

BUDGET-2020 : Analysis of Direct Tax Proposals

Tax Harassment will end – assures FM while presenting union Budget 2020

Trusting every citizen, the aspirational youth, the hard-working women, the risk-taking entrepreneur, the ever hopeful and untiring farmer or the wise and old senior citizen. Many among them are taxpayers. Others may not be taxpayers today. Our Prime Minister has laid before us Ease of Living as a goal to be achieved on behalf of all citizens. An important aspect of ease of living and ease of doing business is fairness. Businesses should have the confidence that things are fair and that the tax administration is efficient. We wish to enshrine a tax payers' charter in the statute. Our government would like to reassure tax payers that they will not be harassed. Tax harassment cannot be tolerated when we speak about wealth creation.

– Hon'ble FM Nirmala Sitharaman



A. Rates of Income Tax

1. Personal Taxation – Options given to Taxpayer

– Section 115BAC proposed to be inserted – granting an option to the Individual or HUFs

- In non-Business Income cases, such option to be exercised **Every Year** on or before furnishing the return u/s 139(1).

- In case of business income, such option can be exercised only once and same shall be valid for subsequent years as well. However, such option can be withdrawn only **ONCE** and can never be opted again.

– **Option I** – pay taxes as per the existing tax rate slab as under: –

Income Slab of Resident Individual and HUF's*	Tax Rate
Upto Rs 2,50,000**	Nil
Rs 2,50,001 to Rs 5,00,000	5%
Rs 5,00,001 to Rs 10,00,000	20%
Above Rs 10,00,000	30%
* subject to rebate u/s 87A if total income does not exceed Rs 5 Lakh	
** Rs 3,00,000 in case of Senior Citizen and Rs 5,00,000 in case of Super senior Citizens	

– **Option II** – Section 115BAC – pay taxes as per the new regime as under: –

Income Slab of Resident Individual and HUF's*	Tax Rate
Upto Rs 2,50,000	Nil
Rs 2,50,001 to Rs 5,00,000	5%
Rs 5,00,001 to Rs 7,50,000	10%
Rs 7,50,001 to Rs 10,00,000	15%
Rs 10,00,001 to Rs 12,50,000	20%

Rs 12,50,001 to Rs 15,00,000	25%
Above Rs 15,00,000	30%

– Comparison of Option I and Option II

Benefits of Exemptions / Deductions	Option I Existing	Option II New
Section 10(5) – travel concession	√	x
Section 10(13A) – House Rent Allowance	√	x
Section 10(14) – various allowances to employees	√	x (will be notified)
Section 10(17) – Daily allowance	√	x
Section 10(32) – Minor child income deduction	√	x
Section 10AA – Income from SEZ	√	x
Section 16 – Deduction from Salary (Standard Deduction, Professional Tax)	√	x
Section 24(b) – Interest for self-occupied House	√	x
Section 32(1)(iia) – Additional Depreciation	√	x
Section 32AD – Investment in Backward Area Deduction	√	x
Section 33AB – Tea, Coffee, Rubber development account	√	x
Section 33ABA – Site Restoration Fund	√	x
Section 35 – Few clauses of scientific research expenditure	√	x
Section 35AD – Deduction for specified business	√	x
Section 35CCC – Expenditure on agriculture extension project	√	x
Section 57(iia) – deduction for family pension	√	x

All deductions under Chapter VI-A – except 80CCD(2) and 80JJAA	√	x
Set off of carried forward or depreciation from any earlier assessment year – in respect of above items	√	x
Set off of loss of house property of the same year	√	x
Any exemption or deduction for allowances or perquisite, by whatever name called	√	x

– Assessee must choose the option very wisely after making proper cost benefit analysis.

2. Concessional Tax Rates to Co-Operative Society

– Section 115BAD proposed to be inserted

– In order to provide level playing field, similar Tax Rate benefits as available to Domestic Companies u/s 115BAA now made applicable to co-operative societies

– Co-operative Societies shall have option to opt for taxation at reduced rate of 22% plus applicable Surcharge and Cess u/s 115BAD **subject to various conditions similar to companies under concessional tax regime** and further no applicability of AMT – Alternate Minimum Tax.

3. Amendment in Concessional Corporate Taxation

– Section 115BAA and 115BAB proposed to be amended

– Earlier provisions of Chapter VI-A other than section 80JJAA were not applicable, now proposed to grant deduction u/s 80JJAA **as well as Section 80M** in case of domestic companies opting for taxation under concessional Tax regime

B. Tax Incentives

4. Exemption to Income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund

– Section 10(23FE) proposed to be inserted

– Applicable to wholly owned subsidiary of the Abu Dhabi Investment Authority and a sovereign wealth fund

– To provide exemption in respect of any income in nature of dividend, interest or long term capital gain on investment made in India whether in form of equity or debt.

– Subject to condition that the investment is made on or before 31/03/2024 and lock in period of 3 years

5. Incentive to Start-ups

i. Section 80-IAC proposed to be amended, to amend: –

Existing Provision	Proposed Incentive
100% Deduction for profit of 3 consecutive assessment years out of SEVEN years beginning from the year in which it is incorporated	100% Deduction for profit of 3 consecutive assessment years out of TEN years beginning from the year in which it is incorporated
Benefit is available if the total turnover of startup does not exceed Rs 25 crore in any of the previous years	Benefit will be available if the total turnover of startup does not exceed Rs 100 crore in any of the previous years

ii. Deferring TDS on ESOP for Startup Employees:

Existing Provision	Proposed Incentive
The tax on ESOP perquisite is required to be paid at the time of exercising of option which may lead to cash flow problem as this benefit of ESOP is in kind	Now TDS to be deducted by the Startup within 14 days – (i) after expiry of 48 months from the end of the relevant assessment year; or (ii) from the date of the sale of such ESOP; or (iii) from the date of assessee ceases to be the employee of the Startup; whichever is the earliest at rates in force of the financial year in which the said ESOP is allotted or transferred .

6. Boost to Affordable Housing

– **Incentive to Developer** – Section 80-IBA proposed to be amended. For claiming 100% deduction from Tax, the project has to be approved by the competent authority by 31st March, 2020. **This period has now been further extended to 31/03/2021.**

– **Incentive to first time Home Buyer** – Section 80EEA proposed to be amended. For claiming additional deduction of Rs 1,50,000 for interest on home loan, the loan has to be sanctioned by 31st March, 2020. **This period has now been further extended to 31/03/2021.**

7. Incentive to New Electricity Generating Companies

- **Concessional Tax Rates of 15%** – Section 115BAB proposed to be amended to include generation of electricity in the scope of ‘business of manufacture or production of any article or thing’
- Now new electricity generating companies are at par with New Manufacturing Companies

8. Concessional Rate of WHT

- **Section 194LC** : Withholding Tax on Interest to Non Resident for long term infrastructure bonds etc – sun set period of borrowing extended from 1st July 2020 to 1st July 2023
- **Section 194LC** : Concessional Withholding Tax of 4% proposed on Interest on Monies borrowed in foreign currency from a source outside India by way of issue of any long term bond or Rupee Denominated Bonds **on or after 1st April, 2020 but before 1st July, 2023** and which is **listed only** on a recognised stock exchange located in any IFSC
- **Section 194LD** : Withholding Tax on Interest to Foreign Institutional Investors and Qualified Foreign Investors on investment in government securities and Rupee Denominated Bonds – sun set period of borrowing extended from 1st July 2020 to 1st July 2023
- **Section 194LC** : Concessional Withholding Tax of 5% proposed on Interest to a FII or QFI in respect of the investment made in municipal debt security **on or after 1st April, 2020 but before 1st July, 2023**

C. Removing difficulties faced by Taxpayers

9. Clarity on Section 35AD

- Proposed to amend Section 35AD(1) to make the deduction thereunder optional
- Now the Assessee shall have option to choose between the deduction u/s 35AD or normal Depreciation route u/s 32

10. Amendment in definition of “business trust”

- In order to make the provisions aligned with the amended SEBI Regulations – Section 2(13A) proposed to amend definition of “Business Trust”
- Under section 115UA, private unlisted InvITs were being differentiated from public listed InvITs with regards to tax treatments provided under the Act.

- SEBI (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 has, inter-alia, done away with the mandatory listing requirement for InvITs.
- In light of this, the definition of business trusts under the Act is proposed to amended so as to do away with the requirement of the units of business trust to be listed on a recognised stock exchange.

D. Widening of Tax Net (TDS-TCS)

11. Rate of TDS on Technical Services reduced

- Proposed to amend Section 194J to reduce the rate of TDS on technical services from existing level of 10% to 2%
- This is proposed in order to reduce the litigation between the revenue and assessee for applicability of 194J and 194C on the transactions of fee for technical services.

12. Scope of 194A expanded

- Proposed to amend Section 194A to expand the coverage to transactions of interest payment by large co-operative society to its members, subject to: –
 - the total sales, gross receipts or turnover of the co-operative society exceeds Rs 50 crore during the immediately preceding financial year; and
 - ceiling limit of Rs 40,000 per payee and Rs 50,000 in case of senior citizen payee

13. E-Commerce Transactions now under Tax Net

- Proposed to insert new Section 194O
- **Scope and Coverage** – Applicable to E-Commerce operators on payments made by them to E-Commerce Participants for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform
- **Ceiling Limit** – gross amount of sales or services or both during the previous year does not exceed Rs 5,00,000. **However, no ceiling limit if PAN / Aadhar not provided.**
- **Rate** – 1% on gross amount of such sales or service or both. **However, higher Rate of TDS of 5% in non-PAN/ Aadhaar cases**
- If TDS under this section applicable, then no further TDS under any other provisions for same transactions.

14. TCS on foreign remittance through LRS

- Proposed to amend Section 206C

– **Scope and Coverage** – An authorized dealer shall be liable to collect TCS if he receives in aggregate Rs 7,50,000 or more in a financial year from a person for remittance out of India under the LRS of RBI,

– **Rate** – 5%. However, in non- PAN/Aadhaar cases, rate shall be 10%.

– Not applicable if buyer has deducted TDS under any provision of the Act

15. TCS on Foreign Tour Packages

– Proposed to amend Section 206C

– **Scope and Coverage** – A seller of an overseas tour program package shall be liable to collect TCS from buyer

– **Ceiling Limit** – Applicable on all amount – without any ceiling limit

– **Rate** – 5%. However, in non- PAN/Aadhaar cases, rate shall be 10%.

– Not applicable if buyer has deducted TDS under any provision of the Act

16. TCS on SALE of Goods

– Proposed to amend Section 206C

– **Scope and Coverage** – A seller of goods is liable to collect TCS whose total turnover from the business carried on by it exceed Rs 10 crore during the immediately preceding financial year

– **Ceiling Limit** – Consideration received from a buyer in a previous year in excess of Rs 50 lakh.

– **Rate** – 0.1% on consideration received from a buyer. However, higher rate of 1% in non-PAN/Aadhaar cases

– No TCS to be collected under this section, if TCS is already collected under other provisions or TDS has been deducted under any other provision

17. Capping of deduction for Employers Contribution to various funds / schemes

– Proposed to amend Section 17(2)(vii)

– Under the existing provisions of the Act, there was no upper cap for deduction of contribution by the employer to

- recognized provident fund
- to approved superannuation fund
- deduction under National Pension Scheme (NPS)

– and above funds were exempt on EEE model. Therefore, high salary earner used to take undue benefits by diverting large part of their income in above three funds directly by employers.

– To curb this practice, now a consolidated upper cap of **Rs 7,50,000** has been proposed and any contribution in excess of this cap shall be taxable in the hands of the employee

D. Improving Tax Administration

18. Scope of DRP expanded

- To cover all categories of Non Resident, earlier only foreign company was covered; and
- To included all cases where AO proposed to make any variation which is prejudicial to assessee

19. Now E-Appeals on way

- Proposed to insert section 250(6A)
- E-appeal scheme to be notified by CBDT to impart greater efficiency, transparency and accountability

20. To Introduce check on Power to Survey u/s 133A

- Proposed to substitute the proviso to Section 133A(6)
- Approval mechanism strengthened to provide approval of –
 - Joint Director or Joint Commissioner if survey it to conduct pursuant to receipt of information from prescribed authority; and
 - Director or Commissioner of Income Tax in all the other cases

21. Stay by ITAT

- Proposed to substitute the proviso to Section 254(2A)
- Stay to be granted only on Mandatory payment of 20% of the disputed demand or furnishing of the security of equal amount

E. Preventing Tax Abuse

22. Definition of ‘Work’ u/s 194C for Contract Manufacturing

- Proposed to amend the definition of work
- Under existing definition of ‘Work’, some Assesseees are using the escape clause of the section by getting the contract manufacturer to procure the raw material supplied through its related parties. As a result, a substantial amount of income escapes the tax net.

– Accordingly, it is proposed to provide that in a contract manufacturing, the raw material provided by the assessee or **its associate** (parties as covered u/s 40A(2)(b)) shall fall within the purview of the ‘work’ under section 194C

23. Penalty for Fake Invoice

– Proposed to insert section 271AAD

– Many persons are found to be indulged in providing / receiving fake invoices to take benefits of the input tax credit under GST etc

– Now, if it is found that that in the books of account maintained by any person there is (i) a false entry; or (ii) an omission of any entry which is relevant for computation of total income of such

person, to evade tax liability, the AO may direct that such person shall pay by way of penalty a **sum equal to the aggregate amount of such false or omitted entry.**

– Further, any other person who cause / assist others in above default, then such other persons shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry

– “false entry” includes use or intention to use – (a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or (b) invoice in respect of supply or receipt of goods or services or **both issued by the person or any other person without actual supply or receipt of such goods or services or both;** or (c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.’.

F. Rationalization of Provisions

24. Removing dividend distribution tax (DDT)

– Proposed to remove the concept of Dividend Distribution Tax u/s 115-O (from Companies) and 115R (From Mutual Funds etc)

– Proposal applicable to dividend received after 01/04/2020

– New regime to move to classical system of taxing dividend in the hands of shareholders/unit holders

– Now dividend not exempt in the hands of recipient u/s 10(34) and 10(35)

– Dividend taxable in the hands of the recipient as per their regular income, without any exemption ceiling

– Deduction u/s 57 can be claimed maximum upto 20% of such dividend

– **Section 80M to be reintroduced** – to remove the cascading effect of dividend distributed by the company a deduction of an amount equal to so much of the amount of income by way of

dividends received from such other domestic company as does not exceed the amount of dividend distributed by the first mentioned domestic company **on or before the due date**.

– Now TDS u/s 194 to be applicable on such dividend exceeding the limit of Rs 5000 per payee

25. Section 55 of the Act to compute cost of acquisition.

– For computing capital gains in respect of an asset acquired before 1st April, 2001, the assessee has been allowed an option of either to take the fair market value of the asset as on 1st April, 2001 or the actual cost of the asset as cost of acquisition.

– Now it is proposed to insert a proviso to provide that fair market value of such an asset on 1st April, 2001 shall not exceed the stamp duty value of such asset as on 1st April, 2001 where such stamp duty value is available.

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

– With a purpose of prefilling the ITR forms and also to have a check on the donation claimed by the donors, it is proposed that deduction under section 80G/ 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.

– Deduction will be available only if one to one matching is done

27. Provisions relating to tax audit u/s 44AB

– In order to reduce compliance burden on small and medium enterprises, it is proposed to increase the threshold limit for a person carrying on business from one crore rupees to **five crore rupees** in cases where,-

(i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and

(ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

– **Changes in the Due date for furnishing Audit Reports** – Further, to enable pre-filing of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assesseees at least one month prior to the due date of filing of return of income. Thus, provisions of section 10, section 10A, section 12A, section 32AB, section 33AB, section 33ABA, section 35D, section 35E, section 44AB, section 44DA, section 50B, section 80-IA, section 80-IB, section 80JJAA, section 92F, section 115JB, section 115JC and section 115VW of the Act are proposed to be amended accordingly. Therefore, these audit reports to be furnished by **30th**

- **Proposed Due Date for filing return u/s 139(1) – 31st** Further, now no distinction between working partner and non working partner due date.
- **Ceiling Limit of turnover for TDS / TCS compliance** – Now it is proposed that reference to the limit of tax audit to be removed and fixed ceiling limit of Rs 1 Crore turnover / receipts in previous year to be amended.

G. International Taxation

28. Modification in conditions for offshore funds’ exemption from “business connection”

– Section 9A of the Act provides for a special regime in respect of offshore funds by providing them exemption from creating a “business connection” in India on fulfilment of certain conditions.

– Section 9A proposed to be amended, to amend: –

Existing Conditions	Proposed Conditions
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	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
where the fund has been established or incorporated in the previous year in which case, the corpus of fund shall not be less than Rs 100 Crore at the end of a period of six months from the last day of the month of its establishment or incorporation, or at the end of such previous year , whichever is later.	if the fund has been established or incorporated in the previous year, the condition of monthly average of the corpus of the fund to be at Rs 100 Crore shall be fulfilled within 12 months from the last day of the month of its establishment or incorporation.

29. Section 94B – Excluding interest paid or payable to PE of non-resident Bank

– Section 94B of the Act, inter alia, provides that deductible interest or similar expenses exceeding one crore rupees of an Indian company, or a permanent establishment (PE) of a foreign company, paid to the associated enterprises (AE) shall be restricted to 30 percent of its earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to AE, whichever is less.

– Based on the Representations received to carve out interest paid or payable in respect of debt issued by a PE of a non-resident in India, being a person engaged in the business of banking for the reason that as per the existing provisions a branch of the foreign company in India is a non-resident in India. Further, the definition of the AE in section 92A, inter alia, deems two enterprises to be AE, if during the previous year a loan advanced by one enterprise to the other enterprise is at 50 per cent. or more of the book value of the total assets of the other enterprise. Thus, the interest paid or payable in respect of loan from the branch of a foreign bank may attract provisions of interest limitation provided for under this section.

– Proposed to amend section 94B of the Act so as to provide that provisions of **interest limitation would not apply** to interest paid in respect of a debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking, in India

30. Section 115A – Exempting non-resident from filing of Income-tax return in certain conditions

– Presently Section 115A(5) provides that a non-resident is not required to furnish its return of income under sub-section (1) of section 139 of the Act, if its total income, consists only of certain dividend or interest income and the TDS on such income has been deducted according to the provisions of Chapter XVII-B of the Act.

– This exemption did not covered the cases of Royalties, fee for technical services etc

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

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

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

31. Scope of Safe Harbor Rules and APA expanded to cover attribution of profit to PE also

– Existing provisions of Section 92CB and 92CC did not covered the cases of attribution of income in case of a non-resident person to the PE

– These cases also results into long drawn litigation between the department and the Taxpayer

– Therefore, it is proposed to it is proposed to amend section 92CB and section 92CC of the Act to cover determination of attribution to PE within the scope of SHR and APA

32. Modification of residency provisions

– The exiting provisions of section 6(1) of the Act provide for situations in which an individual shall be resident in India in a previous year. Clause (c) thereof provides that the individual shall be Indian resident in a year, if he,-

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

(ii) is in India for an overall period of 60 days or more in that year.

– In the above condition an Indian citizen or a person of Indian origin shall be Indian resident if he is in India for 182 days instead of 60 days in that year

– Further Sub-section (6) of the said section provides for situations in which a person shall be “not ordinarily resident” in a previous year. Clause (a) thereof provides that if the person is an individual who has been non-resident in nine out of the ten previous years preceding that year

– These provisions may sometime results into a Indian citizen or person of Indian origin to be non resident for all countries and resident for none. The issue of stateless persons has been bothering the tax world for quite some time.

– To curb the above situations, it is proposed that: –

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

(ii) an individual or an HUF shall be said to be “not ordinarily resident” in India in a previous year, if the individual or the manager of the HUF has been a non-resident in India in **seven out of ten previous years** preceding that year. **Earlier it was nine out of ten years.**

(iii) an Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India.

33. Incorporation of MLI preamble clause to statue book

– India has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (commonly referred to as MLI) along with representatives of many countries, which has since been ratified.

– The MLI will modify India’s DTAA’s to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out. The MLI will be applied alongside existing DTAA’s, modifying their application in order to implement the BEPS measures. MLI is a single instrument, which will modify number of DTAA agreements entered into between sovereign states.

– Article 6 of MLI is a Minimum Standard and shall apply invariably to all the signatories to MLI. Article 6 of MLI contains the Preamble to be incorporated to all the Covered tax agreements.

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

34. Deferring Significant Economic Presence (SEP) proposal

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

35. Amendment in definition of ‘Royalty’

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

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

– Hence, it is proposed to amend the definition of royalty so as **not to exclude consideration for the sale, distribution or exhibition of cinematographic films from its meaning.**

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