DECODING TAX FINE-PRINT

FINANCE BILL, 2020

VAISH ASSOCIATES ADVOCATES
ESTD. 1971

SEQUENCE OF TOPICS

RATES OF TAX AND PERSONAL TAXATION

Tax Rates – Individuals/HUF

[Chapter I & First Schedule] **(w.e.f. 01.04.2020)**

- No change in tax rates.

- Surcharge on income tax for higher income groups where total income does not include any income under section 115AD :

Income (in Rs.)	Existing surcharge	Proposed surcharge
Rs.50 lacs to Rs.1 crore	10%	10%
Rs.1 crore to Rs.2 crores	15%	15%
Rs.2 crores to Rs.5 crores (excluding income u/s 111A & 112A)	25%	25%
Above Rs.5 crores (excluding income u/s 111A & 112A)	37%	37%
Above Rs.2 crores (including income u/s 111A & 112A but not covered above)	25% or 37%	15%

Tax Rates – Individuals/HUF

[Chapter I & First Schedule] **(w.e.f. 01.04.2020)**

- No change in surcharge rate for non-resident persons

- Surcharge on income tax for higher income groups where total income includes income under section 115AD:

Income (in Rs.)	Existing surcharge	Proposed surcharge
Rs.50 lacs to Rs.1 crore	10%	10%
Rs.1 crore to Rs.2 crores	15%	15%
Rs.2 crores to Rs.5 crores (excluding income u/s 115AD)	25%	25%
Above Rs.5 crores (excluding income u/s 115AD)	37%	37%
Above Rs.2 crores (including income u/s 115AD but not covered above)	25% or 37%	15%

Tax Rates – Individuals/HUF

Comments/ Observations:

- The proposed amendment takes care of anomaly in the existing rates where higher surcharge was levied @25%/37% in a case where income exceeded Rs.2/5 crores on account of occasional income in respect of capital gains and income of foreign institutional investors.

- As a consequence of proposed amendment, surcharge on capital gains under section 111A and 112A/income under section 115AD shall be levied @ 15%, irrespective of the slab in which the total income falls, as depicted in the example below:

Tax Rates – Individuals/HUF

Example:

(amounts in crores)

Particulars	Situation I	Situation II	Situation III
Total Income (excluding capital gains) [A]	1.5	4	5.5
Capital gains taxable under section 111A/112A [B]	1.5	1.5	1.5
Total Income (including capital gains) [C= A+B]	3.0	5.5	7.0
Surcharge on total income (excluding capital gains) [D]	**0.225** [1.5*15%]	**1** [4*25%]	**2.035** [5.5*37%]
Surcharge on capital gains taxable under section 111A/112A [E]	**0.225** [1.5*15%]	**0.225** [1.5*15%]	**0.225** [1.5*15%]
Total surcharge post- amendment [D+E]	**0.45**	**1.225**	**2.26**
Total surcharge pre-amendment	**0.75** [3*25%]	**2.035** [5.5*37%]	**2.59** [7*37%]

Tax Rates – Individuals/HUF

w.e.f. 01.04.2021

Income	Existing Slabs (A.Y. 2020-21)	Proposed Slabs (A.Y. 2021-22)
A) General (other than Senior citizens & Very senior citizens):		
Upto Rs.2,50,000*	NIL	NIL
Between Rs. 2,50,001 and Rs. 5,00,000*	5%	5%
Between Rs. 5,00,001 and Rs. 10,00,000	20%	20%
Between Rs. 10,00,001 and Rs. 50,00,000	30%	30%
Between Rs. 50,00,001 and Rs.1 crore	30%	30%
Between Rs.1,00,00,001 and Rs.2 crores	30%	30%
Between Rs.2,00,00,001 and Rs.5 crores (excluding income u/s 111A & 112A)	30%	30%
Above Rs.5 crores (excluding income u/s 111A & 112A)	30%	30%
Above Rs.2 crores (including income u/s 111A & 112A but not covered above)	30%	30%

Tax Rates – Individuals/HUF

w.e.f. 01.04.2021

Income	Existing Slabs (A.Y. 2020-21)	Proposed Slabs (A.Y. 2021-22)
B) Senior citizens - Resident (aged 60 years or above but less than 80 years):		
Upto Rs. 3,00,000*	NIL	NIL
Between Rs. 3,00,001 and Rs. 5,00,000*	5%	5%
Between Rs. 5,00,001 and Rs. 10,00,000	20%	20%
Between Rs. 10,00,001 and Rs. 50,00,000	30%	30%
Between Rs. 50,00,001 and Rs. 1 crore	30%	30%
Between Rs.1,00,00,001 and Rs.2 crores	30%	30%
Between Rs.2,00,00,001 and Rs.5 crores (excluding income u/s 111A & 112A)	30%	30%
Above Rs.5 crores (excluding income u/s 111A & 112A)	30%	30%
Above Rs.2 crores (including income u/s 111A & 112A but not covered above	30%	30%

Tax Rates – Individuals/HUF

w.e.f. 01.04.2021

Income	Existing Slabs (A.Y. 2020-21)	Proposed Slabs (A.Y. 2021-22)
C) Super Senior Citizen – Resident (aged 80 years or more)		
Upto Rs. 5,00,000	NIL	NIL
Between Rs. 5,00,001 and Rs. 10,00,000	20%	20%
Between Rs. 10,00,001 and Rs. 50,00,000	30%	30%
Between Rs. 50,00,001 and Rs. 1 crore	30%	30%
Between Rs.1,00,00,001 and Rs.2 crores	30%	30%
Between Rs.2,00,00,001 and Rs.5 crores (excluding income u/s 111A & 112A)	30%	30%
Above Rs.5 crores (excluding income u/s 111A & 112A)	30%	30%
Above Rs.2 crores (including income u/s 111A & 112A but not covered above)	30%	30%
*** NOTE: Rebate - maximum of Rs.12,500 from the tax payable would be admissible under section 87A of the Act to those individuals whose total income does not exceed Rs.5,00,000 p.a.**		

Section 115BAC - Incentive to Individuals/ HUF

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

- A new section 115BAC has been inserted w.e.f. AY 2021-22 which provides option to individuals/ HUF to pay tax at following concessional rates subject to satisfaction of conditions provided under sub-section 2:

Income	Normal Slabs	Concessional Slabs
Upto Rs.2,50,000	NIL	NIL
Between Rs. 2,50,001 and Rs. 5,00,000	5.2%	5.2%
Between Rs. 5,00,001 and Rs.7,50,000	20.80%	10.40%
Between Rs.7,50,001 and Rs. 10,00,000	20.80%	15.60%
Between Rs. 10,00,001 and Rs.12,50,000	31.20%	20.80%
Between Rs. 12,50,001 and Rs. 15,00,000	31.20%	26%
Above Rs.15,00,000	31.20%	31.20%

Section 115BAC - Incentive to Individuals/ HUF

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

Conditions for availing concessional rate of tax under section 115BAC(2)

❖ No exemption/deduction under following sections:

Section	Description
• Section 10(5)	Leave Travel Concession
• Section 10(13A)	House rent allowance
• Section 10(14)	Certain allowances not in the nature of perquisite within section 17(2)
• Section 10(17)	Allowances to MPs/MLAs
• Section 10(32)	Allowance for income of minor
• Section 10AA	Exemption for SEZ unit
• Section 16	Certain deductions from salaries
• Section 24(b)	Interest in respect of self-occupied or vacant house property treated as NIL
• Section 32(1)(iia)	Additional Depreciation

Section 115BAC - Incentive to Individuals/ HUF

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

Conditions for concessional rate of tax under Section 115BAC(2)

Section	Description
• Section 32AD	Investment Allowance
• Section 33AB	Deduction on account of tea, coffee and rubber development
• Section 33ABA	Site Restoration Fund
• Section 35	Various deduction for donations for or expenditure on scientific research
• Section 35AD	Expenditure on specified business
• Section 35CCC	Expenditure on agricultural extension project
• Section 57(iia)	Deduction in respect of family pension
• Chapter VI-A	Deduction under Chapter VI-A not allowable except section 80CCD(2)- Contribution to NPS or section 80JJAA- for additional employees

Section 115BAC - Incentive to Individuals/ HUF

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

- No set-off of carried forward loss/ depreciation if attributable to deductions/exemptions discussed above.
- No set-off of loss under head 'Income from House Property' with any other head.
- Loss/depreciation not set-off shall be deemed to have been given effect and cannot be claimed in subsequent years.
- No exemption or deduction of any allowance or perquisite under any other law for time being in force.
- The Memorandum proposes to carry out certain amendments in Rule 3 to retain exemption for following allowances under section 10(14):
  - Transport Allowance;
  - Conveyance Allowance;
  - Allowance to meet cost of travel;
  - Daily Allowance to employees

Section 115BAC - Incentive to Individuals/ HUF

Example:

(amounts in 000's)

Particulars	Example 1		Example 2	
	Existing Regime	Concessional Regime	Existing Regime	Concessional Regime
Total Income	900	900	1600	1600
Interest of Rs.200 claimed under section 24(b)	-	-	-	200
Deductions:				
• Section 80C	(150)	-	(150)	-
• Section 80D	-	-	(50)	-
• Section 80CCD(2)	-	-	(50)	(50)
Taxable Income	750	900	1350	1750
Computation of tax liability	**62.50**	**60.00**	**217.50**	**262.50**

In the new tax scheme, though it appears that the tax rates have been significantly reduced, however, there is no significant reduction in tax liability in the hands of the assessee as the same is either similar or more in some situations.

Section 115BAC - Incentive to Individuals/ HUF

Comments/Observations

- Though as per Memorandum explaining the Finance Bill, 2020, unabsorbed loss under the head ‘House Property’ can be carried forward as per existing law, sub-section (3) of proposed section specifically provides that loss referred to in clause (ii) of sub-section (2) (which covers all losses under the head ‘House Property’) shall be deemed to be given full effect to and shall not be allowed to be carried forward.

Section 115BAC - Incentive to Individuals/ HUF

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

❖ Concessional rate will not apply unless option is exercised in the form and manner as prescribed:

Particulars	Conditions
Person having business income	• On or before the due date under section 139(1) for furnishing the return of income. • The option should be exercised for any assessment year commencing on or after the 01.04.2021. • Option once exercised shall apply to subsequent assessment years.
Person not having any business income	• Can opt for benefit under this section alongwith the return of income furnished under section 139(1) of the Act

Section 115BAC - Incentive to Individuals/ HUF

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

- Benefit of concessional taxation under section 115BAC can be withdrawn by person having business income **only once** in the previous year other than the year in which it was exercised and such person shall never be eligible to exercise option under this section unless he ceases to have business income.

- Benefit of deduction u/s 80LA shall be available to a unit of individual/ HUF situated in International Financial Services Centre (IFSC)

- Individuals/ HUF availing benefit of lower tax rate under new provision of section 115BAC have been exempted from AMT and carry forward and set off of AMT credit under sections 115JC and 115JD of the Act

Concessional Tax Scheme for domestic companies u/s 115BAA/ 115BAB

[Clauses 51 & 52] **(w.e.f. 01.04.2020)**

- Sections 115BAA and 115BAB introduced vide Taxation Laws (Amendment) Act, 2019 provided option to certain domestic companies to pay tax at concessional rates.

- Earlier, companies opting for such concessional tax schemes were not allowed deduction under Chapter VI-A under the heading 'C- Deductions in respect of certain incomes' other than section 80JJAA of the Act. Deductions under heads other than 'Head- C' of Chapter VI-A were allowed.

- It is, now, proposed to withdraw deductions under all the head of Chapter VI-A, (e.g. deduction under section 80G under the heading 'B- Deductions in respect of certain payments').

- Further, it is proposed to allow deduction under section 80M in addition to section 80JJAA. Section 80M allows deduction of dividend received by a domestic company from any other domestic company to the extent of the dividend distributed by the first mentioned domestic company on or before the due date [i.e. one month prior to the date for furnishing the return of income u/s 139(1)]

Exemption withdrawal u/s 10(45)

[Clause 7] **(w.e.f. 01.04.2021)**

- Section 10(45) provides that any allowance/ perquisite, notified by Central Government, paid to serving/ retired Chairman or members of Union Public Service Commission shall not be included in total income.

- It is proposed to delete section 10(45) from the Act.

Section 115BAD - Incentive to resident co-operative societies

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

❖ A new section 115BAD inserted w.e.f. AY 2021-22 which provides option to resident co-operative society to pay tax at lower rate of 22% (plus applicable surcharge @10% and cess @4%) as opposed to normal tax rate of 10/20/30% (plus applicable surcharge and cess), provided the income is computed as under [section 115BAD(2)]-

i. without claiming exemption/ deduction:
   - u/s 10AA [SEZ units],
   - u/s 32(1)(iia) [additional depreciation qua new plant and machinery],
   - u/s 32AD [15% on new assets in undertaking set up in specified backward areas in Andhra Pradesh, Bihar, Telangana, and West Bengal]
   - u/s 33AB [specified percentage of amounts deposited with Tea/ Coffee/ Rubber Board]

Section 115BAD - Incentive to resident co-operative societies

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

- u/s 33ABA [specified percentage of amounts deposited in Site Restoration Account]
- u/s 35(1)(ii)/(iia), 35(2AA) [specified deduction for scientific research]
- u/s 35AD [expenditure on specified business]
- u/s 35CCC [expenditure on agricultural extension project]
- u/s 35CCD [expenditure on skill development project]
- under Part C of Chapter VIA except section 80JJAA of the Act (such as 80IA/ IB/ IC/ ID/ IE etc.)

ii. without set-off of any brought forward losses or depreciation to the extent such loss or depreciation relates to deductions mentioned above. Such losses would also not be allowed to be carried forward to subsequent years.

iii. after claiming depreciation other than additional depreciation u/s 32(1)(iia).

Section 115BAD - Incentive to resident co-operative societies

[Clauses 53, 57 & 58] **(w.e.f. 01.04.2021)**

- Benefit of lower rate under the aforesaid section can be exercised by the co-operative society from any year commencing from AY 2021-22 onwards.

- Benefit of deduction u/s 80LA shall be available to a unit of such society situated in International Financial Services Centre (IFSC).

- Such option is to be exercised in the prescribed manner, on or before due date of return u/s 139(1) for the year in which option is exercised.

- Option once exercised would be binding for subsequent years and cannot be withdrawn.

- Co-operative societies availing benefit of lower tax rate under new provisions of section 115BAD have been exempted from AMT and carry forward and set off of AMT credit under sections 115JC and 115JD of the Act.

PENALTY UNDER SECTION 271AAD

Introduction of section 271AAD

[Clause 98] **(w.e.f. 01.04.2020)**

- It is proposed to insert a new provision i.e. section 271AAD for imposing a penalty for false entry/omitted entry in the books of accounts of a taxpayer.

- The proposed section provides that, **during any proceeding under the Act** of a taxpayer, if there is (i) a false entry or (ii) an omission of any entry (which is relevant for computation of income) in the books of account of a taxpayer, then the penalty can be imposed – (i) on such taxpayer and (ii) on other person who caused the taxpayer in making such entry.

- Penalty under the aforesaid provision is without prejudice to any other provision of the Act.

Introduction of section 271AAD

[Clause 98] **(w.e.f. 01.04.2020)**

Comments/Observations:

- Amount of Penalty - Equivalent to the aggregate amount of the false or omitted entry on the person (300% of Tax)

- The term ‘false entry’ has been defined in an inclusive manner to include use or intention to use (a) forged or falsified documents such as a false invoice, or, in general, a false piece of documentary evidence, or (b) invoice in respect of which no actual goods or services have been provided (c) invoice received from a non-existent person.

- The Memorandum dilates intention behind insertion of the proposed section is to penalize taxpayers claiming fraudulent input tax credit under the Goods and Service Tax regime on the basis of fake invoices as well as the persons issuing the fake invoices to them.

- Scope of the section is, however, wide to include other transactions also.

Introduction of section 271AAD

[Clause 98] **(w.e.f. 01.04.2020)**

- The definition of false entry or omitted entry is similar definition of "misreporting of income' defined in section 270A, applicable for assessment orders passed for AY 2017-18 and onwards. The definition is reproduced hereunder:

> "(a) misrepresentation or suppression of facts;
> (b) failure to record investments in the books of account;
> (c) claim of expenditure not substantiated by any evidence;
> (d) recording of any false entry in the books of account;
> (e) failure to record any receipt in books of account having a bearing on total income"

Introduction of section 271AAD

[Clause 98] **(w.e.f. 01.04.2020)**

- Whether the assessing officer can impose penalty on both person through single order or the assessing officer has choice to impose penalty on one person?

- Section 1 of the Finance Bill prescribes the aforesaid penal provision to come into force on 1.4.2020 – Whether the said penalty shall be leviable for proceedings initiated after 1-4-2020 or relating to return of income for AY 2020-21?

Introduction of section 271AAD

[Clause 98] **(w.e.f. 01.04.2020)**

Illustrations

- While accomodation entry of share capital/loan, deemed as unexplained income under section 68 in the hands of taxpayer, penalty is imposed on such person u/s 271AAC, penalty under this section can be imposed on the other person/entry provider.

- Bogus purchase could be considered as false entry to be subjected to penalty under this section to be visited penalty in the hands of both the purchaser and entry provider

- Unaccounted sales could be considered as omitted entry which can be visited with penalty in the hands of both the seller and purchaser.

PROFITS & GAINS OF BUSINESS OR PROFESSION

Option to claim deduction of capital expenditure under section 35AD

[Clause 18] **(w.e.f. 01.04.2020)**

- Section 35AD(1) provides for 100% deduction of the capital expenditure incurred by a taxpayer for the purpose of certain prescribed businesses and on fulfilling the conditions contained therein.

- On a plain reading of section 35AD, the claim of deduction under the said section is mandatory and not optional.

- Section 35AD(4) bars deduction of such expenditure under any other provision of the Act. Consequently, depreciation under section 32 of the Act cannot be claimed on such expenditure.

Option to claim deduction of capital expenditure under section 35AD

[Clause 18] **(w.e.f. 01.04.2020)**

- The sections 115BAA and 115BAB introduced vide the Taxation Laws Amendment Act, 2019 provide for lower rate of taxation (i.e. 22%/15%) provided the deduction, interalia, under section 35AD is not claimed by the taxpayer.

- On a reading of sections 115BAA and 115BAB alongwith section 35AD of the Act, a possible view emerges that a taxpayer opting to be taxed under sections 115BAA and 115BAB would, although not be entitled to claim deduction under section 35AD, but by virtue of the provisions of section 35AD(4) would also be barred to claim depreciation under section 32 thereon.

- However, non-grant of depreciation claim is not the intention of section 115BAA and 115BAB

Option to claim deduction of capital expenditure under section 35AD

[Clause 18] **(w.e.f. 01.04.2020)**

- In order to remove ambiguity and provide clarity, the proposed amendment grants taxpayer an option to claim deduction under section 35AD(1). Consequentially, amendment has also been proposed in the section 35AD(4), so as to be applicable only where the deduction under section 35AD(1) has actually been claimed by a taxpayer.

Comments/ Observations:

- The proposed amendment does not provide that a taxpayer can opt out of claiming benefit under section 35AD only in cases where it claims benefit under sections 115BAA or 115BAB. Hence, in cases where the taxpayer has losses in the initial year(s), it may be possible even for such assessee to shift the claim of deduction from section 35AD to section 32 of the Act.

Allowability of expenses disallowed u/s. 43B to insurance companies on payment basis

[Clause 104] **(w.e.f. 01.04.2020)**

- The computation of profits and gains of an insurance company (other than a life insurance company) is governed by the provisions of section 44 read with rule 5 of the First Schedule to the Act.

- Rule 5 provides that the profit as disclosed by the annual accounts prepared in accordance with the relevant regulations applicable to Insurance companies (Insurance Act, 1938 and IRADA, 1999) is to be taken as the total income subject to the prescribed adjustments.

- One such prescribed adjustment is that any expenditure debited to the profit and loss account which is not admissible under the provisions of section 30 to 43B shall be added back.

Allowability of expenses disallowed u/s. 43B to insurance companies on payment basis

[Clause 104] **(w.e.f. 01.04.2020)**

- On a literal reading of the Rule 5, it does not specifically provide for allowing deduction of a sum disallowed under section 43B in the financial year in which the payment is made. This view has also been adopted by the Mumbai Tribunal in the decision of **New India Assurance: 113 ITD 131** wherein it was held that that clause (a) of rule 5 talks of the 'additions' to be made in respect of disallowances under section 30 to 43B. It does not provide for granting any deduction.

- In order to overcome the hardship of permanent disallowance of a legitimate expenditure to a Insurance company, the Rule 5 is proposed to be amended to allow deduction of an expenditure already disallowed under section 43B.

Rationalisation of provisions relating to tax audit in certain cases

[Clauses 7,8,10,14,15,16,19,20,23,24,26,35,37,39,45,56,57,63, 66, 77 & 78] (w.e.f. 01.04.2020)

- Section 44AB of the Act requires every person, carrying on business with total sales, turnover or gross receipts exceeding one crore and every person carrying on profession with gross receipts exceeding 50 lakh rupees, in the previous year to get his accounts audited and furnish such audit report by the due date as specified under section 139(1).

Rationalisation of provisions relating to tax audit in certain cases

- In order to minimize cumbersome compliance requirements on SME, the existing threshold limit of total sales, turnover or gross receipts of Rs.1 crore, for a person carrying on business has been proposed to be increased by 5 times to Rs.5 crore subject to the following conditions:
  - aggregate of all receipts in cash during the previous year does not exceed five per cent of total receipts; and
  - aggregate of all payments in cash during the previous year does not exceed five per cent of total payments.

- Earlier, threshold limits provided under sections 194A, 194C, 194H, 194I, 194J and 206C for deduction/ collection of tax at source were aligned with the turnover/ total sales/ receipts limits specified under section 44AB of the Act. Amendment is now proposed in the above sections to clarify that for the purposes of TDS/ TCS in the case of individual or HUF carrying on business, the threshold limit shall be Rs. 1 crore and Rs.50 lakhs in the case of profession.

Rationalisation of provisions relating to tax audit in certain cases

- Section 139(1) of the Act, provides due date for furnishing a return of income for :
  - A company;
  - A person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 (this Act) or under any law, or
  - A working partner of a firm whose accounts are required to be audited under this Act or under any law;

  to be 30th September of the relevant assessment year.

- The aforesaid due date for filing the return of income has been proposed to be amended to 31st October of the relevant assessment year.

- Further, amendment has been proposed so that there would be no distinction between working and non-working partner with respect to due date for filing return of income under section 139(1).

Rationalisation of provisions relating to tax audit in certain cases

- Further, in order to facilitate pre-filling of returns in case of assessees having income from business or profession, it is required that the audit report under section 44AB of the Act may be furnished by the said assessees at least one month prior to the due date of filing of return of income.

- Similar amendments in sections 10, 10A, 12A, 32AB, 33AB, 33ABA, 35D, 35E, 44DA, 50B, 80-IA, 80-IB, 80JJAA, 92F, 115JB, 115JC and 115VW are proposed to amend the due dates for filing prescribed reports like Form No.56F, Form No.3AAA, Transfer Pricing report(s), MAT certificate, etc., to one month prior to due date specified in section 139(1) of the Act.

Allowing carry forward of losses and depreciation in certain amalgamation

[Clause 31] **(w.e.f. 01.04.2020)**

- Section 72AA of the Act presently provides for carry forward of accumulated losses and unabsorbed depreciation in case of amalgamation of banking company with any other banking institution subject to conditions provided therein.

- It is proposed to substitute the said section so as to extend the benefit of carry forward of accumulated losses and unabsorbed depreciation in case of amalgamation of –
  - ✓ one or more corresponding new banks with any other corresponding bank; or
  - ✓ one or more Government company(ies) with any other Government company,

  under the scheme brought in by Central Government under the applicable provisions, as the case may be.

TAX INCENTIVES / DEDUCTIONS

Incentive to Abu Dhabi Investment Authority & Sovereign Wealth Fund

[Clauses 7] **(w.e.f. 01.04.2021)**

Amendment in section 10

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

- With a view to provide investment of sovereign wealth funds, new clause (23FE) is proposed to be inserted in section 10 to exempt from tax any income of a "specified person", in the nature of dividend, interest, or long -term capital gains arising from investment made in India, provided the investment is –
  - ✓ made on or before March 31, 2024;
  - ✓ held for atleast 3 years;
  - ✓ made in company/ enterprise carrying on the business of developing and/or operating and maintaining any infrastructure facility as defined in Explanation to clause(i) of section 80-IA(4) or such business as notified by Central Government.

Incentive to ADIA & Sovereign Wealth Fund

[Clauses 7] **(w.e.f. 01.04.2021)**

- "Specified person" is defined in Explanation to mean –
  - a wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA), resident of UAE making investment out of Government funds;
  - sovereign wealth fund which :
    - ✓ is wholly owned & controlled by Government of foreign county;
    - ✓ is set up & regulated under the law of foreign country ;
    - ✓ credits its earnings to designated Government account;
    - ✓ provides no benefit out of its earnings to any private person;
    - ✓ upon dissolution, transfers asset to Government of foreign country;
    - ✓ does not undertake any commercial activity;
    - ✓ is notified by Central Government.

Incentive to Indian Strategic Petroleum Reserves Limited

[Clause 7] **(w.e.f. 01.04.2020)**

Amendment in section 10

- It is proposed to insert new clause (48C) in section 10 to provide exemption from tax to income accruing or arising to Indian Strategic Petroleum Reserves Limited, being wholly owned subsidiary of Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, which –
  - ✓ arises as the result of arrangement of replenishment of crude oil stored in its storage facility in pursuance to directions of Central Government; and
  - ✓ replenishes crude oil in the storage facility within 3 years from the end of the financial year in which the same was removed for the first time.

Time Limit extended for approval of Affordable Housing Project

[Clause 38] **(w.e.f. 01.04.2021)**

Amendment to section 80-IBA

- The provisions of section 80-IBA of the Act presently provide, *inter alia*, for 100% deduction of the profits and gains derived from the business of developing and building affordable housing projects subject to conditions prescribed therein.
- One of the condition is that the project should be approved by the competent authority during the period beginning from June 1, 2016 to March 31, 2020.
- In order to boost the supply of affordable house, the period of approval of the project by the competent authority is proposed to be **extended to March 31, 2021**.

Section 80EEA – Extension of time limit for sanctioning of loan for affordable housing

[Clause 32] **(w.e.f. 01.04.2021)**

- Presently, section 80EEA provides for deduction of interest on loan borrowed for purpose of acquisition of residential house property upto Rs.1,50,000, subject to certain conditions prescribed therein.

- One of the conditions is that loan should be sanctioned by the financial institution during the period beginning from April 1, 2019 to March 31, 2020

- In order to continue promoting purchase of affordable housing and to incentivize first time buyers to invest in residential property, the period of sanctioning of loan is proposed to be **extended to March 31, 2021.**

Section 115BAB- Incentive extended to generation of electricity

[Clauses 52] **(w.e.f. 01.04.2020)**

- Under section 115BAB of the Act, inserted by Taxation Laws (Amendment) Act, 2019, any newly formed manufacturing company shall have the option to pay tax at concessional rate of 15% (plus applicable surcharge and cess) if such company is set-up and registered on or after 1st October, 2019 and commences manufacturing activity upto 31st March, 2023 and fulfil the conditions prescribed therein.

- Explanation to clause (b) of sub-section (2) thereof provides that the business of manufacture or production of any article or thing **shall not include business** of,—
  (i) development of computer software in any form or in any media;
  (ii) mining;
  (iii) conversion of marble blocks or similar items into slabs;
  (iv) bottling of gas into cylinder;
  (v) printing of books or production of cinematograph film; or
  (vi) any other business notified by Central Government.

Section 115BAB- Incentive extended to generation of electricity

[Clauses 52] **(w.e.f. 01.04.2020)**

- It is proposed to extend the benefit of concessional rate under section 115BAB to business of generation of electricity.

Comments / observations

- The issue as to whether generation of electricity amounts to "manufacture or production of an article or thing" had been a matter of debate in Courts/ Tribunal in the context of allowability of additional depreciation under 32(1)(iia) of the Act.
- In the case of power, the end product is "power/ electricity", which, though intangible, is definitely different from the inputs. The primary inputs might be coal, water, sunlight, etc., depending upon the nature of process used, but the final product is a commercially identifiable distinctive product, i.e. "electricity". In view thereof, generation of power/ electricity tantamount to manufacture or production of an article or thing.

Section 115BAB- Incentive extended to generation of electricity

[Clauses 52] **(w.e.f. 01.04.2020)**

Comments / observations

- The Courts/ Tribunals in the following decisions have consistently held that the process of generation of electricity is akin to manufacture of an article or thing :
  - ✓ PCIT vs. NTPC Sail Power Co. (P.) Ltd : 103 taxmann.com 398 (Delhi)
  - ✓ CIT vs. Atlas Export Enterprise: 373 ITR 414 (Mad)
  - ✓ Pr. CIT vs. IDMC Ltd.: 393 ITR 441 (Guj)
  - ✓ N.T.P.C. Ltd. vs. DCIT: 54 SOT 177 (Del)
  - ✓ Giriraj Enterprises vs. DCIT: 163 ITD 1 (Pune) (TM)
  - ✓ Sanwaria Agroils Ltd. vs. ACIT: 165 ITD 604 (Indore)
  - ✓ ACIT vs. Mangalam Cement Ltd.: 185 TTJ 97 (Jaipur)

- In order to provide clarity, it is proposed to expressly provide that that assessees engaged in the generation of power shall be entitled to benefit under section 115BAB of the Act.

TAXATION OF NON-RESIDENTS

Modifying residential status

[Clause 4] **(w.e.f. 01.04.2021)**

- Section 4 read with section 5 of the Act provides that global income of a person resident in India shall be liable to tax in India, but incase of RNOR income accruing and arising outside India unless from a business controlled in or a profession setup in India, is not included

- Section 6(1) of the Act provides for situations in which an individual shall be resident in India in a previous year

- Clause (c) thereof provides that the individual shall be Indian resident in a year if he-

  - has been in India for an overall period of 365 days or more within four years preceding that year, and

  - is in India for an overall period of 60 days or more in that year

Modifying residential status

- Clause (b) of Explanation 1 of said sub-section provides that the 60 day threshold provided in section 6(1)(c) of the Act stands extended to 182 days if:

  - an Indian citizen or a person of Indian origin who being outside India comes on a visit to India in any previous year

- The Finance Bill 2020 has proposed that the 182 day period prescribed in clause (b) of Explanation 1 of section 6(1) be reduced to 120 days

Modifying residential status

- Clause (a) to section 6(6) of the Act provides that a person shall be treated as a “not ordinarily resident” if the person is an individual who:
  - has been non-resident in nine out of the ten previous years preceding that year, or
  - has during the seven previous years preceding that year been in India for an overall period of 729 days or less
- Clause (b) to section 6(6) of the Act thereof contains similar provision for the HUF

Modifying residential status

- The Finance Bill, 2020 proposes to substitute section 6(6) of the Act with the following:

> *"(6) A person is said to be "not ordinarily resident" in India in any previous year, if such person is —*
>
> *(a) an individual who has been a non-resident in India in seven out of the ten previous years preceding that year; or*
>
> *(b) a Hindu undivided family whose manager has been a non-resident in India in seven out of the ten previous years preceding that year."*

Modifying residential status – Taxation of Stateless Persons

- The issue of stateless persons has been bothering the tax world for quite some time since
  - it is possible for an individual to arrange his affairs in such a fashion that he is not liable to tax in any country or jurisdiction during a year
- Such arrangement is typically employed by high net worth individuals to avoid paying taxes to any country/ jurisdiction on income they earn
  - This is not intended by the tax laws particularly in light of the global tax environment where avenues for double non-taxation are being systematically closed

Modifying residential status – Taxation of Stateless Persons

- Accordingly, Finance Bill 2020, proposes to introduce sub-section (1A) to section 6 of the Act to provide that

> *"(1A) Notwithstanding anything contained in clause (1), an* ***individual, being a citizen of India, shall be deemed to be resident in India*** *in any previous year, if he is* ***not liable to tax in any other country*** *or territory by reason of his domicile or residence or any other criteria of similar nature"*

Modifying residential status – Taxation of Stateless Persons

Comments

- Sub-section (1A) to section 6 of the Act is aimed at people who dabble in 'tax arbitrage' by living in different countries without becoming residents of any country

- The term "liable to tax" has not been defined in the Act. The Supreme Court in the case of **UOI v. Azadi Bachao Andolan (263 ITR 706)** while deciphering the meaning of the said term observed as under:

  - test for "liability for taxation" is not to be determined on the basis of an exemption granted in respect of a particular source of income

Modifying residential status – Taxation of Stateless Persons

Comments

- "Liability of tax" is not the same as "payment of tax" since
  - "liability to tax" is a legal situation (subjective tax liability) and "payment of tax" is a fiscal fact (objective tax liability)

- Merely because exemption has been granted from income-tax in respect of particular source of income, it cannot be postulated that the taxable entity is not "liable to tax"

- Once a person is "liable to tax" in a contracting state (State R), he is eligible for claiming treaty benefits in state S, without evaluating whether a particular source of income (in respect of which treaty protection is sought in State S) is taxable in State R

Modifying residential status – Taxation of Stateless Persons

Comments

- The proposal seeks to tax income which is not liable to tax in any country outside India

  - Accordingly, proposed amendment under section 6(1A) will not apply in cases where foreign income of the non-resident is taxed even at 1 percent

- For instance, countries in Middle East such as UAE do not levy personal income tax. Global income of a person, being a citizen of India shall be subject to tax in India in view of the proposed sub-section (1A) to section 6

  - In such a scenario, the person may claim benefit/ exemption under the India-UAE tax treaty subject to him being treated as a resident under Article 4 of the treaty

Modifying residential status – Taxation of Stateless Persons

❖ **Comments**

❖ The proposed amendment created an impression that those Indians who are bonafide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India

❖ To ally the fear of nonresident Indians, CBDT has issued a Press Release dated 02.02.2020 which clarifies that:

- In case of an Indian citizen who becomes deemed resident of India under the proposed section 6(1A), income earned outside India by him shall not be taxed in India unless it is "**derived from an Indian business or profession**".

❖ To give effect to the aforesaid press release, necessary amendments will need to be made in section 5 of the Act

❖ The term "**derived from an Indian business or profession**" has not been defined in the Act

Comments

Availability of treaty benefit

- For instance, Article 4 of the India-UAE tax treaty provides that a person shall be said to be resident in UAE if
  - he resides in that country for more than 183 days

- Article 14 (Independent personal services) of the India UAE Tax Treaty provides that
  - Income derived by a UAE resident in respect of professional services shall be taxable only in UAE, except in the following circumstances when such income may also be taxed in India:

    - If he has a fixed base in India or
    - If he stays in India for more than 183 days

Comments

Availability of treaty benefit

- Article 15 (Dependent personal services) of the India UAE Tax Treaty provides that
  - remuneration derived by a UAE resident in respect of an employment shall be taxable only in UAE unless
    - the employment is exercised in India; and
    - the employee is present in India for more than 183 days; and
    - The employer paying the remuneration is not a resident of India

Comments

Example 1

- If Mr. X, a citizen of India, is working in UAE and consequently is a resident of the said country. Mr. X has obtained tax residency certificate from UAE tax authorities
- Since UAE does not levy tax on the income earned by the individuals, global income of such person shall be subject to tax in India in view of the proposed sub-section (1A) to section 6 of the Act
- In such a scenario, Mr. X may claim benefit/ exemption under the India-UAE tax treaty wherein Article 4 provides that a person shall be said to be resident in UAE if he resides in that country for more than 183 days
- In case of dual residency, he will be treated as a resident of the country where his economic and personal interests are situated

Comments

Example 2

- Mr. X, a citizen of India, travels all over the year in various tax havens such as UAE, the Bahamas, the Cayman Islands, etc. in such a way that he avoids becoming the resident of any of country

- In such a scenario, Mr. X may be unable to obtain the tax residency certificates in any of such jurisdictions and benefit of treaty may not be available

- In such a scenario, entire global income of such person shall be taxed in India under the proposed sub-section (1A) to section 6 of the Act

Comments

- The proposed amendment created an impression that those Indians who are bonafide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India

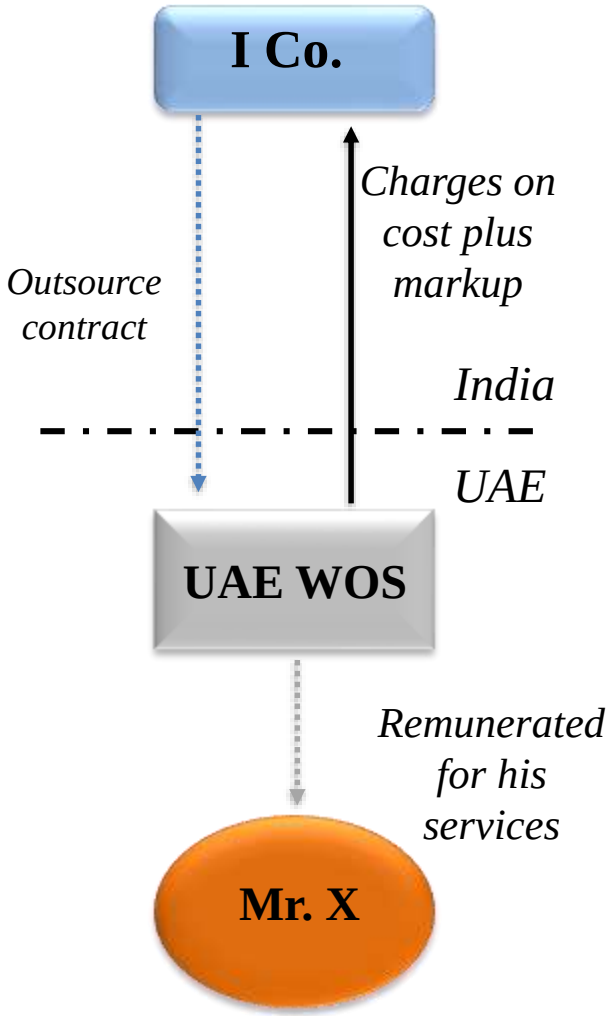
- To ally the fear of nonresident Indians, CBDT has issued a Press Release dated 02.02.2020 which clarifies that:
  - In case of an Indian citizen who becomes deemed resident of India under the proposed section 6(1A), income earned outside India by him shall not be taxed in India unless it is "**derived from an Indian business or profession**".

- The term "**derived from an Indian business or profession**" has not been defined in the Act

Comments

Example 3

- An Indian company establishes a WOS in Dubai for outsourcing the contracts to the said WOS
- Mr. X, an Indian citizen, is a resident of UAE and is employed by the WOS
- Mr. X receives remuneration from the UAE WOS and the said WOS charges fee from the Indian company on a cost plus markup basis
- In such a scenario, can the Indian tax authorities allege that income earned by Mr. X is liable to tax in India since the said income has been derived from an Indian business



Deferment of applicability of Significant Economic Presence

[Clause 5] **(w.e.f. 01.04.2022)**

- OECD BEPS Action Plan 1 recommended that countries may inter-alia introduce a new nexus rule based on the concept of "significant economic presence" (SEP) in their domestic laws to prevent BEPS

- Section 9(1)(i) of the Act provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India shall be deemed to accrue or arise in India.

- Clause (a) of Explanation 1 to section 9(1)(i) of the Act provides that in case of a business of which all the operations are not carried out in India,
  - the income of the business deemed to accrue or arise in India shall be only such part of the income as is reasonably attributable to operations carried out in India

Deferment of applicability of Significant Economic Presence

[Clause 5] **(w.e.f. 01.04.2022)**

- Accordingly, Finance Act, 2018 inserted 'Explanation 2A to clause (i) of sub-section (1) of section 9 of the Act to expand the scope of "business connection" to include "SEP"

- Explanation 2A defined "SEP" to mean:

  - any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if

  - the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or

Deferment of applicability of Significant Economic Presence

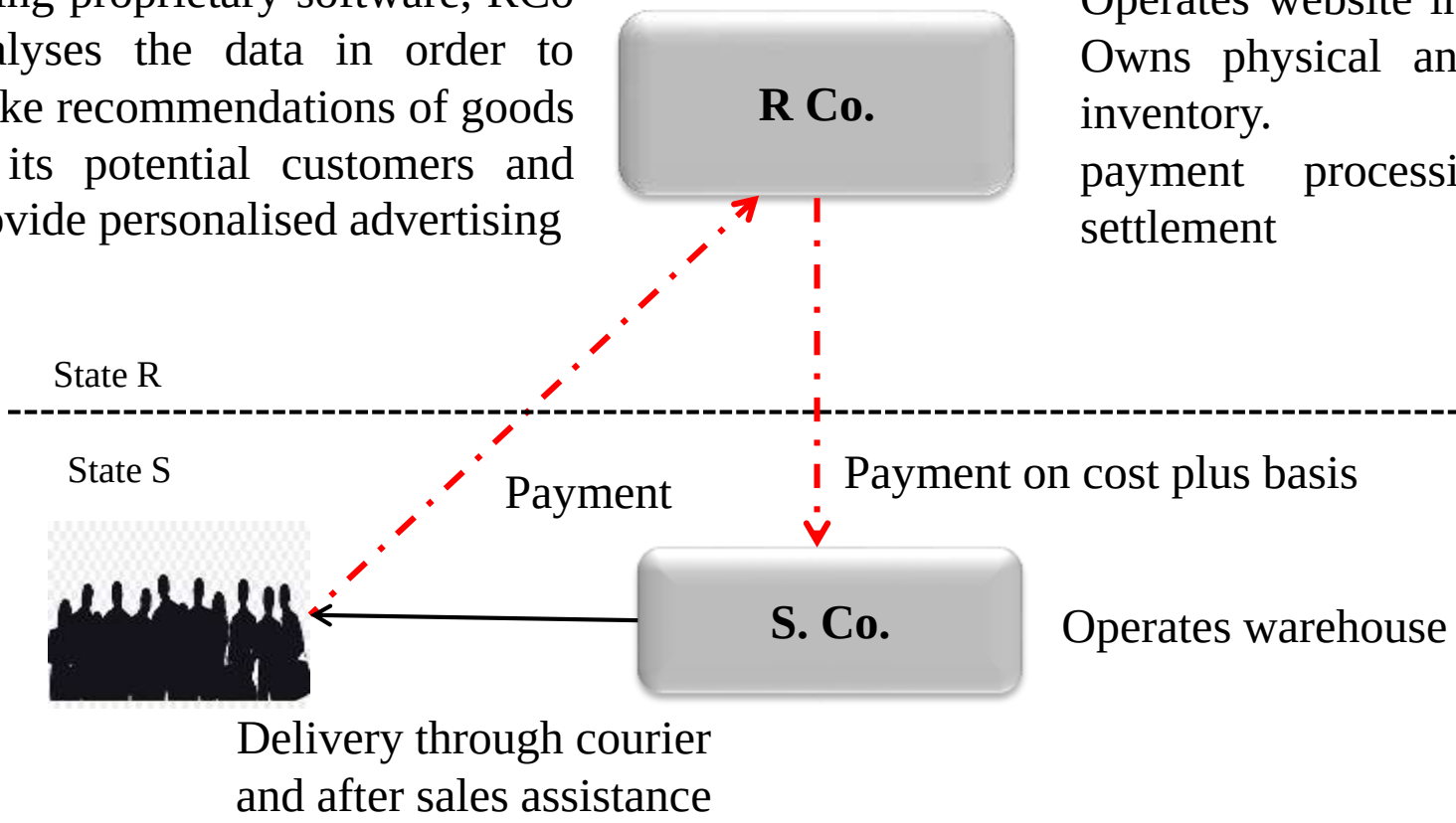
[Clause 5] **(w.e.f. 01.04.2022)**

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

❖ **The objective of the said amendment was to bring firms like Google, Facebook and Netflix, Amazon USA, Uber Inc. etc. with huge consumer base in India into the tax net.**

Example - Online retailer

Using proprietary software, RCo analyses the data in order to make recommendations of goods to its potential customers and provide personalised advertising



RCo may be subject to tax under the Act if it fulfils revenue/ user threshold criteria prsecribed in Explanation 3A. RCo may claim exemption under the tax treaty in the absence of a permanent establishment (PE) of RCo in State S

Deferment of applicability of Significant Economic Presence

[Clause 5] **(w.e.f. 01.04.2022)**

- Since the business having business connection in India on account of SEP is specifically covered under Explanation 2A, clause (a) of Explanation 1 of section 9(1)(i) proposed to be amended by Finance Bill, 2020 as under:

  - *"in the case of a business* ***other than the business having business connection in India on account of significant economic presence*** *of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India"*

Deferment of applicability of Significant Economic Presence

[Clause 5] **(w.e.f. 01.04.2022)**

- For determining SEP of a non-resident in India, threshold for the aggregate amount of payments arising from the specified transactions and for the number of users have not yet been prescribed in the Rules

- G20-OECD report ascribing the threshold for the aggregate amount of payments arising from the specified transactions and for the number of users is expected by the end of December 2020, therefore,

  - Finance Bill, 2020 proposes to defer the applicability of Explanation 2A to section 9(1)(i) of the Act dealing with the 'specified economic presence' to assessment year 2022-23

Expanding the scope of income attributable to the operations carried out in India

[Clause 5 and 103] **(w.e.f. 01.04.2021)**

- BEPS Action Plan 1 on *"Addressing the tax challenges of the digital economy"* recommended that income of a foreign company may be taxed on the basis of location of the customers which can be determined in following manner:
  - Customers can be identified by country of their residence and/or the country in which consumption occurs
  - Customers location can also be identified through freight forwarders, other customs documentation, tracking of Internet Protocol (IP) and card billing addresses

Expanding the scope of income attributable to the operations carried out in India

- In line with the BEPS Action Plan 1 recommendations, Finance Bill, 2020, proposes to insert 'Explanation 3A to clause (i) of sub-section (1) of section 9 of the Act to further expand the scope of "business connection" as follows:

> *"Explanation 3A.—For the removal of doubts, it is hereby declared that the income attributable to the operations carried out in India, as referred to in Explanation 1, shall include income from—*
>
> *(i) such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;*

Expanding the scope of income attributable to the operations carried out in India

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

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

- After Explanation 3A, following proviso shall be inserted with effect from the 01.04.2022:

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

Expanding the scope of income attributable to the operations carried out in India

- Finance Bill, 2020 proposes to tax foreign entities which are earning revenue in the following scenarios:

  - Income from advertisement (displayed by companies such as Google, Facebook on their platform) which is targeted to a customer who resides in India

  - Income from sale of data collected from a person who resides in India or whose IP address is in India

    - Such revenue is earned by data brokers, data analytics firms (such as Spokeo, ZoomInfo, White Pages, PeopleSmart, Intelius, PeopleFinders) which sell user data and customised market research to third parties

Expanding the scope of income attributable to the operations carried out in India

- Income from sale of goods or services using data collected from a person who resides in India or whose IP address is in India

  - Online retailers who are digitally selling goods or services (using the platform of companies such as Amazon USA and Alibaba, China) in India but are not paying any taxes in India since they do not have any physical presence in India

  - Explanation 3A is proposed to be inserted to tax those online retailers who may not meet the revenue/ user threshold stated in Explanation 2A so as to constitute SEP

Expanding the scope of income attributable to the operations carried out in India

- For instance, if an online retailer in USA uses the platform of Amazon USA to sells goods in India, then,

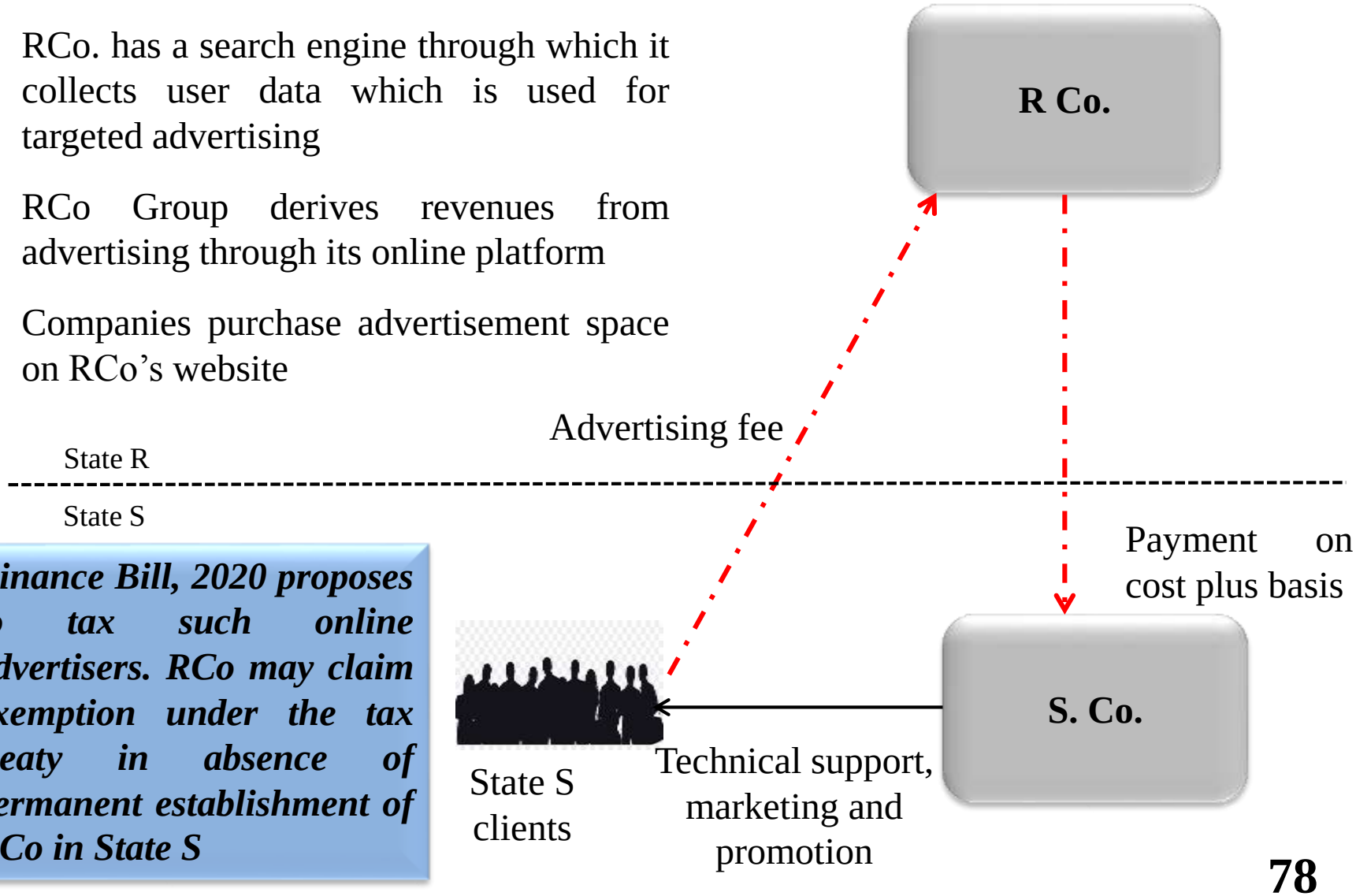
  - assuming Amazon USA has a SEP in India since it meets the user/ revenue threshold criteria which may be prescribed in Explanation 2A

  - Online retailer may not constitute SEP since it does not meet the user/ revenue threshold criteria

  - The profits of such online retailer would be taxed in proposed Explanation 3A and not under Explanation 2A

Example – Internet advertising

- RCo. has a search engine through which it collects user data which is used for targeted advertising
- RCo Group derives revenues from advertising through its online platform
- Companies purchase advertisement space on RCo's website



Finance Bill, 2020 proposes to tax such online advertisers. RCo may claim exemption under the tax treaty in absence of permanent establishment of RCo in State S

Expanding the scope of income attributable to the operations carried out in India

- Proviso to Explanation 3A proposes that with effect from the 01.04.2022, Explanation 3A shall also apply to the income attributable to transactions or activities wherein SEP is constituted

- The intent of the said proviso, it seems, is to tax transactions which do not meet the user/ revenue threshold criteria prescribed in Explanation 2A

- For instance, if a company which earns advertising revenue from India does not meet the user/ revenue threshold criteria, then

  - Advertising revenue earned by such company would be taxable in India in terms of Explanation 3A

Expanding the scope of income attributable to the operations carried out in India

- Further, Finance Bill, 2020 seeks to amend section 295 of the Act so as to empower the Board to make rules for prescribing the manner of computing the income in relation to:

  - operations carried out in India by a non-resident (effective from 01.04.2021) [Explanation 3A]; and

  - transaction or activities of a non-resident (effective from 01.04.2022) [Explanation 2A]

Issue

- Whether the proposed amendment is applicable from retrospective effect?
  - Finance Bill clearly specifies that the amendment is applicable from assessment year 2021-22.
  - However, the proposed amendment states that "*For the removal of doubts, it is hereby declared that*" which may give a handle to the Revenue to argue that the amendment is clarificatory in nature and is applicable to years preceding assessment year 2021-22
  - Since the amendment seeks to significantly expand the scope of business connection, therefore, it cannot have a retrospective operation [Reference: CIT vs. Vatika Township Pvt. Ltd.: 367 ITR 466 (SC)]

Indirect transfer provisions

[Clause 5] **(w.e.f. 01.04.2020)**

- Finance Act, 2012 inserted Explanation 5 to section 9(1)(i) to tax in India gains arising on transfer of shares/ interest in a foreign company which results in an indirect transfer of underlying Indian assets.

- After the introduction of Explanation 5 to section 9(1)(i) of the Act, many investment funds had expressed concerns that owing to the extant indirect transfer provisions, multi-tier non-resident investment funds investing in India, suffer multiple taxation of the same income:

  - at the level of the fund in India in the form of short-term capital gains/ business income; and

  - the upper level of investment in the fund chain on subsequent redemption or buy-back.

Indirect transfer provisions

- Accordingly, to ally the fears of the non resident investment funds, second proviso to Explanation 5 of section 9(1)(i) of the Act was inserted vide Finance Act, 2017 to grant exemption to:
  - Category I and Category II Foreign Portfolio Investors (FPIs) under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 from the indirect transfer provisions, with retrospective effect from 01.04.2015
- Vide Gazette Notification No. SEBI/LAD-NRO/GN/2019/36, SEBI has notified Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [SEBI (FPI) Regulations, 2019] and repealed the SEBI (FPI) Regulations, 2014.

Indirect transfer provisions

- The primary difference between the said two regulations is that:
  - SEBI has done away with the broad basing criteria for the purposes of categorization of portfolios; and
  - The existing three categories of FPIs have been merged into two and category III has been abolished, so that FPIs now are classified as either category I or category II.
    - The list of entities eligible for category I registration has been expanded to include certain regulated funds previously able to register either under category II or category III

Indirect transfer provisions

- In order to synchronise the indirect transfer provisions with SEBI (FPI) Regulations, 2019, Finance Bill 2020, proposes to:
  - amend second proviso to Explanation 5 of section 9(1)(i) of the Act to provide that the said proviso shall be applicable prior to repeal of SEBI (FPI) Regulations, 2014
  - Insert third proviso to Explanation 5 of section 9(1)(i) of the Act shall exempt Category I FPIs under the SEBI (FPI) Regulations, 2019 from indirect transfer provisions. The said proviso is extracted below:

"Provided also that nothing contained in this Explanation shall apply to an asset or a capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, made under the Securities and Exchange Board of India Act, 1992."

Comments

- Foreign investors wishing to make portfolio investments in Indian capital markets must obtain a foreign portfolio investor (FPI) license from SEBI

- As per SEBI (FPI) Regulations, 2019, Category I FPIs include the following:

  - Government and government-related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by government and government-related investor(s);

  - Pension funds and university funds;

  - Appropriately regulated entities such as insurance entities, banks, asset management companies, investment managers, investment advisors, portfolio managers, broker dealers and swap dealers;

Comments

- Financial Action Task Force (FATF) member countries':
  - Appropriately regulated funds;
  - Unregulated funds whose investment manager is appropriately regulated and registered as a category I foreign portfolio investor, provided that the investment manager undertakes all necessary responsibilities on behalf of the unregulated fund; or
  - Endowments of universities that have existed for more than five years;

- An entity
  - whose investment manager is from an FATF member country and registered as a category I FPI or
  - that is at least 75% owned, directly or indirectly by another entity, provided that entity is from an FATF member country

Comments

- Category II FPIs include the following:
  - Appropriately regulated funds not eligible as category I FPIs;
  - Endowments and foundations;
  - Charitable organizations;
  - Corporate bodies;
  - Family offices;
  - Individuals;
  - Appropriately regulated entities investing on behalf of clients, that meet the conditions specified by the SEBI; and
  - Unregulated funds in the form of limited partnerships and trusts

- As per SEBI (FPI) Regulations, 2019, Offshore derivative instruments (ODIs), such as participatory notes or total return swaps, can only be issued by category I FPIs to entities eligible for registration as category I FPIs.

Comments

- Presently, Cayman Islands, Mauritius and Taiwan are not FATF member countries and would not qualify as Category I FPIs which is proposed to be exempted from indirect transfer provisions by Finance Bill, 2020

- In other words, FPIs investing from Mauritius and Cayman Islands are proposed to be subjected to indirect transfer provisions

- Investments made prior to 01.04.2017, shall continue to be grandfathered under the Indo Mauritius Tax Treaty

Rationalizing the definition of ‘royalty’

[Clause 5] **(w.e.f. 01.04.2021)**

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

Rationalizing the definition of ‘royalty’

[Clause 5] **(w.e.f. 01.04.2021)**

- The Kolkata High Court in the case of **DIT vs. v. ATN International Ltd: 72 taxmann.com 353** held that:
  - Only an amount paid in consideration of exploitation of any copyright of the foreign party would have taken the character of royalty.

  - However, payment made for broadcasting/ exhibiting television programmes produced by a foreign party were not taxable as royalty under the DTAA since there is no exploitation of any copyright

Rationalizing the definition of ‘royalty’

[Clause 5] **(w.e.f. 01.04.2021)**

- Courts have in the following cases held that amount received by non-resident for granting exclusive rights of distribution of cinematographic films is not taxable as royalty under the Act:
  - ACIT v. Aishwaraya Arts Creations (P.) Ltd.: 53 taxmann.com 221 (Hyd. ITAT)
  - ACIT v. Mansih Dutt: 12 taxmann.com 50 (Mum ITAT)
  - B4U International Holdings Ltd. v. DCIT: 148 TTJ 237 (Mum ITAT)
  - Indo Overseas Films v. ITO: 81 taxmann.com 378 (Chennai)
- Courts have in the following cases held that the aforesaid amount is not taxable as royalty under the Act as well as DTAA:
  - CIT v. MSM Satellite (Singapore) Pte. Ltd.: 265 Taxman 376 (Bom. HC)
  - Warner Bros. Distributing Inc. v. Addnl. DIT: 44 taxmann.com 237 (Mum. ITAT)
  - ADIT v. Warner Brother Pictures Inc.: 49 SOT 438 (Mum. ITAT)

Rationalizing the definition of ‘royalty’

[Clause 5] **(w.e.f. 01.04.2021)**

- Finance Bill, 2020 proposes to amend Explanation 2 to section 9(1)(vi) of the Act to provide that:
  - consideration for the sale, distribution or exhibition of cinematographic films is taxable as royalty under section 9(1)(vi) of the Act

- Even though the said payments are sought to be taxed under the Act, exemption may still be available under the tax treaty

Aligning the purpose of DTAA with MLI

[Clause 41 & 42] **(w.e.f. 01.04.2021)**

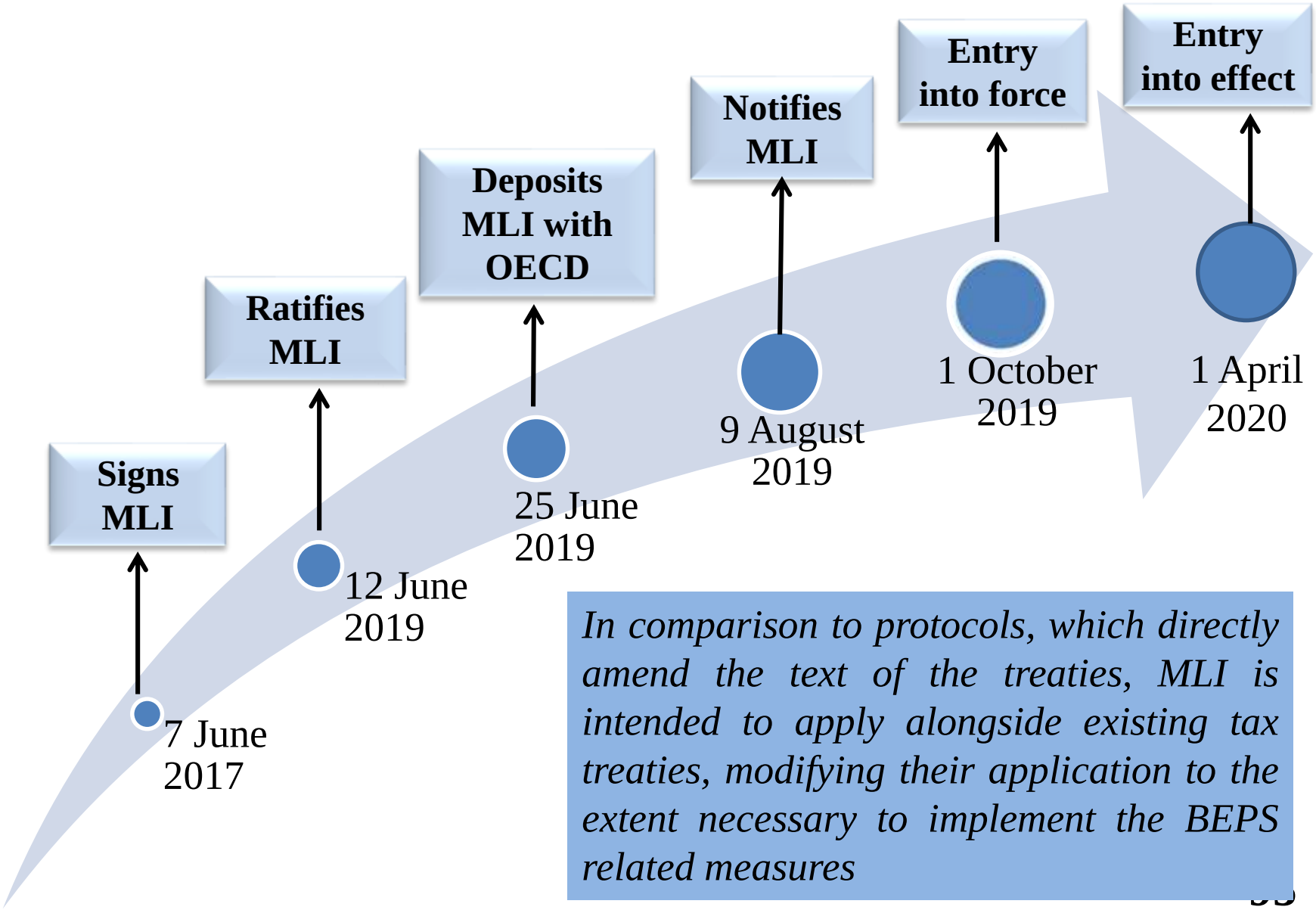
- G20 countries mandated OECD to come out with recommendations to prevent Base Erosion and Profit Shifting ('BEPS')

- The OECD released the final BEPS Action Plans in October 2015 to:
  - Prevent double taxation
  - Prevent no or low taxation by shifting of profits
  - Ensure fair share of tax revenues

- Carrying out large scale changes on a treaty-by-treaty basis would have been time consuming and may have led to inconsistencies across treaties due to the politics and vagaries of bilateral negotiations

- Action Plan 15 recognized the Multilateral Instrument (MLI) as an innovative mechanism aimed at bringing necessary changes without amending or re-negotiating network of existing tax treaties

Aligning the purpose of DTAA with MLI



In comparison to protocols, which directly amend the text of the treaties, MLI is intended to apply alongside existing tax treaties, modifying their application to the extent necessary to implement the BEPS related measures

Aligning the purpose of DTAA with MLI

- MLI consists of 39 Articles. Article 6 of the MLI explains the purpose of the Covered Tax Agreement (CTA) and states that
  - *"Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions)"*

- Article 6 is a minimum standard that has to be adopted by the parties signing the MLI. In the MLI deposited with OECD, India is silent on its position in respect of Article 6.
  - Being minimum standard, such MLI provision to apply to all its 93 CTAs

Aligning the purpose of DTAA with MLI

- Section 90 of the Act empowers the Central Government to enter into Double Taxation Avoidance Agreement (DTAA) with foreign countries for:

(a) granting relief in respect of —

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

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

Aligning the purpose of DTAA with MLI

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

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

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

Aligning the purpose of DTAA with MLI

- Finance Bill, 2020 has now proposed to amend clause (b) of sub-section (1) of section 90 of the Act so as to provide that:

  - the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India for avoidance of double taxation of income under the Act and under the corresponding law in force in that country or specified territory, as the case may be, ***without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of any other country or territory)***

Comments

- India has recently published synthesized texts of certain amended DTAAs that have entered into force, namely with
  - Singapore, UK, Poland, Brazil, Australia, Finland, Austria, Ireland etc. wherein Article 6 of the MLI has been incorporated in the preamble of the respective DTAA
- By making the proposed amendment in section 90 and 90A of the Act, India has merely sought to incorporate/ reinforce stance of Article 6 of the MLI in the Act
- MLI will not impact a) India-USA tax treaty since USA has not signed MLI and b) Indian tax treaties with China, Germany and Mauritius since Indian tax treaties are not notified by said countries

Comments

- The law laid down by the Supreme Court in the case of **Azadi Bachao Andolan: 263 ITR 706:**
  - Upholding the validity of the **CBDT Circular No. 789 of 2000** and that anti treaty shopping provision cannot in absence of specific provisions, be read into a treaty, may not hold water in view of the aforesaid proposed amendment
- It may, however, be argued that since Mauritius has not notified India as a CTA, treaty shopping arrangements are still available under the India-Mauritius tax treaty subject to satisfaction of the LOB clause.
- The Indian tax authorities may invoke provisions of GAAR to deny treaty benefits under the aforesaid case

Exemption of certain income of wholly owned subsidiary of ADIA and Sovereign Wealth Fund

[Clause 7] **(w.e.f. 01.04.2021)**

- In order to promote investment, clause (23FE) to section 10 is proposed to be inserted to provide exemption in respect of income in the nature of dividend, interest or long-term capital gains, arising from investment made by specified person in India

- The investment is required to be made up to 31st March, 2024 and is required to be held for a period of at least 3 years

- The investment must also be in a company or enterprise carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility (as per section 80-IA) or such other business notified by the Central Government in this behalf

Exemption of certain income of wholly owned subsidiary of ADIA and Sovereign Wealth Fund

[Clause 7] **(w.e.f. 01.04.2021)**

❖ In this regard, the "specified persons" shall include:

- Wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA), which is a resident of UAE and makes investment out of the funds owned by the Government of UAE

- Sovereign Wealth Fund, satisfying the following conditions:
  - ✓ wholly owned and controlled, directly or indirectly, by Government of a foreign country;
  - ✓ set up and regulated under the law of the foreign country;
  - ✓ earnings are credited either to the account of the Government of the foreign country or to any other account designated by that Government such that no portion of the earnings inures any benefit to any private person;

Exemption of certain income of wholly owned subsidiary of ADIA and Sovereign Wealth Fund

[Clause 7] **(w.e.f. 01.04.2021)**

- ✓ asset vest in the Government of the foreign country upon dissolution;
- ✓ does not undertake any commercial activity whether within or outside India; and
- ✓ notified by the Central Government in the Official Gazette for this purpose

Exemption of certain income of Indian Strategic Petroleum Reserves Limited (ISPRL)

[Clause 7] **(w.e.f. 01.04.2020)**

- Section 10(48A) was inserted in order to encourage foreign companies to store their crude oil in India and to build strategic oil reserves

- The said provision was further amended to extend the benefit of tax exemption in respect of income from left over stock of crude oil, even if
  - the agreement or arrangement is terminated in accordance with the terms mentioned therein

Exemption of certain income of Indian Strategic Petroleum Reserves Limited (ISPRL)

[Clause 7] **(w.e.f. 01.04.2020)**

- It is now proposed to provide exemption to
  - any income accruing or arising in the case of ISPRL, being a wholly owned subsidiary of Oil Industry Development Board

- However, it is imperative that the crude oil is replenished in the storage facility within three years from the end of the financial year in which the crude oil was removed from the storage facility for the first time

Offshore funds' exemption from "business connection"

[Clause 6] **(w.e.f. 01.04.2020)**

- In order to facilitate location of fund managers of offshore funds in India, a special regime was introduced by inserting section 9A in the Act

- It provides that presence of eligible fund manager in India will not constitute 'business connection' of the offshore fund, subject to fulfillment of certain eligibility conditions

- One of the conditions for eligibility of the fund provided that the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund

Offshore funds' exemption from "business connection"

[Clause 6] **(w.e.f. 01.04.2020)**

- It was observed that the eligible fund manager (resident in India) is required to invest his money so as to create a positive reputation

- Therefore, it is proposed to relax this condition by providing that for the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during first three years up to twenty-five crore rupees, shall not be accounted for

- Similarly, another condition for eligibility of the fund requires that the monthly average of the corpus of the fund shall not be less than one hundred crore rupees, except where the fund has been established or incorporated in the previous year

Offshore funds' exemption from "business connection"

[Clause 6] **(w.e.f. 01.04.2020)**

- In such cases, the corpus of fund shall not be less than one hundred crore rupees at the end of a period of six months from the last day of the month of its establishment/ incorporation, or at the end of such previous year, whichever is later

- This condition does not apply in a case where the fund has been wound up

- However, it is observed that the period for fulfilling the requirement of monthly average of the corpus of one hundred crore rupees ranges from six months to eighteen months, depending on the date of establishment/ incorporation of the fund, resulting in anomaly

Offshore funds' exemption from "business connection"

[Clause 6] **(w.e.f. 01.04.2020)**

- As an effort by the Government to check the same, it is proposed that
  - the condition of monthly average of the corpus of the fund, to be at one hundred crore rupees, shall be fulfilled within twelve months from the last day of the month of the establishment or incorporation of the fund

Tax on dividends, royalty and technical service fees in the case of foreign companies

[Clause 47] **(w.e.f. 01.04.2020)**

- Section 115A of the Act provides for the determination of tax for a non-resident whose total income consists of:
  - (a) certain dividend or interest income;
  - (b) royalty or fees for technical services (FTS) received from the Government or Indian concern in pursuance of an agreement made after 31.03.1976, and which is not effectively connected with a PE, if any, of the non-resident in India

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

Tax on dividends, royalty and technical service fees in the case of foreign companies

[Clause 47] **(w.e.f. 01.04.2020)**

- It is seen that the relief in terms of not filing the return of income has not been extended to non-residents whose total income consists only of the income by way of royalty or FTS of the nature as mentioned in point (b) above

- In this regard, it is proposed to amend section 115A of the Act in order to provide that a non-resident, shall not be required to file his or its return of income under section of section 139(1) of the Act if the total income consists of only

  - dividend or interest income as referred to in clause (a),
  - or royalty or FTS income of the nature specified in clause (b) and the TDS on such income has been duly deducted as per the provisions of Chapter XVII-B of the Act

REMOVAL OF DIVIDEND DISTRIBUTION TAX (DDT)

Removal of Dividend Distribution Tax

[Clauses 7,30,40,47,48,49,50,54,55,59,60,62] (w.e.f. 01.04.2021)

- Section 115-O of the Act provides for additional income-tax chargeable @ 15% (plus surcharge and cess) on dividends declared, distributed or paid by domestic companies, commonly known as Dividend Distribution Tax ("DDT").
- In terms of sub-section (4) of section 115-O
  - such DDT is treated as final payment of tax in respect of distributed profits and
  - income by way of dividend referred to in section 115-O is exempt in the hands of shareholders in terms of section 10(34) of the Act.

Removal of Dividend Distribution Tax

[Clauses 7,30,40,47,48,49,50,54,55,59,60,62] **(w.e.f. 01.04.2021)**

- Similarly, section 115R mandates specified companies and Mutual Funds to pay additional income on amount of income distributed by them to its unit holders, which income is exempt in the recipient's hands in terms of section 10(35) of the Act.
- Memorandum to Finance Bill, 2020 recognizes that dividend is income in the hands of shareholders and therefore, incidence of tax should be on the recipient.

Removal of Dividend Distribution Tax

[Clauses 7,30,40,47,48,49,50,54,55,59,60,62] **(w.e.f. 01.04.2021)**

- Accordingly, provisions of sections 115-O and section 115R of the Act requiring levy of tax on distribution of dividend/ income from units proposed to be amended to apply only with respect to distribution made on or before 31.03.2020.
- Simultaneous amendment proposed in sections 10(34) & 10(35) of the Act to remove exemption in the hands of recipients of aforementioned distributed income received on or after 01.04.2020.
- Similarly, section 115BBDA providing for taxation of dividend income in excess of Rs.10 lakhs in the hands of specified assessee proposed to be amended to apply only to profits distributed by a domestic company on or before 31.03.2020.

Removal of Dividend Distribution Tax

[Clauses 7,30,40,47,48,49,50,54,55,59,60,62] **(w.e.f. 01.04.2021)**

- Consequential amendments proposed in sections 10(23D), 57, 115A, 115AC, 115ACA, 115AD and 115C to remove reference of sections 115R/ 115-O of the Act and section 115UA etc.
- Proposed to introduce new section 80M providing for removal of cascading effect by allowing deduction in respect of amount of dividend received by a domestic company from another domestic company, not exceeding dividend distributed by first mentioned company on or before the due date.
- For the purposes of newly inserted section 80M, due date has been defined to mean the date one month prior to the date for furnishing return of income under section 139(1) of the Act.

Removal of Dividend Distribution Tax

[Clauses 7,30,40,47,48,49,50,54,55,59,60,62] **(w.e.f. 01.04.2021)**

Comments/ observations

- The non-resident shareholders would now be paying tax on the dividend income as per the rate prescribed under the relevant DTAAs, which may vary from 5%, 10% or 15%, as opposed to taxation as DDT under section 115-O of the Act @ 20.36%.
- The amendments shall entitle foreign investors to claim credit in their country of residence of tax paid in India in respect of dividend distributed by domestic companies, thereby providing much needed relief as under the existing regime, non-availability of credit of DDT to most of the foreign investors in their home country resulted in reduction of rate of return on equity capital for them.

Removal of Dividend Distribution Tax

[Clauses 7,30,40,47,48,49,50,54,55,59,60,62] **(w.e.f. 01.04.2021)**

Comments/ observations

- With dividend income now proposed to be taxed in the hands of shareholders, disallowances made by the assessing officers under section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 shall drastically reduce.
- However, the amendment proposed in section 57 of the Act to restrict the allowability of expenses against dividend income to 20% of such income, that too only in respect of expenses incurred on account of interest, may result in litigation inasmuch as allowability of various expenses such as Portfolio Management Charges, salaries payable to treasury team and other related expenses, Demat charges, etc. relatable to earning of dividend income shall be disputed.

TDS on income from dividends & units of a mutual fund

[Clauses 74,80,81,85,86,87,88] **(w.e.f. 01.04.2020)**

- It is proposed to omit third proviso to section 194 of the Act to bring dividend within the ambit of tax deduction at a proposed rate of 10% where aggregate dividend distributed by a company in any previous year to a shareholder exceeds Rs.5,000.
- Amendment proposed in section 194LBA to provide for tax deduction by business trust on dividend income paid to unit holder.
- It is, further, proposed to introduce new section 194K providing for tax deduction at source qua income received by a resident in respect of units of a mutual fund.

TDS on income from dividend & units of a mutual fund

[Clauses 74,80,81,85,86,87,88] **(w.e.f. 01.04.2020)**

- Second proviso to section 195 providing for exclusion of payments in the nature of dividend made to non-residents which have been subjected to DDT under section 115-O of the Act from the rigours of TDS, proposed to be omitted.
- Consequential amendments have also been proposed under sections 196A, 196C and 196D of the Act to make TDS provisions applicable to payments referred to under the said sections.

TRANSFER PRICING AND LIMITATION ON INTEREST DEDUCTION

Advance Pricing Agreement (APA)

[Clause 44] **(w.e.f. 01.04.2020)**

- APA is an agreement between a taxpayer and a taxing authority for determining an appropriate transfer pricing methodology in advance for a set of controlled transactions over a fixed period of time

- Sections 92CC and 92CD were inserted in the Act by Finance Act 2012 to provide a framework for Advance Pricing Agreement ('APA') which were binding on the Government as well as the taxpayer

- Roll back provision was also provided so that an APA could also be applied to international transaction undertaken in previous four years in specific circumstances

Advance Pricing Agreement (APA)

[Clause 44] **(w.e.f. 01.04.2020)**

- In terms of sub-section (1) of section 92CC of the Act, the Board may enter into an APA with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to international transactions to be entered

- Clause (i) of Sub-section (1) of Section 9 of the Act provides that income of a non-resident attributable to operations carried out in India shall be regarded as income deemed to accrue or arise in India

Advance Pricing Agreement (APA)

[Clause 44] **(w.e.f. 01.04.2020)**

- Section 92CC(1) is proposed to be amended to provide that an APA can be obtained for determination of income deemed to accrue or arise in the hands of a non-resident from business connection in India in terms of clause (i) of sub-section (1) of section 9

- The above amendment provides for determination of income / profit attributable to a business connection or Permanent Establishment by way of an APA

SAFE HARBOUR RULES

[Clause 43] **(w.e.f. 01.04.2020)**

- Section 92CB contains the safe Harbour provisions for determination of arms length price under section 92C or 92CA

- The present safe harbour rates are as under:
  - IT/IT enabled services -17%-18%
  - KPO services -18-24%
  - receipt of low value added intra group services, not exceeding Rs. 10 crores - maximum mark up of 5%
  - Provision of contract R&D services - 24%

SAFE HARBOUR RULES

[Clause 43] **(w.e.f. 01.04.2020)**

- Clause (1) of Section 92CB of the Act is proposed to be amended to expand its scope to the determination of income deemed to accrue or arise in the hands of a non-resident from business connection in India in terms of clause (i) of sub-section (1) of section 9

- The rates prescribed under the safe harbor regulations shall be applicable for determination of income deemed to accrue or arise in the hands of the non-resident

Section 94B – Deduction of interest u/s 94B

[Clause 46] **(w.e.f. 01.04.2021)**

- Adopting the recommendations of OECD's BEPS Action Plan 4, section 94B was inserted in the Act providing for deduction of 'excess interest' while computing the taxable income of a taxpayer

- 'Excess interest' is defined to mean the amount of total interest paid or payable by the taxpayer in excess of 30% of EBITDA or interest paid or payable by the taxpayer to associated enterprises, whichever is less

Section 94B – Deduction of interest u/s 94B

[Clause 46] **(w.e.f. 01.04.2021)**

- Section 92A inter alia deems two enterprises to be AEs, if during the previous year, loan advanced by one enterprise is 50% or more of the book value of the total assets of other enterprise

- Subsection (1A) is inserted in section 94B to provide that sub section (1) of section 94B shall not apply to interest paid in respect of debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking.

Section 92F – Reduction in time for filing Form 3CEB

[Clause 46] **(w.e.f. 01.04.2021)**

- Section 92E provides for filing report, obtained from a Chartered Accountant in form 3CEB, by a person who has entered into an international transaction or specified domestic transaction

- Clause (aa) of Explanation (2) to section 139(1) provides that the due date for filing return in case of assessee required to furnish report in form 3CEB shall be 30th day of November

- Clause (iv) of Section 92F is amended to provide that the due date for filing the report in form 3CEB shall be one month prior to the due date for furnishing the return of income u/s 139(1)

AMENDMENTS RELATING TO ASSESSMENT / APPEAL PROCEDURES

Expansion of scope of E-Assessment Scheme

[Clause 69] **(w.e.f. 01.04.2020)**

- Sub-sections (3A) to (3C) to section 143 were inserted by the Finance Act, 2018 to empower the Government to issue a scheme for implementing faceless assessments, pursuant to which the E-assessment Scheme, 2019 was notified by CBDT on 12.09.2019.

- It is proposed to amend sub-section (3A) of section 143 of the Act to provide that in addition to regular assessment cases under section 143(3), a scheme may be issued for carrying out best judgement assessment under section section 144 of the Act.

- Sub-section (3B) is further proposed to be amended to extend the sunset date within which Central Government may issue any direction for implementation of scheme, from existing 31st March, 2020 to 31st March, 2022.

Amendments in section 144C

[Clause 70] **(w.e.f. 01.04.2020)**

Amendment in sub-section (1)

- Section 144C of the Act provides that in case of an eligible assessee, viz., foreign companies and any person in whose case transfer pricing adjustment has been made under section 92CA(3), the AO is first required to forward a draft assessment order to the assessee, if he proposes to make any variation in **the income or loss returned** which is prejudicial to the interest of such assessee. Such eligible assessee, with respect to such variation shall have an option to file objection before the Dispute Resolution Panel ('DRP'), or file acceptance before the AO. In the latter case, the AO would be required to pass a final assessment order, against which appeal would lie before the CIT(A).

- Section 144C(1) is proposed to be amended to omit the words "the income or loss returned".

Amendment in sub-section (15)

- It is further proposed to expand the scope of section 144C by amending the definition of "eligible assessee" as per sub-section (15) to include **all other non-residents assessees, in addition to a foreign company**.

Amendments in section 144C

[Clause 70] **(w.e.f. 01.04.2020)**

Comments / Observations

- Recently, Mumbai Bench of ITAT, in the case of Mausmi SA Investments LLC vs. ACIT (International Taxation) [ITA No. 7026/Mum/2018] **quashed the assessment order** passed by AO holding that the provisions of section 144C were wrongly invoked in case of assessee (a foreign company), **absent any variation in the returned income** which is prejudicial to the interests of the assessee. **In that case, the assessment was completed after re-characterizing the interest income returned by the assessee, without varying the amount of income.**

- Similar view was adopted by Chennai Tribunal in Regen Renewable Energy Generation Global Limited vs. DCIT: 153/Chny/2018 and Mosbacher India LLC vs. Addl CIT: 183 TTJ 1, as well as Pune Tribunal in DCIT vs. Magna International Inc: ITA No. 2098/Pun/2016.

Amendments in section 144C

[Clause 70] **(w.e.f. 01.04.2020)**

- Section 144C(1) is proposed to be amended to omit the words "the income or loss returned". As a result, all cases where any variation (qualitative/ quantitative) prejudicial to an eligible assessee is proposed to be made by AO, shall be covered under the scope of section 144C. The said amendment would overrule the aforesaid judgements rendered by various benches of the Tribunal and extend the scope of section 144C to cases where there is mere re-characterization of income returned by the assessee.

- In several cases involving assessment of foreign companies, the assessing officers merely re-characterize royalty and fees for technical services income as business income by holding that the foreign company has a permanent establishment in India. In such cases, the assessing officer used to pass a draft assessment order, validity of which was being challenged by the assessees on the ground that there is no variation in the income and therefore provisions of section 144C does not apply.

Amendments in section 144C

[Clause 70] **(w.e.f. 01.04.2020)**

- In order to put to rest this controversy, Legislature has now amended the provisions and consequently, a draft assessment order passed in cases where there is no variation in the returned income would be a valid order.

- The amendment in sub-section (15) would overrule the decision of Delhi High Court in the case of ESPN Star Sports Mauritius S.N.C. ET Compagnie v. Union of India: 388 ITR 383, wherein the Court quashed the draft as well as final assessment orders passed by the AO holding that the assessee, a foreign partnership firm was not an eligible assessee in terms of section 144C(15).

- It was held likewise in the case of Maquet Holdings B.V. & Co. KG v. DCIT: ITA No.2572/Mum./2017.

New Scheme of E-appeals

[Clause 95] **(w.e.f. 01.04.2020)**

- In order to further the reforms initiated by the Department to eliminate human interface from the system, and to impart greater efficiency, transparency and accountability, it is proposed to amend the existing provisions of section 250 by inserting sub-section (6A) enabling the Central Government to notify an e-appeal scheme for conducting the first appellate proceedings electronically.

- The aforesaid objective is proposed to be achieved by:
  a) eliminating interface between the CIT(A) and the taxpayer to the extent technologically feasible;
  b) optimizing utilization of the resources;
  c) introducing a team-based appellate system with dynamic jurisdiction

New Scheme of E-appeals

[Clause 95] **(w.e.f. 01.04.2020)**

- Sub-section (6B) provides that the Central Government for the purpose of giving effect to the new e-appeal scheme, may by notification in Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall apply with such exceptions, modifications and adaptations as may be specified in the notification.
- Every notification issued under sub-section (6A) and (6B) by the Central Government must be laid before the Parliament.
- Such notification is required to be issued on or before 31.03.2022.

Comments/ Observations:

- An arrangement akin to the concept of faceless assessments may be adopted to conduct first appellate proceedings.

New Scheme of E-appeals

[Clause 95] **(w.e.f. 01.04.2020)**

- Substantial training and attitudinal change of the appellate authorities would be required particularly where no occasion of explaining the case is given to the assessee in case of electronic appeals.
- The provision to provide opportunity to the taxpayer to seek personal hearing to make submissions/ present their case before the appellate authorities in case adverse inference is proposed to be drawn, shall be imperative.
- Whether denial of personal hearing would be violative of sub-sections (1) to (3) of section 250 which mandates issuance of notice for finalization of a day and place of hearing, right of representation by assessee and AO, etc.?

Providing check on survey operations

[Clause 65] **(w.e.f. 01.04.2020)**

- As per provisions of section 133A of the Act, an income-tax authority is empowered to conduct survey at the business premises of the assessee within his jurisdiction.

- To prevent possible misuse of such powers, a proviso was interested below sub-section (6) to provide that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey without prior approval of the Joint Director or the Joint Commissioner, as the case may be.

Providing check on survey operations

- To further prevent possible misuse of powers, aforesaid proviso to section 133A(6) is proposed to be amended, by providing that:
  - in a case **where the information has been received from the prescribed authority**, no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be; and
  - **in any other case**, no income-tax authority below the rank of Commissioner or Director, shall conduct any survey under the said section without prior approval of the Commissioner or the Director, as the case may be.

Providing check on survey operations

Comments/ Observations:

- The proposed amendment refrains the income tax authority below the rank of Director or Commissioner, in case no information has been received from the prescribed authority, to exercise the powers to carry out survey operations without prior approval of the Commissioner or the Director, as the case may be.

- Presently, receipt or possession of “information” is a condition precedent to carry out search and not survey. As a consequence of this amendment, in all cases (other than cases where “information” is received) prior approval of Commissioner/Director shall be required.

Providing check on survey operations

- "Information" must be specific, definite and authentic. It shouldn't just be a rumor or gossip or hunch

- Mere knowledge about huge investment in house or expenditure on lavish marriage/functions not "information" [refer L.R. Gupta: 194 ITR 32(Del.) SLP dismissed CA 891/ 93 dated 10.8.98]

- Report about roaring practice or charging high rates from customers and about standard of living not "information" [refer Dr. Nand Lal Tahiliani: 170 ITR 592 (All.) SLP dismissed 172 ITR 627]

- Mere information from CBI/Police that assessee possess money, not valid basis [refer Ajit Jain: 242 ITR 302 (Del) affirmed in 260 ITR 80 (SC)]

Clarity on stay by ITAT

[Clause 97] **(w.e.f. 01.04.2020)**

- The existing provisions of **section 254**, inter-alia, **regulates the powers of ITAT to grant stay from recovery of demand** for a maximum period of 180 days in any proceedings against the order of the Commissioner (Appeals). Where the appeal is not disposed of, stay can be extended such that the aggregate of the periods originally allowed and the period so extended shall not, in any case, exceed 365 days, provided that the ITAT is satisfied that the delay is not attributable to the assessee.

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

Clarity on stay by ITAT

- Likewise, it is proposed to substitute second proviso in sub-section (2A) of section 254 to provide that **extension of stay can be granted by ITAT**, on an application made by the assessee, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. **The total stay granted by ITAT cannot exceed 365 days.**

Comments/ Observations:

- The proposed amendment makes it mandatory for the assessee seeking stay before the ITAT to either deposit or furnish a security of an amount equivalent to atleast 20% of the demand raised.

Clarity on stay by ITAT

- ITAT has **inherent appellate powers of** granting stay of demand, so as to prevent appeal if successful from being rendered nugatory [Refer: **ITO v. M. K. Mohammed Kunhi: 71 ITR 815 (SC)]**

- Presently, **principles governing grant of stay of demand before lower authorities** is governed by following:

  - Instruction No. 1914 dated 2/12/93 [236 CTR (St) 17]
  - Circular dtd 1st December, 2009 (Board's Letter F.No. 404/ 10/ 2009 -ITCC, dt. 1st Dec, 2009) [236 CTR (St) 17]
  - Office Memorandum F.No.404/72/93-ITCC, dated 29.02.2016 read with memorandum- F.NO.404/72/93-ITCC, dated 31.7.2017

Clarity on stay by ITAT

- In terms of the aforesaid, during pendency of appeal before CIT(A):
  - **AO is bound to grant stay on payment of 20% of** the disputed demand except in certain specified exceptional circumstances
  - **Pr. CIT has powers to grant stay on payment of lower amount in justified cases**, including cases where addition on the same issue has been deleted by appellate authorities or the decision of the SC or jurisdictional HC is in favour of the assessee [Also refer: Maruti Suzuki India Ltd v. DCIT : 347 ITR 43(Del.)]

- **The proposed amendment, curtails and, in a way, interferes with the inherent appellate jurisdiction of the Tribunal** to grant stay of demand even in meritorious/ deserving cases and puts in stringent condition of minimum payment of 20% of demand.

Clarity on stay by ITAT

- In the following cases, **insistence on payment of 20% of the demand has been held to be not mandatory:**

  - Pr. CIT & Ors. Vs. LG Electronics India (P) Ltd: 303 CTR 649 (SC)
  - Charishma Hotels(P) Ltd. vs. ITO & Ors: 305 CTR 621(Kar)
  - GMV Projects & Systems vs. Asstt.CIT & Anr: 305 CTR 680 (Mad)
  - Samms Juke Box. V. Asstt.CIT: 409 ITR 33(Mad)
  - Bhupendra Murji Shah V. DCIT: 305 CTR 88 (Bom)
  - Flipkart India Private Limited vs ACIT: 396 ITR 551 (Kar)

- **Aforesaid judicial discretion is conspicuous by its absence in** the proposed amendment, making it mandatory for the Tribunal to insist upon payment of 20% of demand.

Clarity on stay by ITAT

- Further, the **nature of security to** be furnished has not been defined and shall accordingly even include cash security, bank guarantee, etc [Refer: Mrs. R. Mani Goyal v. CIT 217 ITR 641 (All.)]

- Having regard to aforesaid, **the proposed amendment is susceptible to judicial review by the High Court/ Supreme Court**

- In **Pepsi Foods (P) Ltd.** V. ACIT: [2015] 376 ITR 87 (Del) [SLP dismissed (2017) 246 Taxman 223] **struck down amendment in third proviso to section 254(2A) taking** away power of the Tribunal to extend stay beyond 365 days even if delay in disposal of appeal is not attributable to assessee

Clarity on stay by ITAT

- Following questions thus arise:
  - Whether the scope of judicial discretion conferred on the ITAT can be curtailed to the extent, even lower than that of AO/CIT?
  - Whether the proposed amendment would also apply to applications seeking extension of stay after 01.04.2020?

Provision for e-penalty

[Clause 100] **(w.e.f. 01.04.2020)**

- It is proposed to insert a new sub-section (2A) in section 274 whereunder the Central Government may notify an e-penalty scheme so as to impart greater efficiency, transparency and accountability while imposing penalty by,—
  - eliminating the interface between the AO and the assessee in the course of proceedings to the extent technologically feasible;
  - optimising utilisation of the resources through economies of scale and functional specialisation;
  - introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

Provision for e-penalty

- The e-penalty scheme is expected to be launched on the lines of E-assessment Scheme-2019.

- It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

- Such directions shall be issued on or before 31st March, 2022.

Provision for e-penalty

Comments/ Observations:

- The aforesaid scheme of e-penalty is in line with the intent of the government to eliminate human interface and an extension to the E-assessment Scheme-2019, whereby the requirement to physically visit the AO is eliminated to impart greater efficiency, transparency and accountability.

- The proposed insertion also seeks to utilise artificial intelligence in the penalty proceedings for reducing wastage of resources viz. papers, fuel, time and effort involved.

Insertion of Taxpayer's Charter in the Act

[Clause 64] **(w.e.f. 01.04.2020)**

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

Comments/ Observations:

- With the intent to further fairness and efficiency in tax administration to promote ease of living and ease of doing business, an attempt is being made to give confidence to the taxpayers by issuing a Charter.

- The Charter is likely to provide an overview of the rights and obligations of the taxpayers and the aims and principles of the Income tax department.

Insertion of Taxpayer's Charter in the Act

- The Taxpayer's Charter appears to be an extension of the Citizen Charter of the Income Tax Department declaring its vision, mission and standards of service delivery to promote awareness amongst the citizens.

- The aim of the Charter is that of nurturing the relationship of mutual trust and respect between tax department and the taxpayers.

- The Charter as a tool of behavioral economics is expected to serve as a guiding light to the tax department in bringing about a change in mindset to prevent instances of harassment and increase compliance to tax laws.

- With this, India shall become only the fourth country in the world to have a Taxpayer's Charter.

Verification of Return of Income

[Clause 67] **(w.e.f. 01.04.2020)**

- Clause (c) of section 140 of the Act provides that in case of a company, return of income shall be verified by the Managing Director ('MD'). In case there is no MD or where MD is unable to verify due to unavoidable reasons, director is given power to verify the same.

- It is, further, provided in the said clause that in case of a company in whose case application for insolvency resolution process has been admitted by the Adjudicating Authority ('AA') under IBC, 2016, the return has to be verified by the insolvency professional appointed by such AA.

- Clause (cd) of section 140 provides that in case of LLP, the return has to be verified by the designated partner of the LLP or any partner in case there is no designated partner or designated partner is unable to verify due to unavoidable reasons.

Verification of Return of Income

- It is proposed to amend clauses (c) and (cd) of section 140 of the Act so as to enable any other persons, as may be prescribed by the CBDT to verify the return of income in the cases of a company and LLP.

Section 288 – Appearance by Authorized Representative

[Clause 102] **(w.e.f. 01.04.2020)**

- Section 288 of the Act provides that any assessee entitled or required to appear before any Income-tax Authority or the Appellate Tribunal, may be attended by an 'Authorized Representative' ('AR') defined under sub-section (2) thereto.

- It is proposed to insert clause (viii) under sub-section (2) of section 288 to enable "any other person as may be prescribed by the Board" to appear as AR.

- The proposed amendment seeks to overcome practical difficulties faced by Insolvency Professionals to act as AR of the corporate debtor before any Income-tax Authority or the Appellate Tribunal.

TAX DEDUCTION / COLLECTION AT SOURCE

Enlarging of scope of Section 194A

[Clause 75] **(w.e.f. 01.04.2020)**

- Section 194A mandates certain specified assessees to deduct tax at source on interest paid other than interest on securities. Proviso to sub-section (1) provides that the section applies to individuals and HUF whose turnover of gross receipts exceeds the monetary limit for tax audit under section 44AB.

- The above proviso is proposed to be amended to exclude only those payees whose turnover does not exceed prescribed threshold (Rs.1 crore/ 50 lakhs), irrespective of requirement of tax audit under section 44AB.

- Sub-section (3) provides for circumstances wherein the provisions of section 194A shall not be applicable, including relaxations given to co-operative societies vide clauses (v) and (viia).

- In order to widen the tax base, a new proviso to sub-section (3) is proposed to be inserted which provides that co-operative societies covered under clauses (v) and (viia) shall be liable to deduct tax under section 194A if:
  - Total sales/ gross receipts/ turnover of the co-operative society exceeds Rs.50 crore rupees during the preceding FY; and
  - Interest/ aggregate interest paid during FY to a single payee exceeds Rs.40,000 (Rs.50,000 in case of senior citizen).

Amendment to definition of ‘work’ in s. 194C

[Clause 76] **(w.e.f. 01.04.2020)**

- Section 194C provides for TDS @ 2% on payments made to a contractor for carrying out any ‘work’.

- The term ‘work’ has been defined in an inclusive manner to include contract manufacturing/job work done by a contractor, only where the work is performed by using raw material procured from the taxpayer. Where the raw material is procured from a third party, the transaction does not fall within the scope of the term ‘work’, thereby ousting the application of section 194C of the Act.

- It is proposed to amend the definition of the term ‘work’ so as to include the transaction of contract manufacturing where raw material is provided by a related party of the taxpayer [as defined in section 40A(2)(b)] within the scope of the term ‘work’.

Amendment to definition of ‘work’ in s. 194C

[Clause 76] **(w.e.f. 01.04.2020)**

Comments/Observations

- In our view, whether the raw material is purchased from a third party or a related party does not alter the nature of transaction from sale of goods to work contract.

- It would be appreciated, the revenue would also collect applicable GST where raw-material is even sold by related party to the contract manufacturer. Hence, the proposed amendment merely result in increasing the tax compliance burden on deductors, without plugging any substantial tax leakage considering that in cases where the recipient has offered the payment to tax, no TDS implications arises on the deductor.

Harmonization between section 194C and 194J

[Clause 79] **(w.e.f. 01.04.2020)**

- Section 194C provides for deduction of withholding tax at the rate of 2% on payments made to a resident for carrying out any ‘work’.

- Section 194J provides for deduction of withholding tax at the rate of 10% on payments made to a resident towards, inter alia, “fees for technical services”.

- The issue whether the service rendered by the vendor is in the nature of “work” or “technical service” is vexed and leads to substantial litigation.

Harmonization between section 194C and 194J

[Clause 79] **(w.e.f. 01.04.2020)**

- In the following cases, the issue of deductibility under section 194C or 194J arose with respect to the following payments:
  - *Charges for maintenance services of medical equipment – Saifee Hospital: 262 Taxman 343 (Bombay HC)*
  - *Prints of final negative of film – Yash Raj Films: 160 ITD 626 (Mum Trib)*
  - *Uplinking Charges*- Viacom's case (matter currently pending before the Supreme Court)

- The distinction drawn by the Courts between the two provisions is that while the term ‘works’ refers to predominantly physical activity, which is tangible; in contrast, in case of rendering of any ‘technical service’, the intellectual aspect plays a dominant role. **[Ref: SRF Finance Ltd. v. CBDT: 211 ITR 861]**

Harmonization between section 194C and 194J

[Clause 79] **(w.e.f. 01.04.2020)**

- Short deduction of taxes under section 194C (in cases where section 194J applies) would lead to initiation of proceedings under section 201 and also attract interest implications (in cases in which the payment has not been offered to tax by the recipient)

- The proposed amendment to section 194J provides that the payment made by way of 'fees for technical services' shall be subjected to withholding tax @ 2%, which is parimateria to the rate of TDS contained u/s 194C

- Considering that post amendment, the rate of TDS for contracting service u/s. 194C or 194J would be the same, the proposed amendment seeks to reduce litigation on the aforesaid issue.

Harmonization between section 194C and 194J

[Clause 79] **(w.e.f. 01.04.2020)**

Comments/ Observations:

- In the decision of **S.R.M.B. Dairy Farming: 400 ITR 9 (SC)** it has been held that the departmental circulars prescribing monetary threshold limits for the tax department to pursue litigation are applicable retrospectively since they result in reduction of litigation.

- The intention behind the proposed amendment to section 194J is reduction of litigation as well.

- Hence, it maybe possible to raise an argument that the proposed amendment shall apply retrospectively since it is meant to reduce litigation between the taxpayers and the tax department.

Section 194LC: Extension of period of concessional withholding tax

[Clause 82] **(w.e.f. 01.04.2020)**

- The existing provisions of section 194LC of the Act provide that-
  - interest income payable to a non-resident by an Indian company or business trust on borrowings made by it in foreign currency from sources outside India under:
    - ✓ a loan agreement, or
    - ✓ by way of issue of any long-term bond including long-term infrastructure bond, or
    - ✓ Rupee Denominated Bond (RDB) issued before July 1, 2020 [section 194LC(2)(ia)],

  shall be subject to deduction of tax at source (TDS) at a concessional rate of 5%.

Section 194LC: Extension of period of concessional withholding tax

[Clause 82] **(w.e.f. 01.04.2020)**

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

  - ✓ extend the period of the said concessional rate of TDS of 5%from July 1, 2020 upto July 1, 2023;
  - ✓ provide for TDS @ 4% on interest payable to non-resident –
    - in respect of monies borrowed,
    - in foreign currency from a source outside India,
    - by way of issuance of long-term bond or rupee denominated bond (RDB),
    - on or after April 1, 2020 but before July 1, 2023, and
    - where such long term bond or RDB is listed on recognised stock exchange located in any IFSC.

Section 194LD: Extension of period of concessional withholding tax

[Clause 83] **(w.e.f. 01.04.2020)**

- The existing provisions of section 194LD of the Act provide that interest income payable, on or after June 1, 2013 to July 1,2020, in respect of investment made by Foreign Institutional Investor or a Qualified Foreign Investor, in a rupee denominated bond (RDB) of an Indian company, or a Government security, shall be subject to deduction of tax at source (TDS) at a concessional rate of 5%.

- It is proposed to – (i) extend the period of the said concessional rate of TDS of 5% from July 1, 2020 upto July 1, 2023, and (ii) apply the said rate, on or after April 1, 2020 but before July 1, 2023, to FII and QFI in respect of investment made in municipal debt security.

Rationalisation of provisions relating to Form 26AS

[Clause 90 & 101] **(w.e.f. 01.06.2020)**

- The existing provisions of section 203AA of the Act provide that the Income-tax Authority or the person authorized by such Authority, shall, within the prescribed time, prepare and deliver a statement in the prescribed form, namely Form 26AS which, inter-alia, contains the following information for every person:
  - from whose income the tax has been deducted, or
  - in respect of whose income, the tax has been paid,

- With advancement in technology like 'Data Analytics', in order to facilitate compliance, multiple information like sale/ purchase of immovable property, share transactions, etc. will now be provided to the assessee deductee, by uploading the same in the registered account of the assessee deductee on the designated portal of the Income-tax Department.

Rationalisation of provision relating to Form 26AS

- As the mandate of Form 26AS would be required to be extended beyond the information about tax deducted, it is proposed to introduce a new section 285BB in the Act in order to facilitate the assessee in filing the return of income and calculating his correct tax liability.

- Under the proposed section 285BB, income tax authority or the person authorized by such authority, shall be required to upload an annual information statement in the prescribed form and manner in the registered account of the assessee within prescribed time.

- Section 203AA is, consequently, proposed to be deleted.

Widening of scope of Section 206C

[Clause 93] **(w.e.f. 01.04.2020)**

- Section 206C requires sellers of certain goods specified in sub-section (1) [alcohol, tendu leaves, timber, forest produce, scrap, minerals, motor vehicles etc.] to collect from the buyer of such goods, a specified percentage of tax at source.

- In order to widen the tax net, new sub-section (1G) is proposed to be inserted which requires collection of tax at source @ 5% of sums received (10% if PAN/ Aadhaar is not furnished by buyer) by :
  - ✓ **Authorised foreign exchange dealers** from a person **for remittance outside India under the Liberalised Remittance Scheme** ('LRS') where such sum or aggregate of such sums is seven lakh rupees or more in a financial year;
  - ✓ **Seller of overseas tour package** against sale of an overseas tour program package.

Widening of scope of Section 206C

[Clause 93] **(w.e.f. 01.04.2020)**

- A new sub-section (1H) is further proposed to be introduced which requires:
  - ✓ specified sellers [i.e., whose gross receipts/ turnover exceed Rs.10 crores in preceding FY];
  - ✓ to collect tax @ 0.1% [1% if PAN/ Aadhaar not furnished by buyer] of **sales consideration of any goods** which are not covered under sub-sections (1), (1G) and (1F);
  - ✓ where the value/ aggregate value of such goods exceeds Rs.50 lakhs in any FY.
- The provisions of sub-sections (1G) and (1H) shall not be applicable if the buyer is:
  - ✓ liable to deduct TDS under any other provision of the Act and he has deducted such amount; or
  - ✓ the Central Government, a State Government , an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority or any other person notified by the Central Government.

Widening of scope of Section 206C

[Clause 93] **(w.e.f. 01.04.2020)**

- The benefit of proviso to sub-section (6A) which provides protection to defaulting sellers where the buyers have duly filed ITR's after taking into consideration the respective amounts while computing total income and paid taxes thereon, has been restricted to transactions referred in sub-sections (1) and (1C).

- Accordingly, the benefit of above proviso will not be applicable to the following:
  - ✓ TCS on sale of motor vehicle exceeding Rs.10 lakhs [sub-section (1F)]
  - ✓ TCS on remittance under LRS [sub-section (1G)]
  - ✓ TCS on tour package [sub-section (1G)]
  - ✓ TCS on sale of goods [sub-section (1H)]

Widening of scope of Section 206C

[Clause 93] **(w.e.f. 01.04.2020)**

Comments/ observations:

- LRS allows resident individuals to remit a certain amount of money [presently upto $2,50,000] during a financial year to another country for specified purposes including travel, educational expenses, medical treatment and maintenance of close relatives
- Over the past few years, outward remittances made through LRS have witnessed sharp increase, especially in the travel category [USD 651 million in FY16 to USD 4.8 billion in FY19]*
- The proposed amendment seeks to keep a record of money remittance under LRS
- Large remittances may also be a criteria for selection of cases for scrutiny under CASS.

* *https://www.bloombergquint.com/business/bq-explains-are-outflows-under-the-liberalised-remittance-scheme-a-concern*

Widening of scope of Section 206C

[Clause 93] **(w.e.f. 01.04.2020)**

- The authorised dealers shall make the remittance after collecting the amount of TCS. Therefore, the remitter may have to shell more money in order to remit the desired net amount.

- The amended provisions may result in additional burden to assessees who are remitting funds outside India, out of past savings on which tax has already been paid.

- Applicability of TCS provisions on foreign package tour packages shall have an adverse impact on travel. As a result, the prices of foreign travel packages may go up since the cost of TCS may be recovered from the buyers.

Widening of scope of Section 206C

[Clause 93] **(w.e.f. 01.04.2020)**

- The amended provisions is expected to put additional burden on individual buyers who are not liable to deduct TDS on payments made to tour operators since the tax incidence of 5% is higher than the rate of TDS under section 194C of the Act (1%/2%) applicable in the hands of companies.

- The amended provisions is expected to put additional burden on individual buyers who are not liable to deduct TDS on payments made to tour operators since the tax incidence of 5% is higher than the rate of TDS under section 194C of the Act (1%/2%) applicable in the hands of companies.

- Further, liability under section 206C(1G) is proposed to be applicable even in case of small-scale travel agents since the turnover threshold under sub-section (6) to qualify as “seller” under section 206C is not applicable to travel agents, resulting in additional compliance burden.

Widening of scope of Section 206C

[Clause 93] **(w.e.f. 01.04.2020)**

- TCS on sale of goods will put additional cash flow burden on low margin high value trading, like bullion trading.

- TCS shall have to be collected on the entire amount of sale once the aggregate sale value exceeds the threshold of Rs. 50 lakhs.

- There shall be practical issue on sales returns wherefrom TCS stood collected at the time of sales.

TAXABILITY OF E-COMMERCE TRANSACTIONS

Taxability of e-commerce transactions

[Clause 84] **(w.e.f. 01.04.2020)**

- A **new section 194-O** is proposed to be inserted which requires an e-commerce '**operator**' to deduct tax at source **@ 1%** on payment made to an e-commerce '**participant**' for sale of goods/ provision of services through **e-facility** or **e-platform** provided by such operator.
- TDS is to be deducted **on the gross value of sale of goods/ services** at the time of credit or payment to participant, whichever is earlier.
- **Direct payment** by purchaser to the participant shall be **deemed to be made by the operator** for computing gross value of sales.
- **'E-commerce operator'** is defined to mean a person **who owns, operates or manages the digital facility/ platform and** is **responsible for paying** to the participant;

Taxability of e-commerce transactions

[Clause 84] **(w.e.f. 01.04.2020)**

- **'E-commerce participant' means** a person **resident in India** selling goods or services (including digital products) through digital facility/ platform for e-commerce
- **'E-commerce'** means supply of goods or services or both (including digital products) over digital or electronic network
- Individual/ HUF participant are **not** subject to TDS provisions, in cases wherein -
  - (a) gross value of sales does not exceed INR 5 Lakhs**; and**
  - (b) PAN/ Aadhaar is furnished to the operator [Sub section (2)]
- No **additional** TDS obligation under any other section of Chapter XVII-B for transactions covered above [Sub section (3)]

Taxability of e-commerce transactions

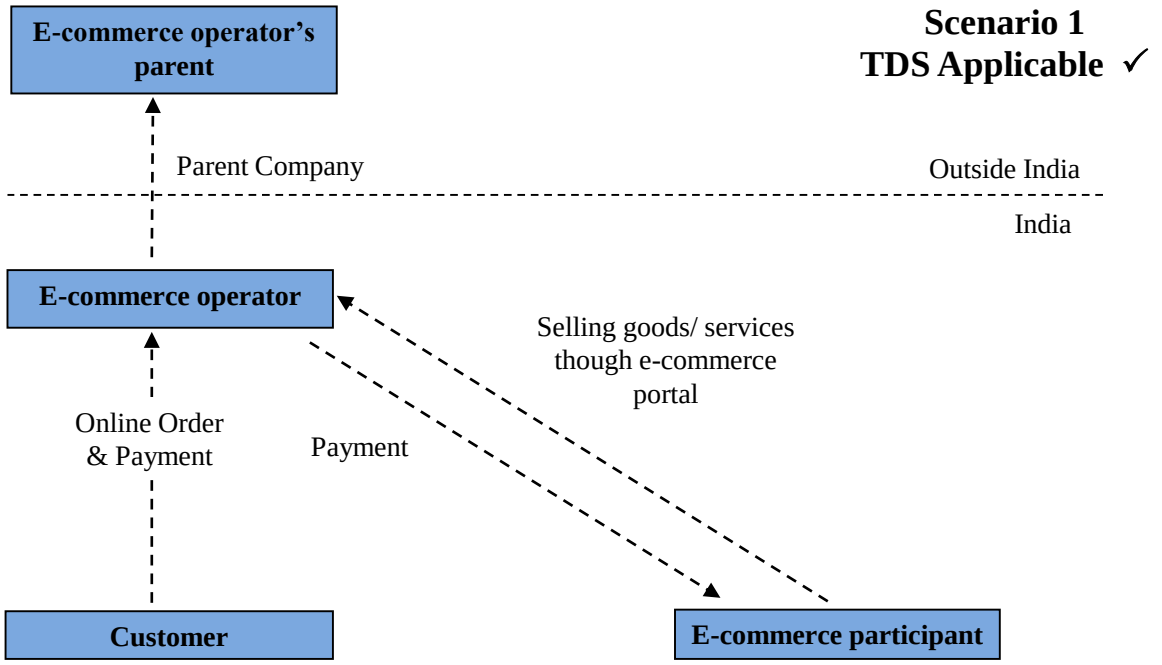
[Clause 84, 89, 91, 92] **(w.e.f. 01.04.2020)**

- TDS provisions shall independently continue to apply on payments for advertising or providing services not in connection with sale of goods/ services referred in sub-section (1) [Proviso to sub section (3)]
- Consequential amendments are being proposed in section 197 (lower TDS), section 204 (person responsible for paying any sum) and section 206AA (tax deduction at the **rate 5%** in Non-PAN/ Aadhaar cases)

Comments/ Observations

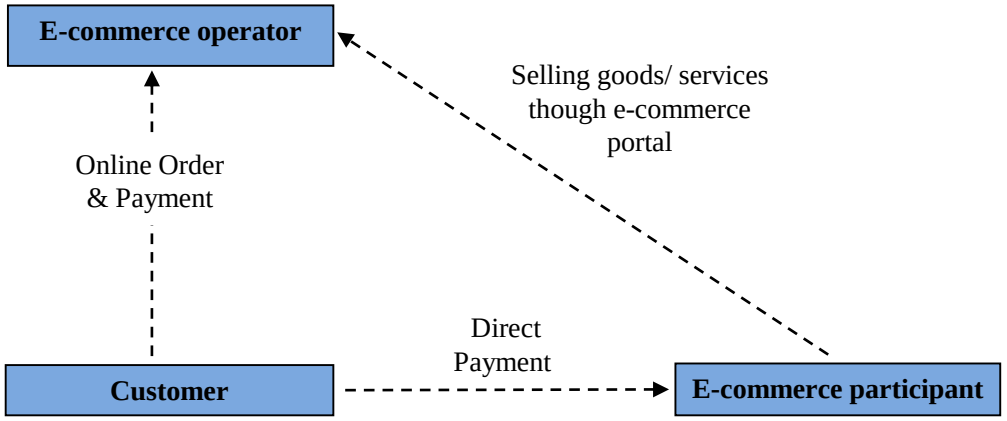
- With the proposed levy of TDS on e-commerce transactions, various e-commerce players operating pan-industry, would be covered under the tax net, e.g. online shopping (Amazon, Flipkart), food (Zomato, Swiggy) etc.

Taxability of e-commerce transactions



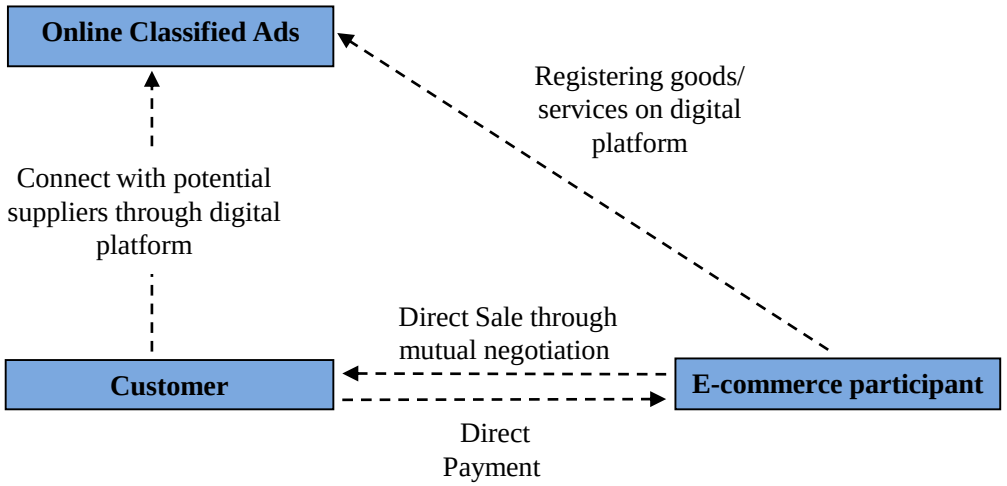
Taxability of e-commerce transactions

Scenario 2
TDS Applicable ✓



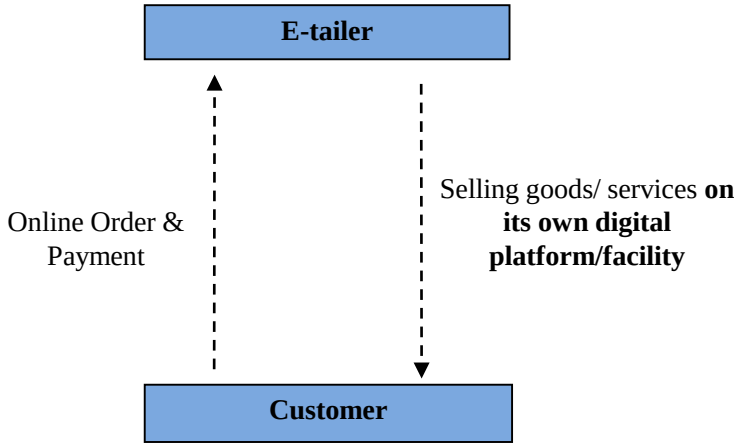
Taxability of e-commerce transactions

Scenario 3
TDS Applicable X



Taxability of e-commerce transactions

Scenario 4
TDS Applicable X



Taxability of e-commerce transactions

[Clause 84] **(w.e.f. 01.04.2020)**

- The proposed withholding may eventually result in increase in prices of goods/services availed online, thereby passing on the burden to the end consumer
- **Sales returns,** being a common phenomenon in the e-commerce industry, would require frequent revision of TDS returns, adding to the compliance burden and cost of e-commerce operators
- The scope of the proposed section is limited to cases wherein the operator is a person, **responsible to make payment** to the participants, i.e., the supplier of goods/ services on the digital platform/facility
- An e-commerce service provider rendering services **on its own digital platform/facility would not be covered within the purview of** the section. [E.g., Ferns & Petals, Printvenue, etc.]

Taxability of e-commerce transactions

[Clause 84] **(w.e.f. 01.04.2020)**

- In the case of providers of **online classified services such as OLX, Quickr, 99Acres, Justdial, etc., only a digital platform** is provided to connect prospective buyers with sellers and the actual sale is transacted independently between the parties without the knowledge or involvement of the classified service provider. Such cases would also fall outside the ambit of section 194-O

- The Explanation appears to expand the scope of the main section by bringing to tax net such transactions wherein the purchaser makes payment to the supplier thereof directly, in respect of sale of goods/services **facilitated by the operator.** In such a case, the e-commerce operator would still be required to comply with the provisions of this section

Taxability of e-commerce transactions

[Clause 84] **(w.e.f. 01.04.2020)**

- In the **case of cab aggregators like** Ola, Uber, etc., a digital platform is provided, wherein the customer often make cash payment directly to the service providers i.e. cab drivers. The deeming fiction of the Explanation to the proposed section would mandate such cab aggregators to deduct tax at source @ 1% on the amounts paid by them to the drivers [qua online payments] as well as on the amounts paid by the customer directly to the cab drivers.
- Covering direct payments by customers to the participant **will impact the cash flow of operators, who shall be required to deduct and deposit tax out of their own coffers**

Taxability of e-commerce transactions

[Clause 84] **(w.e.f. 01.04.2020)**

Applicability of provisions on non-residents

- The proposed section **does not** apply in case of a **non-resident** participant

- However, on a bare reading of the language of the proposed section, it appears that the Legislature consciously intends **to fasten the liability of tax deduction on non-resident operators who, even though do not have a taxable presence in India, facilitate sale of goods/ services of resident participants**. For instance, sale of Indian merchandise in a foreign country though their local e-commerce websites

- There has been a constant debate whether the provisions of the Act can have **extraterritorial operation**, so as to include within its ambit transactions concluded/ entities incorporated outside India. A Constitution Bench of the Supreme Court in the case of *G.V.K. Industries Ltd. ITO: 332 ITR 130*, held that Parliament's power to legislate may extend on extra territorial aspect as well provided that those aspects have some impact or 'nexus' with India.

Taxability of e-commerce transactions

[Clause 84] **(w.e.f. 01.04.2020)**

Applicability of provisions on non-residents

- In an earlier decision, the Supreme Court in the case of *CIT v. Eli Lilly & Co. (India) (P) Ltd: 312 ITR 225* has also **upheld the extra-territorial application** of the provisions of Chapter XVII-B of the Act in case of transactions having territorial nexus with India
- Applicability of the provisions to non-resident operators shall result in substantial practical difficulties in compliance by assessees and enforcement by the tax authorities

Taxability of e-commerce transactions

[Clause 84] **(w.e.f. 01.04.2020)**

E-commerce operator	E-commerce participant	Location of customer	Whether section 194-O would apply?
R/NR	NR	I/F	**X**
R	R	I/F	✔
NR having presence in I	R	I/F	✔
NR not having presence in I	R	**I**	✔
NR not having presence in I	R	**F**	**?**

R – Resident
NR – Non Resident
I – India
F – Country outside India

INCENTIVES FOR START-UPS

Extension of benefits to Start-Ups

[Clause 36] **(w.e.f. 01.04.2021)**

- Section 80-IAC of the Act presently provide for 100% deduction of profits and gains derived from an eligible business by an eligible start-up for 3 consecutive years out of 7 years, at the option of the assessee, subject to the condition that –
  - ✓ start up is incorporated on or after April 1, 2016 but before April 1, 2021; and
  - ✓ total turnover of its business does not exceed Rs. 25 crores.
- In order to further rationalise the provisions, it is proposed to amend section 80-IAC to provide that –
  - ✓ deduction shall be available for a period of 3 consecutive assessment years **out of 10 years** beginning from the year in which it is incorporated;
  - ✓ total turnover of its business does not exceed **Rs. 100 crores**.

Taxation on Employee Stock Option Plan (ESOP) deferred

[Clause 68, 71, 72 & 73] **(w.e.f. 01.04.2020)**

- Presently, ESOP is taxed as "perquisite" under section 17(2) of the Act read with Rule 3(8)(iii) of the IT Rules at the time of exercise of option. Subsequently, at the time of sale of share, the employee is taxed under the head "capital gains".

- In order to ease the burden of payment of taxes by the employees of eligible start-ups, it is proposed to insert sub-section (1C) in section 192 of the Act to provide that the eligible start-up responsible to allot/ transfer any specified security or sweat equity, free of cost or at concessional rate, in any previous year relevant to assessment year 2021-22 or onwards, shall deduct / pay tax within 14 days-
  - ✓ after expiry of 48 months from the end of the relevant assessment year; or
  - ✓ from the date of sale of specified security or sweat equity by the employee; or
  - ✓ from the date on which the employee ceases to be in employment with such employer;

  whichever is earliest on the rate in force in the financial year in which the specified security or sweat equity is allotted or transferred.

Taxation on Employee Stock Option Plan (ESOP) deferred

[Clause 68, 71, 72 & 73] **(w.e.f. 01.04.2020)**

❖ Consequential amendments are made in –

- ✓ section 191 (for assessee to pay the tax direct in case of no TDS); and
- ✓ section 156 (for notice of demand); and
- ✓ section 140A (for calculating self-assessment tax)

TAXATION OF TRUSTS

Registration of Trust or Institution

[Clause 7, 10, 11, 12 and 17] **(w.e.f. 01.06.2020)**

- Under the existing provisions, registration once granted under sections 12A/12AA, could be withdrawn/ revoked only in case of violation of certain specified conditions.

- The proposed amendment seeks to repeal section 12AA and introduce a new section 12AB to provide for new procedure of registration of charitable trust/institutions.

- The amendment primarily proposes to restrict the period of registration of charitable trust/institutions for a maximum period of 5 (five) years.

Registration of Trust or Institution

[Clause 7, 10, 11, 12 and 17] **(w.e.f. 01.06.2020)**

- The proposed amendment provides scenarios where application for registration is mandatory:

Scenario	Time Limit for filing application
Registered u/s12A/12AA	Within 3 months from the date of coming into force of the proposed amendment;
Registered u/s 12AB and due to expire	Atleast 6 months prior to expiry
Provisionally registered u/s 12AB	Atleast 6 months prior to expiry or commencement of activities
Inoperative registration	Atleast 6 months prior to commencement of AY
Modification in objects (not in conformity with conditions of registration)	Within 30 days of adoption/modification
Any other case	Atleast 1 month prior to commencement of relevant AY

Registration of Trust or Institution

[Clause 7, 10, 11, 12 and 17] **(w.e.f. 01.06.2020)**

- The proposed restriction in the period of registration is expected to act as a measure to ensure adherence with conditions of approval.

- The proposed section 12AB also seeks to provide 'provisional registration' for a period of 3 years in cases where registration is sought for the first time.

- Similar amendments are proposed in case of approval/registration of entities under section 10(23C), section 35 and section 80G to restrict period of registration to 5 years.

Registration of Trust or Institution

[Clause 7, 10, 11, 12 and 17] **(w.e.f. 01.06.2020)**

Comments/ Observations:

- The proposed amendment **increases compliance burden** as charitable trusts/institutions will now be required to seek renewal of registration every five years, even in the absence of any change in the objects/activities undertaken.

- The intent of the Legislature is to adopt a non-adversarial regime in case of charitable institutions and avoid conducting roving enquiries into the affairs of the concern during scrutiny assessments.

Registration of Trust or Institution

[Clause 7, 10, 11, 12 and 17] **(w.e.f. 01.06.2020)**

Comments/ Observations:

- The proposal to grant **'provisional registration'** without detailed enquiry, even prior to actual commencement of activities is a welcome change, as it will provide much needed certainty to the charitable institutions, before undertaking full-fledged activities. [DIT v. Foundation of Ophthalmic & Optometry Research Education Centre: 210 Taxman 36 (Del.) upheld]

- The proposed registration scheme **does not provide for condonation in cases where** there in delay in filing application for registration, even in exceptional circumstances.

- The eligibility criteria for registration and reasons for cancellation in the proposed section 12AB is same as existing provisions of section 12AA.

Rationalisation of provisions relating to Trust

[Clause 9, 33, 34, 94 and 99] **(w.e.f. 01.06.2020)**

- Under the existing provisions, the **recipient entity is not required to report donations received.**

- The proposed amendment in section 80G now requires entities receiving donation/sum to furnish a statement in respect thereof and also issue a certificate to the donor/payer

- The proposed amendment also provides that the donor/payer will be allowed deduction under section 80G only if the certificate and prescribed statement is furnished by the recipient entity.

Rationalisation of provisions relating to Trust

[Clause 9, 33, 34, 94 and 99] **(w.e.f. 01.06.2020)**

- It is proposed to levy fee and also penalize the recipient in case of default in filing prescribed statement or furnish certificate in respect of donation/contribution received as under:
  - Section 234G levying fee of INR 200 per day
  - Section 271K levying penalty of not less than INR 10,000 but which may extend upto INR 1,0,000

- Similar amendments are proposed in case of donations/contributions received under section 80GGA and section 35.

Rationalisation of provisions relating to Trust

[Clause 9, 33, 34, 94 and 99] **(w.e.f. 01.06.2020)**

- Deduction of cash donation under section 80GGA is proposed to be restricted to INR 2,000 in line with section 80G.

- It is also proposed to amend provisions of section 11 to explicity provide that charitable trust/institutions will not be eligible to claim dual benefit under sections 11/12 and sections 10(23C)/(46) i.e., benefit under one section shall be deemed to be inoperative when the other is claimed/operative.

Rationalisation of provisions relating to Trust

[Clause 9, 33, 34, 94 and 99] **(w.e.f. 01.06.2020)**

- The prescribed audit report in Form 10B is now required to be furnished by the charitable trust/institution within the specified date referred to in section 44AB.

Comments/ Observations:

- Default on the part of the recipient in furnishing certificate or filing statement will result in the donor losing benefit of deduction.

- No provision for revival of claim in case of delayed compliance.

Rationalisation of provisions relating to Trust

[Clause 9, 33, 34, 94 and 99] **(w.e.f. 01.06.2020)**

Comments/ Observations:

- Charitable institutes/entities will now be required to report details of all donations/contributions received.

COMMODITY TRANSACTION TAX

Widening scope of Commodity Transaction Tax ('CTT')

[Clauses 146 to 149] **(w.e.f. 01.04.2020)**

- CTT at the rate of 0.01% was introduced vide Finance Act, 2013 on sale of commodity derivatives traded in recognized association

- Subsequently, vide Finance Act, 2018, the scope of CTT was expanded by including sale of options on commodity derivatives as taxable commodity transaction

- To further widen the scope of CTT, clause (7) of section 116 of Finance Act, 2013 is proposed to be amended to bring transactions of "sale of option in goods" and "sale of commodity derivatives based on price or indices of price of commodity derivative", within the ambit of "taxable commodity transactions"

Widening scope of Commodity Transaction Tax ('CTT')

[Clauses 146 to 149] **(w.e.f. 01.04.2020)**

❖ CTT is proposed to be levied at the following rates on value of such transactions

S. No.	Taxable commodities transaction	Rate		Value of taxable transaction	Payable by
		Existing	Proposed		
1.	Sale of commodity derivative	0.01%	0.01%	Price at which the commodity derivative is traded	Seller
2.	Sale of commodity derivatives based on prices or indices of prices of commodity derivatives	--	0.01%	Price at which commodity derivative based on prices or indices of price is traded	Seller

Widening scope of Commodity Transaction Tax ('CTT')

[Clauses 146 to 149] **(w.e.f. 01.04.2020)**

S. No.	Taxable commodities transaction	Rate		Value of taxable transaction	Payable by
		Existing	Proposed		
3.	Sale of option on commodity derivatives	0.05%	0.05%	Option Premium	Seller
4.	Sale of option in goods	--	0.05%	Option Premium	Seller
5.	Sale of option on commodity derivative, where option is exercised	0.0001%	0.0001%	Settlement Price	Purchaser

Widening scope of Commodity Transaction Tax ('CTT')

[Clauses 146 to 149] **(w.e.f. 01.04.2020)**

S. No.	Taxable commodities transaction	Rate		Value of taxable transaction	Payable by
		Existing	Proposed		
6.	Sale of option in goods, where option is exercised resulting on actual delivery of goods	--	0.0001%	Settlement Price	Purchaser
7.	Sale of options in goods, where option is exercised resulting in settlement otherwise than by the actual delivery of goods	--	0.125%	Difference between settlement price and strike price	Purchaser

Widening scope of Commodity Transaction Tax ('CTT')

[Clauses 146 to 149] **(w.e.f. 01.04.2020)**

- The reference made to Forward Contracts (Regulation) Act, 1952 has now been replaced by Securities Contracts (Regulation) Act, 1956

- 'Recognised Association' has been changed to 'Recognised Stock Exchange'

Comments/ Observations

- This change has paved the way for the launch of new derivative products.

- A lower CTT rate has been proposed to encourage settlement of transactions by actual delivery of commodities

RATIONALISATION OF PROVISIONS

Cost of acquisition u/s 49 and period of holding u/s 2(42A) in respect of segregated portfolios

[Clause 3 & 25] **(w.e.f. 01.04.2020)**

- In order to confront the number of financial crisis brewing in the country, lead by the IL&FS crisis, where the borrowers failed to repay the amount due to the subscriber-lenders, i.e., Mutual Funds, SEBI vide Circular dated 28.12.2018 authorized the Mutual Funds to create segregated portfolio of debt and money market instrument.

- It was provided in the aforesaid Circular that all the existing unit holders in the affected Mutual Fund schemes as on the date of credit event shall be allotted identical number of units in the segregated portfolio as held in the main portfolio.

Cost of acquisition u/s 49 and period of holding u/s 2(42A) in respect of segregated portfolios

[Clause 3 & 25] **(w.e.f. 01.04.2020)**

- In order to rationalize and provide clarity on calculating cost of acquisition and period of holding of the units in the 'main portfolio' and 'segregated portfolio', it is proposed to amend sections 2(42A) and 49 of the Act as under:

Period of holding under section 2(42A)

- For computing the period of holding of the units allotted in the segregated portfolio, it is proposed to insert sub-clause (hh) under Explanation 1 to section 2(42A) which provides that the period of holding of original units in the main portfolio shall also be included in computing the holding period of units in segregated portfolio.

Cost of acquisition u/s 49 and period of holding u/s 2(42A) in respect of segregated portfolios

[Clause 3 & 25] **(w.e.f. 01.04.2020)**

Cost of acquisition under section 49

- Sub-section (2AG) proposed to be inserted in section 49 of the Act provides that the cost of acquisition of the units in the segregated portfolio shall be:

$$\text{COA of units in total portfolio} \times \frac{\text{NAV to segregated portfolio}}{\text{NAV of total portfolio}}$$

- It is proposed to insert sub-section (2AH) in section 49 of the Act which provides that cost of acquisition of the units in the main portfolio shall be deemed to have been reduced by the amount as derived under sub-section (2AG).

Rationalization of section 55

[Clause 28] **(w.e.f. 01.04.2021)**

- For the purpose of determining the "cost of acquisition" of asset (other than equity share or unit of equity oriented fund or unit of a business trust) acquired before April 1, 2001, an option has been provided in section 55(2)(b) to the assessee to consider the fair market value of the asset as on 01.04.2001 as the cost of acquisition.

- It is proposed to insert a proviso to clause (b) of section 55(2) to provide that in case of land or building or both, the fair market value of such asset on April 1, 2001 shall not exceed the stamp duty value of such asset as on that date where stamp duty value is available.

- It is further proposed to insert an Explanation so as to provide that the definition of "stamp duty value" shall mean "value adopted or assessed or assessable by an authority of the Central Government or a State Government for the purposes of payment of stamp duty in respect of an immovable property."

Section 17 – Rationalization of tax treatment of Employer's Contribution to retirement benefit funds

[Clause 13] **(w.e.f. 01.04.2021)**

- Presently clause (vii) of sub-section (2) of the section 17 provides that amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, shall be treated as perquisite to the extent it exceeds Rs.1,50,000

- Further, employer's contribution towards NPS and recognized provident fund exceeding 12% of the salary was taxable in the hands of the employees under section 17(1)(viii) and 17(1)(vi) respectively

- Section 80CCD provides deduction of employer's contribution to the New Pension System ('NPS') account of an employee, from the total income of such employee, to the extent of 10% of salary for the previous year (14% in case employed by Central Government)

- In addition thereto, annual accretion by way of interest was exempt from tax in the hands of the employees' at the time of withdrawal, in accordance with the prescribed conditions

Section 17 – Rationalization of tax treatment of Employer's Contribution to retirement benefit funds

[Clause 13] **(w.e.f. 01.04.2021)**

- In order to bridge the gap between the tax exemption enjoyed by an employee with low salary income and employees with high salary income and discourage the latter from structuring the salary in a manner where large part of the salary is contributed by the employers to recognized provident fund, NPS and approved superannuation fund, sub-clause (vii) to clause (2) of section 17 is proposed to be amended to provide a combined upper limit of Rs,7,50,000 to cap the exemption enjoyed on the aggregate contribution(s) made by employers to these funds

- Accordingly, contribution made by the employer to the aforesaid funds in excess of Rs.7,50,000 shall be taxed as 'perquisite' in the hands of the employees under section 17(2)(viii)

- Further, a new sub-clause (viia) is proposed to be inserted to section 17(2) to tax the annual accretion relating to the aforesaid employer's contribution in excess of threshold limit of Rs.7.5 lakhs which is included in total income.

Section 17 – Rationalization of tax treatment of Employer's Contribution to retirement benefit funds

[Clause 13] **(w.e.f. 01.04.2021)**

Example: *(figures in lakhs)*

Particulars	I (Low salary employees)		II (Medium salary employees)		III (High salary employee)	
	Now	Proposed	Now	Proposed	Now	Proposed
Salary	**20.00**	**20.00**	**80.00**	**80.00**	**125.00**	**125.00**
Contribution to PF @ 12%	2.40	2.40	9.60	9.60	15.00	15.00
Contribution to Superannuation	1.50	1.50	1.50	1.50	1.50	1.50
Contribution to NPS @ 10%	2.00	2.00	8.00	8.00	12.50	12.50
CTC	**25.9**	**25.9**	**99.10**	**99.10**	**154**	**154**

Section 17 – Rationalization of tax treatment of Employer's Contribution to retirement benefit funds

[Clause 13] **(w.e.f. 01.04.2021)**

Example: *(figures in lakhs)*

Particulars	I (Low salary employees)		II (Medium salary employees)		III (High salary employee)	
	Now	Proposed	Now	Proposed	Now	Proposed
Total Contribution	5.90	5.90	19.10	19.10	29.00	29.00
Taxable Contribution (Above 7.5 lakhs)	0	0	0	11.60	0	21.50
Taxable Income	**20**	**20**	**80**	**91.60**	**125**	**146.50**

Section 17 – Rationalization of tax treatment of Employer's Contribution to retirement benefit funds

[Clause 13] **(w.e.f. 01.04.2021)**

Illustration 1: **(Amount in Rs.)**

Basic Salary - 1,00,00,000

RPF (@12%)	12,00,000
NPS (@10%)	10,00,000
Superannuation Fund	5,00,000
Total contribution	**27,00,000**

Particulars	Existing Provisions	Proposed Provisions
Basic Salary	1,00,00,000	1,00,00,000
Salary as per s. 17(1)(vi)	-	-
Salary as per s. 17(1)(viii)	10,00,000	10,00,000
Perquisite as per s. 17(2)(vii)	3,50,000 [5,00,000 less 1,50,000]	19,50,000 [27,00,000 less 7,50,000]
Gross Total Income	**1,13,50,000**	**1,29,50,000**
Section 80CCD	(10,00,000)	(10,00,000)
Taxable Salary	1,03,50,000	1,19,50,000

Note: Purpose of bridging gap between high and low paid employees is achieved

Section 17 – Rationalization of tax treatment of Employer's Contribution to retirement benefit funds

[Clause 13] **(w.e.f. 01.04.2021)**

Illustration 2: **(Amount in Rs.)**

Basic Salary - 1,00,00,000

RPF (@14%)	14,00,000
NPS (@11%)	11,00,000
Superannuation Fund	5,00,000
Total contribution	**30,00,000**

Particulars	Existing Provisions	Proposed Provisions
Basic Salary	1,00,00,000	1,00,00,000
Salary as per s. 17(1)(vi)	2,00,000	2,00,000
Salary as per s. 17(1)(viii)	11,00,000	11,00,000
Perquisite as per s. 17(2)(vii)	3,50,000 [5,00,000 less 1,50,000]	22,50,000 [30,00,000 less 7,50,000]
Gross Total Income	**1,16,50,000**	**1,35,50,000**
Section 80CCD	(10,00,000)	(10,00,000)
Taxable Salary	1,06,50,000	1,25,50,000

Note: Against the total contribution of Rs. 30,00,000, amount of Rs. 35,50,000 forming part of salary and unreal income of Rs. 5,50,000 is getting taxed, resulting in absurdity

Amendment to section 43CA, 50C, 56(2)(x)

[Clause 22,27,29] **(w.e.f. 01.04.2020)**

- Section 43CA – applies to transaction of transfer of land or building held as stock in trade by the transferor at less than FMV
- Section 50C – applies to transaction of transfer of land or building held as stock in trade held as capital asset by the transferor at less than FMV
- Section 56(2)(x) – applies to transaction of receipt of property by the transferee at less than FMV
- Where the transfer of property is at less than FMV, then the consideration shall be substituted by the FMV of the property being transferred and income shall be computed accordingly.

Amendment to section 43CA, 50C, 56(2)(x)

[Clause 22,27,29] **(w.e.f. 01.04.2020)**

- Presently the provisions of section 43CA, 50C and 56 of the Act provide for safe harbour of five per cent ie where the difference between the fair market value of the property and the consideration paid in relation to transfer of the property is less than 5%, then the consideration amount shall not be substituted by the FMV of the property.
- The aforesaid sections are proposed to be amended to increase the safe harbour limit to ten per cent.
- It may also be possible to argue that the amended safe harbor limit applies retrospectively since it is curative in nature. **(Ref: Chandra Prakash Jhunjhunwala v. CIT: 113 taxmann.com 246 (Kolkata - Trib.)**

‘VIVAD SE VISHWAS’ SCHEME

Vivad Se Vishwas Scheme

(yet to be notified)

- In the Budget Speech, the Hon'ble Finance Minister proposed to introduce the "Vivad se Vishwas" (no dispute but trust) scheme, a one time measure to reduce pending litigation in direct taxes.

- The **Vivad se Vishwas Scheme** is proposed to be **on the lines of "Sabka Vishwas Scheme"**, a legacy dispute resolution scheme that was introduced for litigation related to excise duty and service tax, which was quite successful and ended on January 15, 2020.

- The **framework and modalities** of the proposed scheme **is yet to be notified**.

Vivad Se Vishwas Scheme

(yet to be notified)

- The salient features of the scheme, as indicated in the Budget speech are:
  - Benefit to taxpayers in whose case **appeals are pending at any level**;
  - **Complete waiver of interest and penalty** – only disputed taxes to be paid for payments made till 31st March, 2020;
  - In case of **payment after 31st March, 2020**, a tax payer shall be required to **pay 110% of the disputed tax** (the excess 10% shall be limited to the amount of related penalty and interest, if any) and 30% of penalty, interest and fee;
  - In case where litigation is in respect of interest/penalty, the taxpayer would be required to pay **only 25% of such interest/penalty for settling the dispute**
  - The scheme is slated to **end by 30th June, 2020**.

Vivad Se Vishwas Scheme

(yet to be notified)

Comments/ Observations:

- The Sabka Vishwas Scheme, which was introduced to settle indirect tax litigation was very well received and as per reports, substantial excise duty and service tax cases stand resolved.

- Benefit of Sabka Vishwas Scheme was made **inapplicable in search/audit cases** and **if the taxpayer was convicted for an offence under** the relevant provisions. It remains to be seen whether such restriction will be made applicable under the Vivad Scheme as well.

Vivad Se Vishwas Scheme

(yet to be notified)

Comments/ Observations:

- It will be crucial to see if the scheme will be made applicable to disputes arising from **cash deposits made during the demonetization** period and dispute relating to foreign bank accounts.

- Whether scheme would provide for settlement of 'issues' in appeal or appeal as a whole, considering that there may be certain legal claims which the taxpayer would not want to give up?

- Whether opting for resolution of dispute would mean conceding/giving up claim in subsequent year(s)?

Vivad Se Vishwas Scheme

(yet to be notified)

Comments/ Observations:

- Whether benefit of scheme can be availed even in cases **where the taxpayer has lost and litigation has attained finality?**

- How benefit of scheme can be availed where **matter is heard and judgment reserved by Courts/appellate authorities?**

- Whether benefit of scheme can be availed **if draft assessment order pending** before Dispute Resolution Panel?

- Whether the scheme will cover cases of voluntary disclosure and cases pending before the assessing officer i.e., at assessment stage?

Vivad Se Vishwas Scheme

(yet to be notified)

Comments/ Observations:

- Whether benefit of scheme can be availed by taxpayers who have approached the Settlement Commission?

- Whether the scheme will cover cases where writ has been preferred and pending before Courts?

- Whether benefit of scheme can be availed where taxpayer is ultimately assessed at ‘loss’ and there is no actual tax payable?

Vivad Se Vishwas Scheme- Comparision

Particulars	Income Declaration Scheme, 2016	Direct Tax Dispute Resolution Scheme, 2016	Proposed Vivad Se Vishwas Scheme, 2020
Income Tax	30%	Applicable Tax Rate	#Applicable Tax Rate
Interest	-	Interest upto date of assessment	-*
Penalty	25%	25% if tax more than 10 lacs	Nil*
Krishi Kalyan Cess	25%	-	-*
Effective Rate	**45%**	**37.5% + Interest**	***Within 31.03.2020 - 30% tax After 31.03.2020 -33% tax + 30% of penalty/interest**
Where notice issued under section 142(1)/143(2)/148	NA	NA	Clarification awaited
Where Appeal pending	NA	Only if pending before CIT(A)	Pending at any level

In case of additions u/s 68/69 – Tax rates as prescribed u/s 115BBE would apply

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