Analysis of Union Budget 2020-21

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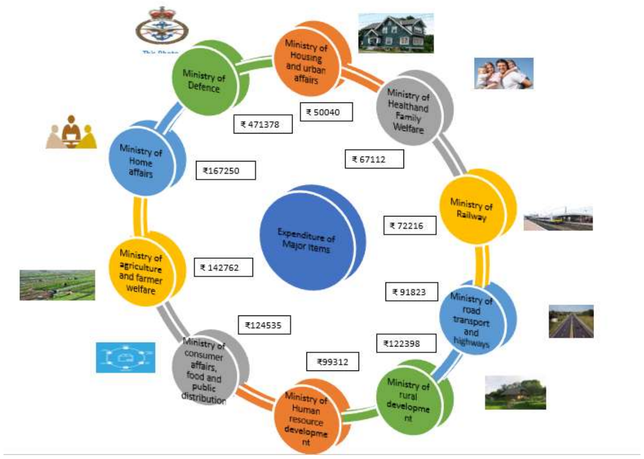
Dear Reader,

The Union Budget for the year 2020 – 21 was presented on 1 Feb 2020 amid the bleak Indian economy, global slowdown, coronavirus, low demand and consumption. Although there have been lot that could have been done there is lot that is done.

The budget 2020, looks like a Budget typically by a lady. With so many verses from various part of literature used, with repetition of important provisions in her speech, with an anecdote of bouquet being used to explain the complex subject the budget certainly has a touch of lady in it. Our Finance Minister Ms. Nirmala Sitharaman beautifully put the whole of her scheme of Budget – Aspirational India, Economic Development and Caring India as the flowers in the bouquet that is Ease of Living and two hands holding this bouquet together– one, Corruption free, policy-driven good governance and two, clean and sound financial sector.



With due consideration given to all segments of economy and society it is a well-balanced budget. Yet, there is more that was expected out of this budget. With the year 2019 -20 no normal year, with so much slowing down of economy, with bleak consumption and lower GDP Growth rate there could have been more being achieved through Budget.

The Budget brings in its own cheers by removal of DDT, reshuffling of Tax slabs for individuals, deferment of SEP Provisions, alignment of Income Tax sections with MLI Provisions it is Budget adopting global practices. Yet, there are devils hidden in curtains like TCS on Liberalised remittance scheme and a seller of an overseas tour program package etc, change in residential status.

Overall Budget is progressive with emphasis on use of technology to achieve the various objectives of government. As the Finance Minister said in speech

"I am mindful of presenting this budget in the backdrop of two cross-cutting developments:

a) Proliferation of technologies, specially analytics, machine learning, robotics, bio-informatics and Artificial Intelligence; and

b) The number of people in the productive age group i.e. 15-65 years in India, being at its highest"

For the first time there is introduction of "taxpayer charter" to increase the fairness and efficiency of tax administration. Although the key lies in implementation yet it shows that the government is committed to taking measures to make citizens free from harassment of any kind. With no free bees, no free sops, with removal of exemption on certain perquisites provided to Union public services commission chairman and members and chief election commissioner and election commissioners the budget seems to mean business. Here is the glimpse of few of the important sectors

Education Sector

• New education policy to be announced. Also, it is proposed to attract FDI and allow raising of foreign currency loans by education institutions. It is proposed to allow top 100 NIRF ranked institutions (in a phased manner) to launch full-fledged degree level online programs to facilitate access to higher education. To strengthen India's position as a preferred higher education destination, it is proposed to hold IND-SAT tests in Asian and African countries to assess foreign students eligible for scholarships in India.

• Developing world class education institutions in India will be one of the constituents for fund utilisation under the NIP launched in December 2019.

• It is proposed that the NSDA give thrust to **infrastructure-focused skill development opportunities**. This proposal is made to enhance employment opportunities for the youth in construction, development and maintenance of infrastructure in the country.

• It is proposed that medical colleges be attached with district hospitals under PPP mode. States providing hospital facilities and concessional land for medical colleges will be eligible for VGF.

• It is proposed that **National Police University and National Forensic Science University** be setup in the domain of policing science, forensic science, cyber forensics etc.

• It is proposed to increase the allocation of funds for **digital connectivity in Government Schools** under the Bharatnet program. In order to provide quality education to students of deprived section of the society as well as those who do not have access to higher education, it is proposed to start degree level full-fledged **online education programme**. This shall be offered only by institutions who are ranked within top 100 in the National Institutional Ranking framework. Initially, only a few such institutions would be asked to offer such programmes.

Non Banking Finance Companies (NBFC)

- The limit for NBFCs to be eligible for debt recovery under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 is proposed to be reduced from ` 500 crore to asset size of ` 100 crore or loan size from existing ` 1 crore to ` 50 lakh.
- Amendments proposed to the Factor Regulation Act, 2011, to enable NBFCs to extend invoice financing to MSMEs through the TReDS platform.
- To address the liquidity constraints of the NBFCs/HFCs, post the Union budget 2019-20, the government formulated a Partial Credit Guarantee scheme for the NBFCs. To further this support of providing liquidity, a mechanism would be devised. Government will offer support by guaranteeing securities so floated.

Medium and Small-Scale Enterprises (MSME)

- The RBI has been asked to consider extending the restructuring window available to MSMEs until 31 March 2021 (currently expiring on 31 March 2020).
- App-based invoice financing loans product to be launched to obviate the problem of delayed payments and consequential cash flows mismatches for MSMEs.
- To resolve working capital challenges, it is proposed to introduce a scheme to provide subordinate debt for entrepreneurs of MSMEs. This subordinate debt would be treated as quasi-equity and would be fully guaranteed through CGTMSE.
- Government e-Marketplace (GeM) is moving ahead for creating a Unified Procurement System in the country for providing a single platform for procurement of goods, services and works. It offers a great opportunity for Medium, Small and micro Enterprises (MSMEs). 3.24 lakh vendors are already on this platform. Its proposed to take its turnover to ` 3lakh crores.

Women

As the FM speech says it is the Budget, “for every woman wishing to stand up and get counted, for every individual from the minority sections of our society – this Budget aims to have your aspirations and hopes addressed”. Never ever we have seen a budget in which the whole segment is dedicated to Women and child. In her section caring Society the FM focuses on Women &Child, Social Welfare; Culture and Tourism and also on Environment and Climate Change.

- **“Poshan Abhiyan”** was launched in 2017-18 to improve the nutritional status of children (0-6 years), adolescent girls, pregnant women and lactating mothers. The Budget proposed to provide **`35600 crore** for nutrition-related programmes for the financial year 2020-21.
- Task force to be set for looking into women age from 18 to above.
- In continuing with our government’s commitment to the welfare of women, this budget provides for about ` 28,600 crore for programs that are specific to women.
- The allocation for Working Women’s Hostel scheme has been tripled from Rs 45 crore in 2019-20 to Rs 150 crore in 2020-21.
- On the issue of providing safety for all women, the budget for Ujjawala, a scheme for prevention of trafficking, rescue and rehabilitation of the victims, has been increased from Rs 20 crore to Rs 30 crore.
- An **Investment Clearance Cell** that will provide “end to end” facilitation and support, including pre-investment advisory, information related to land banks and facilitate clearances at Centre and State level is proposed to be set up for men and women entrepreneurs. It will work through a portal.

Digital

Digital has always been favourite of this government. In this Budget as well if is offered that all "public institutions" at Gram Panchayat level such as Anganwadis, health and wellness centres, government schools, PDS outlets, post offices and police stations will be provided with digital connectivity. It is proposed to provide 6000 crores to Bharatnet programme in 2020-21.

In her Budget speech the FM said

"The digital revolution which has placed India in a unique leadership position globally will see the next wave. We shall aim:

- *To achieve seamless delivery of services through Digital governance*
- *To improve physical quality of life through National Infrastructure Pipeline*
- *Risk mitigation through Disaster Resilience*
- *Social security through Pension and Insurance penetration."*

The budget endeavours to bring in the ease of living through the use of technology and governance.

There are number of steps taken to increase the FDI in India for e.g. there is certain specified categories of Government securities that are opened fully for non-resident investors, apart from being available to domestic investors as well.

As far as International Taxation is concerned there is lot to watch for in this Budget. We have enumerated the key provisions effecting you as global investor/citizen/Multinational Company.

In case you have any queries pertaining to any provisions impacting you or your company, do write to us at info@taxpertpro.com, sudha@taxpertpro.com or be free to call us at 9769033172.

Happy Reading,

Warm Regards,

CA. Sudha G. Bhushan

CA. Naman Agarwal

Removal of Dividend Distribution Tax

Extant Provision

As per Section 115-O of Indian Income Tax Act ("ITA") in addition to the income-tax chargeable in respect of the total income of a domestic company, any amount declared, distributed or paid by way of dividends is charged to additional income-tax at the rate of 15 per cent. The tax so paid by the company (called DDT) is treated as the final payment of tax in respect of the amount declared, distributed or paid by way of dividend. Such dividend referred to in section 115-O is exempt in the hands of shareholders under clause (34) of section 10. 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.

The incidence of tax is, thus, on the payer company and not on the recipient, where it should normally be.

Proposed change

In view of above, it is proposed to carry out amendments so that dividend or income from units are taxable in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT. It is also proposed to provide that the deduction for expense under section 57 of the Act shall be maximum 20 per cent of the dividend or income from units.

Reason for change

The Memorandum explaining the provisions to the Finance Bill, 2020 ("**Memorandum**") states that the dividend is income in the hands of the shareholders and not in the hands of the company. The incidence of the tax should therefore, be on the recipient. Moreover, the present provisions levy tax at a flat rate on the distributed profits, across the board irrespective of the marginal rate at which the recipient is otherwise taxed. The provisions are hence, considered, iniquitous and regressive. The present system of taxation of dividend in the hands of company/ mutual funds was reintroduced by the Finance Act, 2003 (with effect from the assessment year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself.

Impact

FM in her speech said, changes have been proposed in order to "increase the attractiveness of the Indian equity market and to provide relief to a large class of investors". Other reasons were "system of levying DDT results in increase in tax burden for investors and especially those who are liable to pay tax less than the rate of DDT if the dividend income is included in their income" and "non-availability of credit of DDT to most foreign investors in their home country results in reduction of rate of return on equity capital". Indian promoters receiving dividends from domestic companies will be taxed at maximum marginal rate of 42.74%—significantly higher than the current effective rate. Indian promoters would include individuals, HUFs and trust structures. On the other hand, non-resident investors would enjoy lower tax rate as available under tax treaties in force. Tax rate in tax efficient jurisdictions ranges from 5-15%. This discrimination between resident and non-resident investors, does not create a level playing field for on-shore and off-shore investors, and may discourage resident Indian investors. Currently, Indian companies receiving dividend from specified foreign subsidiaries were subject to 15% tax and when such companies distribute dividend to shareholders, they were not required to pay DDT. Proposed amendment provides deduction of dividend received from domestic company only on further distributions. No similar deduction has been provided for dividend received from foreign subsidiaries. This would entail an additional tax outflow and a hit on profitability for domestic companies receiving dividend from foreign subsidiaries. One positive impact is that dividend set off would be available for dividend received from all domestic companies and, hence, requirement of having holding-subsidiary relationship shall no longer be required to avail such benefits. Domestic firms receiving dividend from domestic associates, JVs and other small investments would not be taxed if the same are distributed.

Modification of residency provisions

Extant provision

The residential status of individual in India is based on the number of days stay in India. Basis that an Individual can be Resident and Ordinarily resident, Resident and not ordinarily resident and non-resident.

The following chart highlights the tax incidence in case of different persons:			
Nature of income	***ROR (*)***	***RNOR (*)***	***NR (*)***
Income which accrues or arises in India	Taxed	Taxed	Taxed
Income which is deemed to accrue or arise in India	Taxed	Taxed	Taxed
Income which is received in India	Taxed	Taxed	Taxed
Income which is deemed to be received in India	Taxed	Taxed	Taxed
Income accruing outside India from a business controlled from India or from a profession set up in India	Taxed	Taxed	Not taxed
Income other than above (*i.e.* income which has no relation with India)	Taxed	Not taxed	Not taxed

Therefore, it is very important to determine the residential status of individual. Sub-section (1) of section 6 of the Act provide for situations in which an individual shall be resident in India in a previous year. Clause (c) thereof provides that the individual shall be Indian resident in a year, if he, -

(i) has been in India for an overall period of 365 days or more within four years preceding that year, and
(ii) is in India for an overall period of 60 days or more in that year.

There is relaxation for Indian citizen or a person of Indian origin. As per Clause (b) of Explanation 1 of said sub-section provides that an Indian citizen or a person of Indian origin shall be Indian resident if he is in India for 182 days instead of 60 days in that year. The relaxation is provided to allow them to visit India for longer duration without becoming resident of India.

Reason for change

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

Proposed provision

It is now proposed that the exception provided in clause (b) of Explanation 1 of sub-section (1) to section 6 for visiting India in that year be decreased to 120 days from existing 182 days.

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

This category of persons has been carved out essentially to ensure that a non-resident is not suddenly faced with the compliance requirement of a resident, merely because he spends more than specified number of days in India during a particular year. The conditions specified in the present law in respect of this carve out have been the subject matter of disputes, amendments and further disputes. Further, due to reduction in number of days, as proposed, for visiting Indian citizen or person of Indian origin, there would be need for relaxation in the conditions. It is now proposed to change the above-mentioned Rule for determining the residential status as R NOR. An individual or an HUF shall be said to be "not ordinarily resident" in India in a previous year, if the individual or the manager of the HUF has been a non-resident in India in seven out of ten previous years preceding that year.

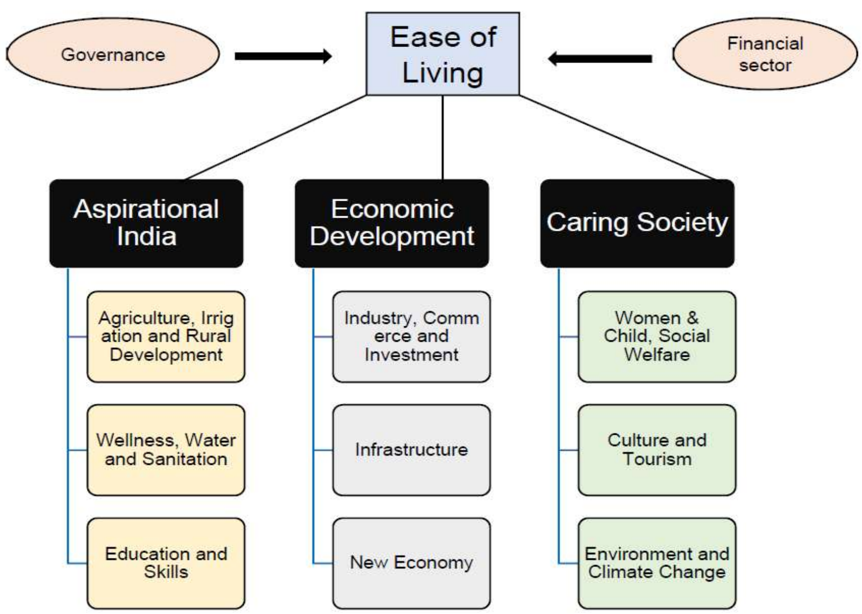
Stateless persons

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.

It is 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.

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

The new provision is not intended to include in tax net those Indian citizens who are bonafide workers in other countries. In some section of the media the new provision is being interpreted to create an impression that those Indians who are bonafide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India on the income that they have earned there. This interpretation is not correct.



Deferring Significant Economic Presence (SEP) proposal

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

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

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

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

(a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

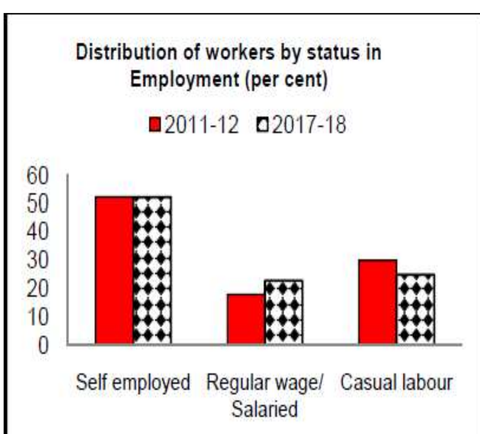
Said Explanation further provided that the transactions or activities shall constitute significant economic presence in India, whether or not, the agreement for such transactions or activities is entered in India; or the non-resident has a residence or place of business in India; or the non-resident renders services in India. It was also provided that only so much of income as is attributable to the transactions or activities mentioned at para 2(a) and (b) shall be deemed to accrue or arise in India.

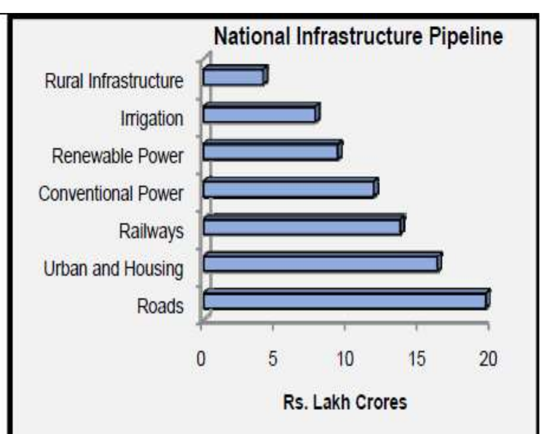
Therefore, for the purposes of determining SEP of a non-resident in India, threshold for the aggregate amount of payments arising from the specified transactions and for the number of users were required to be prescribed in the Rules.

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

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

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.





India is the 5th largest economy in the world in terms of GDP at current US $ Trillion.

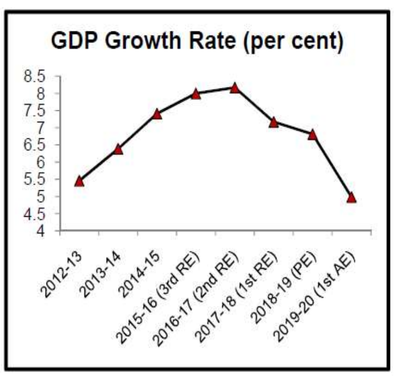
Extension of source rule in the event of a "business connection" expanded to include income

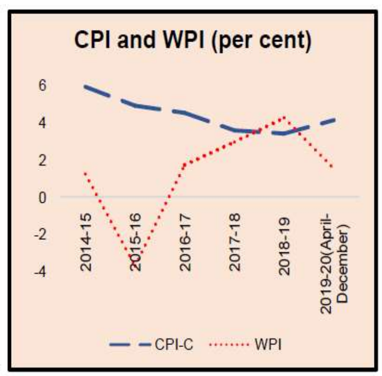
As per the discussion going on in international forum, countries generally agree that income from advertisement that targets Indian customers or income from sale of data collected from India or income from sale of goods and services using such data collected from India, needs to be accounted for in Indian revenue. Hence, it is proposed to amend the source rule to clarify this position. The Budget seeks to expand the scope of income attributable to Indian operations which is within India's taxing rights as a source country, primarily in the context of the digital economy and use of data.

Scope of source rule under the domestic tax law in the event of a "business connection" expanded to include income from:

- Advertisements targeting an Indian customer or a customer who accesses the advertisement through internet protocol address located in India;
- Sale of data collected from an Indian resident or from a person who uses internet protocol address located in India; and
- Sale of goods or services using data collected from an Indian resident or from a person who uses internet protocol address located in India.
- Nexus rules using IP address, location of device and other parameters for affixing customer location have been subject matter of extensive debate globally. Practical challenges of making income determination on the defined basis and potential overlaps with Significant Economic Presence provisions will have to be carefully considered. Additionally, compliance requirements such as filing of return of income could also follow.

Foreign businesses operating in new media and digital space which do not have tax treaty protection will be governed by the amended provisions.





Rationalising the definition of royalty by inclusion of consideration for the sale, distribution or exhibition of cinematographic films

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.

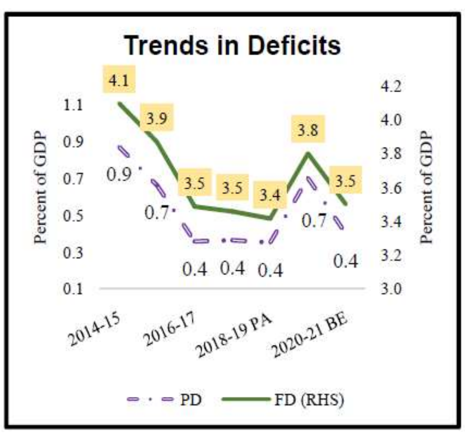
Due to exclusion of consideration for the sale, distribution or exhibition of cinematographic films from the definition of royalty, such royalty is not taxable in India even if the DTAA gives India the right to tax such royalty. Such a situation is discriminatory against Indian residents, since India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

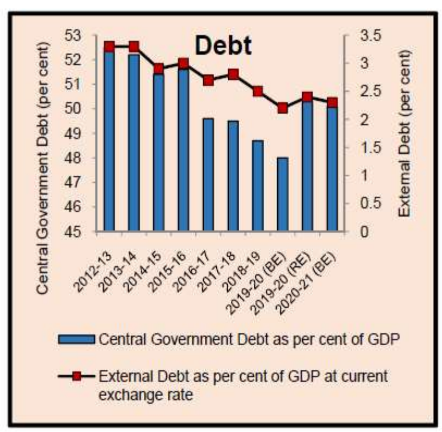
These amendments will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

It is further proposed 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 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. The amendment at clause (ii) will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.





Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund

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

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

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

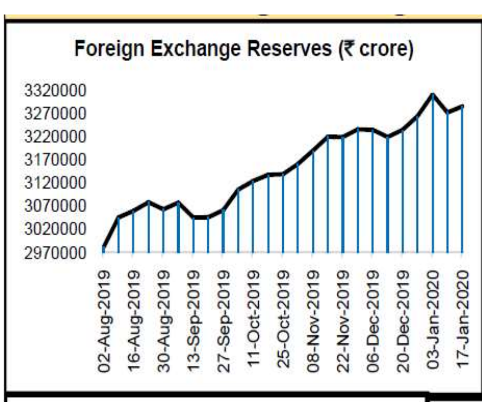
For the purpose of this exemption, “specified person” is proposed to be defined to mean, -

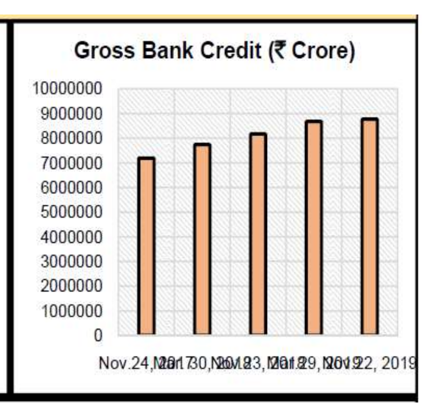
a) a wholly owned subsidiary of the ADIA, which is a resident of the United Arab Emirates (UAE) and which makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates; an

b) a sovereign wealth fund which satisfies the following conditions:

A. It is wholly owned and controlled, directly or indirectly, by Government of a foreign country;
B. It is set up and regulated under the law of the foreign country;
C. Its earnings are credited either to the account of the Government of the foreign country or to any other account designated by that Government such that no portion of the earnings inures any benefit to any private person;
D. Its asset vest in the Government of the foreign country upon dissolution;
E. It does not undertake any commercial activity whether within or outside India; and
F. It is notified by the Central Government in the Official Gazette for this purpose.

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.





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

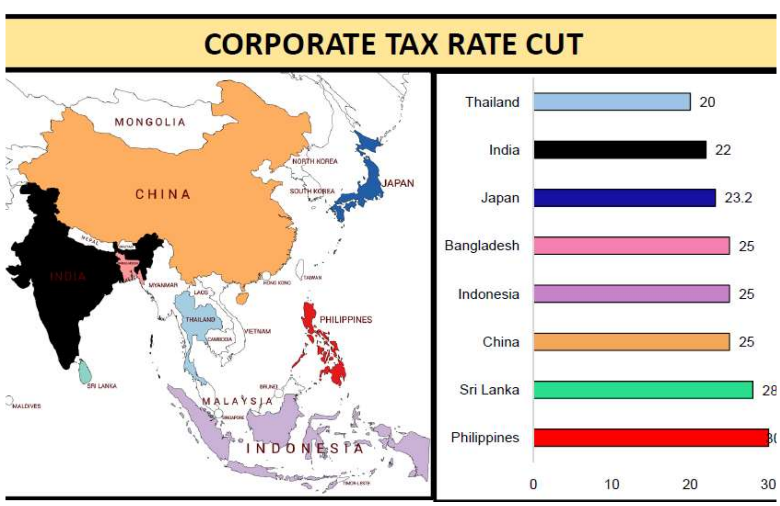
i. Monies borrowed under a loan agreement at any time on or after 1st July, 2012 and before 1st July, 2020;
ii. Borrowings by way of issue of any long-term infrastructure bond at any time on or after 1st July, 2012 and before 1st July, 2014;
iii. Borrowings by way of issue of long-term bond including long-term infrastructure bonds at any time on or after 1st of October 2014 and before 1st July, 2020;

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

In order to attract fresh investment, create jobs and stimulate the economy, it is proposed to; -

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

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



Modification in conditions for offshore funds' exemption from "business connection".

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

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

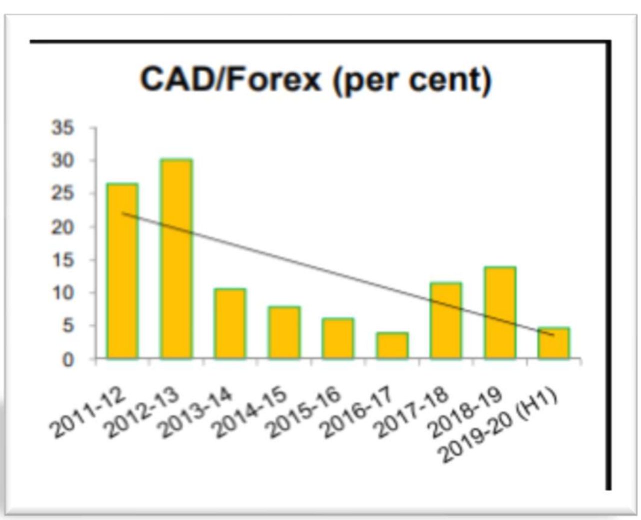
One other condition for eligibility of the fund provided under clause (j) of said sub-section (3) requires that the monthly average of the corpus of the fund shall not be less than one hundred crore rupees except where the fund has been established or incorporated in the previous year in which case,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

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

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

i. for the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during first three years up to twenty-five crore rupees shall not be accounted for; and
ii. if the fund has been established or incorporated in the previous year, the condition of monthly average of the corpus of the fund to be at one hundred crore rupees shall be fulfilled within twelve months from the last day of the month of its establishment or incorporation.

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.



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

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

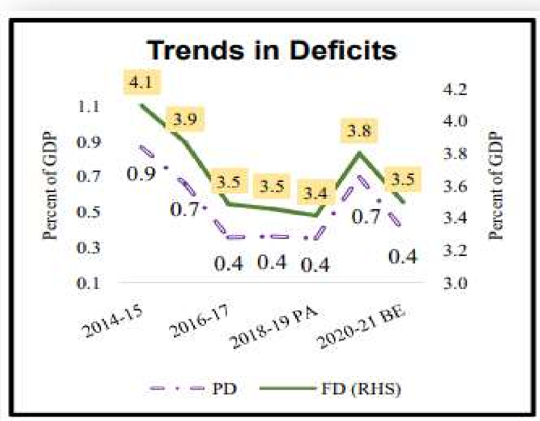
SHR provides tax certainty for relatively smaller cases for future years on general terms, while APA provides tax certainty on case to case basis not only for future years but also Rollback years. Both SHR and the APA have been successful in reducing litigation in determination of the ALP.

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

For the above reasons, it is proposed to amend section 92CB and section 92CC of the Act 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.

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



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

In order to widen and deepen the tax net by bringing participants of e-commerce within tax net, it is proposed to insert a new section 194-O in the Act so as to provide for a new levy of TDS at the rate of one per cent.

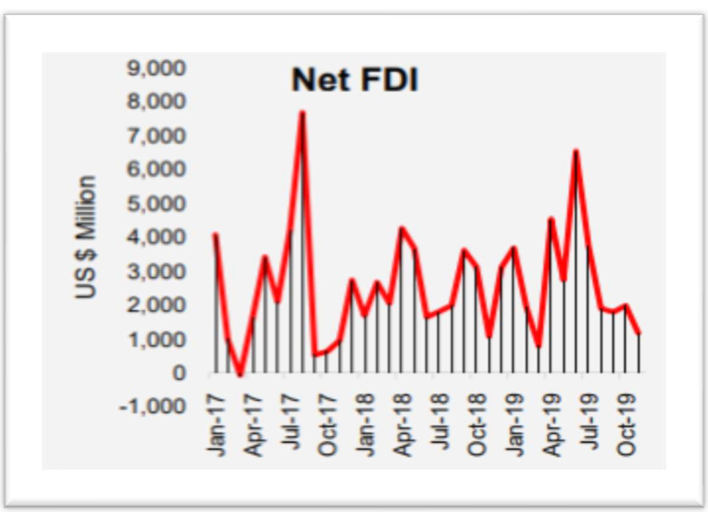
- "e-commerce operator" is defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is a person responsible for paying to e-commerce participant.
- "e-commerce participant" is defined to mean a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.
- "electronic commerce" is defined to mean the supply of goods or services or both, including digital products, over digital or electronic network.
- "services" is defined to include fees for technical services and fees for professional services, as defined in section 194J.

With the following key points:

- The TDS is to be paid by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;
- E-commerce operator is required to deduct tax at the time of credit of amount of sale or service or both to the account of e-commerce participant or at the time of payment thereof to such participant by any mode, whichever is earlier.
- The tax at one per cent is required to be deducted on the gross amount of such sales or service or both.
- Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant shall be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sales or services for the purpose of deduction of income-tax.
- The sum credited or paid to an e-commerce participant (being an individual or HUF) by the e-commerce operator shall not be subjected to provision of this section, if the gross amount of sales or services or both of such individual or HUF, through e-commerce operator, during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number (PAN) or Aadhaar number to the e-commerce operator.
- A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to deduction under the exemption discussed in the previous bullet, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Act. This is to provide clarity so that same transaction is not subjected to TDS more than once. However, it has been clarified that this exemption will not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in sub-section (1) of the proposed section.

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

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



Aligning purpose of entering into Double Taxation Avoidance Agreements (DTAA) with Multilateral Instrument (MLI)

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

a) granting relief in respect of —
    a. income on which tax has been paid both, in India and that foreign country or territory, or
    b. income-tax chargeable under the laws of both, India and that foreign country or territory, to promote mutual economic relations, trade and investment.
b) avoidance of double taxation of income under the laws of both, India and that foreign country of territory,
c) exchange of information for prevention of evasion or avoidance of income-tax chargeable under the laws of both India and that foreign country or territory, or investigation of cases of such evasion or avoidance, or
d) recovery of income-tax under the laws of both India and that foreign country or territory.

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

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

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

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

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

In order to achieve this, clause (b) of sub-section (1) of section 90 of the Act which provides for providing relief in respect of avoidance of double taxation of income under the laws of both country or territory (India and the other foreign country of territory) is required to contain the text provided for in MLI as mentioned at para 4 above. In case of section 90A of the Act also, similar amendment would be required to be carried out.

Therefore, it is proposed to amend clause (b) of sub-section (1) of section 90 of the Act so as to provide that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India for, inter alia, the avoidance of double taxation of income under the Act and under the corresponding law in force in that country or specified territory, as the case may be, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of any other country or territory).

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

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.

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

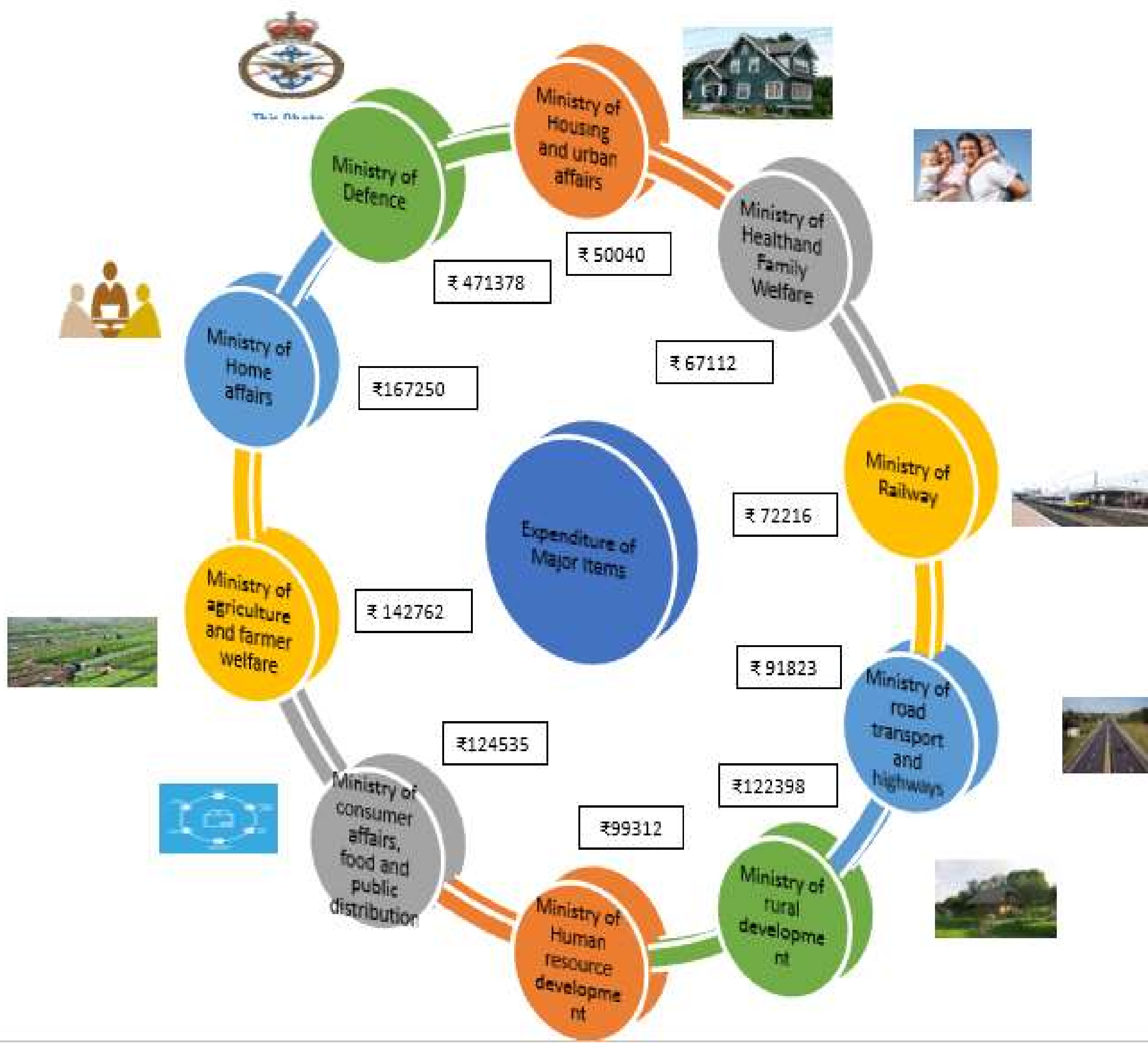
Section 194J of the Act provides that any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of fees for professional services, or fees for technical services, or any remuneration or fees or commission by whatever name called (other than those on which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

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

It is noticed that there are large number of litigations on the issue of short deduction of tax treating 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.

Therefore, to reduce litigation, it is proposed to reduce rate for TDS in section 194J in case of fees for technical services (other than professional services) to two per cent from existing ten per cent. The TDS rate in other cases under section 194J would remain same at ten per cent.

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



Relaxation in Audit Requirements

Bill seeks to amend section 44AB of the Income-tax Act relating to audit of accounts of certain persons carrying on business or profession.

Current Provisions

Clause (a) of the said section provides that every person carrying on business shall get his accounts of any previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year.

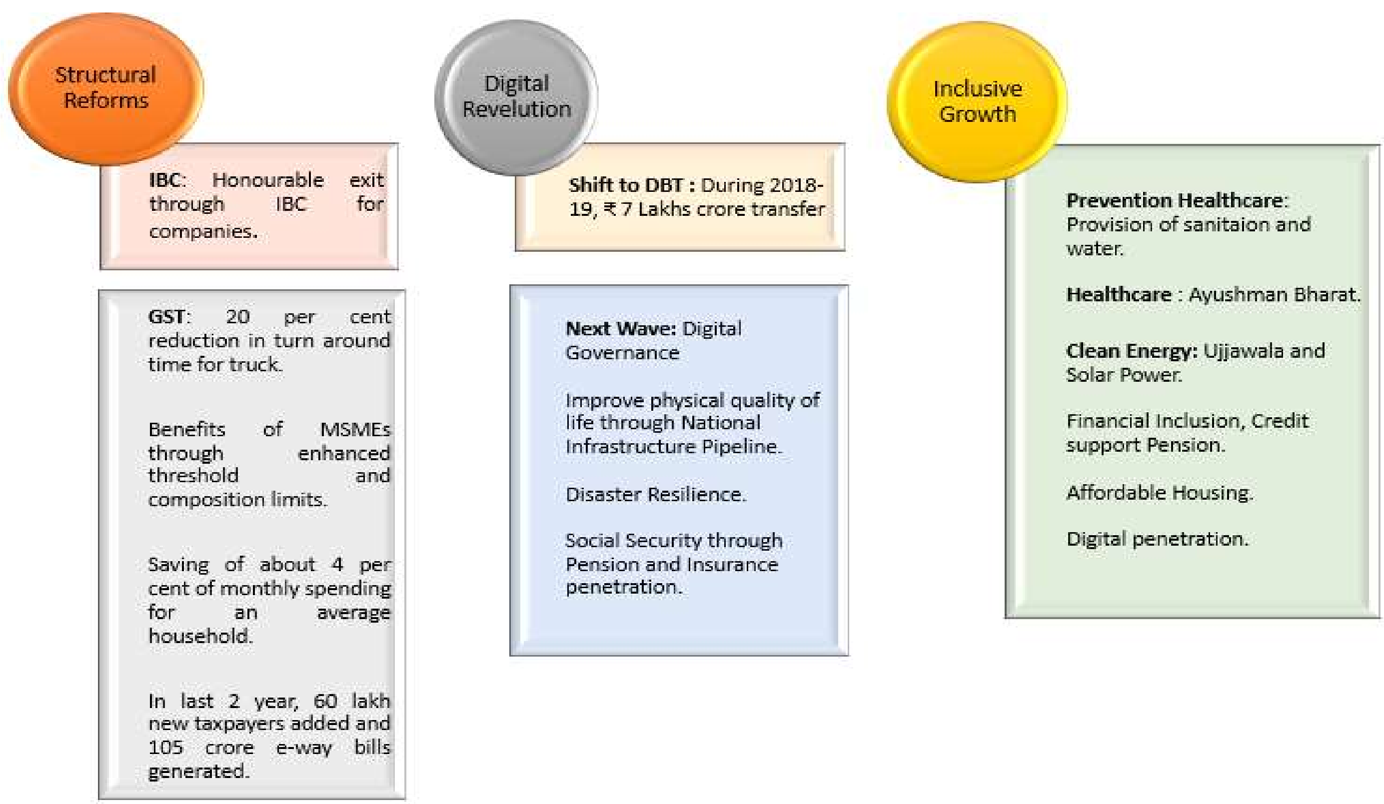
Proposed Provisions

It is proposed to insert a proviso in the said clause so as to provide that in the case of a person whose aggregate of all amount received including amount received for sales, turnover or gross receipts during the previous years, in cash, does not exceed five per cent. of the said amount; and the 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.

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

It is proposed to amend the said clause so as to provide that the specified date will mean one month prior to the due date for furnishing the return of income under sub-section (1) of section 139.

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.



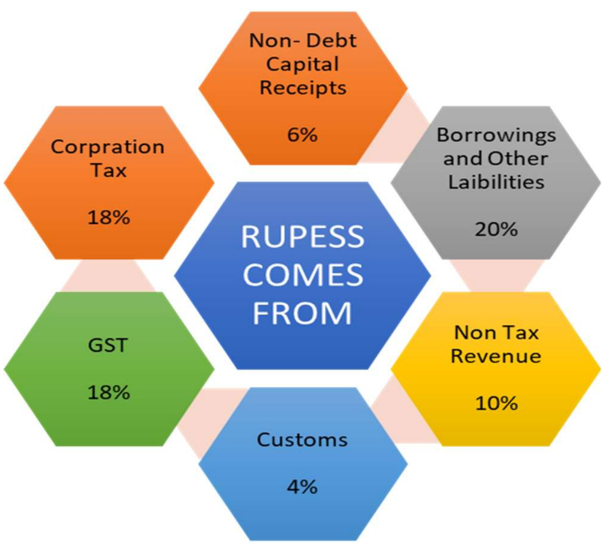
Deferment of taxes arising on Employee Stock Options (ESOPs)

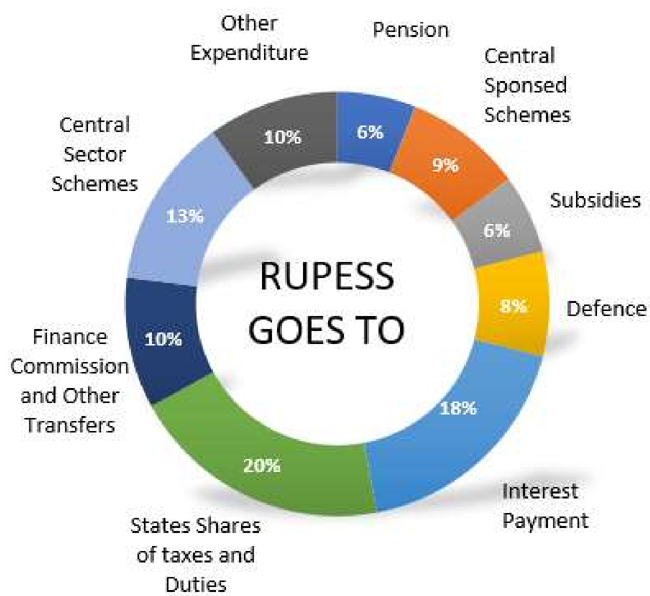
Sub-section (1) of the Section 192 of the Income-tax Act provides that any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. Sub-section (1A) of the said section provides that without prejudice to the provisions contained in sub-section (1), the person responsible for paying any income in the nature of a perquisite which is not provided for by way of monetary payment, referred to in clause (vi) of sub-section (2) of section 17, may pay, at his option, tax on the whole or part of such income without making any deduction therefrom at the time when such tax was otherwise deductible under the provisions of sub-section (1).

Proposed Provisions:

It is proposed to insert new sub-section (1C) so as to provide that for the purpose 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 subsection (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 after the expiry of forty-eight months from the end of the relevant assessment year; or from the date of the sale of such specified security or sweat equity share by the assessee; or from the date of the assessee ceasing to be the employee of the person, whichever is earlier, 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.

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





New and simplified personal income tax regime

The Finance Bill, 2020 seeks to amend the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2020- 2021. Further, it lays down the rates at which tax is to be deducted at source during the financial deductions under the Income-tax Act; and the rates at which “advance tax” is to be paid, tax is to be deducted at source from, or paid on, income chargeable under the head “salaries” and tax is to be calculated and charged in special cases for the financial year 2020-2021.

The Budget seeks to insert new sections 115BAC in the Income-tax Act relating to tax on income of individuals and Hindu undivided family and 115BAD relating to tax on income of certain resident cooperative societies. Sub-section (1) of proposed new section 115BAC provides that 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 an individual or a Hindu undivided family, 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 given in the table below, if the conditions contained in sub-section (2) are satisfied:
Total Income Rate

- Upto 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.

Impact

The budget 2020 has given taxpayers the option to choose between the existing income tax regime (which allows availing existing income tax exemptions and deductions) and a new tax regime with slashed income tax rates and new income tax slabs but no tax exemptions and deductions. The new tax regime offers lower tax rates and new tax slabs and simultaneously removes tax exemptions and will result in lower tax outgo for the tax payer, according to the finance minister. Which tax regime -old or new--would be beneficial i.e. result in lower tax payable for each individual is likely to depend on his/her income composition and investments done. Each individual will have to do his/her own income calculations to figure out which tax regime is more beneficial to him/her. For example, a person who has bought a long-term life insurance policy may have to continue paying the premium.

Finance Minister Nirmala Sitharaman said in her budget speech *“A person earning Rs 15 lakh in a year and not availing any deductions and exemptions will pay only Rs 1.95 lakh tax as compared to Rs 2.73 lakh in the old regime,” said the Finance Minister.*

However, The Budget 2020 has made the tax structure more complicated by adding three income tax slabs. The removal of tax exemptions and deductions certainly makes compliance less tedious, but avid tax planners who maximised their tax deductions will probably pay more tax under the new tax regime. The budget 2020 has tried to put more money in the hands of taxpayers by curtailing the incentives to save.

Widening the scope of section 206C to include TCS on foreign remittance through Liberalised Remittance Scheme (LRS) and on selling of overseas tour package as well as TCS on sale of goods over a limit.

Section 206C of the Act provides for the collection of tax at source (TCS) on business of trading in alcohol, liquor, forest produce, scrap etc. Sub-section (1) of the said section, *inter-alia*, provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of certain goods a sum equal to specified percentage, of such amount as income-tax. In order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on overseas remittance and for sale of overseas tour package, as under:

- An authorised dealer receiving an amount or an aggregate of amounts of seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of five per cent. In non- PAN/Aadhaar cases the rate shall be ten per cent.
- 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.

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

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

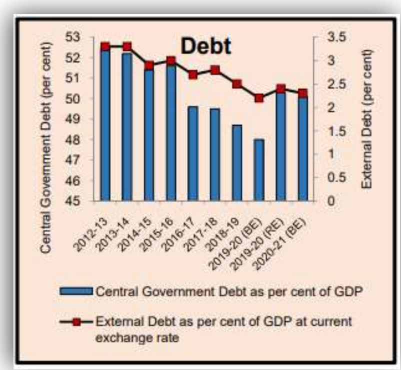
b. the Central Government, a State Government , an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person notified by the Central Government in the Official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

- “authorised dealer” is proposed to be defined to mean a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security.
- “Overseas tour program package” is proposed to be defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.

Further, in order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on sale of goods above specified limit, as under:

- A seller of goods is liable to collect TCS at the rate of 0.1 per cent. on consideration received from a buyer in a previous year in excess of fifty lakh rupees. In non-PAN/ Aadhaar cases the rate shall be one per cent.
- Only those sellers whose total sales, gross receipts or turnover from the business carried on by it exceed ten crore rupees during the financial year immediately preceding the financial year, shall be liable to collect such TCS.
- Central Government may notify person, subject to conditions contained in such notification, who shall not be liable to collect such TCS.
- No TCS is to be collected from the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification.
- No such TCS is to be collected, if the seller is liable to collect TCS under other provision of section 206C or the buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.

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



Exempting non-resident from filing of Income-tax return in certain conditions.

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

(a) certain dividend or interest income;

(b) royalty or fees for technical services (FTS) received from the Government or Indian concern in pursuance of an agreement made after 31st March 1976, and which is not effectively connected with a PE, if any, of the non-resident in India. Sub-section (5) of said section provides that a non-resident is not required to furnish its return of income under sub-section (1) of section 139 of the Act, if its total income, consists only of certain dividend or interest income and the TDS on such income has been deducted according to the provisions of Chapter XVII-B of the Act.

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

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

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

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

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.

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