside India,", the words and brackets *"without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory)*" [Clause 42]

Contd....

Brief Impact:

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

Contd....

- 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 the above, 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 of territory) is required to contain the text provided for in MLI as mentioned at above para. In case of section 90A of the Act also, similar amendment would be required to be carried out.

Contd....

- **Therefore, it is inserted 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 amended to make similar amendment in clause (b) of sub-section (1) of section 90A of the Act. **These amendments will take effect from 1st April, 2021 i.e. A.Y. 2021-22 onwards.**

2. Deferring Significant Economic Presence (SEP) proposal, Extending source rule, Aligning exemption from taxability of Foreign Portfolio Investors (FPIs), on account of indirect transfer of assets, with amended scheme of SEBI, and rationalising the definition of royalty. *[Clause 5 & 105]*

Amendment in section 9 of the Income-tax Act, in sub-section *(1)*,in clause *(i)*,—

(i) **in *Explanation* 1, in clause (*a*),** for the words "in the case of a business", the words "*in the case of a business, other than the business having business connection in India on account of significant economic presence*," shall be substituted with effect from the 1st day of April, 2022;

***(ii)* *Explanation* 2A shall be omitted w.e.f. 01.04.2021 and the following *Explanation* shall be inserted w.e.f. 01.04.2022,** namely:—

'*Explanation* 2A.—For the removal of doubts, it is hereby declared that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

(a) transaction in respect of any goods, services or property carried out by a non-resident with any person 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

Contd....

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

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not—

(i) the agreement for such transactions or activities is entered in India; or

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India:

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.;

Brief Impact:

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"

Contd....

- 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 and said Explanation further provided that the transactions or activities shall constitute significant economic presence in India, whether or not, the agreement for such transactions or activities is entered in India; or the non-resident has a residence or place of business in India; or the non-resident renders services in India.
- Therefore, for the purposes of determining SEP of a non-resident in India, threshold for the aggregate amount of payments arising from the specified transactions and for the number of users were required to be prescribed in the Rules. However, since discussion on this issue is still going on in G20-OECD BEPS project, these numbers have not been notified yet. G20-OECD report is expected by the end of December 2020. In the circumstances, it is proposed to defer the applicability of SEP to starting from assessment year 2022-23. Certain drafting changes have also been made while deferring the proposal.
- **The current SEP provisions shall be omitted from A.Y. 2021-22 and the new provisions will take effect from 1st April, 2022 and will, accordingly, apply in relation to A.Y. 2022-23 and onwards.**

Contd....

Amendment in section 9 of the Income-tax Act, in sub-section *(1)*,in clause *(i)*,—

***(iii)* after *Explanation* 3, the following *Explanation* shall be inserted w.e.f. 01.04.2021:-**

"*Explanation 3A.—For the removal of doubts, it is hereby declared that the income attributable to the operations carried out in India, as referred to in Explanation 1, 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 or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.";

(iv) after Explanation 3A as so inserted, the following proviso shall be inserted with effect from the 1st day of April, 2022, namely:—

"Provided that the provisions contained in this Explanation shall also apply to the income attributable to the transactions or activities referred to in Explanation 2A.";

Contd....

Brief Impact:

- In respect of international forum, the 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 inserted to amend the source rule to clarify this position.

- 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. However, for attribution of income related to SEP transaction or activities the amendment will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

Contd....

Amendment in section 9 of the Income-tax Act, in sub-section *(1)*,in clause *(i)*,—in Explanation 5,—

(I) in the second proviso, after the words, brackets and figures "Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014", the words "prior to their repeal" shall be inserted;

(II) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that nothing contained in this Explanation shall apply to an asset or a capital asset, which is 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.";

Brief Impact:

- 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.

Contd....

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

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

Contd....

Amendment in section 9 of the Income-tax Act, in sub-section *(1)*,in clause *(vi)*,

In Explanation 2, in clause (v), the words ", but not including consideration for the sale, distribution or exhibition of cinematographic films" shall be omitted with effect from the 1st day of April, 2021.

Brief Impact:

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

Contd....

Brief Impact:

- 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 inserted to amend the definition of royalty so as not to exclude consideration for the sale, distribution or exhibition of cinematographic films from its meaning.**

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

Contd....

In section 295 of the Income-tax Act, in sub-section *(2)*, in *clause (b)*,—

(a) after sub-clause *(ii)*, the following sub-clause shall be inserted with effect from the 1st day of April, 2021, namely:-

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

(b) after sub-clause *(iia)* as so inserted, the following sub-clause shall be inserted with effect from the 1st day of April, 2022, namely:—

"(iib) transactions or activities of a non-resident;".

Brief Impact:

- It is inserted to amend section 295 of the Act so as to empower the Board for making rules to provide for the manner in which and the procedure by which the income shall be arrived at in the case of,-
  I. operations carried out in India by a non-resident; and
  II. transaction or activities of a non-resident.
- The amendment at clause (I) will take effect from 01-042021 and will, accordingly, apply in relation to A.Y. 2021-22 and onwards. The amendment at clause (II) will take effect from 01-04-2022 and will, accordingly, apply in relation to A.Y. 2022-23 and subsequent assessment years.

3. Removing dividend distribution tax (DDT) and moving to classical system of taxing dividend in the hands of shareholders/unit holders. [Clauses 7,30,40,47,48,49,50,54, 55,59,60,62,74,80,81,86,87,88 & 89]

- The incidence of tax in respect of dividend, is on the payer i.e. company/Mutual Fund as per section 115-O and 115-R of the Act and not on the recipient. Such dividend is exempt in the hands of recipient as per section 10(34) and 10(35) of the Act.

- 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.

Contd....

Brief Impact:

In view of above, it is inserted 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. Therefore, it is inserted to-

I. **Amend section 115-O** to provide that dividend declared, distributed or paid after 1st April, 2003, but on or before 31st March, 2020 shall be covered under the provision of this section. **[w.e.f.01-04-2021]**

II. **Amend clause (34) of section 10** to provide that the provision of this clause shall not apply to any income, by way of dividend, received on or after 1st April, 2020. **[w.e.f.01-04-2021]. Further, the finance Act, 2020 amended that dividend received on or after 01-04-2020 shall not be included in income if tax has already been paid on such dividend under section 115-O or section 115BBDA.**

III. **Amend section 115R** to provide that the income distributed on or before 31st March, 2020 shall only be covered under the provision of this section. **[w.e.f.01-04-2021]**

Contd....

IV. **Amend clause (35) of section 10** to provide that the provision of this clause shall not apply to any income, in respect of units, received on or after 1st April, 2020. **[w.e.f.01-04-2021]**

V. **Amend clause (23FC) of section 10** so that all dividends received or receivable by business trust from a special purpose vehicle is exempt income under this clause. **[w.e.f.01-04-2021]**

VI. **amend clause (23FD) of section 10** to exclude dividend income received by a unit holder from business trust from the exemption so that the dividend income is taxable in the hand of unit holder of the business trust, in respect of a dividend received from SPV if such SPV has exercised the option of section 115BAA of the Income-tax Act.. **[w.e.f.01-04-2021]**

VII. **Amend sub-section (3) of section 115UA** to delete reference to sub-clause (a) so that distributed income of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 shall be deemed to be income of the unit holder and shall be charged to tax as income of the previous year. Thus dividend income distributed by a special purpose vehicle to business trust would be taxed in the hands of unit holder. **[w.e.f.01-04-2021]**

Contd....

VIII. **Remove reference of section 115-O** dividend income in various sections like section 57, section 115A, section 115AC, section 115ACA, section 115AD and section 115C. **[w.e.f.01-04-2021]**

IX. **Remove the opening line of clause (23D) of section 10,** as mutual fund no longer required to pay additional tax. **[w.e.f.01-04-2021]**

X. **Amend section 115BBDA** which taxes dividend income in excess of ten lakh rupee in the hands of shareholder at ten per cent., to only dividend declared, distributed or paid by a domestic company on or before the 31st day of March, 2020. **[w.e.f.01-04-2021]**

XI. **Insert new section 80M** as it existed before it 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. **[w.e.f.01-04-2021]**

Deduction under section 80M shall be available to the companies opting for new tax regime (i.e. section 115BAA and section 115BAB) with effect from Assessment Year 2021-22.

Contd....

80M. Deduction in respect of certain intercorporate dividends

'80M. (1) Where the gross total income of a domestic company in any previous year includes any income by way of dividends from any other domestic company or a foreign company or a business trust, 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 or foreign company or business trust as does not exceed the amount of dividend distributed by it on or before the due date.

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

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

This section is newly inserted w.e.f. 01-04-2021, Clause 40 of the Finance Act, 2020.

Contd....

XII. **Amend section 57** to provide that no deduction shall be allowed from dividend income, or income in respect of units of mutual fund or specified company, other than deduction on account of interest expense and in any previous year such deduction shall not exceed 20% of the dividend income or income from units included in the total income for that year without deduction under section 57. **[w.e.f.01-04-2021]**

XIII. **Amend section 194** to include dividend for tax deduction (TDS). At the same time the rates of 10% is proposed to be prescribed and threshold is proposed to be increased from Rs 2,500/- to Rs 5,000/- for dividend paid other than cash. Further, at present the mode of payment is given as "an account payee cheque or warrant". It is proposed to change this to any mode. **[w.e.f.01-04-2020]**

XIV. **Amend section 194LBA** to provide for tax deduction by business trust on dividend income paid to unit holder, at the rate of ten per cent. for resident. For non-resident, it would be 5 per cent for interest and ten per cent. for dividend. **[w.e.f.01-04-2020]**

Further a new sub-section (2A) is inserted in the section 194LBA by Finance Act, 2020, reads as under:

"Nothing contained in sub-sections (1) and (2) shall apply in respect of income of the nature referred to in sub-clause (b) of clause (23FC) of section 10, if the special purpose vehicle referred to in the said clause has not exercised the option under section 115BAA."

Contd....

XV. **<u>Insert a new section 194K [w.e.f.01-04-2020]</u>** 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 per cent. It also provides the threshold limit of Rs 5,000/- so that income below this amount does not suffer tax deduction. It is also inserted to defined "Administrator", "specified company", as already defined in clause (35) of section 10. It is also amended 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 inserted 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.

Further, it is explicitly provided in the section by the Finance Act, 2020 that no tax shall be deducted while making payment in respect of capital gain arising from transfer from units.

Contd....

194K. Income in respect of units.

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

(a) units of a Mutual Fund specified under clause (23D) of section 10; or

(b) units from the Administrator of the specified undertaking; or

(c) units from the specified company,

shall, at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.:

Provided that the provisions of this section shall not apply-

(i) 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 responsibile for making the payment to the account of, or to, the payee does not exceed five thousand rupees; or

(ii) if the income is of the nature of capital gains.

Explanation 1.— For the purposes of this section,—

(a) "Administrator" means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

(b) "specified company" means a company as referred to in clause (h) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

(c) "specified undertaking" shall have the meaning assigned to it in clause (i) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

Explanation 2.—For the removal of doubts, it is hereby clarified that where any income referred to in this section is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly'.

This section is newly inserted w.e.f. 01-04-2020, Clause 80 of the Finance Act, 2020.

Contd....

XVI. **Amend section 195** to delete exemption provided to dividend referred to in section 115-O. **[w.e.f.01-04-2020]**

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". **[w.e.f.01-04-2020]**

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". **[w.e.f.01-04-2020]**

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". **[w.e.f.01-04-2020]**

Contd....

XX. **<u>Part II of First Schedule</u>** is amended to provide the rate of deduction of tax from dividend income distributed to a foreign company, non-resident Indian or other non-resident person. In case of all such persons, the tax shall be withheld from the dividend income at the rate of 20%. However, where dividend income of a non-resident person is chargeable to tax at the reduced rate as per the provision of Double Taxation Avoidance Agreement (DTAA) then tax shall be deducted at a rate provided under DTAA. [amended by Finance Act, 2020 as DDT was proposed to be removed by the Finance bill but no specific rate was prescribed in the first schedule of bill, 2020 for deduction of tax in respect of dividend income which implies that the rate of withholding in case of non-resident or foreign company would be covered under the residuary entry i.e. 30% or 40%, therefore, to clarify the same, the amendment was made by the FA, 2020]

4. Rationalization of provisions of section 55 of the Act to compute cost of acquisition[Clauses 28]

In section 55 of the Income-tax Act, in sub-section *(2)*, in clause *(b)*, after sub-clause *(ii)*, the following shall be inserted w.e.f. 01.04.2021, namely:—

'Provided that in case of a capital asset referred to in sub-clauses (i) and (ii), being land or building or both, the fair market value of such asset on the 1st day of April, 2001 for the purposes of the said sub-clauses shall not exceed the stamp duty value, wherever available, of such asset as on the 1st day of April, 2001.

Explanation.—For the purposes of this proviso, "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.'

Brief Impact:

The existing provisions of section 55 of the Act provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 01-04-2001, the assessee has been allowed an option of either to take the fair market value of the asset as on 01.04.2001 or the actual cost of the asset as cost of acquisition.

Contd....

Brief Impact:

- Thus, it is amended to rationalise the provision and to insert a proviso below sub-clause (ii) of clause (b) of Explanation under clause (ac) of sub-section (2) of the said section to provide that **in case of a capital asset, being land or building or both, the fair market value of such an asset on 1st April, 2001 shall not exceed the stamp duty value of such asset as on 1st April, 2001 where such stamp duty value is available.**

- It is also amended to insert an Explanation so as to provide that for the purposes of sub-clause (i) and (ii), "**stamp duty value" shall mean the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.**

These amendments will take effect from 1st April, 2021.

5. Rationalisation of provisions relating to trust, institution and funds [Clauses 7,9,11,12,17,33,34,61,96,98 & 101]

Amendment or changes are inserted for following sections and procedures, as under:

A. Amendment of sub-section (7) of section 11 to allow entities holding registration under section 12A/12AA to apply for notification under clause (46) of section 10 which are established or constituted under a Central or State Act or by a Central or State Government

B. Rationalising the process of registration of trusts, institutions, funds, university, hospital etc. and approval in the case of association, university, college, institution or company etc., should also be for a limited period

C. Filing of statement of donation by donee to cross-check claim of donation by donor

Contd....

Brief Impact:

Hence, it is inserted to amend relevant provisions of the Act to provide that,-

I. Similar to exemptions under clauses (1) and (23C), exemption under clause (46) of section 10 shall be allowed to an entity even if it is registered under section 12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it would not be entitled for deduction under clause (46) from the date on which the registration becomes operative. **[Amendment in Section 11(7) of the Act, w.e.f. 01-06-2020, Clause 9 of the Finance Act, 2020]**

II. The registration under section 12AA would also become inoperative in case of an entity exempt under clause (23C) of section 10 as well, to have uniformity. The condition about making it operative again would also be similar to what is proposed for clause (46) of section 10 **[Amendment in Section 11(7) of the Act, w.e.f.01-06-2020, Clause 9 of the Finance Act, 2020]**

Contd....

III. An entity approved, registered or notified under clause (23C) of section 10, section 12AA or section 35 of the Act, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, **the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1st April, 2020**. **[Amendment in Section 10, 12AA and 35 of the Act, w.e.f.01-06-2020, Clause 7, 11 & 17 of the Finance Act, 2020]**

IV. Insertion of new section 12AB (Procedure for fresh registration) w.e.f. 01.06.2020. Nothing contained in section 12AA of the Act shall apply after that. **[Clause 11, 12 & 61 of the Finance Act, 2020]**

V. An entity already approved under section 80G shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five years at one time. **[Amendment in Section 80G of the Act, w.e.f.01-06-2020, Clause 33 of the Finance Act, 2020]**

Contd....

VI. Application for approval under section 80G shall be made to Principal Commissioner or Commissioner. **[Amendment in Section 80G of the Act, w.e.f.01-06-2020, Clause 33 of the Finance Act, 2020]**

VII. Similar to section 80G of the Act, deduction of cash donation under section 80GGA shall be restricted to Rs 2,000/- only. **[Amendment in Section 80GGA of the Act, w.e.f.01-06-2020, Clause 34 of the Finance Act, 2020]**

VIII. Deduction u/s 80G/ 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee shall be levied u/s 234G of the Act and penalty shall be levied u/s 271K of the Act. **[Section 234G & 271K is newly inserted w.e.f.01-06-2020, Clause 96 & 101 of the Finance Act, 2020, Amendment in Section 80G & 80GGA of the Act, w.e.f.01-06-2020, Clause 33 & 34 of the Finance Act, 2020]**

Contd....

234G. Fee for default relating to statement or certificate.

(1) Without prejudice to the provisions of this Act, where,—

(a) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or

(b) the institution or fund fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section, ***it shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.***

(2) The amount of fee referred to in sub-section (1) shall,—

(a) not exceed the amount in respect of which the failure referred to therein has occurred;

(b) be paid before delivering or causing to be delivered the statement or before furnishing the certificate referred to in sub-section (1)

This section is newly inserted w.e.f. 01-06-2020, Clause 96 of the Finance Act, 2020.

Contd....

271K. Penalty for failure to furnish statements, etc.

Without prejudice to the provisions of this Act, the Assessing Officer may direct that a sum not less than ten thousand rupees but which may extend to one lakh rupees shall be paid by way of penalty by—

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

(ii) the institution or fund, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section.

This section is newly inserted w.e.f.01-06-2020, Clause 101 of the Finance Act, 2020.

Contd....

IX. **An entity making fresh application** for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G **shall be provisionally approved or registered for three years on the basis of application** without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.

The application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.

[Amendment in Section 10, 12AA and 35 , 80G of the Act, w.e.f. 01-06-2020, Clause 7, 11 & 17, 33 of the Finance Act, 2020 and section 12AB is newly inserted w.e.f.01-06-2020, Clause 12 of the Finance Act, 2020]

Contd....

X. **<u>Voluntary donations (being corpus donation)</u>** received by the institutions registered u/s 12AA is exempt from Income. In line of the same, an Explanation to the Third Proviso to Section 10(23C) is inserted by the Finance Act, 2020, to amend that the corpus donations shall not form part of the income of institutions or funds availing exemption under section 10(23C). Consequential amendment is made in the Twelfth Proviso to Section 10(23C) and Explanation 2 to section 11 that the such amount of corpus donation shall not be treated as application of income for the donor. Currently, this restriction was only in respect of corpus donations made to entities registered under section 12AA which was introduced in the Income Tax Act by FA, 2017.

[Amendment in Section 10 and 11 of the Act, w.e.f. 01-06-2020, Clause 7 & 11 of the Finance Act, 2020, which was not proposed in the bill earlier]

Registration u/s 12AB r.w.s 12A(1)(ac)

Liability of Registration	Time Limit of Reg.	Validity of Reg.	Renewal	Note
Trust or Institution already Registered u/s 12A or 12AA	Within 3 months from 1st June, 2020	For 5 Years	6 month prior to expiry of registration	i. Pr. Commissioner or commissioner shall not verify whether activity of trust is genuine or not u/s 12AB ii. Registration shall be granted within **3 months** from the end of the month in which application was made.
Fresh Registration u/s 12AB	No Time Limit	For 5 Years	6 month prior to expiry of registration	i. Pr. Commissioner or commissioner after verification of activity shall accept or reject the application. ii. Registration shall be granted within **6 months** from the end of the month in which application was made.
Provisional Registration u/s 12AB	1 month prior to commencement of P.Y.	For 3 Years	6 month prior to expiry of registration	i. This registration shall be treated as provisional registration. ii. Registration shall be granted within **1 months** from the end of the month in which application was made.

Contd....

- All application on which no order has been passed before 1st June 2020 shall be treated as application made u/s 12A(1)(ac).
- If objects of any trust or institution has modified then such trust or institution shall make a application u/s 12AB within 30 days of such modification.
- Pr. Commissioner or Commissioner has power to cancel the registration granted u/s 12AB, if he is satisfied that activity of trust or institution is not genuine or not in accordance with the objects of such trust or institution after providing a reasonable opportunity of being heard.

6. Expanding the eligibility criteria for appointment of member of Adjudicating Authority under the Prohibition of Benami Property Transaction Act, 1988. [Clause 145]

- **Amended section 9 of the Prohibition of Benami Property Transaction Act, 1988 w.e.f. 01/04/2020 [Clause 143]**

Old Section

9(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Adjudicating Authority unless he,—

(a) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service; or

(b) has been a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service.

New Section

for clause (b), the following clause shall be substituted with effect from the 1st day of April, 2020, namely:—

(b)(i) has been a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service; or

(ii) ***is qualified for appointment as District Judge.***

Contd....

Brief Impact:

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

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

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

7.RATIONALISATION OF PROVISIONS RELATING TO TAX AUDIT IN CERTAIN CASES *[CLAUSES 7, 8, 10, 14, 15, 16, 19, 20, 23, 24, 26, 35, 37, 39, 45, 56, 57, 63 & 66] W.E.F. 01-04-2020*

Brief Impact:

As per the existing provisions of Section 44AB every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed or exceeds 1 Crore rupees in any PY & for person carrying on profession is required to get his accounts audited if his gross receipt in profession exceeds 50 lakh rupees in any PY.

Thus, in order to reduce compliance burden on MSME Enterprises the threshold limit for a person carrying on business has been increased to **five crore rupees in cases where-**

- aggregate of all receipts in cash during the PY does not exceed 5% of such receipt &
- aggregate of all payments in cash during the PY does not exceed 5% of such payment.

Brief Impact:

Further, to enable pre-filling of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assessees at least one month prior to the due date of filing of return of income. This requires amendments in all the sections of the Act which mandates filing of audit report along with the return of income or by the due date of filing of return of income.

Amendment in Section 10(23C):-

In the tenth proviso, for the words and figures *"Section 288 and furnish along with the return of income for the relevant assessment year"*, the words, figures and letters "Section 288 before the specified date referred to in section 44AB and furnish by that date" shall be substituted **(Clause 7 of the Finance Act,2020).**

Similarly, Amendments have been made in Section 10A **(Clause 7)**, Section 12A **(Clause 10)**, Section 32AB **(Clause 14),** Section 33AB **(Clause 15)**, Section 33ABA **(Clause 16)**, Section 44DA **(Clause 24),** Section 50B **(Clause 26),** Section 80IA **(Clause 35),** Section 80IB **(Clause 37),** Section 80JJAA **(Clause 39),** Section 115JB **(Clause 56)**, Section 115JC **(Clause 57) &** Section 115VW **(Clause 63).**

CONTD....

Brief Impact:

Amendment in Section 35D & 35E **(Clause 19 & 20 of the Finance Act,2020)**:-

for the words "and the assessee furnishes, along with his return of income for the first year in which the deduction under this section is claimed, the report of such audit", the words, figures and letters "before the specified date referred to in section 44AB and the assessee furnishes for the first year in which the deduction under this section is claimed, the report of such audit by that date" shall be substituted.

Amendment in Section 44AB (Clause 23 of the Act):-

(A) in clause *(a)*,—

(i) the word "or" occurring at the end shall be omitted;

(ii) the following proviso shall be inserted, namely:—

"provided that in the case of a person whose—

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent. Of the said amount; and

CONTD....

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent. Of the said payment, this clause shall have effect as if for the words “one crore rupees”, the words “five crore rupees” had been substituted; or’”

(B) in the *explanation,* in clause *(ii)*,

"specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means **date one month prior to** the due date for furnishing the return of income under sub-section (1) of section 139***.[Similar amendment has been made in Section 92F (Clause 45 of the Finance Act,2020)].***

CONTD....

Amendment in Section 139 sub-section *(1)*, in *Explanation* 2, in clause *(a)*—

"*(a)* where the assessee other than an assessee referred to in clause (*aa*) is—

(*i*) a company; or

(*ii*) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(*iii*) a ~~**working**~~ partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, the ~~**30th day of September**~~ **31st day of October** of the assessment year"

The amendment relating to extending threshold for getting books of accounts audited

It will have consequential effect on TDS/TCS provisions contained in Sections 194A **(Clause 75)**, 194C **(Clause 76)**, 194H **(Clause 77)**, 194I **(Clause 78)**, 194J **(Clause 79)** and 206C **(Clause 95)** as these provisions fasten liability of TDS/TCS on certain categories of person, if the gross receipt or turnover from the business or profession carried on by them exceed the monetary limit specified in clause (a) or clause (b) of section 44AB w.e.f. 01-04-2020 i.e. Substitute with "***rupees one crore in case of the business or rupees fifty lakh in case of the profession***"

8. Rationalisation of provision relating to Form 26AS [Clause 92 & 103]

- **Deletion of section 203AA of the Income-tax Act, w.e.f. 01/06/2020 [Clause 92] and insertion of new section 285BB (Annual Information statement)[Clause 103]**

Reason of Deletion

- In order to facilitate compliance, multiple information in respect of a person such as sale/purchase of immovable property and share transactions etc. will also be uploaded in new form in addition of details of tax deducted or collected.

Brief Impact

- 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. Consequently, section 203AA has deleted.

Contd....

Brief Impact:

- Section 203AA of the Act, *inter-alia*, requires the prescribed income-tax authority or the person authorised by such authority referred to in section 200(3), to prepare and deliver a statement in Form 26AS to every person from whose income, the tax has been deducted or in respect of whose income the tax has been paid specifying the amount of tax deducted or paid.
- **The Form 26AS as prescribed in the Rules, *inter-alia*, contains the information about tax collected or deducted at source.** However, with the advancement in technology and enhancement in the capacity of system, multiple information in respect of a person such as sale/purchase of immovable property, share transactions etc. are being captured or proposed to be captured. In future, it is envisaged that in order to facilitate compliance, this information will be provided to the assessee by uploading the same in the registered account of the assessee on the designated portal of the Income-tax Department, so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability.

Contd....

- 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 inserted 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 deleted.

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

9. Rationalisation of the provisions of section 49 and clause (42A) of section 2 of the Act in respect of segregated portfolios. [Clause 3 & 25]

- **Amended section 2(42A) & 49 of the Income-tax Act, w.e.f. 01/04/2020 [Clause 3 & 25]**

Reason of Amendment

- SEBI on 28/12/2018, 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. So the question arise after SEBI circular that
  - Whether unit of segregated scheme shall be treated as short-term capital asset or not as per definition provided in clause (42A) of section 2?
  - What will be the cost of acquisition of such units for the provision of section 49 of the Act?

Contd....

Brief Impact:

Therefore, clause (42A) section (2) has amended to provide that in the case of a capital asset, being a unit or units in a segregated portfolio, referred to in sub-section (2AG) of section 49, **there shall be included the period for which the original unit or units in the main portfolio were held by the assessee.**

Section 49 has also amended by inserting the new sub section (2AG) 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.

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

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

10. Amendment in the provisions of Act relating to verification of the return of income and appearance of authorized representative. [Clause 67 & 104]

- **Amended section 140 & 288 of the Income-tax Act, w.e.f. 01/04/2020 [Clause 67& 104]**

Reason of Amendment

- As per the provision of section 140 of the Act, in case of company the return is required to be verify by MD. Where the MD is not able to verify or there is no MD, any director of that company can verify the return. Similarly in case of 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
- Similarly, section 288 of the Act provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee as its "authorised representative", in connection with any proceedings under the Act.

Contd....

However, if an application of application for insolvency resolution process has been admitted by the Adjudicating Authority (AA) under the Insolvency and Bankruptcy Code, 2016 (IBC), then all the power of BOD or Partner is exercised by Insolvency Professional or the Administrator. In such cases Insolvency Professional is not empowered by the Act to verify the return and to appear before authority as its "Authorized Representative".

Brief Impact:

Therefore, clause (c) and (cd) of section 140 and sub section (2) of section 288 of the Act has amended so as to enable any other person, as may be prescribed by the Board to verify the return of income and to appear as an authorised representative in the cases of a company and LLP.

J. Other Amendments in the Income Tax Act by the FA, 2020 (not proposed in the Bill)

1. Definition of 'Chief Commissioner' is amended [Clause 3]

In clause (15A) of section 2 of the Income Tax Act,—

(a) after the words "Chief Commissioner of Income-tax", the words "or a Director General of Income-tax" shall be inserted;

(b) after the words "Principal Chief Commissioner of Income-tax", the words "or a Principal Director General of Income-tax" shall be inserted.

Brief Impact:

After the amendment, the definition read as under:

"Chief Commissioner" means a person appointed to be a Chief Commissioner of Income-tax or a Director General of Income-tax or a Principal Chief Commissioner of Income-tax or a Principal Director General of Income-tax under sub-section (1) of section 117;

2. Widening the Scope of Equalisation Levy: Chapter VIII of Finance Act 2016 *(Clause 152 & 153 of Finance Act,2020)*

Brief Impact:

The Equalisation Levy was introduced by the Finance Act, 2016 w.e.f. 01-06-2016. This levy is charged at the rate of 6% from the consideration paid or payable to a non-resident person for the online advertisement services. The Finance Act, 2020 has widen the scope by inserting the new section 165A for Equalisation Levy at the rate of 2% on the consideration received or receivable for e-commerce supply or services made or facilitated by an e-commerce operator, w.e.f. 01.04.2020.

- "**e-commerce operator**" means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both;
- "**e-commerce supply or services**" means—

(i) online sale of goods owned by the e-commerce operator; or

(ii) online provision of services provided by the e-commerce operator; or

(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or

(iv) any combination of activities listed in clause (i), (ii) or clause (iii);';

Contd....

- **Charge of Equalisation Levy on e-commerce supply of services:** From 01-04-2020, the equalisation levy shall be charged at the rate of 2% from the consideration received or receivable by an e-commerce operator from e-commerce supply of goods or services made or provided or facilitated by it:

a) To A person who is resident in India; or

b) To A non-resident person in the following circumstances:

   I. Sale of advertisement which targets a customer who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and

   II. Sale of data collected from a person who is resident in India or from a person who uses internet protocol address located in India.

c) To A person who buys such goods or services or both using internet protocol address located in India;

Contd....

- **The equalisation levy under sub-section (1) of section 165A, shall not be charged—**

(i) where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;

(ii) where the equalisation levy is leviable under section 165 i.e. Online advertisement service; or

(iii) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated as referred to in sub-section (1) is less than two crore rupees during the previous year

Contd....

- **Collection and recovery of equalisation levy on e-commerce supply or services:** The equalisation levy referred to in sub-section (1) of section 165A, shall be paid by every e-commerce operator to the credit of the Central Government for the quarter of the financial year ending with the date specified in column (2) of the Table below by the due date specified in the corresponding entry in column (3) of the said Table

S. No.	Date of ending of the quarter of Financial Year	Due date of the Financial Year
(1)	(2)	(3)
1	30th June	7th July
2	30th September	7th October
3	31st December	7th January
4	31st March	31st March.

Contd....

- In order to ensure effective compliance, it also inserts to provide consequential amendments for interest; penalty and prosecution in case of defaults with sufficient safeguards. Furnishing of statement (Section 167), Processing of statement (Section 168), Rectification of Mistake (section 169) and other sections of the Chapter.
- An e-commerce operator who fails to deposit the equalisation levy to the credit of central government by due date shall be liable for payment of simple interest at the rate of 1% of such levy for every month or part of the month during which such failure continues. **(Section 170 amended)**
- The penalty is levied only on the e-commerce operator on its failure to deposit the levy with the Indian Govt. Where an e-commerce operator fails to pay whole or any part of the equalisation levy required to be paid by him, he shall be liable for payment of penalty of an amount equals to the amount of equalisation levy that he failed to pay. **(Section 171 amended)**
- Consequential amendments have been made to section 10(50) of the Income tax Act, to give tax exemption for the income arising from any e-commerce supply or services made, on or after 0104-2020, on which equalization levy is chargeable.

3. Scope of Section 194N expanded i.e. TDS on cash Withdrawal to discourage cash transactions [Clauses 84]

Section 194N (Payment of certain amount in cash) substituted w.e.f. 1st day of July, 2020

Every person, being,—

(i) a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent. of such sum, as income-tax:

Provided that in case of a receipient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit of file return of income under sub-section (1) of section 139 has expired, immediately preceding the previous year in which the payment of the sum is made to him, the provision of this section shall apply with the modification that—

Contd....

(i) the sum shall be the amount or the aggregate of amounts, as the case may be, in cash exceeding twenty lakh rupees during the previous year; and

(ii) (ii) the deduction shall be—

(a) an amount equal to two per cent. of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds twenty lakh rupees during the previous year but does not exceed one crore rupees; or

(b) an amount equal to five per cent. of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds one crore rupees during the previous year:

Provided further that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the first proviso shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification:

Provided that nothing contained in this sub-section shall apply to any payment made to,—

(i) the Government;

(ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;

(iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934;

(iv) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorization issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;

Provided also that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the provision of this section shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification

Brief Impact:

"In order to achieve the target of cash less economy, a new section 194N in the Act was inserted by the Finance Act (No.) 2,2019 w.e.f. 01.09.2019, Which provides the levy of TDS at @ 2% on cash payments in excess of Rs. 1 crore in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from ***one or more accounts** maintained by the recipient. This levy will discourage the cash withdrawal and promote the Indian economy towards cashless payments."

However, the Finance Act, 2020 has widen the scope of this provision by substituting the existing section with a new Section 194N. Whereas the earlier provision is continued same with more clarification that the TDS will be deducted on entire payments made during the year in excess of Rs.1 Crore

Further, an amendment has been made by inserting first proviso, to provide a higher rate of TDS on a payment made to a person who has not filed return of income for immediately 3 preceding Assessment years relevant to previous year and time limit for filing return of income under section 139(1) of the Act has expired. In such a situation, TDS will be deducted @ 2% on payment more than Rs. 20 lakhs to such recipients; and when the payment to such receipents is more than Rs. 1 Crore, it will attract TDS at 5% instead of 2%.

However, payment made to certain recipients as specified in provisos are exempt.

4. Power of Central Government is increased [Clause 75 & 91]

In Section 194A(**Interest other than "Interest on securities")** after sub-section (4), the following sub-section shall be inserted, namely:—

''(5) The Central Government may, by notification in the Official Gazette, provide that the deduction of tax shall not be made or shall be made at such lower rate, from such payment to such person or class of persons, as may be specified in the said notification.''.

In section 197A (**No deduction to be made in certain cases)** of the Income-tax Act, for sub-section (1F), the following sub-section shall be substituted, namely:—

(1F) Notwithstanding anything contained in this Chapter, no deduction of tax shall be made, or deduction of tax shall be made at such lower rate, from such payment to such person or class of persons, including institution, association or body or class of institutions, associations or bodies, as may be notified by the Central Government in the Official Gazette, in this behalf.

Brief Impact:

The above amendments are made to empower the central government to issue notification in respect of lower rate of TDS.

Thank You...!!!

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