K C Mehta & Co.

Chartered Accountants

India Budget 2021

RESILIENCE TO **RENAISSANCE**

India Budget 2021

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The provisions contained in the Finance Bill, 2021 ("the Bill") are proposals and are likely to undergo amendments while passing through Houses of Parliament before being enacted.

Change will not come if we wait for some other person or some other time. We're the ones we've been waiting for. We are the change that we seek.

Barack Obama

Reflections

Hope all of you are safe and doing well. The year 2020 would be remembered for a long time. It has changed the entire perspective and has changed life of many. The change appears to be permanent.

On the economic front, the entire year 2020 was most challenging. With disruption of the businesses, disruption of supply chain, travel getting restricted, anxiety and concerns regarding health and well being, sustainability of businesses and livelihood, survival of the Governments, everything that you can think of has happened during the year. But the silver lining is that we are on the other side of the year and hopefully the worst is behind us.

India had most stringent measures for combating Covid19. For almost one full month of April 2020, it had complete lock down including of manufacturing and service premises except related to essential services. Even after that, there was very gradual opening up of economic activities. This therefore had major toll on the economy and consequently on the Government finances. Response to the challenging situation was the test of the Government.

Despite very high level of fiscal deficit not only for the current year but also for coming year, the Government decided not to deter from its long-term policy and continued its plan and has decided to face the financial challenges by coming up with alternate resources of raising finance. This was certainly bold (like stringent Covid19 containment measures) and am sure it would result into stellar results.

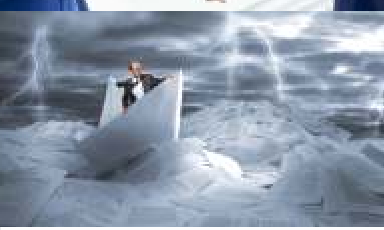
Since most of the concessions in the corporate and individual tax rates were already given earlier, there was not much of a scope for any reduction in the tax rates or giving any incentive. However, the Government decided to iron out some creases in the law and rationalise provisions. The Government took pathbreaking decisions of reducing the time limit for tax assessments and of making re-opening of the completed assessments very difficult for the tax department, taking away the discretion from individuals and moving towards a system-based approach.

Expressing intention of removing audit for GST and relying on self-certification by the taxpayer is another example of putting faith on the taxpayers by the Government.

I am sure that these experiments of the Government in putting faith on the taxpayers would result into much needed tax buoyancy in coming years.

Milin Mehta



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State of Economy

India Budget 2021 RESILIENCE TO **RENAISSANCE**

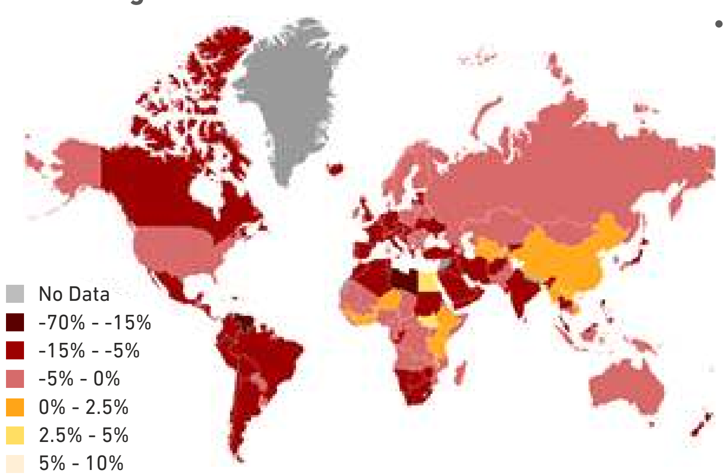
Economic Survey 2020-21

Background

The Year 2020 can well be summed up in one Latin phrase "Annus Horribilis", meaning a horrible year. Nothing can sum up better than this phrase as to what befell on the whole world. An event of such sheer magnitude, force and vengeance that no human being would have dreamt of in their worst nightmares.

The fallout of the Pandemic was that economies across the world were left in tatters with continued lockdowns that brought all economic activity to a standstill. The IMF has estimated that the global economy shrunk by 4.4% in 2020 and considers this decline as the worst since the Great Depression of the US of the 1930s which has been succinctly put in the graph by the British Broadcasting Corporation (BBC) showing countries across the global in some level of recession or another.

Majority of countries in recession
Real GDP growth



Source: International Monetary Fund - BBC

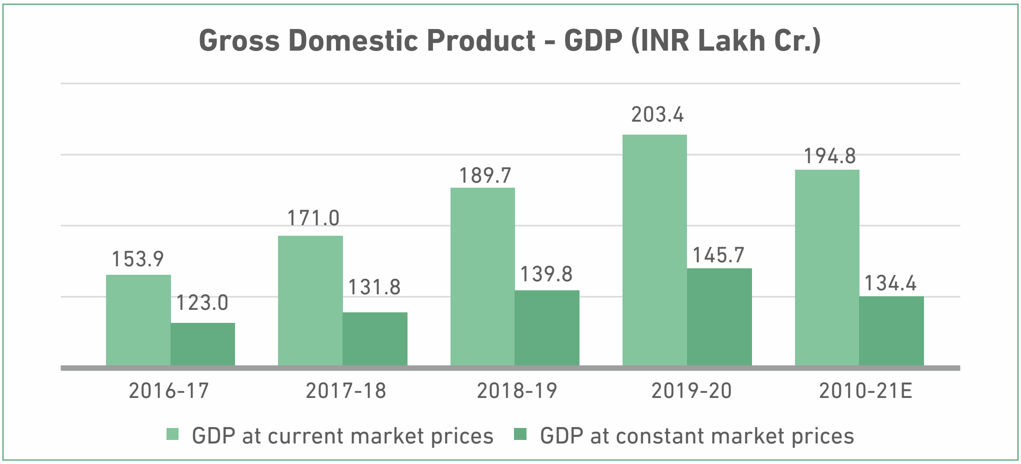
Positive Take-Aways

Though 2020 was tumultuous in every possible way, the dark clouds always have a silver lining. The year gave us time to sit back and reflect on the broader perspective of how we look at work, family, entertainment or health. Some of the positives take-ways are:

- Healthcare Advancements: Human nature known for its fortitude developed vaccines against COVID-19 Virus in less than 12 months against the normal time span of 18-24 months.
- Education Experiment: Distance/Online education for schools and colleges became the norm with students across all ages adopting newer technologies to study and learn.
- Changing Work Routines: Work From Home (WFH) for businesses across a spectrum of industries made one realize that absence of physical offices did not deter people from doing their regular jobs.
- Business Innovation: Alternative forms of entertainment, whether it is OTT or home delivery of food have led to a slew of new business ideas and companies and created more Unicorns.

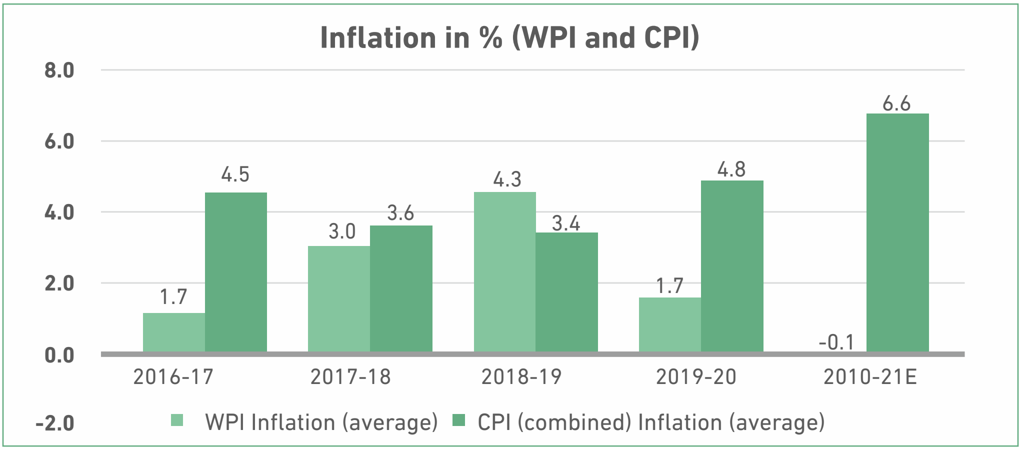
Indian Economy 2020-21

- Global economic output is estimated to fall by 4.4 per cent in 2020, the sharpest contraction in a century.
- India's GDP is estimated to contract by 7.7 per cent in 2020-21, on account of a sharp 15.7 per cent decline in first half and a modest 0.1 per cent fall in the second half.

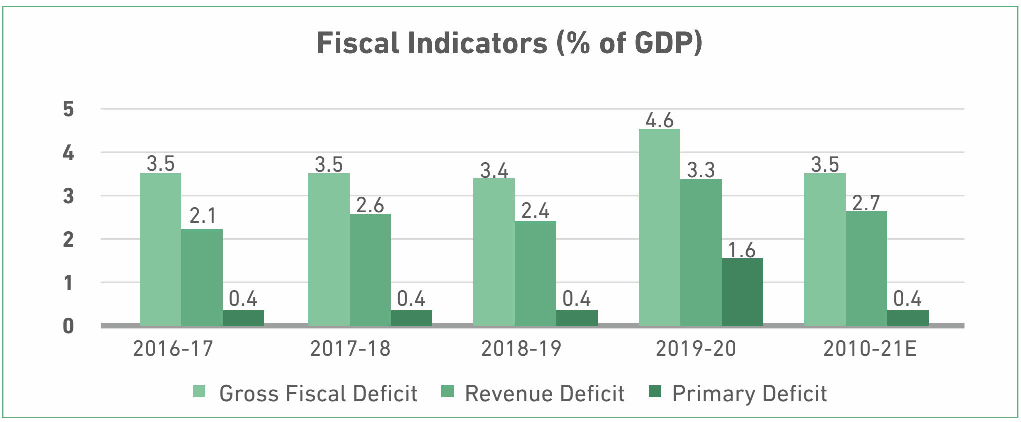


Economic Survey 2020-21

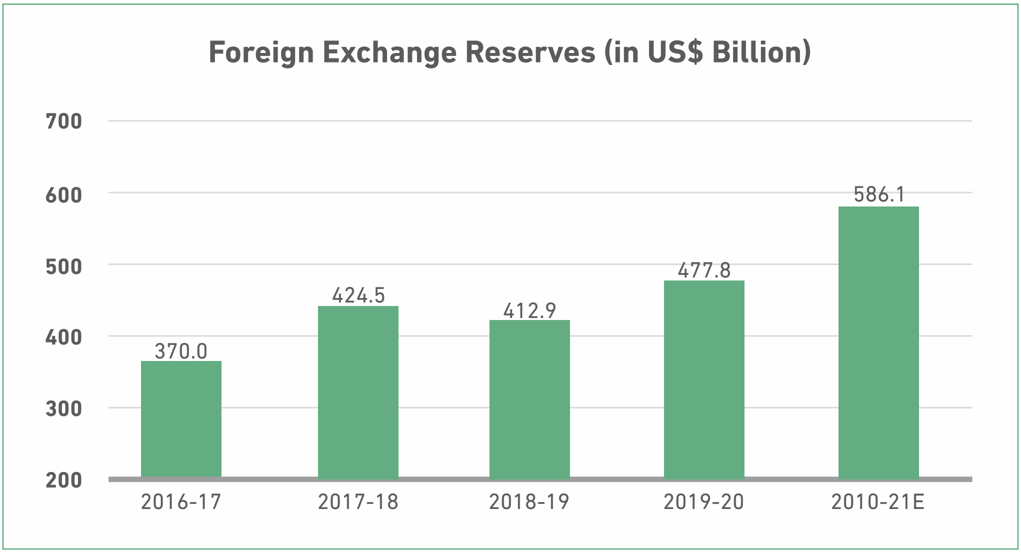
- India's real GDP projected for growth of 11.0 per cent in 2021-22 and 15.4 per cent in nominal terms.
- Key economic indicators like E-way bills, rail freight, GST collections and power consumption not only reached pre-pandemic levels but surpassed pre-COVID levels.
- Agriculture sector has been resistant to shocks by the COVID-19 pandemic showing a growth of 3.4 per cent in both Q1 and Q2 2020-21.
- High food prices became a major driver of inflation in 2020 though signs of easing are seen.



- India recorded a current account surplus of 3.1 per cent of GDP in the first half of the year largely supported by strong services exports.



- Net FPI inflows recorded an all-time monthly high of US$ 9.8 billion in November 2020. During April-December 2020, equities witnessed inflow of US$ 30.0 billion, five times its previous year value.
- With the rise in gold reserves and foreign currency assets, India's foreign exchange reserves climbed to a new high of US$ 586.08 billion as on January 8, 2021.



Economic Survey 2020-21 Key Themes and Focus Areas

Economic Survey 2020-21 has compared economic gospel truths of developed economies from an Indian perspective to evaluate whether they hold good. The areas sought to be evaluated were whether inequalities led to negative outcomes (in terms of health and social problems, literacy, life expectancy etc.) or whether short term pain for long term gain, implying health before economics can be justified. The Survey also looks at whether growth rate can support higher debt and its vice-versa impact, whether the negative bias of Credit Rating Agencies have an impact on financial parameters of a country and whether sustained Regulatory Forbearance can lead out of a financial crisis are some of the key themes and focus areas of the Survey.

Economic Survey 2020-21

Saving Lives and Livelihood – Tackling once in a Lifetime Crisis

"Jaan Hai to Jahan Hai" was what was espoused by the honorable Prime Minister when the country entered into its first lock-down phase. What this Survey tries to address is that when faced with an unprecedented crisis, the first and foremost Dharma is of "saving lives". The fact that while GDP growth will recover from the temporary shock caused by the pandemic, human lives that are lost cannot be brought back has been well recognized by the Government and all activities have been focused towards saving lives.

- COVID-19 pandemic was once in a century crisis for which no one was adequately prepared. Thus, it was a case of daily learning as one dealt with the pandemic.
- The first and foremost objective of the incumbent Government was to first save lives and the economic revival can be taken up later. Saving lives became the Dharma as espoused in the Mahabharata.
- The strategy of saving lives was applied considering the Nobel-Prize winning research by Hansen & Sargent in 2001, which recommended a policy focused on minimizing losses in a worst-case scenario when uncertainty is very high.

Growth and Debt Sustainability – Can the Roles be Reversed?

"Daag Acche Hai" a highly popular tagline of Surf Excel seems to have been replicated for "Debt Accha Hai", meaning a bad thing can be good if it addresses a greater good. The Survey tries to understand whether the reverse of higher growth leading to debt sustainability holds true in the Indian context. Debt sustainability depends on the "interest rate growth differential" (IRGD), implying differential between the interest rate paid to service government debt and the growth rate of the economy and is a key concept in assessing fiscal sustainability.

- The question for India is whether a consistently negative IRGD affect the relationship between debt and growth in India? or does a higher growth lead to lower debt or lower debt cause higher growth?
- One argument is that higher public debt leads to lower aggregate demand and growth rates as well as crowding out of private investment on account of higher interest rate. The other side of argument is higher growth rate leads to lower public debt to GDP ratio.
- As India is expected to have a negative IRGD till 2030, policy makers have to use counter-cyclical fiscal policy to enable growth. However, a thin line differentiates between fiscal irresponsibility and a relaxed policy towards debt and fiscal spending during a growth slowdown / economic crisis.

Indian Fundamentals – at Crossroads with Sovereign Debt Rating

Sovereign credit ratings of India being the fifth largest economy in the world is given the lowest rung of the investment grade (BBB-/Baa3). Historically, the fifth largest economy has never been given a rating below AAA (stated as Triple A). As ratings do not capture India's fundamentals, the fiscal policy measures adopted by the Government should not be dictated by the Credit Rating Agencies (CRAs).

- As ratings do not reflect India's strong fundamentals, the sovereign credit rating given by CRAs have had no major adverse impact on key economic indicators such as Stock Indices Returns, Foreign Exchange Rate or the G-Sec yield.
- Though ratings do not reflect the fundamentals, they have a potential to negatively impact equity and debt flows to developing countries.

Growth – Capitalism – Inequality?

Economic Survey of 2019-20 had argued for wealth creation in an ethical manner by advocating the invisible hand of markets with the invisible hand as the development mantra for Indian growth story. This Year's Survey tries to disprove the arguments of developed economies in the post Global Financial Crisis era that inequality is no accident but an essential feature of capitalism. The Survey tries to disprove that correlation exists between capitalism and inequalities, thereby leading to adverse outcomes.

- In the Indian context various data analyses have shown that though the growth has led to increase in inequalities, the adverse impact of such inequalities which was generally observed in the developed economies was not the case in India.
- The question then arises is whether inequality and poverty be seen and read in the same context. Inequality refers to the degree of dispersion in the distribution of assets, income or consumption whereas Poverty refers to the absolute value of assets, income or consumption of those at the bottom of the pyramid.
- For India perspective where the growth potential is high and the scope for poverty reduction is immensely significant, a policy that lifts the poor out of poverty by increasing the overall pie is the best outcome, even if it leads to inequalities.

Healthcare – Ignored Sector No More

COVID-19 pandemic has brought to the fore the mantra that "Health is Wealth. Survey has stated that "saliency bias" should not govern our healthcare policy. It further observed that there is a tremendous potential to provide

healthcare access across remote areas through telemedicine by investing in internet connectivity and health infrastructure.

- A study by WHO in 2004 has found that increasing life expectancy from 50 to 70 years (a 40 per cent increase) could raise the economic growth rate by 1.4 percentage point per year. Thus, health of a nation directly effects the economic growth.

- The policymakers need to design healthcare infrastructure similar to Quality and Outcomes Framework (QOF) by the National Health Service (NHS) UK, a system designed for the performance management and payment of general practitioners (GPs).

Regulation to Supervision – Still a Pipedream

It has been discussed ad nauseum that the problems of India's administrative processes are much less from either lack of compliances or regulatory standards but largely from overregulation. The Survey identified that the time taken for a company to undergo voluntary liquidation in India and struck off the records was 1,570 days.

Various Categories	2015	2020
Regulatory Enforcement overall rank	69	74
Government regulations are effectively enforced	87	104
government regulations are applied and enforced without improper influence	74	107
Administrative proceedings are conducted without unreasonable delay	75	89
Due process is respected in administrative proceedings	72	45
Number of Countries	102	128

- The 'World Rule of Law Index' published by the World Justice Project provides country-wise comparison on various parameters of regulatory enforcement and proceedings.
- The Survey found that the policymakers are naturally inclined towards prescriptive regulation over supervision as regulation can be measured.

Regulatory Forbearance – Delicate, Use with Care

Regulatory Forbearance for Financial Institutions especially Banks implies relaxing norms for restructuring assets where the restructured assets are no longer required to be classified as Non-Performing Assets (NPAs) and therefore do not require the levels of provisioning that NPAs normally attract.

- The Forbearance Policies are introduced to have the desired short-term economic effects and should not normally exceed the two years' limit.
- P. J. Nayak Committee constituted by RBI in 2014 highlighted in its Report two major concerns stemming from the forbearance regime (i) Ever-greening of loans by classifying NPAs as restructured assets. and (ii) Undercapitalization of banks - Prolonged Regulatory Forbearance resulting in overstating the actual capital and creating a false sense of security and leading to zombie lending (meaning lending to unproductive firms).
- Asset Quality Review (AQR) exercise must be conducted immediately after the forbearance is to check the efficacy of Regulatory Forbearance.

Innovation – Miles to Go before I Sleep

India has entered the top 50 innovating countries for the first time since the inception of the Global Innovation Index (GII) in 2007 having improved its rank from 81 in 2015 to 48 in 2020. Though entering the top 50 is big achievement, India lags behind in certain areas: 107th on education sub-pillar, primarily on account of ranking 118th on pupil-teacher ratio in secondary education; 115th on new business per thousand population in ages 15-64 [from a total of 131 economies].

- India's gross expenditure on R&D at 0.65 per cent of GDP is substantially lower than that of the top 10 economies (~1.5-3 per cent of GDP).
- Though India has had a generous tax incentive structure to boost R&D, such incentives have not yielded a corresponding level of private participation in Gross Expenditure on R&D (GERD) in India.
- The business sector in India contributes substantially lower to GERD (~ 37 per cent) as compared to businesses in the top ten economies (~68 per cent).

Ayushman Bharat's Jan Arogya Yojana (JAY) – JAI Ho Moment

Pradhan Mantri- Jan Arogya Yojana (JAY) has been seen as a huge success in providing healthcare facilities to the most vulnerable sections. Facilities such as dialysis continued to be utilized even during the peak of COVID-19 pandemic and during lockdown. General medicine a major clinical specialty, accounting for over half the claims reached

pre-COVID-19 levels in December 2020. PM-JAY enhanced health insurance coverage.

Economic Survey 2020-21

- Healthcare represents a critical public good and the introduction of Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB-PM-JAY) was a big step taken to provide healthcare access to the most vulnerable sections of society.
- Impact study of PM-JAY on Health Outcomes such as increase in health insurance and a decline in infant mortality imply that the Scheme has been successful.

Bare Necessities – Roti, Kapda Aur Makaan

Access to "the bare necessities" such as housing, water, sanitation, electricity and clean cooking fuel are a sine qua non to live a decent life. The Bollywood slogan of the 1970s seems to have made a comeback in the Survey by constructing a Bare Necessities Index (BNI) at the rural, urban and all India level. The BNI has been created for all states on parameters including Drinking Water, Sanitation, Hygiene and Housing Condition in India. Certain states are seen to have done better than other states when it comes to bare necessities.

- The Economic Survey strives to examine the progress made in the country on delivering "the bare necessities" to all its citizens with the components of "bare necessities" being housing, water, sanitation, electricity and clean cooking fuel, consumed by all the members of a household.
- Some of the key findings of the analysis are that Overall Bare Necessities Index (BNI) has increased across all states, both on the urban and rural level though some states have done better than others.

Sectoral Economic Performance:

Fiscal Developments

Revenue:

- Budget 2020-21 estimated the Gross Tax Revenue (GTR) to be Rs. 24.23 lakh crore (i.e. 10.8 per cent of GDP), an increase of 20 per cent from 2019-20 PA.
- In 2020-21 (upto November), the actual realization of Non-Tax Revenue receipts has been Rs. 1.24 lakh crore against BE of Rs. 3.85 lakh crore.
- For 2020-21 (up to November 2020), the actual realization of Non-Debt Capital has been a meagre Rs. 0.18 lakh crore against BE of Rs. 2.30 lakh crore.
- The monthly gross GST collection crossed the Rs. 1 lakh crore mark continually from September – December 2020 with collection of December 2020 at Rs. 1.15 lakh crore.

Expenditure:

- The composition of government expenditure in the 2019-20 Provisional Actuals (PA) reveals that expenditure on defence services, salaries, pensions, interest payments and major subsidies account for more than 65 per cent of total expenditure.

- The States, for the year 2020-21, have budgeted for gross fiscal deficit of 2.8 per cent of GDP as against an estimate of 2.6 per cent in 2019-20 Provisional Actuals (PA) and 2.4 per cent in 2018-19.

External Sector

- During Q1 FY 2020-21, India's exports and imports saw a considerable contraction in line with the overall contraction in global trade. The trade deficit during the April-December 2020-21 was US$ 57.5 billion as compared to US$ 125.9 billion in the corresponding period last year.
- India registered a trade surplus in the month of June 2020 after a gap of 18 years.

Monetary Management and Financial Intermediation

- The repo rate was cut by 75 basis points (bps) in first Monetary Policy Committee (MPC) meeting in March 2020 and another 40 bps cut in second meeting in May 2020, aggregating to 115 bps.
- The current repo rate stands at 4.0 per cent; reverse repo rate at 3.35 per cent and the bank rate at 4.25 per cent.
- The higher reserve money growth has not translated into an equivalent money supply growth. Credit growth of Banks has slowed down to 6.7 per cent as on January 1, 2021 and NBFC sector too showed a decline.

Price and Inflation

- The average Consumer Price Index – Combined (CPI-C) inflation which was 5.9 per cent in 2014-15, fell to 3.4 per cent in 2018-19 and 4.8 per cent in 2019-20.
- The major driver of CPI-C inflation was the food and beverages group, whose contribution has increased to 59 per cent in April-December 2020 compared to 53.7 per cent in April-December 2019.
- Wholesale Price Index (WPI) inflation declined from 4.3 per cent in 2018-19 to 1.7 per cent in 2019-20, which subsequently stood at 1.2 per cent in December 2020. The decline in WPI inflation in the current year is mainly on account of fuel & power.

Agriculture & Food Management

- ~54.6 per cent of the total workforce in
- the country is engaged in agricultural and allied sector activities (as per Census 2011) and accounts for approximately 17.8 per cent of the country's Gross Value Added (GVA) for the year 2019-20 (at current prices).
- Food Processing sector is one of the sectors chosen for Production-Linked Incentive (PLI) Scheme with an approved financial outlay of Rs. 10,900 crores.
- In FY 2019-20 (as per Fourth Advance Estimates), total food grain production in the country is estimated at record 296.65 million tonnes vis-à-vis 285.21 million tonnes of FY 2018-19.

Economic Survey 2020-21

Industry and Infrastructure

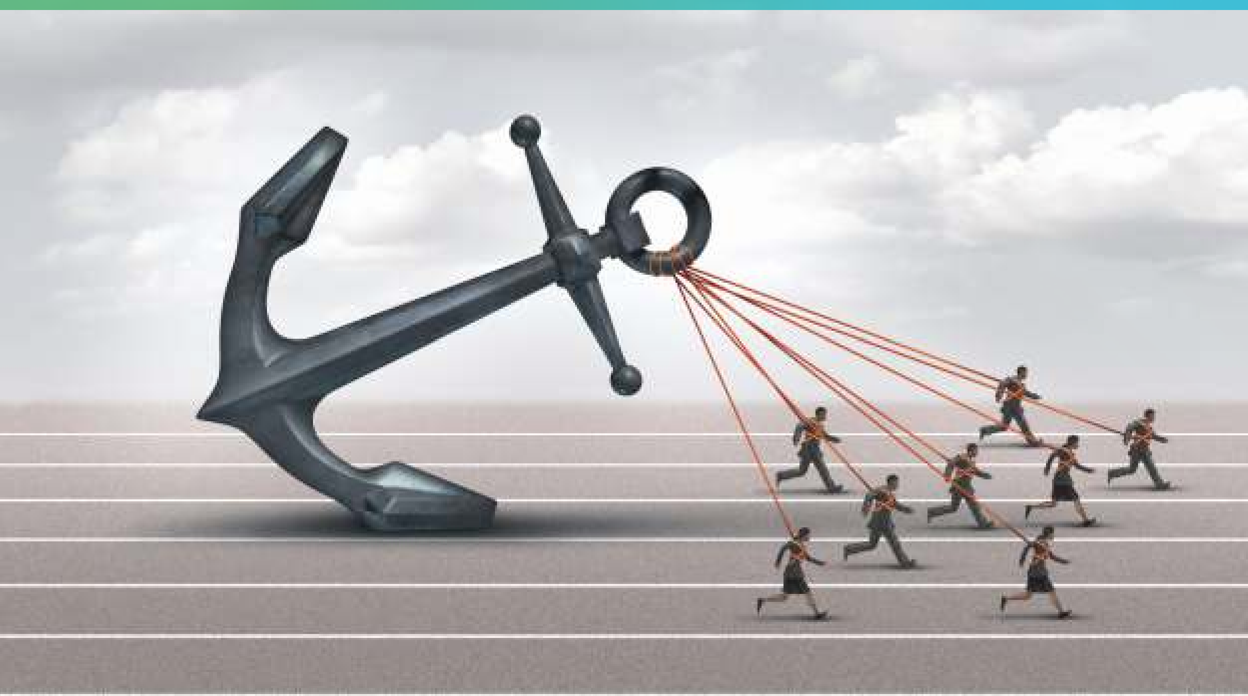
- To provide relief and support to the economy measures equivalent to Rs. 29.87 lakh crores or 15 per cent of India's GDP were introduced.
- The eight-core industries that support infrastructure and have a weight of ~40 per cent in the Index of Industrial Production (IIP) recorded an all-time low growth of (-) 37.9 in April 2020.
- The share of GCF of the industrial sector declined from 38.2 per cent in FY 2011-12 to 30.2 per cent of GDP in FY 2017-18 but showed a slight increase to 31.9 per cent in FY 2018-19.

Services Sector

- Services sector's significance in the Indian economy has been growing steadily, with the sector now accounting for over 54 per cent of the economy and almost four-fifths of total Foreign Direct Investment (FDI) inflows.
- As per the first advance estimates, Gross Value Added (GVA) of services sector is expected to contract by 8.8 per cent in 2020-21, whereas it grew by 5.5 per cent in 2019-20.
- India's services export growth slowed down to 2.5 per cent in 2019-20 from 6.6 per cent in FY 2018-19 primarily on account of transportation, insurance and communication services.

Budget Highlights

India Budget 2021 RESILIENCE TO RENAISSANCE



Direct Tax

Business Reorganizations

- All kinds of Goodwill, irrespective of mode of acquisition or generation, would not be eligible for depreciation with effect from AY 2021-22.
- Assets or money distributed to partners of firms or members of AoP / BoI on dissolution or reconstitution of firm / AoP / BoI in excess of capital account balance (excluding revaluation profits) is proposed to be subject to capital gains tax.
- Gains arising on Slump exchanges would be taxable as Slump sale.
- Conversion of certain co-operative banks into banking companies to be tax neutral.
- Amendments are proposed for facilitating demergers and disinvestments of public sector undertakings.

Personal Tax

- Income from high premium unit liked insurance plans issued after 1st February 2021 are proposed to be brought to tax net.
- Interest income arising from contribution made to provident funds in excess of INR 250,000 in a year are proposed to be taxable.
- Cash assistance in lieu of leave travel concession is proposed to be exempt subject to conditions.
- Benefit of deduction of interest on housing loans upto INR 1.5 Lacs would be extended to loans sanctioned upto March 31, 2022.
- Senior citizens above 75 years of age would have option to not file tax returns if their income comprises of only pension and interest and bank deducts tax at source on the same at applicable rates.
- Safe harbour limits for deviation from stamp duty valuations increased to 20% for transfer of certain residential properties subject to conditions.

International Tax

- Definition of the phrase "Liable to tax" to be introduced, to have impact on application of DTAAs.
- Scope of Equalisation levy on e-commerce supply or services is proposed to be expanded significantly.
- Income from e-commerce supply or services chargeable to tax as royalty / fees for technical services would be excluded from scope of equalisation levy.
- Significant Economic Presence tests applicable from 1st April 2021 without any change.
- Dividend incomes and related expenditure to be excluded from book profits while calculating MAT liability for foreign companies.
- Book profits for MAT are proposed to be recomputed for past years where current year book profits include adjustments on account of Advanced Pricing Arrangements or Secondary adjustments.

- Several incentives have been rolled out of units set up in or relocated to IFSC.
- Measures to be prescribed for claiming reliefs in respect of receipts from overseas retirement accounts.
- Certain relaxations are proposed in conditions applicable to funds and fund managers for testing business connection.

Business Tax

- Defaults in timely deposit of employees' contributions to various employee welfare funds beyond statutory timelines to be disallowed permanently.
- Turnover limits for exemption from tax audit requirements are proposed to be increased from INR 5 crores to INR 10 crores where more than 95% of receipts and payments are made through banking channels or digital modes or modes other than cash.
- The Bill clarifies that only Individuals, HUFs and partnership firms (excluding LLPs) would be eligible for presumptive taxation on income from profession.
- Profit linked incentives and capital gains exemptions for new start-ups to be extended by one year.
- Profit linked deductions would be extended for affordable housing projects approved upto 31st March 2022. Developers of affordable rental housing projects approved prior to 31st March 2022 are also proposed to be extended tax holiday benefits.

Tax deduction and Collection at source

- Dividend distributions to FIIs to be subject to lower withholding tax rates if provisions of tax treaties are more beneficial.
- Buyers to deduct 0.1% tax at source (5% in absence of PAN) on purchase of goods if annual purchases from the seller exceeds Rs. 50 Lakhs and annual turnover of buyer exceeds Rs. 10 Crores.
- Higher of 5% or double rate of TDS / TCS to be applicable if payee defaults in filing of returns for 2 or more preceding years.
- Dividend distributions to business trusts (i.e. REITs and INVITs) would not be subject to withholding taxes.
- Zero Coupon Bonds issued by Infrastructure debt funds not to be subject to tax withholding u/s 194A.

Tax Administration

- Advance tax liability on dividends is proposed to be imposed only after declaration or payment of dividends.
- Return filing due date for partners revised to 30th November where partnership firm is subject to transfer pricing audit.
- The Bill proposes to reduce time limits for filing belated and revised returns by three months to 31st December of AY.
- It is proposed to reduce the time limit of completing scrutiny assessment u/s 143

Direct Tax

and best judgement assessments u/s 144 from existing twelve months time to nine months for AY 2021-22 and onwards. Consequently, time limit for issuance of notice u/s 143(2) is proposed to be reduced from six months to three months from end of financial year in which return is furnished.

- A complete revamp of the existing provisions pertaining to reassessments and search related assessments is proposed, including reduction of period of limitation for reopening to three years in normal cases and to an extended period of 10 years in very limited cases.
- Scheme is proposed to be notified for faceless proceedings at Income Tax Appellate Tribunal level.
- Dispute Resolution Committee is proposed to be constituted for certain small and medium taxpayers.
- Settlement Commission to cease to operate from 1st February 2021.
- Board for Advance Rulings comprising two officers of rank of Chief Commission of Income tax is proposed to replace Authority of Advance Rulings.

Other Direct Tax amendments

- Amendments are proposed to stop misuse of provisions relating application of corpus funds and loan proceeds by Charitable organisations.
- Thresholds under Section 10(23C) for exemptions to small charitable organisations increased from previous threshold of Rs. 1 crore applicable qua-university / hospital / institution to Rs. 5 crore applicable qua taxpayer.

Changes to CGST Act

- Section 16 of the CGST Act is proposed to be amended to include a condition which would allow ITC to a recipient only if the supplier furnishes the details of outward supplies.
- Amendment to Section 50 of the CGST Act for payment of interest only on the net GST liability paid in cash in case of delayed payment of tax.
- Activities or transactions by a club or an association to its members or vice-a-versa for a consideration is proposed to be specifically included in the scope of supply under Section 7 of the CGST Act.
- Certification of reconciliation statement in form GSTR 9C by specified persons is proposed to be removed. The Annual return will now include a self-certified reconciliation of the turnover with the financial statements.
- Section 129 is proposed to be delinked from Section 130 and the consequences recovery of tax not paid will now be contained under Section 129 itself.
- The tax liability declared in GSTR 1 has been included in the definition of self-assessed tax.

Changes to IGST Act

- Supplies made to SEZ developers or SEZ units would be eligible for zero rating only where the supplies are for authorized operations of the SEZ developers or SEZ units.
- Where a person making zero rated supplies under a bond or an LUT has claimed a refund of unutilized input tax credit and the export proceeds for such supplies are not realized within the timelines specified under the FEMA, such person shall be liable to deposit such refund received along with interest.
- The option to make zero rated supplies with payment of tax is proposed to be restricted only to notified class of taxpayers or notified class of goods or services.

Changes to the Customs Act and Customs Tariff Act

- An amendment is proposed to Section 25 to prescribe validity of all conditional exemptions.
- The time limit for completion of any inquiry or investigation initiated is proposed to be fixed to two years.
- An amendment is proposed to Section 46 of the Customs Act requiring all the taxpayers to file Bill of Entry one day before arrival of goods at the customs station even where such day is a holiday.
- Where any goods entered for exportation under wrongful a claim of any remission or refund of duty, provision proposed to be inserted to confiscate such goods.

Indirect Tax

- Where an exporter has claimed refund of unutilized input tax credit under GST on the basis of fraudulent invoice or willful misstatement or suppression of facts, a penalty not exceeding 5 times of the refund claimed shall be imposed.
- Issuance of summons, notice, service of order, filing of Bill of Entry, Shipping Bills, registrations, amendments etc. shall be done through the Customs Portal.
- Levy of Agriculture Infrastructure and Development Cess (AIDC) on import of goods
- Import of goods at concessional rate of Customs duty allowed for use in manufacture of finished goods on job work basis
- Amendments in relation to safeguard measures
- Amendments in relation Anti-absorption, anti-circumvention of Anti-dumping duty and Countervailing Duty and CVD etc.
- Changes in import duty in certain segments

Business Tax

India Budget 2021 RESILIENCE TO RENAISSANCE

Business Reorganization

Goodwill ineligible for tax depreciation

Section 32(1) of the Act read with Explanation 3 thereof inter alia allows a taxpayer to claim depreciation on intangible assets viz. know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature provided it is used for the purpose of business or profession. Such depreciation is allowable on written down value (WDV) basis as per prescribed rate on the respective value of block of assets and in case of an undertaking engaged in the generation or generation and distribution of power, the depreciation can be claimed on straight line basis as per prescribed rate.

It is to be noted that Goodwill is not specifically covered in section 32(1) for allowability of depreciation on intangible asset as mentioned above. However, it has been claimed that Goodwill should be regarded as "business or commercial rights of similar nature" as mentioned in section 32(1) of the Act and accordingly depreciation on Goodwill shall be allowable in accordance with provision of section 32(1) of the Act. However, in absence of specific mention of the word "Goodwill" in section 32(1), the claim of depreciation on Goodwill was running into litigation at various High Courts and ultimately the Apex Court in year 2012 in the case of Smif Securities Limited (348 ITR 302). The Apex Court in such case held that Goodwill can be regarded "as any other business or commercial rights of similar nature" and accordingly the depreciation is allowable on Goodwill.

The Finance Bill 2021 ("Finance Bill") proposes to amend the relevant provisions under the Act so as to specifically exclude a Goodwill of a business or profession from the list of qualifying assets for allowing tax depreciation. Accordingly, no depreciation on Goodwill shall be allowable with effect from AY 2021-22 onwards.

Since depreciation on Goodwill will not be allowable, the Finance Bill proposes to amend section 50 of the Act (dealing with capital gain arising from depreciable assets) to provide that where a Goodwill forms part of block of assets for AY 2020-21 and depreciation has been claimed on such Goodwill, the CBDT will specify the manner of computing the written down value of such block of assets and capital gain arising under section 50 of the Act.

The Finance Bill also proposes to amend section 55 of the Act dealing with cost of acquisition of certain intangible assets of a business viz. Goodwill, trademark, or brand name for the purpose of computing capital gain. Currently the cost of acquisition of such asset is regarded as Nil unless the same has been acquired by way of paying a purchase price or unless the same has been acquired under certain tax neutral transfer as defined in section 49(1) of the Act. The Finance Bill now provides where such intangible assets relate to a business or profession, the cost of acquisition of such asset is regarded as Nil unless the same has been purchased by way of paying a purchase price or unless the same has been acquired from previous owner under certain tax neutral transfer as defined in section 49(1) of the Act provided the previous owner has purchased the same by paying a purchase price. In such cases, the purchase price shall be regarded as cost of acquisition of such assets. Further since the Finance Bill has proposed to withdraw the depreciation on Goodwill w.e.f. from AY 2020-21, the provision of section 55 has further been amended to provide that cost of acquisition of Goodwill in such case shall be further reduced by the depreciation obtained thereon on or before AY 2020-21.

While explaining the rationale for proposing the above amendments, the Memorandum mentions that the Goodwill is not a depreciable asset and further it may see an appreciation in business and is not a depreciable one and hence this amendment. Further, while discussing the rationale of such provision, the Memorandum has also sought to disincentivise the aggressive tax planning wherein depreciation has been claimed on Goodwill generated under certain tax neutral business organization schemes. It therefore appears that such aggressive claim of depreciation on Goodwill has made the claim of depreciation in all cases as ineligible in view of such proposed amendments.

Further by reading the amendment proposed in section 50 & 55, it can be inferred that the government does not wish to allow depreciation on Goodwill form AY 2021-22 which forms part of block of assets as on AY 2020-21 & on which depreciation has been claimed up to AY 2020-21. However, no corresponding amendment has been proposed in section 43(6) of the Act which define the meaning of written down value for the purpose of computing tax depreciation. There are various judicial precedents which provide that once an asset became a part of a block of assets and depreciation has been claimed on such assets, it shall lose its individual identify under the Act for claim of depreciation. Accordingly, unless the necessary amendment has been made similar to as proposed in section 50, the argument to claim depreciation in such case will remain open. The same would however not be in sync with the intent of the Legislature.

The above amendment will have a far-reaching implication in the context of M&A deals and restructuring of business by way of acquisition, amalgamation, de-merger, slump exchange/sale etc. Currently, such deals consider the cash flow saving generated on account of tax depreciation, if allowable on Goodwill arising in such process. However, from AY 2021-22 onwards, no such depreciation is allowable on Goodwill. Accordingly, it will have the impact on manner of valuation of business and arriving the consideration for acquisition of a business.

Business Reorganization

Slump sale includes slump exchange

Under existing section 2(42C), "slump sale" is defined as transfer of one or more undertakings as a result of sale for a lump-sum consideration, without value being assigned to individual assets and liabilities. This definition has sparked a controversy as to whether transfer of an undertaking for non-monetary consideration (i.e., by way of issuance of shares or bonds etc., commonly referred to as "slump exchange") would qualify as a 'Slump sale'. In September 2020, Hon'ble Madras High Court had deliberated on this issue and had held that monetary consideration is necessary for a transaction to qualify as a 'sale', and consequently for a transaction to be a 'slump sale'.

Contrary to the decision of the High Court, it has been clarified vide Memorandum to the Finance Bill that if transfer of an undertaking is in lieu of a non-monetary asset, it is in fact monetized since in such a case, the consideration for the asset transferred is first ascertained and then, the consideration is discharged by way of non-monetary assets. Accordingly, it would be a case of transfer and would thus, be considered as a Slump sale. The Memorandum further clarifies that a transfer which in effect and substance is by way of sale is also currently covered in the definition of slump sale.

The Finance Bill proposes to clarify its position by amending the scope of Slump sale by replacing the current terminology of transfer "as a result of sale" with transfer "by any means". It is also proposed to introduce a new explanation to Section 2(42C) which would provide that the word "transfer" shall have the meaning assigned to it under Section 2(47).

Taxation on reconstitution / dissolution of partnership

Currently the provision of section 45(4) of the Act provides that when a partnership firm/LLP transfers a capital asset by way of distribution of capital assets on dissolution or otherwise of a firm/LLP, such firm/LLP shall be chargeable to tax in the hands firm/LLP in the year in which such transfer take place and capital gain shall be computed considering the fair market value of such asset as the full value of consideration.

There is a litigation on applicability of the above section in cases of reconstitution of firm, or when a partner retires from a firm and receives the consideration in excess of the amount lying in his capital account. There is a view that since in such case there is no transfer of capital asset by the firm, the firm is not liable to tax. Further, the partner receives the amount to the extent of his shares in partnership and considering the various decisions including the decision of Apex Court, such partner is also not liable to tax. The possibility of litigation is further compounded when there is a revaluation of capital assets in the books of firm by way of credit to partner's capital account and subsequent to retirement, there is a withdrawal by such partner of his capital account balance or there is an adhoc payment to partner over his capital account balance at the time of his retirement.

To put an end to such tax controversy and to provide the clarify of taxation in the hands of partner and in the hands of firm, the Finance Bill has proposed to replace the existing provision of section 45(4) by inserting new provision section 45(4) and section 45(4A).

The proposed section 45(4) provides that when a partner of a firm, at the time of dissolution or reconstitution of firm, receives any capital asset from a firm, the fair market value of the capital assets shall be regarded as full value of consideration and the cost of acquisition to the firm shall be reduced while computing the capital gain in the hands of firm.

Section 45(4A) provides that when a partner of a firm, at the time of dissolution or reconstitution of firm, receives consideration being value of any money or other assets in excess of his capital account balance, the difference between the amount received (or fair market value of assets) and the balance of such partner in a firm shall be taxable in the hands of a firm in the year in which such money or other asset was received by a partner. Further for the purpose of computing the amount lying in capital account of such partner, the amount credited to his capital account by way of revaluation of any asset or due to self-generated Goodwill or self-generated asset shall be ignored. Accordingly, no credit shall be given to the firm for such revaluation amount while computing the capital gain tax liability by such firm.

Since the capital gain tax has been paid by the firm on the amount of consideration paid to a partner in excess of his capital account balance, the provision of section 48 has been amended to provide that such excess amount taxed under section 45(4A) will be allowed as a deduction in the manner as may be prescribed (in addition to expenditure incurred wholly and exclusively in connection with transfer and cost of acquisition / improvement) from the full value of consideration. This shall nullify the double taxation of capital gain income in the hands of firm in respect of such excess amount. This is welcome amendment to provide certainty on taxation of income earned by the partner of a firm/LLP.

Tax neutralization for disinvestment of public sector company

The government is planning to raise INR 1.75 lakh crores from disinvestment in public sector companies and financial institutions, including 2 PSU banks and one general insurance company. Out of the total INR 1.75 lakh crores, INR 1 lakh crores shall be generated by selling government stake in public sector banks and financial institutions. INR 75,000 crores would be generated from CPSE disinvestment receipts.

In this backdrop, in order to facilitate such strategic disinvestment by the Government, it is proposed to relax the provisions of

[1] *Areva T&D India Ltd. v. CIT, Tax Case Appeal No. 673 of 2018, decision dated 08 September 2020.*

Business Reorganization

section 2(19AA) in respect of demerger and section 72A in respect of carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

It is proposed to amend clause (19AA) of section 2 to insert explanation 6 to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger if such reconstruction or splitting up is carried out to transfer any asset of the demerged company to the resulting company. It is also proposed that the resulting company must be a public sector company on the appointed day indicated in such scheme, as may be approved by the Central Government or any other body authorised under the provisions of the Companies Act 2013 or any other law for the time being in force governing such public sector companies in this regard. It is required to fulfil such other conditions as may be notified by the Central Government in the Official Gazette in this behalf.

The provisions of Section 72A(1) allows amalgamated company to carry forward losses or unabsorbed depreciation of amalgamating company. However, presently, in case of amalgamation of public sector companies, such benefits of carry forward of losses are available only if such public sector company or companies are engaged in the business of operation of aircraft or in similar business. The Finance Bill proposes to extend such benefit of carry forward of losses or unabsorbed depreciation in case of amalgamation of all public sector companies, irrespective of the business that it is engaged in.

Government, in earlier years, had carried out strategic disinvestment from public sector companies which resulted into reduction of Government shareholding below 51% and control has also been transferred to the buyer. Further, Government had put restriction under share purchase agreement under strategic disinvestment for the buyer not to amalgamate such company immediately after such disinvestment.

In respect of the losses or unabsorbed depreciation of such erstwhile public sector companies, the Finance Bill proposes to extend benefits of section 72A(1) in respect of carry forward of such losses or unabsorbed depreciation by resulting company upon amalgamation of such erstwhile public sector companies. However, such benefit shall be allowed only if amalgamation of such erstwhile public sector company is carried out within five years from the end of previous year in which restriction put by Government at the time of disinvestment ends. Further, the amount of loss or unabsorbed depreciation shall be allowed to be carried forward to the extent it existed as on date of disinvestment.

The above amendments will facilitate the Government to undertake various strategic disinvestments from public sector companies engaged in all businesses. The above amendment is proposed to take effect from April 01, 2021 and will, accordingly apply in relation to AY 2021-22 onwards.

Conversion of an urban co-operative bank into banking company

RBI had recently permitted transition of urban co-operative banks into banking companies. In order to facilitate / incentivize this transition, the Finance Bill proposes to provide certain tax benefits to the predecessor as well as successor co-operative banks which are part of the transition.

Accordingly, the Finance Bill proposes to exempt capital gains on transfer of assets from predecessor co-operative bank to successor co-operative bank. However, the cost of acquisition & cost of improvement, if any, of the predecessor co-operative bank in this case shall be considered as the cost of acquisition of the successor co-operative bank.

Similarly, the Finance Bill proposes that deduction / amortization in the nature of depreciation, preliminary expenses or expenditure resulting out of amalgamation / demerger and incurred for voluntary retirement benefits shall be available to the predecessor co-operative bank and successor banking company in proportion of number of days before & after such reorganization.

Withholding Tax

TDS on Purchase of Goods

The Government, with an intention to deepen the tax net, had imposed liability to collect tax at source (TCS) on sale of goods vide Finance Act 2020. TCS has its own set of issues in accounting and mismatch between invoice and receipt. The Finance Bill proposes to pass on this compliance significantly on to the buyer by introduction of a new section 194Q from July 01, 2021, wherein the buyer of goods is required to withhold tax on purchase of goods for a sum exceeding INR 50 lakhs during the year provided that the buyer has turnover of INR 10 crores or more during the preceding financial year.

The buyer is required to withhold tax at the rate of 0.1% (5% in absence of PAN or higher rate as per newly proposed section 206AB) at the time of payment or credit, whichever is earlier. However, no tax is required to be deducted under this section if:

- Tax is deductible under any other provision of the Act on such a transaction; or
- Tax is collectible under section 206C [excluding provision of 206C(1H)-TCS on sale of goods].

It is to be noted that the Finance Act 2020 w.e.f. October 01, 2020 provided a responsibility on the seller of goods to collect tax at source on sale of goods under section 206C(1H) of the Act as per applicable rate on a sum exceeding INR 50 lakhs, subject to the condition that the turnover of such seller exceeds INR 10 crores during the preceding financial year. However, if tax is deductible under any other provision of the Act on such transaction, TCS is not applicable if tax has been already deducted. In view of the introduction of section 194Q, such seller is now not required to collect tax at source from sale made to such buyers provided such buyer in such a case complies with TDS obligation.

Higher withholding tax for non-filers of tax return

In order to discourage taxpayers that do not file tax return in India despite having large amount of TDS / TCS in India and in order to improve compliance, the Finance Bill has proposed to levy higher rate of TDS/TCS on the income of such taxpayers by introducing section 206AB and 206CCA.

Vide such newly proposed sections, tax shall be required to be deducted at higher rate if -

- Such person, being a deductee or a collectee, has not filed tax return for two previous years immediately prior to the previous year in which tax is required to be deducted / collected, and
- Tax deducted or collected in case of such taxpayers is INR 50,000 or more in each of such two previous years.

The higher rate is defined as higher of following rates of tax -

- Twice the rates as specified in relevant provision or
- Twice at rates in force or
- 5%

It has been provided that the above provisions are not applicable when tax is required to be deducted under section192, 192A, 194B,194BB, 194LBC or 194N. It has been provided that no tax is required to be deducted at such higher rate in case of a non-resident if it does not have a permanent establishment in India.

Considering the non-availability of information with deductor relating to filing of tax return of the deductee, in order to enforce the above provision, it is necessary that the tax department comes out with online facility wherefrom the deductor can access such limited information. Such facility is available in case of enforcement of TDS provision by banking company on cash withdrawal cases.

It is important to note that in absence of PAN, there could be interplay between section 206AA and the aforesaid provisions. The Finance Bill provides that if the provisions of section 206AA are applicable (on non-availability of PAN), tax shall be withheld at higher of the two rates provided in section 206AA and the aforesaid provisions.

No TDS on dividend paid to Business Trust by an SPV

Under the Act, income of a business trust being InvIT or REIT has been given a passthrough status with respect to taxation of dividend and interest income received from an underlying company being a Special Purpose Vehicle (SPV) by way of taxation of such income in the hands of unitholders. Further, the Finance Act 2020 has shifted the burden of tax liability on dividend from the company to the shareholders by abolishing Dividend Distribution Tax. Since dividend income earned by a business trust is not taxable in the hands of such business trust, it has been provided that no tax is required to be withheld under section194 of the Act by such SPV while distributing dividend to the trust. The said amendment has been made applicable with effect from April 01, 2020.

It may be noted that tax is required to be deducted by such business trust under section 194LBB of the Act while distributing divided to his unitholders.

No TDS on interest paid by an Infrastructure Debt Fund

In order to enable notified infrastructure debt funds to issue zero coupon bonds, it has been proposed to make suitable amendments in section 2(48) of the Act. Further, it has been proposed to amend section 194A of the Act, to provide that income paid by such funds in relation to zero coupon bonds shall not attract tax deduction at source under section 194A.

TDS on FII Dividends

Under normal circumstances, in case of payments to non-residents, tax is to be withheld under section 195 of the Act either at the rate specified in the Schedule to the Act or the rate specified in the DTAA, whichever is beneficial. However, there are certain specific provisions applicable to non-residents wherein tax is to be withheld at a rate specified in the relevant provision /

Withholding Tax

section, for instance, section 194LC, 194E, 196D, etc. Based on the specific language of the provisions, there was an anomaly as to whether benefit of DTAA could be availed in such cases absent a reference to DTAA. There was a school of thought as per which irrespective of the language of the section, DTAA benefit, if any, should be available when the payment is to be made to a non-resident by virtue of section 90(2). The other view was that language of the provisions was to be respected and DTAA provisions would not come into play while dealing with such specific sections including section 196D.

Pursuant to an amendment made vide Finance Act 2020, dividends were made taxable in the hands of shareholders (including non-residents). This led to situations wherein dividend paid to FIIs would be taxable in their hands after considering beneficial provisions of DTAA, however, for withholding tax purposes, the rate would still be 20% under section 196D, as recourse to DTAA was not available for withholding tax as per the view discussed above. This view got further confirmed by Supreme Court's decision in the case of PILCOM vs. CIT, West Bengal (Civil Appeal No. 5749 of 2012).

In order to provide relief available pursuant to DTAA in respect of such cases pertaining to withholding tax from dividends to be paid to FIIs, an amendment has been proposed to section 196D by way of insertion of a proviso allowing recourse to DTAA rate for the purpose of withholding tax subject to the payee furnishing Tax Residency Certificate. This amendment shall be applicable from AY 2022-23.

Start-up

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Section 54GB provides exemption from capital gains on sale of residential property – i.e., a house property or a plot of land owned by an individual or an HUF. To claim the exemption, subject to certain other conditions, investment is to be made in an eligible start-up, and such investment is to be utilized by such eligible start-up within one year to acquire a new asset.

Currently, the exemption is only applicable to transfer of residential property made before March 31, 2021. It is proposed to extend this period upto March 31, 2022. This amendment is proposed take effect from April 01, 2021.

Further, the existing provisions of section 80-IAC of the Act provide a tax holiday for profits and gains derived from an eligible business by an eligible start-up for a period of three consecutive AYs out of ten years if –

- it is incorporated on or after April 01, 2016 but before April 01, 2021, and
- its total business turnover does not exceed INR 100 crores for the year in which the deduction is claimed.

The Finance Bill proposes to extend the abovementioned time-limit for incorporation of a new company upto March 31, 2022. This will create a conducive environment for new start-ups which are incorporated in the post-Covid economy.

Minimum Alternate Tax

Dividend received by a foreign company

As per the extant provisions of the Act, a foreign company is not subject to Minimum Alternate Tax (MAT) under section 115JB provided that it does not have a Permanent Establishment (PE) in India in accordance with applicable DTAA provisions. Further, even where a foreign company has a PE in India, no MAT is payable on incomes in the nature of capital gain on securities, or interest, or royalty / FTS, if such income which is credited to profit & loss account is chargeable to tax at lower rates (including lower rates as per DTAA) as compared to the tax rate specified under section 115JB.

A similar exclusion is proposed to be provided in case of dividend income, which is now taxable in the hands of shareholders after abolition of Dividend Distribution Tax (DDT) vide Finance Act 2020. The Finance Bill proposes that divided income of a foreign company shall be excluded while computing book profits under section 115JB where the above-mentioned condition is fulfilled. A consequential amendment in this regard proposes that any expenditure incurred for earning such divided income shall also be added back while computing the MAT liability if the same has been debited to profit & loss account.

APA / Secondary adjustments

The Finance Bill additionally proposes that where, on account of effect of an Advanced Pricing Agreement (APA) or on account of secondary adjustment pertaining to income of earlier years, there is an increase in book profits of a company for a previous year, the Assessing Officer (AO) shall, upon application in this regard, recompute the book profits and tax payable for such earlier years and the year under consideration in such manner as may be prescribed by the Rules to be notified in this regard.

The provisions of section 154 shall apply in this regard, and the time limit of four years as per section 154 shall be reckoned from the end of the financial year in which the said application is received by the AO.

This amendment is proposed to take effect from April 01, 2021 and will accordingly, apply in relation to the AY 2021-22 and subsequent assessment years.

Other Important Changes

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Delay in depositing employee's contribution

The issue pertaining to delayed deposits by an employer of employee's contribution to various funds (provident fund, superannuation fund, ESIC, etc.) and its eligibility for a tax deduction under section 36(1)(va) of the Act has been a subject matter of litigation. It is important to mention that section 36(1)(va) applies to employees' contribution to various funds and the same is deductible only when it is paid within the due date prescribed under the respective statute. In contrast, it is to be noted that as per section 43B, employer's contribution to various funds is deductible even if the same is paid beyond the due date under respective statute if the same is paid on or before the due date of filing of income-tax return.

As noted above, in the context of employee's contribution, stringent requirement of payment within due date under PF Act applies and Hon'ble Gujarat High Court[2] has also held that no deduction is allowable on account of delay by the employer in depositing the employee's contribution. However, various Courts have taken liberal interpretation whereby extended time limit available under section 43B has been considered even for the purpose of deduction under section 36(1)(va) (despite the fact that section 36(1)(va) does not make any reference to section 43B). Rajasthan High Court upheld the allowability of employee's contribution to PF taking into consideration the provisions of section 43B. Interestingly, Revenue's Special Leave Petition (SLP) against the said order has been dismissed by Supreme Court[3].

In order to settle the dust and provide clarity about applicability of section 43B to employee's contribution, the Finance Bill proposes to insert a proviso stating that provisions of section 43B shall not be applicable to a sum received by the employers from their employees as contribution to provident fund, superannuation fund etc. and accordingly, deduction under section 36(1)(va) for the employee's contribution would be allowed only when the contributions are deposited within the due date specified in the relevant law.

The amendment is proposed to be effective from April 01, 2021. However, considering the language used in the newly inserted Explanations, this amendment shall also have an impact on the pending litigations.

Turnover Limit for Tax Audit increased

Section 44AB currently provides that every person carrying on a business shall be required to get its accounts audited if its total sales, turnover or gross receipts exceeds INR 1 crore in a year. Vide Finance Act 2020, in order to reduce burden of compliances, the government increased such limit to INR 5 crores subject to condition that both the amount received in cash and payments made in cash in year under consideration is not more than 5% total amount of receipts or payments, respectively.

[2] *CIT v. Gujarat State Road Transport Corporation (366 ITR 170)*

[3] *PCIT Jaipur v. Rajasthan State Beverages Corporation Limited (84 taxmann.com 185)*

Other Important Changes

To further promote non-cash & digital transactions, and to reduce compliance burden of small and medium enterprises, it is proposed to increase such threshold of INR 5 Crores to INR 10 Crores.

This amendment is proposed to take effect from April 01, 2021 and will accordingly apply for AY 2021-22.

Presumptive Taxation Scheme & LLP

Section 44ADA was introduced vide Finance Act 2016 for presumptive taxation of income of residents engaged in profession with a threshold limit of INR 50 lakhs wherein a sum equal to 50% of the total gross receipts is deemed to be the income chargeable to tax.

The Explanatory Notes to Finance Act 2016 (Circular no. 3 of 2017 dated January 20, 2017) stated that this provision shall only be applicable to such resident taxpayer who is an individual, HUF or partnership firm but not a Limited Liability Partnership. However, the language of Section 44ADA only stated that the section was applicable to a person resident in India. This mismatch is now proposed to be rectified vide Finance Bill 2021 and accordingly, section 44ADA is proposed to be amended to provide that the provisions of this section shall apply to an taxpayer, being an individual, HUF or partnership firm, not being an LLP as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008.

Exemption for Affordable Rental Housing Projects

The existing section 80-IBA of the Act provides for 100% deduction of profits and gains derived from a business of developing and building affordable housing projects subject to certain conditions. One of the conditions being that the project is required to be approved by competent authority after June 01, 2016 but on or before March 31, 2021. It is now proposed to extend the period of approval to March 31, 2022.

Additionally, vide the Finance Bill, it is now proposed to allow deduction under section 80-IBA of the Act to affordable rental housing project which is notified by the Central Government on or before March 31, 2022 and which fulfil such conditions as prescribed. This step has been taken in order to help migrant laborers and to promote affordable rental schemes.

This amendment is proposed to take effect from April 01, 2022 and will accordingly apply AY 2022-23 onwards.

Dividend Income and Advance Tax

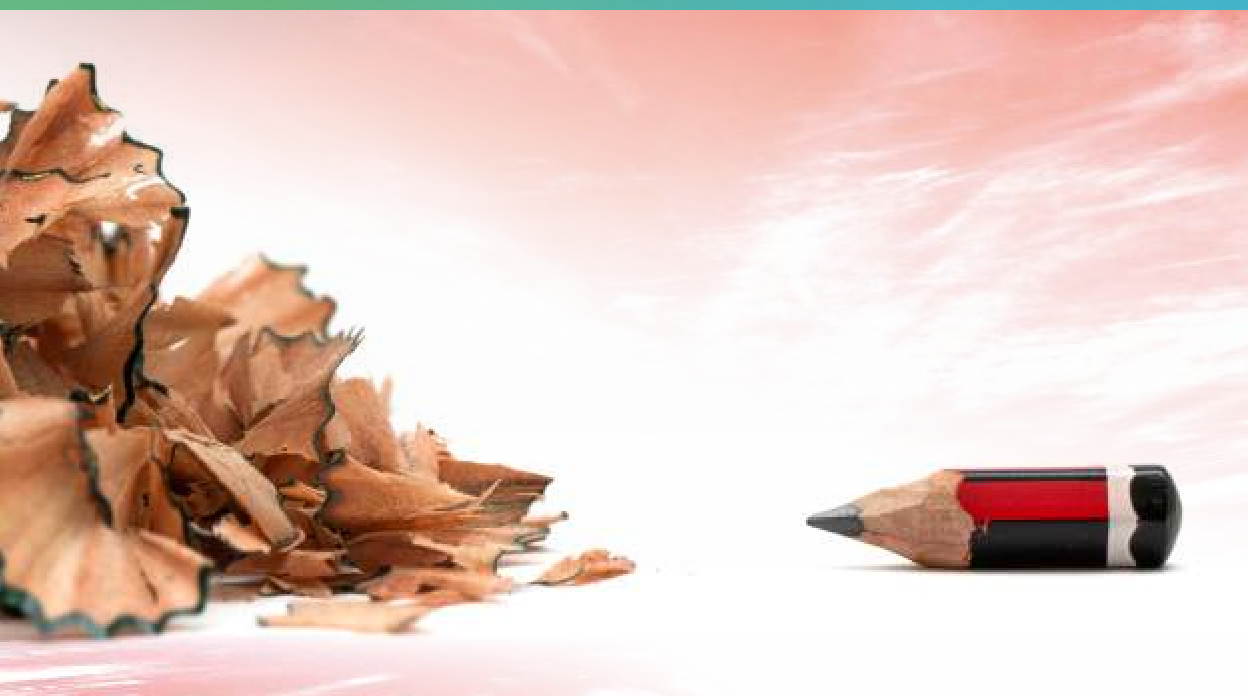
The existing provisions of Act requires the taxpayer for payment of advance tax on quarterly basis if the advance tax liability exceeds by INR10,000. If there is a shortfall in making the payment of advance tax, the taxpayer is required to pay interest under section 234C @ 1% per month or part of the month.

The Finance Act, 2020 has abolished the levy of dividend distribution tax and it is not taxable in the hands of shareholders. However, it is not possible for a taxpayer to estimate the amount of divided that they will receive from a company during a financial year. Accordingly, it has been provided that no interest under section 234C shall be payable on shortfall in payment of advance tax where such failure is on account of underestimation or failure to estimate such divided income. However, such benefit shall be given only when a taxpayer deposits the entire amount of advance tax as part of remaining installment of advance tax post receipt of dividend income or where no such installment is due, then by March 31, of the relevant financial year.

The above provision is not applicable to deemed dividend as referred to in section 2(22)(e).

International Tax

India Budget 2021 RESILIENCE TO RENAISSANCE



"Liable to Tax" defined

While the term "liable to tax" is being used in various sections under the Act as well as in Agreements entered into under sections 90 or 90A, the provisions of the Act, hitherto, did not define the term. Primarily -

- Under section 6 of the Act, a person who is otherwise non-resident in India as per basic conditions but has derived India sourced income amounting to INR 15 Lakhs or more and is not liable to tax in any other country by reason of his domicile or residence or any other criteria of similar nature is considered to be a resident in India.

- The provisions of section 10(23FE) exempts income of a specified person, being a pension fund, which is created or established under the laws of a foreign country, in form of dividend, interest or long-term capital gain arising from an investment made by it in India. However, one of the conditions for being a specified person is that such a pension fund should not be liable to tax in the foreign country under the law of which it is created or established.

There has been a dispute in respect of interpretation of this phrase used in Double Tax Avoidance Agreements (DTAAs) entered into by India with other countries or territories. Explanation 4 to section 90 of the Act as introduced by Finance Act 2017 provides that in cases where a term is referred to under any DTAA entered into by India but is not defined under such DTAA, then the meaning of such term shall be as it is defined / meant to be for the provisions of the Act. However, as mentioned above, the term "liable to tax" was neither defined under DTAA nor under the provisions of the Act. Therefore, it led to considerable litigation from interpretational perspective.

In order to provide clarity in this regard, the Finance Bill proposes that a person shall be liable to tax in any country if tax is imposed on such person under any law for the time being in force in that country. This shall also include situations where, subsequent to imposition of tax liability, an exemption has been provided. This clarification would be a relief to Indian residents in foreign countries, especially gulf countries, where they may not be subject to income-tax because of a specific exemption notification.

To summarize, in view of the proposed definition in section 2 of the Act, only if a person is resident in a country / territory where no tax is imposed (as against imposition and subsequent exemption), such person shall not be considered to be liable to tax in that country / territory.

Vide Finance Act 2020, Equalization Levy (EL) was introduced for consideration received / receivable by a non-resident e-commerce operator from e-commerce supply or services and was proposed to be taxed at 2% w.e.f. AY 2021-22. Further, such income was exempted from being taxed under the Act vide section 10(50) w.e.f, AY 2022-23. The Finance Bill proposes to introduce the following amendment / clarifications for such levy:

Exclusion of Royalty / Fees for Technical Services (FTS)

Various e-commerce operators provide online services which could be categorized as Royalty / FTS under the Act read with DTAA. However, due to the operation of section 10(50), such overlapping payments could be considered as exempt under the Act in absence of a specific exclusion / provision. To remedy this, the Finance Bill proposes to insert an Explanation to section 163 (of the Finance Act 2016) which provides that the scope of equalization levy shall not include consideration which is taxable as Royalty / FTS in India under the Act read with DTAA. Thus, online services in the nature of Royalty / FTS would continue to be taxed as such and would not fall with the purview of EL.

Clarification on scope of online supply or services

E-commerce supply or services includes 'online supply of goods' or 'online provision of services' or combination of both by an e-commerce operator. It was a matter of debate as to whether the provisions of EL would apply if only the order is placed online, and the actual provision of goods / services takes place offline. To remove this ambiguity, the Finance Bill proposes to insert an Explanation which provides that 'online supply of goods' and 'online provision of services' shall include one or more of the following activities taking place online:

- acceptance of offer for sale
- placing the purchase order
- acceptance of the purchase order
- payment of consideration, or
- supply of goods or provision of services, partly or wholly

The government has thus provided the much-needed clarity that the provisions of EL would be triggered even if the order is placed online and the goods / services are provided offline. However, these amendments shall have far reaching implications. EL started with "Google Tax" taxing advertisement services, got extended to e-commerce operators vide Finance Act 2020 and now, the definition of "online supply of goods" or "online provision of services" has been expanded so as to cover even transactions of goods / services where merely a part of the activity is done online. That apart, provisions of Significant Economic Presence (SEP) kick in from April 01, 2021 which clearly shows that India is moving thick and fast towards considering

Equalization levy

"market" as a source of income and the whole concept of "Business Connection" has undergone a substantial change (by taxing business carried out "with" India instead of simply taxing business carried out "in" India).

Amount subject to EL under section 165A

As per existing section 165A of the Finance Act 2016, a consideration received or receivable from e-commerce supply or services is liable to being taxed at the rate of 2%. There exists a school of thought which states that only the commission received by the e-commerce operator would be subject to EL and not the sales consideration received for supply or services. To put this debate to rest, the Finance Bill proposes to amend Section 165A to provide that consideration received or receivable from e-commerce supply or services shall include:

- consideration for sale of goods, irrespective of whether the e-commerce operator owns the goods; and
- consideration for provision of services, irrespective of whether service is provided or facilitated by the e-commerce operator.

Exemption under section 10(50)

According to the existing section 10(50), the exemption of income from provision of e-commerce supply or service (which was chargeable to EL) would be available from April 01, 2021. As against that, EL on provision of e-commerce supply or service was introduced with effect from April 01, 2020. Thus, there was an overlapping period of 1 year where such income was taxed under the Act as well as liable to EL. The Finance Bill proposes to remedy this anomaly and accordingly the exemption under section 10(50) for provision of e-commerce supply or services would now be available from April 01, 2020.

These amendments are proposed to be effective retrospectively from April 01, 2020.

International Financial Services Center (IFSC)

The government, with the object of promoting setup of IFSCs in India, has provided for various tax & regulatory benefits & concessions to units located in IFSCs. So far, GIFT City in Gandhinagar has been setup as an IFSC in India and, in order to promote its growth, the Finance Bill proposes to further provide certain tax benefits & concessions, which are discussed as under-

Fund management activity & business connection

Currently, the Act provides that, subject to certain conditions specified in Section 9A pertaining to participation / investment / membership in eligible investment fund, investment by such funds, minimum corpus fund maintenance, eligibility of fund manager, etc., the fund management activity of such eligible investment funds shall not constitute business connection in India.

The Finance Bill proposes to amend the applicability of section 9A by giving power to the Central Government for issuing Rules in order to exempt such fund / fund manager from being required to fulfil one or more conditions contained in section 9A, if such fund is established on or before March 31, 2024. Accordingly, eligible funds shall not constitute business connection in India and their income shall not be subject to tax in India, except in cases where such income is taxable notwithstanding existence of business connection. The Rules in this regard are yet to be published.

Investment division of Offshore Banking Units (OBU)

The Finance Bill proposes to provide following exemptions in respect of Investment division of OBUs located in IFSC for income accrued, arisen to or received as under –

- Income of Investment division of OBUs located in IFSC shall be exempt to the extent such income is attributable to it and computed in the manner as may be provided by Rules framed in this regard,
- Income of a non-resident as a result of transfer of non-deliverable forward contracts entered into with OBUs located in IFSC shall be exempt from tax.

All the above exemptions / concessions proposed by the Finance Bill shall be available if OBU / IFSC unit, as the case may be, has commenced operations on or before March 31, 2024.

Further, the Finance Bill proposes to tax OBUs in respect of income from securities (other than dividends) and short term or long-term capital gains from transfer of such securities at a concessional rate of 10%.

Royalty income from aircraft leasing

The Finance Bill also proposes to exempt income of a non-resident in the nature of royalty from leasing of aircrafts if such royalty is paid by IFSC units which are eligible for deduction under section 80LA.

International Financial Services Center (IFSC)

Relocation of foreign funds to IFSC

In order to incentivize & promote setting up of units in IFSC in India, the Finance Bill proposes to exempt capital gains arising out of relocation of funds to IFSCs located in India, if such transfer takes place on or before March 31, 2023, as under –

- Any transfer, in a relocation, of capital asset by original fund (established outside India) to resultant fund (established in India)
- Any transfer, in a relocation, of shares / units / interest in original fund by a holder thereof for shares / units / interest in resultant fund

In respect of the above transfers, relocation is defined as transfer of assets of original fund to resultant fund, where consideration to the shareholder / unitholder / interest-holder of the original fund is in the same proportion as it existed in the original fund.

Additionally, a grandfathering benefit shall also be provided in case of transfer of shares of a company resident in India by the resultant fund (when such shares were acquired by the resultant fund on account of relocation) if the capital gains were not chargeable to tax, absent relocation.

Consequently, although the transfer will be exempt in the hands of transferor, its own cost of acquisition & improvements, if any, shall be deemed to be the cost of acquisition to the transferee. A consequent amendment has also been made to allow for carry forward and set-off of losses despite change in shareholding as a result of the above transfer.

Section 80LA has also been amended to provide for deduction to OBU of IFSC in respect of gain on transfer of an asset being aircraft or aircraft engine leased to domestic company before transfer where the OBU commenced operation on or before March 31, 2024.8. Section 80LA is being amended to provide for specific criteria for tax deduction i.e. removing of the requirement of obtaining permission under any other law (if it is registered under IFSC Authority Act, 2019).

Sovereign Wealth Fund and Pension Fund

Sovereign Wealth Fund (SWF) & Pension Fund (PF) is a state-owned investment fund of any country that invests in real estates and financial estates globally. In order to boost the investment in infrastructure sector in India, the Finance Act 2020 inserted new clause (23FE) in section 10 of the Act which has provided complete exemption to income of such funds which are in the nature of dividend, interest or long term capital gains arising from an investment made by such fund in India whether in the form of debt or equity, provided that such investment is made in an entity carrying on business of operating and maintaining; or developing, operating and maintaining any infrastructure facility as defined in Section 80-IA(4) or any other business as specified by the Central Government in this behalf. In order to rationalize and remove difficulties for foreign investors in fulfilling certain conditions given in said clause following amendment have been proposed:

- The existing provision of the Act permits SWF / PF to invest in Category I and Category II Alternate Investment Fund ('AIF') provided such AIF has 100% of its investment in eligible infrastructure company. The Finance Bill proposes to relax such condition by permitting such AIFs -
  - to have at least 50% investment in eligible infrastructure company,
  - to grant proportionate exemption where investment in infrastructure companies is less than 100%,
  - to also allow investment in Infrastructure Investment Trust ('InvIT').

Sovereign Wealth Fund and Pension Fund

- Under existing law, the SWF / PF are not permitted to have investments in India in infrastructure company through its holding company. It has now been proposed to allow the same subject to conditions that -
  - such holding company is a domestic company,
  - it has been set up on or after April 01, 2021,
  - it has at least 75% investment in infrastructure companies
- Under the existing law, SWF / PF are not permitted to invest in Non-Banking Finance Company (NBFC), Infrastructure Debt Fund (IDF) and Infrastructure Finance Company (IFC). It has now been proposed to allow the same subject to conditions of minimum 90% lending to one or more infrastructure companies.
- Under existing law, the SWF / PF are not allowed to have loans or borrowings or deposit or investments. Such condition is now proposed for relaxation by permitting to have loans or borrowings for purposes other than investment in India.
- Under existing law, the SWF / PF are not permitted to undertake any commercial activity. Such condition has now proposed to be removed with a condition that the SWF / PF are not permitted to participate in day-to-day affairs of the investee companies except appointment of director for monitoring investment in investee companies / entities.
- Under existing law, the PF which are liable to tax in foreign jurisdiction in which they are created or established are not considered as entitled for exemption under section 10(23FE) of the Act. It has now proposed to relax such condition if such PF is taxable in foreign jurisdiction but subsequently the exemption is granted to them.

Further, with respect to the first two conditions provided above where the condition of 100% investments / lending in infrastructure entities has been relaxed, it has been provided that the exemption would also be available proportionately. It has also been provided that the manner of computation of such % of investment shall be prescribed.

Personal Tax

India Budget 2021 RESILIENCE TO RENAISSANCE

Taxation of Income

Taxation of Unit Linked Insurance Policies

Unit Linked Insurance Policy (ULIP) is a combination of life insurance policy and investments into equity & debt funds. The existing provision of section 10(10D) of the Act provides that where premium payable for any of the years during the term of a life insurance policy (including ULIP) does not exceed 10% of actual sum assured, the sum received under such policy shall be exempt from tax.

Consequently, it was possible, especially for HNIs, to invest substantial funds in such ULIP and earn a tax-free income. In order to curb such situations, the Finance Bill proposes an additional monetary cap on the amount of premium payable for ULIP eligible to claim exemption, whereby if the following caps are breached, income from such ULIP shall be subject to tax, unless such income is received upon / after death of the policyholder –

- In respect of a single ULIP issued on or after February 1, 2021, if the annual policy premium is more than INR 250,000 during the term of such policy;
- In respect of more than one ULIP issued on or after February 1, 2021 held by a person, the benefit shall be restricted to such policies having an aggregate premium upto INR 250,000 for any of the previous years during the term of any of such policies.

The Finance Bill proposes that above income shall be chargeable to tax under the head capital gains (taxable at 10% if gain is long term in nature and at 15% if gain is short term in nature) and Central Board of Direct Taxes (CBDT) will notify the manner of computing capital gains in such cases. Further, in cases where exemption to ULIP is not available in view of the above, the income arising from such ULIPs shall be subject to TDS in accordance with provision of section 194DA at 5% in case of residents.

Taxation of interest on contributions to PF

The existing provision of section 10(11) of the Act provides for an exemption in relation to payment received from Government Provident Funds (GPF) [Provident Fund for Government employees and Public Provident Fund (PPF)]. Similarly, the existing provisions of 10(12) provides exemption to employee in relation to payment received from Recognized Provided Fund in respect of accumulated balance as per Rule 8 of Part A of Fourth Schedule.

Both the above sections provide exemption in respect of receipt of accumulated balance of contribution made by the taxpayer (as an employee or otherwise), employer's contribution as well as interest on both the contributions. The Finance Bill now proposes to restrict the exemption in respect of interest on contribution made by the taxpayer. The proposed amendment provides that such exemption on interest shall be available only in respect of taxpayer's annual contribution up to INR 250,000 to such funds. In this regard, following is worth noting:

a. Withdrawal of exemption is only in respect of interest and does not apply to the actual contributions received back even if they are in excess of INR 250,000 annually

b. The restrictions apply only in respect of contributions made on or after April 01, 2021 and thus, interest in respect of all contributions made till March 31, 2021 would continue to enjoy exemption

c. The contributions would include voluntary contributions made to provident funds

d. The annual ceiling of INR 250,000 is to be computed separately for each provident fund (PPF, GPF and RPF). While section 10(11) applies to PPF as well as GPF, the maximum contribution that can be made to PPF is INR 150,000 and therefore, effectively, the said restriction on interest exemption would not be applicable to PPF

e. In case where contribution exceeds INR 250,000, interest on contribution up to INR 250,000 would continue to be exempt and only interest on excess contribution shall be subject to tax, methodology whereof will be prescribed separately

f. While the main provisions grant exemption under section 10(11) and 10(12) in respect of payments from such funds, the proviso seeks to tax interest in respect of excess contribution on accrual basis. Based on certain media releases, such interest would be taxed on lines similar with bank interest in the year of accrual. While there is a possible alternate view regarding taxability of such amount only in the year of payment / receipt, a suitable clarification from CBDT would be required to clarify the position

g. It is important to note that provisions relating to withholding of tax also provides for withholding at the time of payment out of such fund, if no exemption is available

Taxation of Income

Taxation of overseas retirement fund

The persons who have been employed outside India, might have invested in the retirement fund account in such foreign countries when they were non-resident in India. The withdrawal from such retirement fund may be taxed on receipt basis in such foreign countries. However, when such person, upon retirement, returned to India and have become resident in India, he/she is liable to be taxed on accrual basis in India instead of receipt basis. Therefore, it leads to a mismatch in the year of taxability of such withdrawal from retirement funds.

Accordingly, in order to address this mismatch, the Finance Bill proposes to insert a new section 89A to provide that the income of a specified person from specified account shall be taxed in the manner and in the year as prescribed by the Central Government. A "specified person" is a person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country. Further, "specified account" is an account maintained in a notified country by the specified person in respect of his retirement benefits, income from which is taxable at the time of withdrawal or redemption and not on accrual basis.

The CBDT shall prescribe manner as to how such income / withdrawals from such overseas retirement fund shall be taxed. It would also be important how the credit of taxes paid in the country in which such fund is generated shall be allowed in India against the tax payable in India in view to avoid double taxation, if any.

This amendment is proposed to take effect from April 01, 2022 and will accordingly, apply in relation to the AY 2022-23 and subsequent assessment years.

Deductions & Reliefs

LTC claim for AY 2021-22

The existing provision of section 10(5) of the Act read with Rule 2B provides for an exemption for certain amounts incurred on travel within India by taking leave from employment, popularly known as LTA / LTC exemption. The amount of exemption to an employee is an amount equivalent to actual traveling fare incurred and computed as per Rule 2B. Further, such exemption is given for two travel journeys during the block period of 4 calendar years.

In view of Covid-19 outbreak and its impact on tourism & hospitality and considering the practical difficulties faced by the taxpayers in claiming LTA in current block of Calendar Year 2018 to 2021, the CBDT vide its Press Release dated October 29, 2020 had introduced an alternative mechanism for claim of LTA by employees which provides for claim of exemption of LTA up to INR 36,000 by spending three times the value of LTA for purchase of goods & services bearing GST (at the rate of 12% or more) through digital mode.

In order to enact such provisions under the Act, the Finance Bill proposes to add enabling provisions by insertion of proviso to sub-section (5) to section 10 of the Act for AY 2021-22. It should be noted that the Finance Bill explains that the conditions originally laid down in CBDT Press Release will form part of notification which will be issued later under first proviso to sub-section (5) of section 10 of the Act. Further, it has also been proposed that the expenditure claimed as exempt as an alternate to LTA by one individual shall not be available as exemption to any other individual for such LTA exemption. This amendment is proposed to be applicable only for AY 2021-22.

Deduction of Housing Loan Interest

Section 80EEA provides for a deduction upto INR 150,000, subject to certain conditions, in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. One of the conditions is that such loan should be sanctioned by the financial institution during the period April 01, 2019 to March 31, 2021.

The Finance Bill proposes to extend the time limit for above-mentioned sanction of loan from March 31, 2021 to March 31, 2022, intended to act as a catalyst for increase in demand for affordable housing.

This amendment is proposed to take effect from April 01, 2022 and will accordingly apply from AY 2022-23 onwards.

Safe harbor for home buyers and developers

In cases where circle rate of an immovable property is more than the agreed consideration, the differential is taxed in the hands of the seller vide section 43CA of the Act. However, the section currently provides a tolerance limit of 10%. This limit was increased to 20% for a limited time period from November 12, 2020 to June 30, 2021 vide Press Release dated November 13, 2020.

Deductions & Reliefs

The Finance Bill now proposes to incorporate this increase in limit within the provisions of the Act in respect of primary sale of residential units up to INR 2 crores, subject to certain qualifying conditions specified therein.

At the same time, the differential is, currently, also taxed in the hands of the buyer under section 56(2)(x) where the differential is more than 10% or INR 50,000, whichever is higher. In order to bring parity in the provisions of section 56(2) and section 43CA, the Finance Bill also proposes to introduce consequential relief under section 56(2) for a differential upto 20% for the above-mentioned period.

It should be noted that this relief is not available to a buyer who purchases a house / residential unit which was held as a capital asset and thus, the said relaxation is not available under section 50C of the Act.

No tax return for certain Senior Citizens

With the objective of reducing compliance for resident senior citizens aged 75 years and above, it has been proposed to insert section 194P wherein, subject to following conditions, no tax return shall be required to be filed by resident senior citizens:

- Such senior citizen has earned pension income and he does not have any other income except interest income from a bank in which such pension income is credited,
- He has furnished a declaration to the specified bank in the form to be notified,
- The bank has deducted tax at source under section 194P(1) of the Act.

It is further proposed that the bank shall be required to compute and deduct income tax, if any, under this section after giving effect to the deductions under chapter VI-A and rebate under section 87A, thus discharging the resident senior citizen from their obligation to file a tax return under section 139 of the Act.

Tax Administration

India Budget 2021 RESILIENCE TO RENAISSANCE

Tax Return

Time limit for filing of belated or revised return

The existing provisions of the Act allow taxpayers to file their tax return even after the due date but before the end of the relevant assessment year. Similarly, the revision in tax return filed is also permitted at any time before the end of the relevant assessment year.

The Finance Bill proposes to amend the provisions of sub-section (4) & sub-section (5) of section 139 of the Act to reduce such period by three months. Accordingly, taxpayers are now allowed to file their belated tax return or to revise the same latest by December 31 of respective assessment year. This amendment would be applicable from AY 2021-22 onwards.

Due Date for partners of a firm subject to TP

The existing provisions of the Act requires partnership firm & their partners to file their tax return by July 31 of the relevant assessment year, or by October 31 of the relevant assessment year if such partnership firm is subject to tax audit under section 44AB of the Act. In case where the partnership firm is subject to transfer pricing audit under section 92E of the Act, such partnership firm is required to file its tax return by November 30 of the relevant assessment year. However, the existing provisions of the Act do not provide corresponding relaxation to partner of such firm (which is subject to transfer pricing audit) to file their tax return by November 30 of the relevant assessment year. Such mismatch in provisions of the Act has created a situation where partner of the firm (which is subject to transfer pricing audit) is required to file his tax return either by July 31 or October 31 of the relevant assessment year whereas the partnership firm is required to file its tax return by November 30 of the relevant assessment year.

In order to correct this mismatch in provisions of section 139 of the Act, it has been proposed in the Finance Bill to amend the provisions of the section by which the due date of filing tax return by the partner of firm which is subject to transfer pricing audit under section 92E of the Act is extended to November 30 of the relevant assessment year. This amendment is proposed to be made applicable from AY 2021-22 onwards.

Due date for spouses governed by Portuguese Civil Code

The existing provisions of the Act requires the partners of the firm to file their tax return by October 31 of the relevant assessment year if such partnership firm is subject to audit under provisions of section 44AB of the Act. The provisions of section 5A requires apportionment of income between spouses governed by Portuguese Civil Code. Considering the provisions of section 5A of the Act where income of spouse of a partner of a firm which is subject to tax audit under section 44AB of the Act is determined post finalization of books of account and tax audit of respective partnership firm, the Finance

Bill proposes to amend the provisions of section 139 of the Act to align due date of filing of tax return applicable to partner of such partnership firm to spouse of such partner also. This amendment is proposed to be made applicable from AY 2021-22 onwards.

Criteria to treat tax return as invalid

The existing provisions of section 139(9) of the Act prescribes certain conditions under which a tax return is declared as defective and if the defect is not rectified with the period permitted under the Act, it is considered as invalid. The current practice of processing tax returns under section143(1) by way of automated cross-matching of income, expenses, TDS, various forms / reports, etc. with ITR has resulted in unnecessary issuance of notices under section 139(9) to various taxpayers in past which caused a genuine hardship in resolving the same from the side of taxpayer as well as tax department.

Considering such difficulties faced by the taxpayer and tax department in effective implementation of provisions of section 139(9) of the Act, the Finance Bill has proposed to notify class of persons to whom such conditions as specified for treating the tax return as invalid shall not apply or it would apply with few modifications. The proposed amendment would help the taxpayer to reduce unnecessary litigation arising out of automated processing of tax return at CPC.

This amendment would be applicable from AY 2021-22 onwards.

Tax Assessment

Inquiry before assessment by Faceless Assessment Unit

The Hon'ble Prime Minister of India launched the platform for promoting transparent taxation on August 13, 2020 which has introduced system of carrying out faceless assessment instead of physical or virtual tax hearing. The existing provisions of section 142(1) empowers the assessing officer to issue notice under section 142(1) to make inquiry i.e., asking for records, books of accounts and other supporting material in connection with scrutiny assessment. Under 'Faceless Assessment' Scheme, the power to make inquiries has been given to 'prescribed income tax authority' and not to assessing officer. Accordingly, in order to issue notices in automated manner by National e-Assessment Center, the Finance Bill proposes to amend the provisions of section 142(1) of the Act so as to empower the prescribed income tax authority along with assessing officer to issue notices necessary for the purpose of making inquiry before framing assessment order.

Processing of tax returns by CPC

The tax returns filed by the taxpayer are taken up by Centralized Processing Units (CPC) for processing under section 143(1) for its arithmetical accuracy and correctness of claim on the basis of primary information furnished in tax return. The Finance Bill has proposed to make following changes in processing of tax return:-

- Reduce the time period from one year to nine months for processing of tax return by CPC from the end of relevant year in which tax return is filed
- Adjustment in returned income not only by disallowance of expenditure but also to increase the total income on the basis of amounts reported in various reports furnished like Form 3CD, Form 3CEB etc.
- To authorize CPC to disallow deduction claimed under any section of Heading C of Chapter VIA if the return is filed beyond the due date provided in section 139(1) of Act. The amendment is in line with provisions of section 80AC of the Act. Currently, CPC was authorized to disallow any deduction under section 80IA-80IAB, 80-IB, 80-IC,80-ID or 80-IE if return is furnished after the specified due date.

Shortening the timelines for Assessment

Existing provisions of the Act allow the tax department to identify and select taxpayer for detailed scrutiny by issuing notice under section 143(2) of the Act however, issuance of notice is currently permitted within period of six months from the end of the financial year in which return is furnished. The Finance Bill proposes to amend the provisions of section 143(2) to reduce such period by three months and thereby it is proposed to select cases for scrutiny assessment within period of three months from the end of the financial year in which return is furnished. These amendments are proposed to be made applicable from AY 2021-22 onwards.

At present, the time limit to complete assessment for AY 2019-20 onwards is 12 months from the end of the relevant assessment year when the case is selected for an assessment.

It is now proposed that for carrying out assessment of AY 2021-22 and subsequent AYs, the time limit would be reduced to 9 months from the end of the relevant AY. Hence, assessment for AY 2021-22 would get time barred on December 31, 2022 and so on.

Following tables summarizes various due dates for completion of assessment:

Particulars	AY 2018-19	AY 2019-20	AY 2020-21	AY 2021-22
Where there is no transfer pricing assessment				
Time limit for completion of assessment	30-09-2020 (extended to 31-03-2021)	31-03-2021 (extended to 30-09-2021)	31-03-2022	31-12-2022
Where there is a transfer pricing assessment				
Time limit for completion of assessment	30-09-2021	31-03-2022	31-03-2023	31-12-2023

In fact, the time limit of selection of case for assessment has been reduced in the Finance Bill from 6 months to 3 months from the end of the year in which the return has been filed. The return of income for AY 2020-21 is required to be filed on or before March 31, 2021. To select a case for non-transfer pricing assessment, the notice can be issued latest by June 30, 2021 and the assessment is required to be completed latest by March 31, 2022. In case where the return of income of AY 2021-22 is required to be file on or before March 31, 2022, to select a case for non-transfer pricing assessment, the notice can be issued latest by June 30, 2022 and the assessment is required to be completed latest by December 31, 2022.

It is worth noting that for AY 2019-20, while the due date for completion of assessment has been extended to September 30, 2021 vide announcement made on May 13, 2020, the same has not yet been made a part of law and suitable amendment / notification in this regard is expected from the Government.

Tax Assessment

The above amendments suggest that the government want to complete the assessment proceedings at the earliest once the tax return has been filed. This is in view of the advancement of technology used by the tax department and the system of a faceless assessment.

Provisional Attachment in fake invoice cases

The penalty under section 271AAD had been introduced to penalize the persons making false entries or omitting entries in the books of accounts maintained by such person and also the person who causes the first mentioned person to make false entry or omit any entry. The penalty was meant to discourage various persons who advised making false entries or omission of entries for evasion of taxes.

It has been proposed that the Income Tax Department shall be empowered to provisionally attach any property of a Taxpayer in whose case penalty proceedings under section 271AAD have been initiated and the quantum of penalty which is likely to be imposed exceeds INR 2 Crores.

Hence, the inclusion of penalty under section 271AAD within the scope of section 281B for provisional attachment of property is meant to further discourage person from making such false entries for evasion of tax.

Re-assessment & Search cases

K C Mehta & Co.
Chartered Accountants

Revamping re-assessment procedures

As per the existing provisions of the Act, the Department has been given power to reopen the case for an assessment if it has "reason to believe" that income has escaped assessment. The department can re-open the case for assessment for up to previous 6 assessment years. Further in case of escapement of income in relation to foreign asset, the department has wide powers to re-open previous 16 assessment years for assessment.

Further, in case of a concluded assessment, the assessment can be reopened after 4 years from the end of the AY only if there is failure on the part of the Taxpayer to "disclose fully and truly all material facts" necessary for assessment. The phrases "reason to believe" and "disclose fully and truly all material facts" are not defined in the Act and hence have been subject matter of dispute and have often been the main ground for challenging the legality of reopening. The taxpayers have been generally successful in getting the reassessment quashed by challenging the legality of the proceedings. On the other side, it is also observed that, the wide meaning of phrase "reason to believe" and the absence of legal requirement for having any information or material on record for reopening the assessment, has resulted in arbitrary reopening of cases, which in turn has resulted in more litigation.

The Finance Bill proposes to overhaul the provisions for reopening of assessment and provide a more rational, objective and Taxpayer-friendly approach for conducting the reassessment proceedings. The new scheme is summarized as under:

- The AO can re-open the case for assessment up to 3 previous assessment years only when the AO has any information which has been flagged in the case of the taxpayer for such assessment year in accordance with the risk management strategy of CBDT or any information, being final objection raised by C&AG which indicates that assessment has not been made in accordance with the provisions of the Act. Apart from this, no other material can be considered as information to re-open the case.

- Very stringent condition has been proposed by the Finance Bill to re-open the case for assessment year beyond previous 3 years but up to previous 10 assessment years. It has been provided that such assessment year/s can be re-opened only when the AO has in his possession books of accounts or other documents or evidence which reveals that the income, represented in the form of an asset, has escaped assessment and the value of such escaped income is 50 lacs or more.

- It is pertinent to note that income amounting to INR 50 Lacs or more must be represented as an asset and it cannot be merely a book entry or an entry on loose paper. The material on record must point to an asset which has been

Re-assessment & Search cases

generated out of escaped income. Hence, reopening of assessment beyond the period of 3 years from the end of the AY would not be permitted in case where the material on record do not point to any asset held by the Taxpayer. This is a significant restriction on the power of the AO to reopen the assessment beyond the period of 3 years from the end of the AY.

- In case of reopening of assessment within the period of 3 years, the approval of Pr. CIT or Pr. DIT would be required. In other cases, approval of Pr. CCIT or Pr. DGIT or CCIT would be required.
- Further, before issuance of notice for re-opening the case for assessment, the AO is required to follow procedure as under, as per the proposed Section 148A:

  I. Conduct an inquiry, if required, with prior approval of Commissioner/ Chief Commissioner, based on the "information" which suggests that the income chargeable to tax has escaped assessment.

  ii. Issuance of show cause notice to the Taxpayer as to why his case should not be re-opened based on the information and to provide an opportunity of being heard.

  iii. Minimum 7 days and maximum 30 days to be provided to the Taxpayer for furnishing a reply.

  iv. To consider the reply of the Taxpayer and to decide on the basis of material available on record including the reply filed by the Taxpayer, whether to issue notice for re-opening of case.

  v. Order must be passed within 1 month from end of month in which reply of Taxpayer is received or from the end of month in which time to file reply expires, in case no reply is filed.

  vi. While computing the time limit for issuance of notice for re-opening of the case, the time or the extended time allowed to a Taxpayer under the above procedure or the period during which the above proceeding is stayed by an order or injunction of any court, the said period is excluded. This means that the above proceedings can be challenged before the Courts and instead of the challenging the order disposing of the objections, the show cause notice itself can be challenged by the Taxpayer.

  vii. Where after exclusion of the above time period where the time period to pass the final order by the AO under above procedure is less than 7 days, the remaining period shall be extended to 7 days and the period of issuance of notice for reassessment shall be deemed to be extended accordingly.

- Failure on the part of the AO to adhere to the above procedure may result in invalid reassessment proceedings. Though the above procedure to some extent is being followed currently in view of various Apex Courts decisions, since the Finance Bill proposes to incorporate the same as part of the Act, it shall provide more certainty and increases the accountability on the Tax Officer before issuance of the notice for reassessment.

- The new section requires presence of information with the AO for issuing a notice for reopening the assessment. This condition of having information significantly restricts the power of the AO to reopen the assessment simply on the basis of assumption or change of opinion or review. Now, the AO would require concrete information on record to reopen the assessment.
- Further, in the existing law, there is an extended time limit of 16 years in case of income which is relating to foreign asset located outside India. This time limit of 16 years has been removed and there is no separate time limit for income relating to foreign asset outside India. Hence, the time limit of 3 years/10 years would be applicable to income relating to foreign asset as well.
- It is also clarified that the above referred extended time limit of 10 years cannot be used for AY 2020-21 or earlier AYs if the time limit of 6 years have already elapsed as per the existing provisions at the time of issuance of notice for reassessment under the new provisions.

Revamping search / survey assessments

The Finance Bill proposes to change the existing procedure of separate search assessments under section 153A and section 153C in case of search initiated or requisition made on or after April 01, 2021. It proposes to merge the search assessment with the new re-reassessment proceedings. Accordingly, in search/survey case, the assessment can be re-opened for assessment up to 3/10 years subject to following modification:

- Under the new reassessment procedure, the AO is required to have specific "information" as defined therein which suggests that income has escaped assessment for reopening of case. However, in case of search and survey for re-opening of case up to 3 assessment years, it shall be deemed that the AO has in his possession, such information and accordingly the AO can issue notice for reopening of case in following cases:

    1) Taxpayer in whose case search has been carried or books of accounts, other documents or any asset have been requisition on or after April 01, 2021
    2) Taxpayer in whose case survey under section 133A has been carried on or after April 01, 2021
    3) Taxpayer where the search is

Re-assessment & Search cases

conducted on or after April 01, 2021 on person other than such taxpayer and the AO is satisfied with prior approval of Pr. CIT/CIT that the money, bullion, jewelry, or other valuable article or thing seized or requisitioned during search belongs to such Taxpayer or books of accounts, other documents seized or requisitioned during search pertains to such taxpayer or any information contained therein relates such taxpayer.

- Unlike the existing search process where there is an automatic reopening of 6 AYs, the new provisions provide for reopening of 3 AYs immediately preceding the AY relating to the FY in which search is initiated. However, for re-opening of case in case of search/ survey, beyond 3 assessment years but up to 10 assessment years , it is still necessary that the AO has the specified information as well as he has in his possession books of accounts or other documents or evidence which reveals that the income, represented in the form of an asset, has escaped assessment and the value of such escaped income is 50 lacs or more. There should be an existence of asset to tax the unaccounted income found during the course of search/survey.

- Further in case of search, the procedure for issuing show cause notice and obtaining reply from an taxpayer before issuance of notice for re-opening of case, as referred in section 148A is not applicable. The said procedure is also not applicable where a case is required to be re- opened in case of an taxpayer in whose case the AO is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any money, bullion, jewelry or other valuable articles or things seized during search on any person belongs to such taxpayer or books of account, documents seized during the search pertains to such taxpayer or any information contained therein relates to such taxpayer. Hence, in such cases, there would be no obligation on the part of the Department to give an opportunity of being heard before issuing notice u/s 148.

- However, in case of survey, the Taxpayer would be given an opportunity of being heard under section 148A before issuing a notice under section 148. This means that despite there being a presumption of "information" being with the AO in survey proceedings for reopening the assessment, the Taxpayer would be allowed an opportunity to rebut the "information" in the proceedings under section 148A.

Dispute Resolution

Faceless Income Tax Appellate Tribunal

CBDT has been aiming to achieve greater transparency, efficiency and accountability and in respect of this, provisions pertaining to faceless assessment, faceless CIT(A), etc. have already been issued and implemented. In continuation of the same, the Finance Bill proposes to introduce Faceless Income Tax Appellate Tribunal wherein the entire interface between the parties to appeal and Appellate Tribunal would be removed and appellate system with dynamic jurisdiction would be introduced.

It has been announced that a National Faceless Income Tax Appellate Tribunal would be set up for managing and disposing the appeals which shall be filed before the Appellate Tribunal.

The peculiar feature of Appellate Tribunal is that representative of the Taxpayer as well as the Income Tax Department put forth their respective arguments before the bench of members. In case of Faceless Scheme, it would be pertinent to see how the Scheme would facilitate the making of arguments by the Taxpayer and the Department.

Discontinuation of Income Tax Settlement Commission

The Income Tax Settlement Commission (ITSC) was set up in the year 1976 on the basis of recommendations of Direct Tax Enquiry Committee headed by Justice Shri K. N. Wanchoo. The committee recommended that in any fiscal administration, there should be scope for compromise and settlement instead of proliferation of litigation which benefit neither the Taxpayer nor the department. The committee therefore recommended to have an alternative dispute resolution forum within the framework of the Act for fair and prompt settlement of disputes and collection of taxes. The ITSC has thus been constituted as a dispute resolution forum which holistically resolves issues in a time bound manner.

Chapter XIX-A of the Act dealt with the provisions governing the power and procedure for settlement of cases under the Act. The Finance Bill proposes to discontinue ITSC with effect from February 01, 2021. In view of the proposed amendment to discontinue ITSC and in order to ensure that the applications pending as on February 01, 2021 are disposed off, the Finance Bill also proposes to constitute an Interim Board for Settlement for disposing the pending application. The salient features of the proposed amendment are summarized as under.

- No application can be filed with the ITSC with effect from February 01, 2021.
- Application which has already been filed before February 01, 2021 with the ITSC and the ITSC has passed the order admitting the application [order under section 245D(2C)] and final order [order under section 245D(4)] is not passed shall be regarded as "pending application". The scope of Interim Board is restricted to deciding only these pending applications.

Dispute Resolution

- The Finance Bill has proposed that all the "pending application" shall henceforth be disposed-off by the newly constituted Interim Board for Settlement as per the provision of Interim Board for Settlement Scheme to be notified by the Central Government.

- For disposing off the pending application, the Interim Board for Settlement will be vested with all the powers of Settlement Commission including power of Inspection etc. power to call for report and/or power to grant immunity from prosecution and penalty. The Interim Board for Settlement shall pass the order or amend the order in accordance with the existing provision laid down under the ITSC scheme.

- The Central Government will further notify the Interim Board for Settlement Scheme for faceless disposal of the pending application by Interim Board. The newly constituted Interim Board will have dynamic jurisdiction with functional specialization and during proceeding there will not be any interface between the taxpayer and Interim Board.

- The Finance Bill further provides that the Taxpayer on or before 30th June 2021 can exercise an option to withdraw the application originally filed with the ITSC.

If the taxpayer does not opt to withdraw pending application

- In case where the taxpayer does not opt to withdraw the application, then the pending application will be assigned and/or transferred from one Interim Board to any other Interim Board for disposal of the application as per the notified scheme.

- All the records, documents and evidence relating to pending application shall be transferred to the Interim Board for the purpose of disposing off the application by the Board as per the provision of notified scheme.

- The Interim Board of Settlement will then be vested with all the power of ITSC relating to the pending application and Interim Board will dispose-off the pending application as per the provision of the Act.

If the taxpayer opts to withdraw pending application

- If the taxpayer decides to withdraw pending application, the jurisdictional AO/IT Authority will dispose-off the case and pass the assessment /reassessment order in accordance with the provision of the Act as if application for settlement of case was never filed.

- For the purpose of determining the period of limitation while completion of assessment / reassessment as above; the period during which the application was pending with the ITSC shall be excluded.

- It is specifically provided that during the course of assessment/ reassessment proceeding, the IT Authority or the AO shall not be permitted to use any material and/or information produced by the taxpayer before the ITSC or an outcome of any inquiry conducted by ITSC, unless the said material etc. is collected by the AO himself.

New Dispute Resolution Committee

After discontinuation of Income Tax Settlement Commission (ITSC) with effect from February 01, 2021, the Finance Bill proposes to constitute a new forum for providing an opportunity to the Taxpayer to resolve the dispute under the Act. The newly constituted forum will have specific role and limited scope. Hence, the scope of the newly constituted 'Dispute Resolution Committee" is narrow. The proposed amendment also provides that there will be tolerance monetary limit beyond which an application will not be admitted. Therefore, unlike ITSC, the Taxpayer cannot take the benefit for dispute resolution if the disputed amount is above the threshold limit. The matter can be referred to a new dispute resolution forum where;

- aggregate sum of variations proposed or made in such order does not exceed Rs.10 lacs.
- such order is not based on search initiated under section 132 or requisition under section 132A in the case of taxpayer or any other person or survey under section 133A or information received under an agreement referred to in section 90 or section 90A.
- where return has been filed by the taxpayer for the assessment year relevant to such order, total income as per such return does not exceed Rs.50 lacs.

The Dispute Resolution Committee will have power to waive or reduce the penalty imposable under the Act and grant immunity from prosecution under the Act. Further in certain cases where the Taxpayer is subject to prosecution or has committed any specified offences under certain acts and other cases as specified, he is not eligible to use the above mechanism to settle his dispute.

The Central Government will also notify Faceless Dispute Resolution Committee Scheme for achieving greater transparency, efficiency, and accountability in administration of dispute resolution process under the Act.

The proposed amendment will be applicable from April 01, 2021 and hence it will be effective from AY 2021-22.

With a view to avoiding dispute in respect of assessment of tax liability and to provide tax certainty, a scheme of Authority for Advance Rulings (AAR) was incorporated in the Act. Over the past several years it has been witnessed that large number of applications are pending for disposal and therefore, there was a need to revamp the scheme of AAR in

Dispute Resolution

such a way that an alternate method is implemented to provide timely ruling to the Taxpayer.

In view of the above, the Finance Bill proposes the following broad amendment to the existing scheme of AAR as under.

- The AAR shall cease to operate with effect from the notified date. The Central Government will constitute one or more Board for Advance Rulings for giving advance rulings and thereafter all the power and provision governing the scheme of AAR laid down under the Act will apply to Board of Advance Ruling.
- In case where the application is pending before the AAR, then from the notified date, all such application shall be transferred to the Board of Advance Ruing along with all records, documents, and material.
- The Central Government will further notify Faceless Scheme for achieving greater transparency, efficiency, and accountability in administration of advance ruling mechanism as per the new provision under the Act.
- A new section 245W is proposed to be inserted to provide for appeal to High Court against the order passed or ruling pronounced by the Board for Advance Ruling. This appeal can be filed by the applicant as well as by the Department. The appeal can be filed within period of 60 days or such further time as granted by the court not exceeding 30 days.
- The Central Government will also notify scheme for e-filing of appeal by the Assessing Officer to impart greater efficiency, transparency and accountability in overall administration of the scheme.
- It is further proposed that under the new scheme of advance ruling, an applicant under the Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 will not be covered.

The proposed amendment will be applicable from April 01, 2021 and hence it will be effective from AY 2021-22.

Settlement Commission Cases out of VSV

Vivad Se Vishwas Scheme (VSV) was introduced on March 17, 2020 with an objective of reducing pending income tax litigation, generating timely revenue for the Government and giving benefit to taxpayers by providing them peace of mind, certainty and savings on account of time and resources.

The settlement provisions under the Act provide for an alternate mechanism to a taxpayer who chooses to exit the regular process of assessment which would have resulted into determination of tax liability and instead approached the ITSC for settlement of his case under Chapter XIX-A of the Income-tax Act. As the VsV was enacted for the resolution of disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case under Chapter XIX-A of the Income-tax Act, such cases as are covered by Chapter XIX-A of the Income-tax Act (whether they have attained finality or not) have always been, therefore, intended to be outside the purview of VsV.

Though by way of FAQ it was provided that VsV scheme cannot be availed in case where the proceedings are pending with the ITSC or a writ is pending against the order of ITSC, however, with a view to remove any ambiguity, it is proposed to amend the provisions of VsV to clarify the original legislative intent for which the definitions of appellant in section 2(1)(a), disputed tax in section 2(1)(j) and tax arrears in section 2(1)(o), of the VsV are proposed to be amended by way of removal of doubts by this Bill.

The said amendments are proposed to be effective retrospectively from the March 17, 2020.

Other Direct Tax Amendments

India Budget 2021 RESILIENCE TO RENAISSANCE

Trusts & charitable institutions

Application of funds out of Corpus & Borrowings

The trusts, funds or institutions carrying on charitable and religious activities are entitled to exemption under section 10(23C) or section 11 of the Act subject to certain conditions relating to its registration under the Act. Further, such entities are required to spend at least 85% of its receipts for the object of the trust, subject to certain relaxation. However, the Act provides for a complete exemption to such entities in respect of corpus donation received by it.

In this context, it was observed that certain entities were using such corpus donation for its capital or other objective of the entities while at the same time, considering such capital expenditure as application of income while justifying usage of at least 85% of its non-corpus income. Since corpus donation is exempt from tax, to treat the utilization of amount therefrom as application of income against normal donation will deviate the purpose of mandating such entities to utilize 85% of its income.

In order to curb such a situation, the Finance Bill has proposed to make the following changes -

- The exemption from tax to corpus donation shall be allowable only when the identity of such corpus donation has been preserved by way of investing the amount of corpus donation in one or more of eligible form specified in section 11(5) specifically maintained for such donation.
- Any amount spent from such corpus fund shall not be regarded as application of income for the purpose of computing the sum utilized for the object of the trust from its income (other than corpus donation). However, if such amount is deposited or invested back in investment prescribed under section 11(5) of the Act & specifically maintained for corpus donation, out of income of the trust, it shall be regarded as application of income.

The Finance Bill further clarifies that amount spent out borrowed fund shall not be treated as application of income for the purpose of section 11 & section 10(23C) of the Act. However, once such loan is repaid out of income any previous year, the same shall be considered as application of income to the extent of the amount repaid.

Further the Finance Bill also prohibits the set off or deduction of any excess application of any of the year preceding the previous year.

The above amendments will strengthen the purpose of giving exemption to such charitable entities towards utilization of regular donation for its intended purposes as against accumulation of the same.

The aforesaid amendments are proposed to be applicable from AY 2022-23 onwards.

Exemption to Hospital / Educational Institutions

The existing provisions of section 10(23C) of the Act provides for exemption of income received by different funds or institutions etc. which include universities and educational institutions [as covered by section 10(23C)(iiiad)] and hospital & other similar institutions [as covered by section 10(23C)(iiiae)], provided that the annual receipts of such university or educational institution does not exceed INR 1 crore in a year. Considering the language of such provision, such limit is required to be computed separately for each institution / entity.

In order to provide to benefit to small trusts and institutions, it has been proposed to increase such limit to INR 5 crores to expand the category of trust for the purpose of this exemption. However, such increased limit shall apply to an taxpayer as against to each institution / entity and accordingly, the receipt of all institutions / hospitals run by one taxpayer is required be aggregated for computing the threshold limit.

The above amendment is proposed to be applicable from AY 2022-23 onwards.

Indirect Tax
(GST and customs)

India Budget 2021 RESILIENCE TO RENAISSANCE

Goods & Services Tax

The following amendments have been proposed in the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017. It is to be noted that these amendments shall have to be passed by both the houses of the Parliament after which the President shall give an assent to the said amendments and subsequently these amendments shall also have to be carried out by all the States and Union Territories (having an Assembly) in the respective State / UT Goods and Services Tax Acts. Only then, Government would be in position to notify these changes to be effective.

IGST Act

Supplies made to SEZ

An amendment is proposed to Section 16, to treat supplies of goods or services to SEZ developer/unit to be zero rated only if such supplies are made for authorised operations. While similar provisions existed under the erstwhile Excise / Service tax laws, this condition is not currently there in the law but still was enforced by some officers. This amendment puts the ambiguity to rest.

Refund of zero-rated supplies

Another amendment to section 16 is also proposed to provide that where the taxpayer is unable to realize export proceedings with respect to export of goods or services, he shall have to deposit the refund of accumulated ITC claimed, along with interest, within 30 days after expiry of time limit as specified under Foreign Exchange Management Act, 1999. Rule 96B was inserted in March 2020 to provide for recovery of refund in case of non-realization of export proceeds; the said Rule now has blessings under the law.

Currently the option for making zero rated supplies with payment of tax is available for all the taxpayers. It is now proposed to restrict the option of making zero rated supplies on payment of integrated tax only to a notified class of taxpayers as well as notified class of supplies of goods or services. As a result, the exporters shall now be mandatorily required to export under a bond or LUT and claim the refund of unutilised ITC. This would lead to blockage of working capital for taxpayers who are not allowed to export with payment of tax. Moreover, the ITC accumulated on account of purchase of Capital Goods would also remain utilised.

CGST Act

Input Tax Credit (ITC)

It has been proposed to insert clause (aa) to section 16 (2) (which specifies conditions to avail ITC) to provide that ITC in respect of a debit note/ invoice would be available to a recipient only where the taxpayer furnishes Form GSTR 1 as specified in section 37 and the same is communicated to the recipient in form GSTR 2A.

Section 43A which was inserted to the CGST Act vide CGST Amendment Act, 2018, contains provisions to allow ITC of only such invoices to the recipient, which were uploaded by the suppliers. However, since such section was effectively meant to introduce the new GST returns which the Government was not keen to introduce as of now, the said section was not brought in force.

It was thus, being argued that Rule 36 (4) which restricts the ITC available on the basis of Invoices reflecting in GSTR 2A, is not valid in absence of an enabling provision and was also sought to be challenged before the Courts as being Ultra Vires the Act. It seems that the Rule now has blessings of the Act. In fact, while the newly inserted clause to section 16 (2) allows 100% ITC of invoices reflected in GSTR 2A, Rule 36 (4) allows ITC to the extent of 105% of the invoices being reflected in GSTR 2A.

Annual Return

Currently a taxpayer is required to submit Annual Return in Form GSTR-9 along with a Reconciliation statement in Form GSTR-9C which is to be certified by a specified professional.

The mandatory requirement of furnishing the Reconciliation Statement duly audited and certified by the specified professional is now proposed to be removed by way of omission of section 35(5).

The GST Council at its 39th Meeting discussed the issues faced by taxpayers due to the requirement of filing audited Reconciliation Statement. This proposal seems to be in line to ease the compliance burdens on the taxpayers.

However, it is proposed that the taxpayer furnishing the Annual Return may include a self-certified statement reconciling the value of supplies declared in the returns with the audited financial statements.

As mentioned above, the aforesaid

provisions shall be effective from a date to be notified by the Government. Accordingly, while submission of Reconciliation Statement in Form GSTR 9C for the F.Y. 2019-20 would continue, we will have to wait to see the notification to ascertain the applicability of this amendment for the subsequent years.

Interest on delayed payment of tax

A proviso was inserted to section 50 by the Finance Act, 2020 to provide that interest shall be payable only on net cash liability for the delayed payment of tax. While the said amendment seemed to be clarificatory in nature, there were still doubts on whether this amendment would have prospective/ retrospective effect.

Further, a Press Release dated August 26, 2020 was issued to clarify that Authorities would not undertake any coercive action in respect of recovery of interest for prior period. However, in many cases, the department had imposed the interest on the gross amount for prior periods which lead to many taxpayers approaching the Courts.

This ambiguity is now proposed to be removed by this amendment retrospectively applicable from July 01, 2017.

Following points, however, are worth pondering:

Goods & Services Tax

- Whether taxpayers who have already paid interest on the gross liability can apply for a refund since the provision would be made applicable retrospectively, when notified?
- The amendment only covers those scenarios where the return was filed belatedly. However, there would be various other scenarios where although the return was filed but tax was not paid, short paid, and there was ITC available or the return itself was not filed but there was a balance available in the Electronic Credit as well as Cash ledger. Such cases do not seem to be covered under this proviso.

Expansion in the scope of supply

Section 7(aa) is proposed to be inserted retrospectively w.e.f. July 01, 2017 to tax the supplies made by a club or association to its members and vice versa. The amendment carried out is as follows:

- A person and its members / constituents shall be deemed to be two separate persons
- Supply from such person to its members/constituents and vice-a-versa will be deemed to be supply under the act and therefore it will be taxable supply
- Para 7 of Schedule II which treated the supply of goods by unincorporated association or body of persons to a member as neither supply of goods nor supply of services is deleted.

This amendment looks beyond principles of mutuality upheld by the Hon'ble Supreme Court in the case of State West Bengal Vs Calcutta Club Ltd. and Joint commercial tax officer Vs Young Men's Indian Association

where it was held that a club cannot make supplies to its own members.

Self-assessed Tax to include liability as per GSTR 1

An explanation is proposed to be inserted in section 75 to define "self-assessed tax" to include tax payable towards outward supplies as furnished in Form GSTR-1 but not included in Form GSTR-3B.

The Form GSTR 1 would now be treated at par with Form GSTR 3B to calculate the tax liability of a taxpayer. Where the liability shown in the GSTR 3B is lesser than the tax liability shown in the GSTR 1, the authority would now have the powers to consider the higher tax liability and invoke recovery provisions under section 79.

Separation code for different proceedings

Sections 73 and 74 allowed closure of cases for co-noticees where the case was closed for the main noticee. It is proposed that cases of detention and confiscation under section 129 and 130 would continue even where the main noticee admits and pays tax with interest and penalty. sections 129 & 130 are proposed to be made separate codes for conducting proceedings of detention, seizure and confiscation of goods & conveyance in transit.

Further, section 129 has is proposed to be amended to remove the levy of tax from such section so as to cover only penalty proceedings in this Section, in case of goods and conveyances in transit in contravention of provision of the Act.

Earlier, if penalty was not paid under section 129, proceedings under section 130 were initiated. Section 129 is proposed to be delinked from section 130. Accordingly, amended section 129 would deal with detention, seizure and release of goods & conveyance in transit, whereas section 130 deals with confiscation of goods & conveyance in transit.

It is proposed to increase the penalty on taxpayers in case of detention/seizure of goods & conveyances in case where the owner is willing to discharge the penalty:

The Taxpayer comes forward for payment of such penalty

- Exempted goods: 2% of value of goods or INR 25,000 whichever is less
- Other goods: Penalty equal to 200% of tax payable on such goods

The Taxpayer does not come forward for payment of such penalty

- Exempted goods: 5% of value of goods or INR 25,000 whichever is less
- Other goods: Penalty equal to 50% of value of goods or 200% of tax payable on such goods; whichever is higher

The provision for releasing the goods on a provisional basis upon execution of bond and furnishing security is removed.

A time limit of 7 days is proposed for issuance of a notice specifying the tax and penalty payable and a time limit of another 7 days is proposed for passing the order for payment of tax & penalty. Earlier no time limit was specified for these activities.

If the taxpayer fails to discharge their demand within 15 days of date of receipt of the order, the authority is empowered to sell/dispose the seized goods/conveyance to recover the demand value. An option is allowed to the transporter for releasing the seized goods/conveyance by paying the penalty imposed in the order or Rs. One lakh; whichever is lower.

Fine and penalty leviable in lieu of confiscation of goods proposed to be increased to 100% of tax payable on such goods.

Provisional Attachment

Presently the department can attach the property of a taxpayer under section 83 during the pendency of specific proceedings under sections 62, 63, 64, 67, 73 or 74. The said attachment remains valid till the one year from the date of the order of the provisional attachment.

The department is now given expanded powers to provisionally attach the property of a taxpayer from initiation of the proceedings. Such attachment would now

Goods & Services Tax

remain valid till the expiry of one year from the date of order. The scope of provisional attachment is expanded to Chapters XII (Section 59 to 64), XIV (Section 67-72) and XV (Section 73 to 84).

Pre-deposit for Appeal in case of detention

A proviso is proposed to be inserted to section 107(6) to provide that where an order is passed for the detaining/seizing goods or conveyance due to any violation of any provision of the Act, then appeal can be filed after paying 25% of the penalty as a pre deposit.

Power to call & publish information

It is proposed to substitute the section 151, wherein now the commissioner can, by an order (earlier a notification was required) direct any person to furnish information within such time and manner as may be specified therein.

It is also proposed to amend section 152 to state that the information collected by Authority or commissioner under sections 150 & 151, cannot be published/used without giving the concerned person an opportunity of being heard. Presently there is no requirement to give opportunity of being heard for use of information collected under this section.

Central Sales Tax Act

An amendment is proposed to section 8(3)(b) so that a registered dealer can make interstate purchases under concessional rate of by furnishing Form C only of such goods which are either resold or used in the manufacture or processing for sale of goods specified under section 2(d), i.e. for sale of petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption.

Customs Duty

Customs Act

Conditional Exemption notifications valid for 2 years

Presently, all conditional exemption notifications issued under section 25 are valid until specified or withdrawn. An amendment is proposed to section 25 i.e., power to grant exemption from duty, to prescribe the validity of all conditional exemptions till March 31 falling immediately two years after the date of exemption notification, unless otherwise specified or varied or rescinded.

For all existing notifications, it is proposed to restrict the validity all the existing conditional exemptions till March 31, 2023 unless otherwise specified or varied or rescinded.

The above clause for expiry of notifications is only for conditional exemptions. Absolute or unconditional exemption notifications shall be valid until rescinded, varied or modified.

Time limit for completion of certain actions

It is proposed to insert a new section 28BB to prescribe the time limit of 2 years for completion of any inquiry or investigation initiated with respect to audit, search, seizure, summons etc. The said time limit can be extended by the Principal Commissioner or Commissioner of Customs for a further period of one year on sufficient cause being shown. The period during which stay has been granted by an order of court or tribunal shall not be considered to compute the time-limit.

The above provision would not be applicable to any inquiry or investigation with respect to audit, search, seizure, summons etc. initiated before the date on which the Finance Bill receives the assent of the President.

Delay in completion of proceedings led to delay in issuance of Show Cause Notice which ultimately resulted in loss to the Government due to the bar of limitation. The present proposal is essentially to get the inquiries / investigations by the department completed in a time bound manner so that the Show Cause Notices can be issued within the period of limitation provided under the law.

Filing of Bill of Entry

An amendment is proposed to the section 46 requiring all the taxpayers to file Bill of Entry one day before arrival of goods at the customs station even where such day is a holiday. Currently, the taxpayers can file bill of entry till the next day on which goods arrives at customs station excluding holidays.

Further, it is proposed that the Board shall have to power to extend such time limit which shall not be later than the day on which goods arrives at customs station.

Confiscation of goods entered for exportation

Section 113 prescribes various situation where goods entered for exportation can be confiscated. The Finance Bill has proposed to insert new clause (ja) to the section 113 to incorporate a situation where any goods entered for exportation under wrongful a claim of any remission or refund of duty or tax in contravention of the provisions of the Customs Act or any other law for the time being in force shall be liable to confiscation.

Penalty on exporters

It is proposed to insert new section 114AC to impose penalty on the exporter of goods who has claimed refund of unutilized input tax credit under GST on the basis of fraudulent invoice or willful misstatement or suppression of facts. The quantum of penalty specified is not exceeding 5 times the amount of refund claimed.

This is in addition to the penalty under the GST law for the same contravention.

Proceedings through the Customs Common Portal

The Finance Bill has proposed to introduce a new common portal "Common Customs Electronic Portal", similar to GST, for facilitating issuance of summons, notice, service of order, filing of Bill of Entry, Shipping Bills, registrations, amendments etc. through the common portal.

It seems that the ICEGATE portal being used for the Customs compliance shall be referred to as the Common portal under the law.

AIDC on agri-products

The Finance Bill has proposed to introduce Agriculture Infrastructure and Development Cess (AIDC) on goods imported into India at a rate not exceeding the rate of Basic Customs Duty, in addition to the other customs duties being levied currently w.e.f. February 02, 2021.

The Central Government shall, after due appropriation by the Parliament, utilize such AIDC for the purpose of financing agriculture infrastructure and other development expenditure.

The AIDC shall not apply in case the specified goods are imported under advance authorization or under any exemption notification as specified under the notification imposing AIDC.

It is to be noted that there is a corresponding reduction in BCD rates for goods on which AIDC has been imposed so that it does not lead to any additional burden on the taxpayers.

Customs Duty

The AIDC ranges from 1.5% to 100% depending on specified goods being imported. The specified goods on which AIDC proposed to be imposed along AIDC rate and proposed reduced rates in BCD is as below:

Sr. No.	Heading, Sub-heading of tariff item	Commodity	BCD	AIDC
1	0808 10 00	Apples	15%	35%
2	1511 10 00	Crude Palm Oil	15%	17.5%
3	1507 10 00	Crude Soya-bean oil	15%	20%
4	1512 11 10	Crude Sunflower seed oil	15%	20%
5	0713 10	Peas (Pisum sativum)	10%	40%
6	0713 20 10	Kabuli Chana	10%	30%
7	0713 20 20	Bengal Gram (desichana)	10%	50%
8	0713 20 90	Chick Peas (garbanzos)	10%	50%
9	0713 40 00	Lentils (Mosur)	10%	20%
10	2204	All goods (Wine)	50%	100%
11	2205	Vermouth and other wine of fresh grapes, flavoured	50%	100%
12	2206	Other fermented beverages for example, Cider, Perry, Mead, sake, mixture of fermented beverages or fermented beverages and nonalcoholic beverages	50%	100%
13	2208	All goods (Brandy, Bourbon whiskey, Scotch etc.)	50%	100%
14	2701	Various types of coal	1%	1.5%
15	2702	Lignite, whether or not agglomerated	1%	1.5%
16	2703	Peat, whether or not agglomerated	1%	1.5%
17	3102 10 00	Urea	Nil	5%
18	3102 30 00	Ammonium nitrate	2.5%	5%
19	31	Muriate of potash, for use as manure or for the production	Nil	5%

AIDC on Petrol and Diesel

The Finance Bill also proposed to introduce AIDC on petrol and diesel in addition to Basic Excise Duty and Special Additional Excise Duty w.e.f. February 02, 2021.

The AIDC shall be imposed at Rs. 2.5 per litre on petrol and at Rs. 4 per litre on diesel.

It is to be noted that there is a corresponding reduction in rate of Basic Excise Duty and Special Additional Excise Duty by Rs. 2.5 per litre on petrol and Rs 4 per litre diesel so that it does not lead to any additional burden on the taxpayers.

Customs Tariff Act

Time limits in case of Anti-dumping duty or Countervailing duty

Under the present wordings of the Customs Tariff Act, the Anti-dumping duty or Countervailing duty is levied for a fixed term of 5 years. An amendment is proposed to be made which gives powers to the Government to impose Anti-dumping duty or Countervailing duty for a period up to five years i.e. it can be less than 5 years taking into consideration the special circumstances that may exist.

The Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and Customs Tariff (Identification, Assessment and Collection of countervailing duty on subsidized articles and for determination of injury) Rules, 1995 have been amended to provide for time bound completion of investigation for in case of Anti-dumping duty as well as review of continued imposition of Anti-dumping duty and Countervailing duty.

A new sub-rule 5(3A) proposed to be inserted to the Anti-dumping duty rules specify that the period of investigation shall normally be for a period of 12 months. The officer can consider a period maximum 6 months in the past calculated from the date of initiation of the investigation. The designated authority may, however, consider the period of investigation to be for a period not less than 6 months or not more than 18 months.

W.e.f. July 01, 2021 a review of imposition of Anti-dumping duty and Countervailing duty shall be completed at least three months prior to the expiry of the Anti-dumping duty and Countervailing duty, as the case may be.

The majority of Anti-Dumping Duty Rules or Countervailing Duty Rules, as the case may have also been *mutatis mutandis* made applicable in case of review also so as to provide for time bound completion of the proceedings.

Anti-Absorption

Provisions with respect to levy of anti-absorption measures have been introduced in the Rules in cases where Anti-dumping duty or Countervailing duty have been imposed. Powers have been given to the Central Government to modify the Anti-dumping duty or Countervailing duty imposed in case where there is either a decrease in the export price of any goods without adequate change in resale price of such goods imported from the exporting country or territory or in case of any other circumstances to be notified by the Government.

Anti-Circumvention

In case where an anti-circumvention investigation has been started against any person, Anti-dumping duty or Countervailing duty, as the case may be, can be imposed from the date of initiation of the inquiry.

Powers given to the Central Government for provisional assessment of imports of article alleged to be circumventing Anti-Dumping

Customs Duty

Duty or Countervailing duty in force by way of seeking a guarantee from importer on the recommendation of the designated authority.

Removal of goods from EOU or SEZ to DTA

Further, amendments have been proposed in section 9 and 9A of the Customs Tariff Act to impose Anti-dumping duty or Countervailing duty in respect of goods cleared from an Export Oriented Undertaking or Special Economic Zone Unit to a Domestic Tariff Area. The said amendments bring the provisions of Anti-dumping duty or Countervailing duty in line with the provisions of Safeguard duty. As per the amended provision, the goods which are cleared from an Export Oriented Undertaking or a Special Economic Zone to Domestic Tariff Area or used in manufacturing of final goods which are to be cleared to Domestic Tariff Area, Anti-dumping duty or Countervailing duty shall be payable unless specifically exempted.

Safeguard measures

Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 has been amended to substitute the term "duty" with "measures". This will expand the scope of Safeguard duty rules which would now allow the government to impose measures other than duty which would include tariff rate quota or such other measures.

This amendment is to bring the rules in line with the amendment made to the Customs Tariff Act made in the last budget.

Further, a Rule has been introduced which requires the Central Government to notify to the WTO, all actions required under the WTO Agreement on Safeguards. The said Rule also provides that an opportunity shall be provided to hold consultations with the members of the WTO having substantial interest as exporters of the product concerned before imposition of a safeguard measure.

Rule 11 (2) of the above Rules has been overhauled to provide for the measures that can be introduced by the DG in order to prevent or remedy the serious injury. The amendment rule provides guidance / conditions for determination of tariff rate quota to be imposed as a measure, which is as follows:

- Maintaining traditional trade flow of the article over the representative period
- The existing and likely demand supply scenario in the country
- Any other condition that may be considered relevant

It is provided that the level of tariff rate quota applied shall not reduce the quantity of imports below the level of average of imports in the last three years for which statistics are available unless a different level is necessary.

The tariff rate quota imposed can be global or country specific. The specific tariff rate quota may be allocated to countries with substantial interest, considering the proportion of the share of imports of the article. In case country specific tariff rate

quota is imposed, a residual tariff rate quota shall be provided for all other countries and the countries with specific tariff rate quota may use such residual tariff rate quota in case such countries exhaust their specific tariff rate quota. Further, any unused tariff rate quota may be carried forward and added to the tariff rate quota for subsequent period.

Import of goods at concessional rate allowed for use in job work

The Customs (Import of Goods at Concessional Rate of Duty) Rules, 2007 are applicable in cases where the benefit of concessional rate of Customs duty is availed in specified cases. Amendments have been made to the said rules to provide for relaxation in cases where goods are imported at a concessional rate and supplied to job workers. The said amendment provides the following relaxations as well as procedure in such cases, which are as follows:

Rule 4 and 6 have been substituted to provide additional information with respect to the job worker in addition to the details of the imported goods to be submitted to the jurisdictional AC/ DC. The quarterly return format has also been changed to cover the details of goods sent to the job worker, processed by the job worker and received back from the job worker.

Rule 6A has been inserted to allow the importer to send the imported goods other than gold, jewellery & articles thereof, and other precious metals, for job work for manufacture of final product after due intimation to the proper officer. The said Rule provides for a detailed procedure to be followed for intimation to the proper officer as well as documentation to be followed for sending the goods to the job worker.

The proper officer may take necessary actions under these rules including imposing penalty in case:

- The goods sent to the job-worker are not received back within six months
- The importer is not able to establish that the goods sent for job work have been used as per the provisions

The job-worker shall be required to maintain an account of receipt of goods, manufacturing process undertaken and details of the waste generated during manufacturing process. Such details may be produced before the proper officer as and when asked.

The job worker may also, after completion of the job work process, send the processed goods to the importer or to another job worker as directed by the Importer for carrying out the remaining processes, if any, under the cover of a challan or the challan of the principal manufacturer duly endorsed by him.

There were divergent views on whether the goods imported at a concessional rate should be used only in the factory of the manufacturer or can be sent to a job worker. The above-mentioned amendments bring

Customs Duty

the much-needed change to the rules along with a proper procedure to be followed when sending such goods to job workers.

An amendment has also been made to the above rules for clearance of Capital Goods imported at a concessional rate. An importer shall be allowed to clear the imported Capital Goods which are used for the purpose specified in the respective notification granting exemption/concessional rate of duty on the following conditions:

- Permission is obtained from the proper officer
- Duty equal to the difference between duty leviable on such goods and duty already paid at time of import has been paid on the depreciated value of the goods along with interest. The depreciation shall be calculated at percentage points specified for the number of quarters or part thereof, such goods have been used. The method prescribed for calculation of duty payable is similar to the one applied for removal of goods by EOUs as per the FTP.

Customs Tariff Changes

Tariff rate changes for Basic Customs Duty

These changes shall be effective from 02.02.2021, unless otherwise specified.

Particulars	Increase in Duty
Chemicals	
• Carbon Black	From 5% to 7.5%
Plastic items	
• Builder's ware of Plastics	From 10% to 15%
Gems and Jewellery Sector	
• Cut and Polished Synthetic stones, including Cut and Polished Cubic Zirconia	From 10% to 15%
Electrical and Electronics Sector	
• Compressor of a kind used in refrigerating equipment • Compressor of a kind used in air-conditioning equipment	From 12.5% to 15%
Printed Circuit Board Assembly [PCBA] of charger or adapter	From 10% to 15%
Parts of Automobiles	
• Safety glass, consisting of toughened (tempered) or laminated glass. • Parts of Electrical lightning and signaling equipment, windscreen wipers, defrosters, and demisters, of a kind used for cycles or motor vehicles • Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships • Instrument Panel Clocks and Clocks of a similar type for vehicles, Aircraft, Spacecraft or Vessels	From 10% to 15%

Customs Duty

The tariff rate for Basic Customs Duty for the following products has been increased to 15% without any change in the effective rates of Basic Customs Duty

Particulars	Existing rate
• Air compressors mounted on a wheeled chassis for towing	7.5%
• Gas Compressors (other than of a kind used in air-conditioning equipment), free-piston generators for gas turbine, turbo charger and other compressors	7.5%
• Electric Motors	10%
• Relays	10%
• Boards, panels, consoles, etc. for electric control or distribution of electricity	10%
• Other instruments, appliances and machines	7.5%
• Electronic automatic regulators and other controlling instruments or apparatus	10%

Increase in duty rates in respective notifications
(with effect from 2.2.2021, unless specified otherwise)

Particulars	Increase in Duty
Agricultural Products and By Products	
• Denatured Ethyl Alcohol (ethanol) for use in	From 2.5% to 5 %
manufacture of excisable goods	
• All goods except dog and cat food and shrimp larvae feed	From Nil/5/10 to 15%
Minerals	
• Natural borates and concentrates thereof	
Fuels, Chemicals and Plastics	
• Bis-phenol A	From Nil to 7.5%
• Epichlorohydrin	From 2.5% to 7.5%
• Polycarbonates	From 5 % to 7.5 %
• Other plates, sheets, films, etc. of other plastics	From 10% to 15%
Leather	
• Wet blue chrome tanned leather, crust leather, finished leather of all kinds, including splits and sides of the aforesaid	From Nil to 10%
Textiles	
• Raw Silk (not thrown) • Silk yarn, yarn spun from silk waste (whether or not put up for retail sale)	From 10% to 15 %
• Raw Cotton	From Nil to 5%+5% AIDC
• Cotton waste (including yarn waste or garneted stock)	From Nil to 10%
Metals	
• Screw, bolts, nuts, etc. of iron and steel	From 10% to 15%

Particulars	Increase in Duty
Capital Goods	
• Tunnel boring machines	
• Parts and components for manufacture of tunnel boring machines with actual-user condition	
IT, Electronics and Renewable	
• Specified insulated wires and cables	From 7.5% to 10%
• Former, bases, bobbins, brackets; CP wires; P.B.T.; Phenol resin moulding powder; Lamination/ El silicon steel strips for use in manufacture of transformers (entry at S.No. 198 of 25/1999- Customs)	From Nil to applicable rate
• Inputs or parts for manufacture of Printed Circuit Board Assembly (PCBA) of cellular mobile phone	From Nil to 2.5% (w.e.f. 1.4.2021)
• Inputs or parts for manufacture of camera module of cellular mobile phone.	
• Inputs or parts for manufacture of connectors of cellular mobile phone	
• Inputs or raw material for manufacture of specified parts like back cover, side keys etc. of cellular mobile phone	
• Inputs or raw material (other than PCBA and moulded plastics) for manufacture of charger or adapter of cellular mobile phones	From Nil to 10%
• Moulded plastics for manufacture of charger or adapter	From 10 to 15%
• Inputs or parts of Printed Circuit Board Assembly of charger or adapter of cellular mobile phones	
• Inputs or parts of Moulded Plastic of charger or adapter of cellular mobile phones	
• Inputs or raw materials (other than Lithium-ion cell and PCBA) of Lithium-ion battery or battery pack	From Nil to 2.5% (w.e.f. 1.4.2021)
• Parts or components of PCBA of Lithium-ion battery or battery pack	
• Inputs or raw materials of following goods: -	
• Other machines capable of connecting to an automatic data processing machine or to a network (8443 32 90) • Ink cartridges, with print head assembly (8443 99 51) • Ink cartridges, without print head assembly (8443 99 52)	
• Ink spray nozzle (8443 99 53)	
• Inputs and parts of LED lights or fixtures including LED Lamps	From 5% to 10%
• Inputs for use in the manufacture of LED driver or MCPCB (Metal Core Printed Circuit Board) for LED lights or fixtures including LED Lamps	
• Solar lanterns or solar lamps	From 5% to 15%
• Parts of Electronic Toys for manufacture of electronic toys	
• Solar Inverters	From 5% to 20%
Goods imported under Project Import Scheme	
• All goods other than Bicycle parts and components	From 10% to 15%
• High Speed Rail Projects being brought under project imports	From applicable rate to 5%

Customs Duty

Increase in duty rates in respective notifications
(with effect from 2.2.2021, unless specified otherwise)

Particulars	Decrease in Duty
Agricultural Products and By Products	
• All goods except dog and cat food and shrimp larvae feed	From 20/30% to 15%
Minerals	
• Natural borates and concentrates thereof	From 5% to 2.5%
Fuels, Chemicals and Plastics	
• Naphtha	From 4% to 2.5%
• Caprolactam	From 7.5% to 5 %
• Nylon chips	From 7.5% to 5%
Textiles	
• Nylon Fibre and Yarn	From 7.5% to 5%
Gems and Jewellery Sector	
• Silver	From 12.5% to 7.5%+2.5%AIDC
• Silver Dore	From 11% to 6.1%+2.5% AIDC
• Gold	From 12.5% to 7.5%+2.5%AIDC
• Gold Dore	From 11.85% to 6.9% + 2.5% AIDC
• Base metals or precious metals clad with precious metals • Other precious metals like Platinum, Palladium, etc. • Waste and scrap of precious metals or metals clad with precious metals	From 12.5% to 10%
• Spent catalyst or ash containing precious metals	From 11.85% to 9.17%
• Gold or Silver Findings	From 20% to 10%
• Coin	From 12.5% to 10%
Metals	
• Iron and steel scrap, including stainless steel scrap [up to 31.03.2022]	From 2.5% to Nil
• Primary/Semi-finished products of non-alloy steel	From 10% to 7.5%
• Flat products of non-alloy and alloy steel	From 10/12.5% to 7.5%
• Long product of non-alloy, stainless and alloy steel	From 10% to 7.5%
• Raw materials for use in manufacture of CRGO steel [up to 31.03.2023]	From 2.5% to Nil
• Copper Scrap	From 5% to 2.5%

Particulars	Decrease in Duty
Aviation Sector	
• Components or parts, including engines, for manufacture of aircrafts or parts of such aircrafts, by Public Sector Units under Ministry of Defence subject to condition specified	From 2.5% to 0%
Medical devices	
• Medical Devices imported by International Organization and Diplomatic Missions	Health cess reduced from 5% to 0%
Goods imported under Project Import Scheme	
• High Speed Rail Projects being brought under project imports	From applicable rate to 5%

Change in levy of Social Welfare Surcharge (SWS) on various items

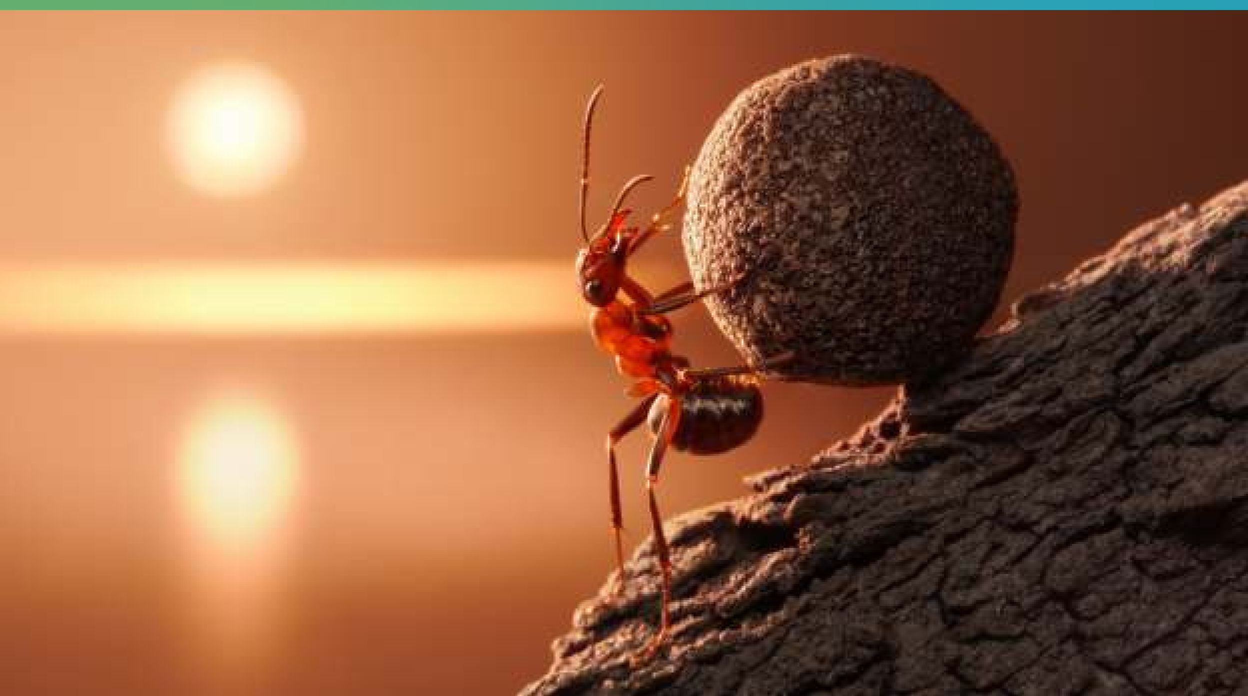
Notification No. 12/2018-Customs, dated 02.02.2018 prescribing effective rates of 3% on certain items, including gold and silver, is being rescinded. Further, SWS is being exempted on the value of AIDC imposed on gold and silver.

Accordingly, these items would attract SWS, at normal rate, only on value plus basic customs duty

SWS is being exempted on goods falling under heading 251511 and 251512

Corporate Laws

India Budget 2021 RESILIENCE TO **RENAISSANCE**



Corporate Laws

Limited Liability Partnerships (LLPs)

Offences and Penalties:

In addition to Companies Act, 2013, the LLP Act, 2008 also provided for compounding of offences. The Finance Minister in her Budget speech has announced decriminalization of compoundable offences by LLPs involving minor, procedural or technical violations or such offences that are not harmful to public at large. The offences proposed to be decriminalized include:

(i) eligibility and appointment of designated partners;

(ii) registration of changes in partners;

(iii) maintenance of books of account, other records and audit; and

(iv) filing of annual return.

The decriminalizing of offences under the LLP Act will help entrepreneurs to regularize the offences at low compliance cost instead of threat of heavy penalties and fear of imprisonment.

Companies Act, 2013

Certain amendments have been made in the Budget speech to incentivize "Small Company" and "One Person Company", having lesser compliance requirement under the Companies Act, 2013, by making them more viable/sustainable through enhancing the limits as to cover more companies under such provision.

Small Companies:

Section 2(85) of Companies Act, 2013 defines "Small Company" as a Company other than a public company:

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees;

Provided that nothing in this clause shall apply to:

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

The Finance Minister has proposed to revise the definition of Small Company as under:

Criteria	Existing Limits [in Rs]	Proposed Limits [in Rs]
Paid up Share Capital	Fifty Lakhs	Two Crore
Turnover	Two crore	Twenty crore

The primary intention of revising the threshold is to provide ease of doing business for a larger set of companies (falling under the umbrella of revised limits) by providing minimal compliances for such companies. This will substantially reduce compliance requirements for smaller establishments who can focus their energies on business operations. For instance, a small company needs to hold only two board meetings in a year, unlike other companies that are required to hold four such meetings in the same period. Small companies are not required to maintain their cash flow statement and their annual returns could simply be signed by a company secretary or a single director. These companies are also not required to change their auditors under Section 139(2) which is mandatory for other companies. In case of regulatory violations, the penalties levied are also comparatively low.

As per the Budget estimates, this relaxation will benefit more than two lakh companies in easing their compliance requirements. The move is likely to get more companies under the 'Small' category and benefit them in terms of the reduced compliance requirements.

One Person Companies [OPCs]:

Section 2(62) of the Companies Act defines a one-person company as a company that has only one person as to its member. One Person Company (OPC) is free from stringent legal compliances such as board meetings, financial statement inclusions, quorums, mandatory rotation of an auditor.

According to Rule 6 of the Companies (Incorporation) Rules, 2014, if the paid up share capital of an One Person Company exceeds fifty lakh rupees and its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.

For the benefit of Start-ups and Innovators, it has been proposed to remove the restrictions/cap on paid up capital and turnover to be categorized as "One Person Company". The resultant effect is that conversion from OPC to a Private/Public Company will not be mandatory irrespective of its paid up capital or turnover.

Further, threshold limit for number of days an Indian Citizen was required to be a Resident in India to incorporate an OPC is proposed to be reduced from 182 days to 120 days. [As of now, according to Rule 3 of the

Corporate Laws

Companies (Incorporation) Rules, 2014, only an individual who is an Indian Citizen and resident in India (for a minimum period of 182 days) shall be eligible to incorporate One Person Company (OPC).] There had been an implicit restriction on a Non-resident Indian [NRI] to incorporate an OPC in India. The proposal now permits an NRI to incorporate OPC, provided he stays in India for a period of 120 days instead of 182 days. It will allow more investment in OPCs with the permission for NRIs to incorporate such entities.

These proposals will help in giving a spotlight to single person economic entities such as small traders, artisans and other service providers and encourages aspiring entrepreneurs for setting up Small Company/OPC.

Other matters

Some of the other initiatives announced by the Finance Minister under the Companies Act, 2013 are as follows:

The Finance Minister has proposed setting up E -courts, strengthening of NCLT process and introduction of alternate methods of debt resolution and special framework for MSMEs to ensure faster resolution of cases. This will help the business community at large in carrying out their businesses with lesser hassle and regulatory compliances.

MCA 21 is the electronic backbone for dissemination of information to all stakeholders, including the regulator, corporates and investors. All filings in respect of Companies and LLPs are submitted to the ministry through this portal. It has been announced to utilize the data available with the Regulators by launching updated version 3.0 and data analytics and artificial intelligence. MCA 21 version 3.0 builds on the existing processes by introducing new utilities such as helpdesk solution, e-consultation module, security and threat management for utilizing the capabilities of Artificial Intelligence and Machine Learning. Features such as autopilot surveillance, pre-emptive fraud-detection, compliance management, improved user experience, capability for integration and data exchange with other regulators and government agencies, data analytical capabilities will also be included in the new version. The new version is bound to help the stakeholders in complying with the requirements without physical appearance.

References

India Budget 2021 RESILIENCE TO RENAISSANCE

Tax Rates* for AY 2022-23

*[To be increased by applicable surcharge and health & education cess (see Notes)]

Individual, HUF, AOP & BOI

Taxable Income	All Individual, HUF, AOP & BOI	Resident Individual of 60 years or more age	Resident Individual of 80 years or more age
Upto Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	5%	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	5%	5%	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Rs. 10,00,001 and above	30%	30%	30%

Optional Tax regime for all Individual, HUF (Insertion of New Section 115BAC)

Taxable Income	All Individual, HUF
Upto Rs. 2,50,000	Nil
Rs. 2,50,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs. 7,50,000	10%
Rs. 7,50,001 to Rs. 10,00,000	15%
Rs. 10,00,001 to Rs. 12,50,000	20%
Rs. 12,50,001 to Rs. 15,00,000	25%
Rs. 15,00,001 and above	30%

This optional tax regime shall be exercised by Individual or HUF without claiming any exemption or deductions as prescribed u/s. 115BAC and under relevant rules.

Tax Rates* for AY 2022-23

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Partnership Firm & Foreign Companies

Particulars	General Tax Rate
Partnership Firm & LLP	30%
Foreign Company	40%

Domestic Companies

Particulars	General Tax Rate
Domestic Company with Turnover / Gross Receipts up to Rs. 400 Crores in FY 2019-20	25%
Domestic Company opted for taxation under section 115BA	25%
Domestic Company opted for taxation under Section 115BAA	22%
Domestic Manufacturing Company incorporated on or after 1st October 2019 opted for taxation under Section 115BAB	
-Income derived from Manufacturing or Production	15%
-Other income for which no specific rate of tax is specified	22%
-Short-term capital gain of a non-depreciable capital asset	22%
Domestic Company not covered above	30%

Optional tax regime u/s. 115BAA or 115BAB shall be exercised by Company without claiming any exemption or deductions as provided in respective section and filing prescribed Form as per relevant rule.

Co-operative Society

Total Income	General Tax Rate
Upto Rs. 10,000	10%
Rs. 10,001 to 20,000	20%
Rs. 20,001 and above	30%

Tax Rates* for AY 2022-23

Resident Co-operative Society (Section 115BAD)

Particulars	General Tax Rate
Co-operative Society opted for taxation u/s 115BAD	22%

This optional u/s 115BAD tax regime shall be exercised by co-operative society without claiming any exemption or deductions as provided in the Act and filing prescribed Form as per relevant rule.

Special Rates of Tax

Nature of Income	Rate of Tax
Minimum Alternate Tax (Section 115JB) excluding company opted under section 115BAA and 115BAB.	15%
Alternate Minimum Tax (Section 115JC) excluding person opted for tax regime under section 115BAC and 115BAD	18.5%
STCG on listed securities (Section 111A)	15%
LTCG on listed equity share, units equity oriented mutual funds, business trust or unit linked insurance plan exceeding Rs. 1,00,000 (Section 112A)	10%
LTCG on unlisted securities or shares of a company in which the public are not substantially interested derived by **Non-Resident** (Section 112)	10%
LTCG on assets other than listed securities and zero-coupon bonds (Section 112)	20%
Royalty & Fees for Technical Services derived by **Non-Resident** (Section 115A)	10%
Dividend derived by non-resident subject to tax treaty benefit	20%
Tax payable by any Company (other than Foreign) on Buy-back of Shares (Section 115QA)	20%
Income by way of Royalty in respect of a patent developed and registered in India derived by **Resident** (Section 115BBF)	10%
Dividend Income received from Certain Speci?ed Foreign Companies (Section 115BBD)	15%

Tax Rates* for AY 2022-23

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Note 1: Rate of Surcharge on Income Tax

Total Income	Upto Rs. 50 Lacs	Rs.50 Lacs to Rs. 1 Cr.	Rs.1 Cr. to Rs. 2 Cr.	Rs.2 Cr. to Rs. 5 Cr.	Rs. 5 Cr.to Rs.10 Cr.	Above Rs. 10 Cr.
Individual / HUF/ AOP/ BOI (including tax regime u/s 115BAC)	Nil	10%	15%	25%**	37%**	37%**
Co-operative Society	Nil	Nil	12%	12%	12%	12%
Co-operative Society opted for tax regime u/s 115BAD	10%	10%	10%	10%	10%	10%
Partnership Firm / LLP	Nil	Nil	12%	12%	12%	12%
Foreign Company	Nil	Nil	2%	2%	2%	5%
Domestic Company						
Domestic Company (not opting for lower taxation u/s 115BAA & 115BAB)	Nil	Nil	7%	7%	7%	12%
Domestic Manufacturing Companies u/s 115BAA & 115BAB	10%	10%	10%	10%	10%	10%

**Above rate of surcharge shall not be applicable on tax payable on dividend and capital gains arising from transfer of certain securities u/s. 111A, 112A & 115AD. In such case applicable surcharge would be 15%.

Note 2: Health & Education Cess @ 4% will be charged to all taxpayer on the amount of Income Tax & Surcharge.

Note 3: In case where person is opting for taxation u. s. 115BAA/ 115BAB/ 115BAC & 115BAD, tax payable on capital gains arising will be at the rate specified in section 111A, 112 & 112A in respect of capital asset covered within the scope of these sections.

Note 4: A non-resident including foreign company can also avail lower rate of tax, if any, specified under applicable tax treaty subject to compliance with treaty access provision as provided under the Act

TDS Rates for FY 2021-22

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
192	Salary	As per Slab	As per Slab
192A	Provident Fund amount which is not exempt from tax	50,000	10%
193	Interest on Securities		
	(1) Interest on Debentures (Listed/Unlisted debentures issued by company in which public are substantially interested)	5,000**	10%
	(2) Interest on 7.75% Savings (Taxable) Bonds, 2018	10,000	10%
	(3) Any Other Interest on Securities (Unlisted)	0	10%
194	Dividend (including deemed dividend) to Resident	5,000*	10%
194A	(1) Interest paid by Banking Company, Co-operative Society/Banks engaged in banking business, Post Office under a deposit scheme framed by Central Government	40,000***	10%
	(2) Interest other than Interest on Securities (Other than above)	5,000	10%
194B	Winning from Lotteries	10,000	30%
194BB	Winnings from Horse Races	10,000	30%
194C	Payments to Contractors		
	(1) Payment to Transporter covered by Section 44AE [2]	NA	NIL
	(2) Payment to Individual / HUF (other than above)	30,000[3]	1%
	(3) Payment to Others (other than above)	30,000[3]	2%
194D	Insurance Commission	15,000	5%
194DA	Income component received from LIC (including ULIP) which are not covered u/s 10(10D)	1,00,000	5%
194E	Non-Resident Sportsman /Sports Association / Entertainer	0	20%[1]
194EE	Payment of deposits under NSS to Resident / Non-Resident	2,500	10% [1]
194F	Repurchase of units of Mutual Fund /UTI from Resident / Non-Resident	0	20%[1]
194G	Commission on Sale of lottery tickets to Resident / Non- Resident	15,000	5%[1]

TDS Rates for FY 2021-22

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Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194H	Commission or Brokerage to Resident	15,000	5%
194I	Rent to Resident		
	(a) Rent for machinery / plant / equipment	2,40,000	2%
	(b) Rent for other than in (a)	2,40,000	10%
194-IA	Payment on transfer or certain immovable properties (Other than agricultural land)	50,00,000	1%
194-IB	Payment of Rent by certain Individuals or HUF (other than those who are covered u/s 194I) to a resident	50,000 p.m.	5%[4]
194-IC	Payment under specified agreement (in case of joint development agreement excluding payment in kind)	0	10%
194J	Payment to resident taxpayer for professional services, royalty, sum referred u/s 28(va) excluding fees for technical services	30,000	10%
	Payment to resident taxpayer for fees for technical services or payment to taxpayer engaged in the business of call centre	30,000	2%
	Remuneration, fees, commission paid to Director (other than those on which tax is required to be deducted u/s 192) which is not in the nature of Salary	0	10%
194K	Income/ Dividend in respect of Units of Mutual Fund registered u/s 10(23D) payable to resident	5000	10%
194LA	Compensation to a resident on acquisition of immovable property (excluding compensation received under RFCTLAAR Act, 2013)	2,50,000	10%
194LB	Interest paid to a Non-Resident by the Noti?ed Infrastructure Debt Fund	0	5%[1]
194LBA	Payment to a resident Unit Holder speci?ed in Section 115UA (in respect of dividend if SPV opted for 115BAA)	0	10%
	Payment of Interest to a non- resident Unit Holder specified in Section 115UA	0	5%[1]
	Payment of Dividend to a non- resident Unit Holder specified in Section 115UA if SPV opted for 115BAA	0	10%[1]

TDS Rates for FY 2021-22

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194H	Commission or Brokerage to Resident	15,000	5%
194I	Rent to Resident		
	(a) Rent for machinery / plant / equipment	2,40,000	2%
	(b) Rent for other than in (a)	2,40,000	10%
194-IA	Payment on transfer or certain immovable properties (Other than agricultural land)	50,00,000	1%
194-IB	Payment of Rent by certain Individuals or HUF (other than those who are covered u/s 194I) to a resident	50,000 p.m.	5%[4]
194-IC	Payment under specified agreement (in case of joint development agreement excluding payment in kind)	0	10%
194J	Payment to resident taxpayer for professional services, royalty, sum referred u/s 28(va) excluding fees for technical services	30,000	10%
	Payment to resident taxpayer for fees for technical services or payment to taxpayer engaged in the business of call centre	30,000	2%
	Remuneration, fees, commission paid to Director (other than those on which tax is required to be deducted u/s 192) which is not in the nature of Salary	0	10%
194K	Income/ Dividend in respect of Units of Mutual Fund registered u/s 10(23D) payable to resident	5000	10%
194LA	Compensation to a resident on acquisition of immovable property (excluding compensation received under RFCTLAAR Act, 2013)	2,50,000	10%
194LB	Interest paid to a Non-Resident by the Noti?ed Infrastructure Debt Fund	0	5%[1]
194LBA	Payment to a resident Unit Holder speci?ed in Section 115UA (in respect of dividend if SPV opted for 115BAA)	0	10%
	Payment of Interest to a non- resident Unit Holder specified in Section 115UA	0	5%[1]
	Payment of Dividend to a non- resident Unit Holder specified in Section 115UA if SPV opted for 115BAA	0	10%[1]

TDS Rates for FY 2021-22

K C Mehta & Co.
Chartered Accountants

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194LBB	Income in respect of units of investment fund under Section 115UB		
	(1) In case of Payee being Resident	0	10%
	(2) In case of Payee being Non-Resident	0	Rate in Force [1]
194LBC	Income distribution to an investor by Securitisation Trust in respect of Section 115TCA		
	(1) In case of Payee being Resident Ind/HUF	NA	25%
	(2) In case of Payee being Resident any other person	NA	30%
	(3) In case of Payee being Non-Resident	NA	Rate in Force[1]
194LC	Interest paid by Specified Company to a Non-Resident on ECB	0	5%[1]
	Interest paid by Specified Company to a Non-Resident on Long term Bond or Rupee Denominated Bonds listed on recognized stock exchange in any IFSC	0	4%[1]
194LD	Interest payments to FII and QFI's on their Investment in Govt. Securities and RDB of an Indian Company, Municipal debt securities	0	5%[1]
194M	Payment by Individual/HUF for carrying out any work pursuant to contract, commission & fees for profession services (not covered by 194C, 194D & 194J)	Rs. 50 Lacs	5%
194N	TDS on cash withdrawal		
	- Person who did not filed ITR for preceding three AYs & time limit to file original ITR is expired and said person withdrawing cash not exceeding Rs. 1 Crore	Rs. 20 lacs	2%
	- Person who did not filed ITR for preceding three AYs & time limit to file original ITR is expired and said person withdrawing cash exceeding Rs. 1 Crore	On amount exceeding Rs. 1 Crore	5%
	- Any other person	Rs. 1 Crore	2%
194O	Payment by e-commerce operator to e-commerce participant in respect of sale of goods or services	Rs. 5 lacs[5]	1%
194P	TDS in case of resident senior citizen having age of 75 year or more and receiving only pension in the bank and interest income from the same bank.	As per Slab[6]	As per Slab[6]

TDS Rates for FY 2021-22

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194Q	TDS on payment for purchase of goods by specified buyer (w.e.f July 1, 2021)	50,00,000	0.1%
195	Payment of other sums to Non-Resident (Other than those specified in Section 194LB)	Rates specified under Part II of First Schedule of Bill, including applicable surcharge and health and education cess subject to rate specified under applicable DTAA	
196A	Income to non-residents in respect of units of MF as specified u/s 10(23D) or of specified company as specified u/s explanation of 10(35)[7]	0	20% [1]
196B	Income from units (including long term capital gain on transfer of such units) to an offshore fund	0	10% [1]
196C	Income from foreign currency bonds or GDR of Indian Company	0	10% [1]
196D	Income of FII from securities not being long term and short-term capital gain	0	20% [1]

(* in case of Resident Individual only)

(** in case of Resident Individual / HUF only)

(*** Rs. 50,000 in case of Resident Senior Citizen)

[1] All rates of TDS for Non-Resident taxpayer shall be increased by applicable Surcharge, Health & Education Cess

[2] Transporter means persons engaged in plying, hiring and leasing of Goods Carriages having Income u/s. 44AE and not owning more than 10 goods carriage. Nil rates will be applicable if the transporter quotes his PAN and furnishes prescribed declaration.

[3] This limit is for individual transaction. However, if aggregate payment to contractors during the year exceeds Rs.1,00,000 then tax will have required to be deducted even where individual transaction is less than the threshold limit of Rs. 30,000

[4] In case TDS is to be made as per section 206AA or 206AB, TDS amount shall not exceed rent payable for the last month of financial year or last month of tenancy.

[5] This limit is provided to only e-commerce participant being resident individual or HUF whose gross amount from sale of services and goods does not exceed Rs. 5 lacs and provided PAN or Aadhar card.

[6] Specified senior citizen need to submit declaration in the prescribed Form and manner to the Specified Bank. Accordingly, such specified senior citizen is not required to file ITR for the year in which TDS is deducted.

[7] No TDS will be withheld, in case where units have been acquired from UTI out of Non-Resident External account maintained in India or remittance of Funds in foreign currency as per FEMA regulations.

Note 1: A non-resident including foreign company is subject to lower withholding tax, if any, specified under applicable tax treaty subject to compliance with treaty access provision as provided under the Act.

Note 2: In order to strengthen the PAN /Aadhar Mechanism, as per section 206AA of the Act any person whose receipts are subject to TDS i.e. the deductee, shall furnish his PAN / Aadhar to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:

(i) prescribed in the Act;

(ii) at the rate in force i.e. the rate mentioned in the Finance Act; or

(iii) 20%

However, in the case TDS is required to be deducted u/s 194O and 194Q, the maximum TDS rate will be 5% instead of 20%. Further, in case of TDS deductible u/s. 192A where PAN in not furnished, TDS shall be deducted at Maximum Marginal Rate.

In addition to above, with effect from July 1, 2021 the Finance bill vide section 206AB of the Act provides higher rate of TDS in case where deductee who is non-filer of income-tax return excluding a non-resident not having PE in India.

Accordingly, except in case of TDS falling under section 192, 192A, 194B,194BB, 194LBC or 194N; if deductee has not filed income tax return for immediately two preceding AYs for which time limit to file original return is expired and aggregate of TDS deducted and TCS collected in both such AYs is Rs. 50,000 or more (for each year), the deductor is required to deduct TDS at higher of the following rates;

(i) Twice of the rate prescribed in the Act;

(ii) at twice the rate in force i.e. the rate mentioned in the Finance Act; or

(iii) 5%

TCS Rates

Rates of Tax Collected at Source

Section	Nature of Payment	Threshold Limit	Rate
206C	Sale of alcoholic Liquor for human consumption & Indian made foreign Liquor	0	1%
206C	Sale of Timber obtained by any mode and any other forest produce	0	2.5%
206C	Sale of scrap	0	1%
206C	Parking Lot/ Toll plaza/Mining and Quarrying	0	2%
206C	Sale of tendu Leaves	0	5%
206C	Minerals, being coal or lignite or iron ore	0	1%
206C(1F)	Sale of Motor Car	10,00,000	1%
206C(1G)	Remittance out of India under the LRS of RBI**	7,00,000	5%
206C(1G)	Sale of overseas Tour Package*	0	5%
206C(1H)	Sale of goods (not covered under any of the above provision) excluding the case where the buyer of goods is liable to deduct tax at source on such goods under any other provision and has deducted such TDS)	50,00,000 [1]	0.1%

**TCS will not be applicable in cases where the buyer being deductor has already deducted TDS from the consideration as per the provision of Chapter XVII-B.

[1] The provisions of section 206C(1H) is applicable to seller whose turnover exceeded Rs. 10 crore during the immediately preceding financial year. Further, certain specified buyer such as central or state government, local authority or any other person as specified are excluded from the provision of the said section.

Note I: In order to strengthen the PAN/Aadhar Mechanism, as per section 206CC of the Act, any person who makes above nature of payment which is subject to TCS shall furnish his PAN/ Aadhar to the seller failing which the seller shall collect tax at source at higher of the following rates:

(i) at twice the rate specified in the section, or

(ii) at the rate of 5%

Further, in a case where TCS need to be collected u/s 206C(1H) and buyer has not provided PAN or Aadhar Card, TCS will be collected at the rate of 1%.

In addition to above, with effect from July 1, 2021 the vide section 206CCA of the finance bill provides higher rate of TCS in case where buyer being non-filer of income-tax return excluding non-resident not having PE in India.

Accordingly, if buyer has not filed income tax return for immediately two preceding AY for which time limit to file original return is expired and aggregate of TDS deducted and TCS collected in both such AY is Rs. 50,000 or more (for each year), seller is required to collect TCS higher of the following rates:

(i) At twice of the rate prescribed in the Act;

(ii) 5%

Rates of Equalisation Levy – The Finance Act, 2016

Section	Nature of Payment	Threshold Limit	Rate
165	Equalisation Levy in respect of Specified Services (e.g. online advertisement) provided by non-resident excluding case where services are not for business or profession.	1,00,000	6%
165A	Equalisation Levy in respect of e-commerce supply or services made by Non-Resident e-commerce operator	2 Crore	2%

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