

# FINANCE BILL, 2020

## PROVISIONS RELATING TO DIRECT TAXES

### Introduction

The provisions of Finance Bill, 2020 (hereafter referred to as "the Bill"), relating to direct taxes seek to amend the Income-tax Act, 1961 (hereafter referred to as 'the Act'), Prohibition of Benami Property Transactions Act, 1988 (hereafter referred to as "PBPT Act"), and Finance Act, 2013, to continue to provide momentum to the buoyancy in direct taxes through tax-incentives, reducing tax rates for co-operative society, individual and Hindu undivided family (HUF), deepening and widening of the tax base, removing difficulties faced by taxpayers, curbing tax abuse and enhancing the effectiveness, transparency and accountability of the tax administration.

With a view to achieving the above, the various proposals for amendments are organised under the following heads:—

- (A) Rates of income-tax;
- (B) Tax incentives;
- (C) Removing difficulties faced by taxpayers;
- (D) Measures to provide tax certainty;
- (E) Widening and deepening of tax base;
- (F) Revenue mobilisation measures;
- (G) Improving effectiveness of tax administration;
- (H) Preventing tax abuse; and
- (I) Rationalisation of provisions of the Act.

### DIRECT TAXES

#### A. RATES OF INCOME-TAX

##### I. Rates of income-tax in respect of income liable to tax for the assessment year 2020-21.

In respect of income of all categories of assessee liable to tax for the assessment year 2020-21, the rates of income-tax have either been specified in specific sections (like section 115BAA or section 115BAB for domestic companies) or have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance (No 2) Act, 2019, as amended by Taxation Law Amendment Act, 2019 (TLAA) for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases.

##### (1) Surcharge on income-tax

The amount of income-tax shall be increased by a surcharge for the purposes of the Union,—

- (a) in the case of every individual or HUF or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act, not having any income under section 115AD of the Act,—
  - (i) having a total income (including the income under the provisions of section 111A and 112A of the Act) exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income-tax; and
  - (ii) having a total income (including the income under the provisions of section 111A and 112A of the Act) exceeding one crore rupees but not exceeding two crore rupees, at the rate of fifteen per cent. of such income-tax;
  - (iii) having a total income (excluding the income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;
  - (iv) having a total income (excluding the income under the provisions of section 111A and 112A of the Act) exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;

- (v) having a total income (including the income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees, but is not covered under clause (iii) or (iv) above, at the rate of fifteen per cent of such income tax:

Provided that in case where the total income includes any income chargeable under section 111A and 112A of the Act, the rate of surcharge on the amount of income-tax computed in respect of that part of income shall not exceed fifteen per cent;

- (aa) in the case of individual or every association of person or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act having income under section 115AD of the Act,-
  - (i) having a total income exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income-tax; and
  - (ii) having a total income exceeding one crore rupees but not exceeding two crore rupees, at the rate of fifteen per cent. of such income-tax;
  - (iii) having a total income [excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;
  - (iv) having a total income [excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;
  - (v) having a total income [including the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding two crore rupees but is not covered in sub-clauses (iii) and (iv), at the rate of fifteen per cent. of such income-tax:

Provided that in case where the total income includes any income chargeable under clause (b) of sub-section (1) of section 115AD of the Act, the rate of surcharge on the income-tax calculated on that part of income shall not exceed fifteen per cent;

- (b) in the case of every co-operative society or firm or local authority, at the rate of twelve per cent. of such income-tax, where the total income exceeds one crore rupees;
- (c) in the case of every domestic company except such domestic company whose income is chargeable to tax under section 115BAA or section 115BAB of the Act,—
  - (i) at the rate of seven per cent. of such income-tax, where the total income exceeds one crore rupees but does not exceed ten crore rupees;
  - (ii) at the rate of twelve per cent. of such income-tax, where the total income exceeds ten crore rupees;
- (d) in the case of domestic company whose income is chargeable to tax under section 115BAA or 115BAB of the Act, at the rate of ten per cent;
- (e) in the case of every company, other than a domestic company,—
  - (i) at the rate of two per cent. of such income-tax, where the total income exceeds one crore rupees but does not exceed ten crore rupees;
  - (ii) at the rate of five per cent. of such income-tax, where the total income exceeds ten crore rupees;
- (f) In other cases (including sections 92CE, 115-O, 115QA, 115R, 115TA or 115TD), the surcharge shall be levied at the rate of twelve per cent.

## **(2) Marginal Relief—**

Marginal relief has also been provided in all cases where surcharge is proposed to be imposed.

## **(3) Education Cess—**

For assessment year 2020-21, "Health and Education Cess" is to be levied at the rate of four per cent. on the amount of income tax so computed, inclusive of surcharge wherever applicable, in all cases. No marginal relief shall be available in respect of such cess.

## **II. Rates for deduction of income-tax at source during the financial year (FY) 2020-21 from certain incomes other than “Salaries”.**

The rates for deduction of income-tax at source during the FY 2020-21 from certain incomes other than “Salaries” have been specified in Part II of the First Schedule to the Bill. The rates for all the categories of persons will remain the same as those specified in Part II of the First Schedule to the Finance (No 2) Act, 2019, for the purposes of deduction of income-tax at source during the FY 2019-20. For sections specifying the rate of deduction of tax at source, the tax shall continue to be deducted as per the provisions of these sections. Two new sections 194K and 194-O have been inserted specifying the rates within the sections. Rate of section 194 has been modified from rate in force to ten per cent.

### **(1) Surcharge—**

The amount of tax so deducted, in the case of a non-resident person (other than a company), shall be increased by a surcharge,—

- (a) in the case of every individual or HUF or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act, being a non-resident, calculated,—
  - (i) at the rate of ten per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds fifty lakh rupees but does not exceed one crore rupees;
  - (ii) at the rate of fifteen per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed two crore rupees;
  - (iii) at the rate of twenty-five per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds two crore rupees but does not exceed five crore rupees;
  - (iv) at the rate of thirty-seven per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds five crore rupees;
- (b) in the case of every co-operative society or firm, being a non-resident, calculated at the rate of twelve per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;
- (c) in the case of every company, other than a domestic company, calculated,—
  - (i) at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees;
  - (ii) at the rate of five per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.

No surcharge will be levied on deductions in other cases.

### **(2) Education Cess—**

“Health and Education Cess” shall continue to be levied at the rate of four per cent. of income tax including surcharge wherever applicable, in the cases of persons not resident in India including company other than a domestic company.

## **III. Rates for deduction of income-tax at source from “Salaries”, computation of “advance tax” and charging of income-tax in special cases during the FY 2020-21.**

The rates for deduction of income-tax at source from “Salaries” during the FY 2020-21 and also for computation of “advance tax” payable during the said year in the case of all categories of assesseees have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the FY 2020-21 on current incomes in cases where accelerated assessments have to be made, for instance, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc. New provisions are inserted for tax rates in respect of individual or HUF (section 115BAC of the Act) and resident co-operative societies (section 115 BAD of the Act) with an option to these taxpayers. The salient features of the rates specified in the said Part III are indicated in the following paragraphs-

**A. Individual, HUF, association of persons, body of individuals, artificial juridical person.**

Paragraph A of Part-III of First Schedule to the Bill provides following rates of income-tax:—

- (i) The rates of income-tax in the case of every individual (other than those mentioned in (ii) and (iii) below) or HUF or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act (not being a case to which any other Paragraph of Part III applies) are as under:—

Upto Rs. 2,50,000	Nil.
Rs. 2,50,001 to Rs. 5,00,000	5 per cent.
Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
Above Rs 10,00,000	30 per cent.

- (ii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Upto Rs.3,00,000	Nil.
Rs. 3,00,001 to Rs. 5,00,000	5 per cent.
Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
Above Rs 10,00,000	30 per cent.

- (iii) in the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year,—

Upto Rs. 5,00,000	Nil.
Rs. 5,00,001 to Rs. 10,00,000	20 per cent.
Above Rs 10,00,000	30 per cent.

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph (including capital gains under section 111A, 112 and 112A) as well as income tax computed under section 115BAC, shall be increased by a surcharge at the rate of,—

- having a total income (including the income under the provisions of section 111A and 112A of the Act) exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income-tax;
- having a total income (including the income under the provisions of section 111A and 112A of the Act) exceeding one crore rupees, at the rate of fifteen per cent. of such income-tax;
- having a total income (excluding the income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;
- having a total income (excluding the income under the provisions of section 111A and 112A of the Act) exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;
- having a total income (including income under the provisions of section 111A and section 112A of the Act) exceeding two crore rupees, but is not covered under clauses (c) and (d), shall be applicable at the rate of fifteen per cent. of such income-tax:

Provided that in case where the total income includes any income chargeable under section 111A and section 112A of the Act, the rate of surcharge on the amount of Income-tax computed in respect of that part of income shall not exceed fifteen per cent..

Marginal relief is provided in cases of surcharge.

From the assessment year 2021-22 (FY 2020-21), individual and HUF tax payers have an option to opt for taxation under the newly inserted section 115BAC of the Act and the resident co-operative society has an option to opt for taxation under the newly inserted section 115BAD of the Act. This is discussed later.

#### **B. Co-operative Societies**

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for FY 2019-20. The amount of income-tax shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees. However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

From the assessment year 2021-22, resident co-operative societies have an option to opt for taxation under newly inserted section 115BAD of the Act. This is discussed later.

#### **C. Firms**

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for FY 2019-20. The amount of income-tax shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a firm having a total income exceeding one crore rupees. However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

#### **D. Local authorities**

The rate of income-tax in the case of every local authority has been specified in Paragraph D of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for the FY 2019-20. The amount of income-tax shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

#### **E. Companies**

The rates of income-tax in the case of companies have been specified in Paragraph E of Part III of the First Schedule to the Bill. In case of domestic company, the rate of income-tax shall be twenty five per cent. of the total income, if the total turnover or gross receipts of the previous year 2018-19 does not exceed four hundred crore rupees and in all other cases the rate of Income-tax shall be thirty per cent. of the total income. However, domestic companies also have an option to opt for taxation under section 115BAA or section 115BAB of the Act on fulfilment of conditions contained therein. The tax rate is 15 per cent. in section 115BAB and 22 per cent. in section 115BAA. Surcharge is 10 per cent. in both cases.

In the case of company other than domestic company, the rates of tax are the same as those specified for the FY 2019-20.

Surcharge at the rate of seven per cent. shall continue to be levied in case of a domestic company (except those opting for taxation under section 115BAA and section 115BAB of the Act), if the total income of the domestic company exceeds one crore rupees but does not exceed ten crore rupees. Surcharge at the rate of twelve per cent shall continue to be levied, if the total income of the domestic company (except those opting for taxation under section 115BAA and section 115BAB of the Act) exceeds ten crore rupees.

In case of companies other than domestic companies, the existing surcharge of two per cent shall continue to be levied, if the total income exceeds one crore rupees but does not exceed ten crore rupees. Surcharge at the rate of five per cent shall continue to be levied, if the total income of the company other than domestic company exceeds ten crore rupees.

Marginal relief is provided in surcharge in all cases.

In other cases [including sub-section (2A) of section 92CE, sections 115-O, 115QA, 115R, 115TA or 115TD], the surcharge shall be levied at the rate of twelve per cent..

For FY 2020-21, additional surcharge called the "Health and Education Cess on income-tax" shall be levied at the rate of four per cent on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such cess.

*[Clause 2 & the First Schedule]*

#### IV Other amendments having impact on rates for various categories of person

##### A. Incentives to resident co-operative societies.

The TLAA, which replaced The Taxation Laws (Amendment) Ordinance, 2019, sought to provide additional fiscal stimulus to attract investment, generate employment and boost the economy in the wake of economic developments post enactment of the Finance (No. 2) Act, 2019 and keeping in view the reduction of rate of corporate income tax by many countries world over. TLAA, *inter alia*, introduced section 115BAA in the Act so as to provide that an existing domestic company may opt to pay tax at 22 per cent., if it does not claim any incentive and deduction as provided in said section.

In case of the domestic company opting to pay tax at the rate of 22 per cent. under said section, it was provided that,-

- (a) failure to satisfy specified conditions would disqualify it for the concessional rate and normal provisions of the Act shall apply.
- (b) deemed loss or depreciation arising out of amalgamation attributable to any incentive, deduction or exemption, shall not be allowed in computation of income.
- (c) for FY 2020-21, where there is unabsorbed depreciation allowance in respect of a block of asset which has not been given full effect to in earlier FYs, corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2020.
- (d) it shall be entitled to deduction under section 80LA of the Act, subject to fulfilment of conditions contained therein, in respect of a Unit in the International Financial Services Centre, if any.

It was also provided that such company shall not be subjected to Minimum Alternate Tax (MAT) under section 115JB of the Act and that, the carry forward and set off of MAT credit, if any, under section 115JAA of the Act would not be allowed.

Representations have been received from the stakeholders requesting to provide for concessional rate of tax in case of resident co-operative society on similar lines. In view of the above, it is proposed to insert a new section (115BAD) in the Act to provide that,-

- (i) notwithstanding anything contained in the Act but subject to the provisions of Chapter XII and satisfaction of certain conditions, a co-operative society resident in India shall have the option to pay tax at 22 per cent. for assessment year 2021-22 onwards in respect of its total income so however that if it fails to satisfy the conditions in any previous year, the option shall become invalid and other provisions of the Act shall apply;
- (ii) the condition for concessional rate shall be that the total income of the co-operative society is computed,—
  - (a) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or under any provisions of Chapter VI-A;
  - (b) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (a) above; and
  - (c) by claiming the depreciation, if any, under section 32, except clause (iia) of sub-section (1) thereof, determined in such manner as may be prescribed;
  - (iii) the loss and depreciation referred to in (ii)(b) above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year. However, where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1st April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2020 in the prescribed manner, if the option is exercised for a previous year relevant to the assessment year beginning on 1st April, 2021;
  - (iv) the concessional rate shall not apply unless option is exercised by the co-operative society in the prescribed manner on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after 1st April, 2021 and such option once exercised shall apply to subsequent assessment years;
  - (v) if the person has a Unit in the International Financial Services Centre (IFSC), as referred to in sub-section (1A) of section 80LA, the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that section; and
  - (vi) the option so exercised cannot be withdrawn;
  - (vii) The surcharge applicable to such co-operative society shall be levied at 10 per cent..

It is further proposed to amend section 115JC of the Act so as to provide that the provisions relating to Alternate Minimum Tax (AMT) shall not apply to such co-operative society.

It is also proposed to amend section 115JD of the Act so as to provide that the provisions relating to carry forward and set off of AMT credit, if any, shall not apply to such co-operative society.

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

[Clauses 53, 57 & 58]

## B. Incentives to Individual and HUF.

In line with options provided to domestic companies under the TLAA and proposed to be provided to resident co-operative societies under this Bill, it is also proposed to provide similar option to individual and HUF by insertion of section 115BAC in the Act, which provides the following:-

- (i) On satisfaction of certain conditions, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

Total Income (Rs)	Rate
Upto 2,50,000	Nil
From 2,50,001 to 5,00,000	5 per cent.
From 5,00,001 to 7,50,000	10 per cent.
From 7,50,001 to 10,00,000	15 per cent.
From 10,00,001 to 12,50,000	20 per cent.
From 12,50,001 to 15,00,000	25 per cent.
Above 15,00,000	30 per cent.

- (ii) The option shall be exercised for every previous year where the individual or the HUF has no business income, and in other cases the option once exercised for a previous year shall be valid for that previous year and all subsequent years.
- (iii) The option shall become invalid for a previous year or previous years, as the case may be, if the Individual or HUF fails to satisfy the conditions and other provisions of the Act shall apply;
- (iv) the condition for concessional rate shall be that the total income of the individual or HUF is computed,—
- without any exemption or deduction under the provisions of clause (5) or clause (13A) or prescribed under clause (14) (other than those as may be prescribed for this purpose) or clause (17) or clause (32) of section 10 or section 10AA or section 16 or clause (b) of section 24 [in respect of property referred to in sub-section (2) of section 23] or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or clause (iia) of section 57 or under any provisions of Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA;
  - without set off of any loss,-
    - carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (a) above; or
    - under the head house property with any other head of income;
  - by claiming the depreciation, if any, under section 32, except clause (iia) of sub-section (1) thereof, determined in such manner as may be prescribed; and
  - without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.
- (v) the loss and depreciation referred to in (ii)(b) above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year so however, that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1st April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2020 in the prescribed manner, if the option is exercised for a previous year relevant to the assessment year beginning on 1st April, 2021;
- (vi) the concessional rate shall not apply unless option is exercised by the individual or HUF in the form and manner as may be prescribed,-
- where such individual or HUF has no business income, along with the return of income to be furnished under sub-section (1) of section 139 of the Act; and

- b. in any other case, on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the return of income for any previous year relevant to the assessment year commencing on or after 1st April, 2021 and such option once exercised shall apply to subsequent assessment years;
- (vii) if the individual or HUF has a Unit in the International Financial Services Centre [clause (zc) of section 2 of the Special Economic Zones Act, 2005], as referred to in sub-section (1A) of section 80LA, the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that section; and
- (viii) the option can be withdrawn only once where it was exercised by the individual or HUF having business income for a previous year other than the year in which it was exercised and thereafter, the individual or HUF shall never be eligible to exercise option under this section, except where such individual or HUF ceases to have any business income in which case, option under para (vi)(a) above shall be available.

It is further proposed to amend section 115JC of the Act so as to provide that the provisions relating to AMT shall not apply to such individual or HUF having business income.

It is also proposed to amend section 115JD of the Act so as to provide that the provisions relating to carry forward and set off of AMT credit, if any, shall not apply to such individual or HUF having business income.

The condition listed at (iva) above, means that the individual or HUF opting for taxation under the newly inserted section 115BAC of the Act shall not be entitled to the following exemptions/ deductions:

- (i) Leave travel concession as contained in clause (5) of section 10;
- (ii) House rent allowance as contained in clause (13A) of section 10;
- (iii) Some of the allowance as contained in clause (14) of section 10;
- (iv) Allowances to MPs/MLAs as contained in clause (17) of section 10;
- (v) Allowance for income of minor as contained in clause (32) of section 10;
- (vi) Exemption for SEZ unit contained in section 10AA;
- (vii) Standard deduction, deduction for entertainment allowance and employment/professional tax as contained in section 16;
- (viii) Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23. (Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);
- (ix) Additional depreciation under clause (iia) of sub-section (1) of section 32;
- (x) Deductions under section 32AD, 33AB, 33ABA;
- (xi) Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;
- (xii) Deduction under section 35AD or section 35CCC;
- (xiii) Deduction from family pension under clause (iia) of section 57;
- (xiv) Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub-section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme) and section 80JJAA (for new employment) can be claimed.

As many allowances have been provided through notification of rules, it is proposed to carry out amendment of the Income-tax Rules, 1962 (the Rules) subsequently, so as to allow only following allowances notified under section 10(14) of the Act to the Individual or HUF exercising option under the proposed section:

- (a) Transport Allowance granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty
- (b) Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office;
- (c) Any Allowance granted to meet the cost of travel on tour or on transfer;
- (d) Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.

It is also proposed to amend rule 3 of the Rules subsequently, so as to remove exemption in respect of free food and beverage through vouchers provided to the employee, being the person exercising option under the proposed section, by the employer.



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

[Clauses 53, 57 & 58]

### **C. Modification of concessional tax schemes for domestic companies under section 115BAA and 115BAB**

TLAA inserted section 115BAA and section 115BAB in the Act to provide domestic companies an option to be taxed at concessional tax rates provided they do not avail specified deductions and incentives. Some of the deductions prohibited are deductions under any provisions of Chapter VI-A under the heading "C. Deduction in respect of certain incomes" other than the provisions of section 80JJAA.

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

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

[Clauses 51 & 52]

### **D. Withdrawal of exemption on certain perquisites or allowances provided to Union Public Services Commission (UPSC) Chairman and members and Chief Election Commissioner and Election Commissioners**

Section 10 of the Act provides for exemption in respect of certain incomes and activities under specific circumstances. Clause (45) thereof, inserted by the Finance Act, 2011, provides that any allowance or perquisite as may be notified by the Central Government, paid to the serving/ retired Chairman or Members of UPSC shall not be included in computing their total income and hence shall be exempt from income-tax.

Further, vide Notification No. 49/2011 dated 6th September, 2011 bearing SO 2045(E), it was notified that in the case of serving Chairman and members of UPSC the following allowances and perquisites shall be exempt from income-tax for the purposes of clause (45) of section 10 of the Act, with effect from 1st April, 2008:

- (i) the value of rent-free official residence;
- (ii) the value of conveyance facilities including transport allowance;
- (iii) the sumptuary allowance;
- (iv) the value of leave travel concession provided to a serving Chairman or member of the UPSC and members of his family.

In the case of retired Chairman and members of UPSC, the said Notification states that the following allowances and perquisites shall be exempt from income-tax for the purposes of clause (45) of section 10 of the Act, with effect from 1st April, 2008:

- (i) a sum of maximum of Rs 14,000 per month for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis;
- (ii) the value of a residential telephone free of cost and the number of free calls to the extent of 1500 per month (overall and above the number of free calls per month allowed by telephone authorities).

Section 8 of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 which determines the conditions of service of the Chief Election Commissioner and other Election Commissioners, provides for income-tax exemption to the Chief Election Commissioner and other Election Commissioners on the value of rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and other such conditions of service as are applicable to a Judge of the Supreme Court under Chapter IV of the Supreme Court Judges (Conditions of Service) Act, 1958 and the rules made thereunder.

It is proposed to remove these exemptions. Accordingly, it proposed to:

- (i) delete clause (45) of section 10 of the Act;
- (ii) amend section 8 of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, so as to delete the exemption from income-tax on value of rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and other such conditions of service as are applicable to a Judge of the Supreme Court, paid to Chief Election Commissioner and other Election Commissioners.

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

[Clause 7]

## B. TAX INCENTIVES

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

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

In order to promote investment of sovereign wealth fund, including the wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA), it is proposed to insert a new clause in the said section so as to provide exemption to any income of a specified person in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or equity, in a company or enterprise carrying on the business of developing, or operating and maintaining, or developing, operating or maintaining any infrastructure facility as defined in Explanation to clause (i) of sub-section (4) of section 80-IA of the Act or such other business as may be notified by the Central Government in this behalf. In order to be eligible for exemption, the investment is required to be made on or before 31st March, 2024 and is required to be held for at least three years.

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

- (a) a wholly owned subsidiary of the ADIA, which is a resident of the United Arab Emirates (UAE) and which makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates; and
- (b) a sovereign wealth fund which satisfies the following conditions:
  - A. It is wholly owned and controlled, directly or indirectly, by Government of a foreign country;
  - B. It is set up and regulated under the law of the foreign country;
  - C. Its earnings are credited either to the account of the Government of the foreign country or to any other account designated by that Government such that no portion of the earnings inures any benefit to any private person;
  - D. Its asset vest in the Government of the foreign country upon dissolution;
  - E. It does not undertake any commercial activity whether within or outside India; and
  - F. It is notified by the Central Government in the Official Gazette for this purpose.

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

*[Clause 7]*

### **Exemption in respect of certain income of Indian Strategic Petroleum Reserves Limited.**

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

Clause (48A) thereof, inserted by the Finance Act, 2016, provides that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in the total income, if such storage and sale by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; and having regard to the national interest, the foreign company and the agreement or arrangement are notified.

Clause (48B) of said section, inserted by the Finance Act, 2017 and amended by the Finance Act, 2018, provides for exemption in respect of any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from the facility in India after the expiry of the agreement or the arrangement referred to in clause (48A) or on termination of the said agreement or the arrangement, in accordance with the terms mentioned therein, as the case may be, subject to such conditions as may be notified by the Central Government in this behalf.

It is now proposed to provide exemption, by inserting a new clause in section 10, to any income accruing or arising to Indian Strategic Petroleum Reserves Limited (ISPRL), being a wholly owned subsidiary of Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of an arrangement for replenishment of crude oil stored in its storage facility in pursuance to directions of the Central Government in this behalf. This exemption shall be subject to the condition that the crude oil is replenished in the storage facility within three years from the end of the financial year in which the crude oil was removed from the storage facility for the first time.

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

*[Clause 7]*

### **Rationalization of provisions of start-ups.**

The existing provisions of section 80-IAC of the Act provide for a deduction of an amount equal to one hundred per cent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of

seven years, at the option of the assessee, subject to the condition that the eligible start-up is incorporated on or after 1st April, 2016 but before 1st April, 2021 and the total turnover of its business does not exceed twenty-five crore rupees.

In order to further rationalise the provisions relating to start-ups, it is proposed to amend section 80-IAC of the Act so as to provide that-

- (i) the deduction under the said section 80-IAC shall be available to an eligible start-up for a period of three consecutive assessment years out of ten years beginning from the year in which it is incorporated;
- (ii) the deduction under the said section shall be available to an eligible start-up, if the total turnover of its business does not exceed one hundred crore rupees in any of the previous years beginning from the year in which it is incorporated.

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

[Clause 36]

#### **Extending time limit for approval of affordable housing project for availing deduction under section 80-IBA of the Act.**

The existing provisions of section 80-IBA of the Act, *inter alia*, provide that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building affordable housing projects, there shall, subject to certain conditions specified therein, be allowed a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business. The conditions contained in the section, *inter alia*, prescribe that the project is approved by the competent authority during the period from 1st June, 2016 to 31st March, 2020.

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

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

[Clause 38]

#### **Extending time limit for sanctioning of loan for affordable housing for availing deduction under section 80EEA of the Act**

The existing provisions of section 80EEA of the Act provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. The deduction allowed is up to one lakh fifty thousand rupees and is subject to certain conditions. One of the conditions is that loan has been sanctioned by the financial institution during the period from 1st April, 2019 to 31st March, 2020.

The said deduction is aimed to incentivise first time buyers to invest in residential house property whose stamp duty does not exceed forty-five lakh rupees. In order to continue promoting purchase of affordable housing, the period of sanctioning of loan by the financial institution is proposed to be extended to 31st March, 2021.

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

[Clause 32]

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

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

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

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

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

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

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

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

[Clause 6]

#### **Amendment of section 115BAB of the Act to include generation of electricity as manufacturing.**

The TLAA, *inter-alia*, inserted section 115BAB in the Act. The newly inserted section provides that new manufacturing domestic companies set up on or after 1st October, 2019, which commence manufacturing or production by 31st March, 2023 and do not avail of any specified incentives or deductions, may opt to pay tax at a concessional rate of 15 per cent. Further, Explanation to clause (b) of sub-section (2) thereof provides that for the purposes of the said section, businesses engaged in development of computer software, mining, conversion of marble blocks or similar items into slabs, bottling of gas into cylinder, printing of books or production of cinematograph film or any other business as may be notified by the Central Government will not be considered as manufacturing or production.

Representations have been received from various stakeholders requesting to provide that the benefit of the concessional rate under section 115BAB of the Act may also be extended to business of generation of electricity, which otherwise may not amount to manufacturing or production of an article or thing. Accordingly, it is proposed to explain that, for the purposes of this section, manufacturing or production of an article or thing shall include generation of electricity.

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

[Clause 52]

#### **Amendment of section 194LC of the Act to extend the period of concessional rate of withholding tax and also to provide for the concessional rate to bonds listed in stock exchanges in IFSC.**

Section 194LC of the Act, provided for a concessional rate of Tax Deductible at Source (TDS) at five per cent by a specified company or a business trust, on interest paid to non-residents on the following forms of borrowings (approved by the Central Government) made in foreign currency from sources outside India:

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

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

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

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

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

[Clause 82]

**Amendment of section 194LD of the Act to extend the period of concessional rate of withholding tax and also to extend this concessional rate to municipal debt securities.**

Section 194LD of the Act provides for lower TDS of five per cent in case of interest payments to Foreign Institutional Investors (FII) and Qualified Foreign Investors (QFIs) on their investment in Government securities and RDB of an Indian company subject to the condition that the rate of interest does not exceed the rate notified by the Central Government in this regard. The section further provides that the interest should be payable at any time on or after 1st June, 2013 but before 1st July, 2020.

Representations have been received for extension of the time limit and also for a further concessional rate of TDS on interest payment on investment in municipal bonds, as Foreign Portfolio Investors (FPIs) have now been permitted to invest in municipal bonds by the Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI) under the limits available for FPI investments in State Development Loans (SDL).

In order to attract fresh investment, create jobs and stimulate the economy, it has been proposed to amend section 194LD to,-

- (i) extend the period of rate of TDS of five per cent under the said section to 1st July, 2023 from the existing 1st July, 2020;
- (ii) provide that the concessional rate of TDS of five per cent under the said section shall also apply on the interest payable, on or after 1st April, 2020 but before 1st July, 2023, to a FII or QFI in respect of the investment made in municipal debt security.

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

[Clause 83]

**C. REMOVING DIFFICULTIES FACED BY TAXPAYERS**

**Excluding interest paid or payable to Permanent Establishment of a non-resident Bank for the purpose of disallowance of interest under section 94B.**

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 per cent. of its earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to AE, whichever is less. Further, a loan is deemed to be from an AE, if an AE provides implicit or explicit guarantee in respect of that loan. AE for the purposes of this section has the meaning assigned to it in section 92A of the Act. This section was inserted in the Act through the Finance Act, 2017 in order to implement the measures recommended in final report on Action Plan 4 of the Base Erosion and Profit Shifting (BEPS) project under the aegis of G-20-Organisation of Economic Co-operation and Development (OECD) countries to address the issue of base erosion and profit shifting by way of excess interest deductions.

Representations have been 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.

It is, therefore, 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.

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

[Clause 46]

**Increase in safe harbour limit of 5 per cent. under section 43CA, 50C and 56 of the Act to 10 per cent..**

Section 43CA of the Act, *inter alia*, provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

Section 50C of the Act provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by stamp valuation authority for

the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration and capital gains shall be computed on the basis of such consideration under section 48 of the Act. The said section also provides that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

Clause (x) of sub-section (2) of section 56 of the Act, *inter alia*, provides that where any person receives, in any previous year, from any person or persons on or after 1st April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "income from other sources". It also provide that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds five per cent of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "Income from other sources".

Thus, the present provisions of section 43CA, 50C and 56 of the Act provide for safe harbour of five per cent.

Representations have been received in this regard requesting that the said safe harbour of five per cent may be increased.

It is, therefore, proposed to increase the limit to ten per cent..

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

[Clauses 22, 27 & 29]

#### **Providing an option to the assessee for not availing deduction under section 35AD.**

Section 35AD of the Act, relating to deduction in respect of expenditure on specified business, provides for 100 per cent. deduction on capital expenditure (other than expenditure on land, goodwill and financial assets) incurred by the assessee on certain specified businesses. Under sub-section (1) of section 35AD, the said deduction of 100 per cent. of the capital expenditure is allowable during the previous year in which such expenditure has been incurred. Further, sub-section (4) provides that no deduction is allowable under any other section in respect to the expenditure referred to in sub-section (1). At present, an assessee does not have any option of not availing the incentive under said section.

Due to this, a legal interpretation can be made that a domestic company opting for concessional tax rate under section 115BAA or section 115BAB of the Act, which does not claim deduction under section 35AD, would also be denied normal depreciation under section 32 due to operation of sub-section (4) of section 35AD. This has not been the intention of the statute.

Therefore, it is proposed to amend sub-section (1) of section 35AD to make the deduction thereunder optional. It is further proposed to amend sub-section (4) of section 35AD to provide that no deduction will be allowed in respect of expenditure incurred under sub-section (1) in any other section in any previous year or under this section in any other previous year, if the deduction has been claimed by the assessee and allowed to him under this section.

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

[Clause 18]

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

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

- (a) certain dividend or interest income;
- (b) royalty or fees for technical services (FTS) received from the Government or Indian concern in pursuance of an agreement made after 31st March 1976, and which is not effectively connected with a PE, if any, of the non-resident in India.

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

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

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

- (i) his or its total income consists of only dividend or interest income as referred to in clause (a) of sub-section (1) of said section, or royalty or FTS income of the nature specified in clause (b) of sub-section (1) of section 115A; and
- (ii) the TDS on such income has been deducted under the provisions of Chapter XVII-B of the Act at the rates which are not lower than the prescribed rates under sub-section (1) of section 115A.

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

*[Clause 47]*

#### **Deferring TDS or tax payment in respect of income pertaining to Employee Stock Option Plan (ESOP) of start-ups.**

ESOPs have been a significant component of the compensation for the employees of start-ups, as it allows the founders and start-ups to employ highly talented employees at a relatively low salary amount with balance being made up via ESOPs.

Currently ESOPs are taxed as perquisites under section 17(2) of the Act read with Rule 3(8)(iii) of the Rules. The taxation of ESOPs is split into two components:

- i. Tax on perquisite as income from salary at the time of exercise.
- ii. Tax on income from capital gain at the time of sale.

The tax on 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.

In order to ease the burden of payment of taxes by the employees of the eligible start-ups or TDS by the start-up employer, it is proposed to amend section 192 of the Act, and insert sub-section (1C) therein to clarify that for the purpose of deducting or paying tax under sub-sections (1) or (1A) thereof, as the case may be, a person, being an eligible start-up referred to in section 80-IAC, responsible for paying any income to the assessee being perquisite of the nature specified in clause (vi) of sub-section (2) of section 17 of the Act, in any previous year relevant to the assessment year 2021-22 or subsequent assessment year, deduct or pay, as the case may be, tax on such income within fourteen days —

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

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

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

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

*[Clauses 68, 71, 72 & 73]*

#### **Allowing carry forward of losses or depreciation in certain amalgamations.**

Section 72AA of the Act provides for carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949. This section operates notwithstanding anything contained in sub-clause (i) to (iii) of clause (1B) of section 2 or section 72A of the Act.

In order to address the issue faced by the amalgamated public sector banks and public sector General Insurance Companies, it is proposed to extend the benefit of this section to amalgamation of,-

- (i) one or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or both, as the case may be, or
- (ii) One or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government under section 16 of the General Insurance Business (Nationalisation) Act, 1972.

“Corresponding new bank” is proposed to be given the meaning as assigned to it in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

“Government company” is proposed to be given the meaning assigned to it in section 2(45) of the Companies Act, 2013. In addition, it is to be engaged in the general insurance business and has come into existence by operation of section 4 or section 5 or section 16 of the General Insurance Business (Nationalisation) Act, 1972.

“General insurance business” is proposed to be given the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972.

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

[Clause 31]

#### **Modification of the definition of “business trust”**

Section 115UA of the Act provides for a taxation regime applicable to business trusts. Under the said regime, the total income of the trust, excluding capital gains income is charged at the maximum marginal rate. Further, the income by way of interest and rent, received by the business trust from a Special Purpose Vehicle (SPV) is accorded pass through treatment i.e. there is no taxation of such interest or rental income in the hands of the trust and no withholding tax at the level of SPV. The business trusts are also required to furnish return of income and adhere to other reporting requirements.

The definition of “business trust” has been provided in clause (13A) of section 2 of the Act, to mean a trust registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations made under the Securities and Exchange Board of India (SEBI) Act, 1992 and the units of which are required to be listed on a recognised stock exchange in accordance with the relevant regulations.

Representations have been received stating that private unlisted InvITs should be given the same status as public listed InvITs with regards to tax treatments provided under the Act. Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 vide notification No.SEBI/LAD-NRO/GN/2019/10 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 required to be aligned with the amended SEBI Regulations.

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

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

[Clause 62]

### **D. MEASURES TO PROVIDE TAX CERTAINTY**

#### **Amendment for providing attribution of profit to Permanent Establishment in Safe Harbour Rules under section 92CB and in Advance Pricing Agreement under section 92CC**

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

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

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

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

In view of the above, it is proposed to amend section 92CB and section 92CC of the Act to cover determination of attribution to PE within the scope of SHR and APA.

With respect to section 92CB, the amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.



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

[Clauses 43 & 44]

#### **Allowing deduction for amount disallowed under section 43B, to insurance companies on payment basis.**

Section 44 of the Act provides that computation of profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or a co-operative society shall be computed in accordance with the rules contained in the First Schedule to the Act.

Section 43B of the Act provides for allowance of certain deductions, irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by the assessee, only in the previous year in which such sum is actually paid.

Rule 5 of the said Schedule provides for computation of profits and gains of other insurance business. It states that profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 or the rule made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 or the regulations made thereunder, subject to the condition that any expenditure debited to the profit and loss account which is not admissible under the provisions of sections 30 to 43B shall be added back; any gain or loss on realisation of investment shall be added or deducted, as the case may be, if the same is not credited or debited to the profit and loss account; any provision for diminution in the value of investment debited to the profit and loss account shall be added back. Thus, there is no specific provision, in this rule, in the case of other insurance companies, to allow deduction for any payment of certain expenses specified in section 43B if they are paid in subsequent previous year. There is a possibility that such sum may not be allowed as deduction in the previous year in which the payment is made. This has not been the intention of the legislature.

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

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

[Clause 104]

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

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

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

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

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

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

[Clause 79]

### **E. WIDENING AND DEEPENING OF TAX BASE**

#### **Enlarging the scope for tax deduction on interest income under section 194A of the Act.**

Section 194A of the Act governs interest other than interest on securities. Sub-section (1) thereof provides that any person not being individual or HUF who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall deduct income-tax at the rates in force.

Sub-section (3) of said section provides for circumstances in which the provisions of sub-section (1) shall not apply. Clause (i) thereof provides the circumstance where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person to the account of, or to, the payee, does not exceed a certain threshold. Clause (v) provides circumstance to be the income credited or paid

by a co-operative society (other than a co-operative bank) to a member or to income credited or paid by a co-operative society to any other co-operative society. Clause (viiia) provides circumstance to be the income credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank and deposits (other than time deposits) with a co-operative bank other than a co-operative society or bank engaged in carrying on the business of banking.

In order to extend the scope of this section to interest paid by large co-operative society, it is proposed to amend sub-section (3) and insert proviso to provide that a co-operative society referred to in clause (v) or clause (viiia) of said sub-section (3) shall be liable to deduct income-tax in accordance with the provisions of sub-section (1), if-

- (a) the total sales, gross receipts or turnover of the co-operative society exceeds fifty crore rupees during the financial year immediately preceding the financial year in which the interest referred to in sub-section (1) is credited or paid; and
- (b) the amount of interest, or the aggregate of the amount of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than fifty thousand rupees in case of payee being a senior citizen and forty thousand rupees, in any other case.

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

[Clause 75]

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

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

- The TDS is to be paid by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;
- E-commerce operator is required to deduct tax at the time of credit of amount of sale or service or both to the account of e-commerce participant or at the time of payment thereof to such participant by any mode, whichever is earlier.
- The tax at one per cent is required to be deducted on the gross amount of such sales or service or both.
- Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant shall be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sales or services for the purpose of deduction of income-tax.
- The sum credited or paid to an e-commerce participant (being an individual or HUF) by the e-commerce operator shall not be subjected to provision of this section, if the gross amount of sales or services or both of such individual or HUF, through e-commerce operator, during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number (PAN) or Aadhaar number to the e-commerce operator.
- A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to deduction under the exemption discussed in the previous bullet, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Act. This is to provide clarity so that same transaction is not subjected to TDS more than once. However, it has been clarified that this exemption will not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in sub-section (1) of the proposed section.
- "e-commerce operator" is defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is a person responsible for paying to e-commerce participant.
- "e-commerce participant" is defined to mean a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.
- "electronic commerce" is defined to mean the supply of goods or services or both, including digital products, over digital or electronic network.
- "services" is defined to include fees for technical services and fees for professional services, as defined in section 194J.
- Consequential amendments are being proposed in section 197 (for lower TDS), in section 204 (to define person responsible for paying any sum) and in section 206AA (to provide for tax deduction at 5 per cent. in non-PAN/ Aadhaar cases).

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

[Clause 84]

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

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

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

- An authorised dealer receiving an amount or an aggregate of amounts of seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of five per cent. In non-PAN/Aadhaar cases the rate shall be ten per cent.
- A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS at the rate of five per cent. In non-PAN/ Aadhaar cases the rate shall be ten per cent.
- The above TCS provision shall not apply if the buyer is,-
  - a. liable to deduct tax at source under any other provision of the Act and he has deducted such amount.
  - b. the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified in that notification.
- "authorised dealer" is proposed to be defined to mean a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security.
- "Overseas tour program package" is proposed to be defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.

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

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

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

[Clause 93]

### **F. REVENUE MOBILISATION MEASURES**

#### **Rationalization of tax treatment of employer's contribution to recognized provident funds, superannuation funds and national pension scheme.**

Under the existing provisions of the Act, the contribution by the employer to the account of an employee in a recognized provident fund exceeding twelve per cent. of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding one lakh fifty thousand rupees is treated as perquisite in the hands of the employee. Similarly, the assessee is allowed a deduction under National Pension Scheme (NPS) for the fourteen per cent. of the salary contributed by the Central Government and ten per cent. of the salary contributed by any other employer. However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer. This is

giving undue benefit to employees earning high salary income. While an employee with low salary income is not able to let employer contribute a large part of his salary to all these three funds, employees with high salary income are able to design their salary package in a manner where a large part of their salary is paid by the employer in these three funds. Thus, this portion of salary does not suffer taxation at any point of time, since Exempt-Exempt-Exempt (EEE) regime is followed for these three funds. Thus, not having a combined upper cap is iniquitous and hence, not desirable.

Therefore, it is proposed to provide a combined upper limit of seven lakh and fifty thousand rupee in respect of employer's contribution in a year to NPS, superannuation fund and recognised provident fund and any excess contribution is proposed to be taxable. Consequently, it is also proposed that any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme may be treated as perquisite to the extent it relates to the employer's contribution which is included in total income.

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

[Clause 13]

### **Widening the scope of Commodity Transaction Tax (CTT).**

The Finance Act, 2013 had introduced Commodities Transaction Tax (CTT) on the sale of commodity derivatives based on non-agricultural commodities traded in recognised associations. The intention behind introducing CTT was to bring parity between the derivative trading in the securities market and the commodity market. The CTT was levied at the rate of 0.01 per cent, which was also the rate of Securities Transaction Tax (STT) levied on sale of 'futures' (a contract, which derives its value from an underlying asset and is settled by physical delivery) in securities. Subsequently, the scope of CTT was expanded vide the Finance Act, 2018 by also including the sale of options on commodity derivatives as taxable commodity transactions.

Trading in derivatives including commodity derivatives is regulated by the Securities Contract (Regulation) Act, 1956 (SCRA). Prior to 2015, derivative trading in commodities was regulated by the Forward Markets Commission (FMC) under the Forward Contracts (Regulation) Act, 1952 (FCRA). In 2015, the FCRA was repealed and the FMC was merged with the SEBI. As a result, the recognised associations defined in the FCRA were replaced by the recognised stock exchange defined in the SCRA. Subsequently, the scope of "commodity derivatives" was expanded vide notification dated 27th September, 2016, which notified a number of goods for the purpose of its definition in clause (bc) of section 2 of the SCRA. These goods included cereals and pulses, oil seeds/ oil cakes and oils, spices, metals, precious metals, gem and stones, fibres, energy, sweeteners, plantation, dry fruits and others.

Presently, as per SCRA regulations, derivative trading in commodities is limited only to commodity 'futures' and 'option on commodity futures'. The underlying asset in the 'option on commodity futures' is a 'commodity future'. This means that upon expiry, if the 'option' is exercised, the option-holder gets a right to buy or sell a 'commodity future' and not the right to buy or sell the goods directly. However, vide notification dated 18th October, 2019, 'option in goods' has also been included in the definition of 'derivatives' in clause (ac) of section 2 of the SCRA. This has paved the way for new derivative product 'options in goods' with goods notified on 27.09.2016 directly as the underlying asset. Moreover, 'commodity futures' based on prices or indices of prices of 'commodity futures' is also likely to be introduced as a new product in the commodity derivative market.

Necessary changes are, therefore, proposed in Chapter VII of the Finance Act, 2013, to align the provisions of CTT with the changes in commodity derivative market. Moreover, in order to encourage the commodity transactions, settled by physical or actual delivery of goods, it is proposed to charge CTT on the new commodity derivative products at following rates: –

- Sale of a commodity derivative based on prices or indices of prices of commodity derivatives at the rate of 0.01 per cent payable by the seller, which is the same rate at which CTT is currently charged on a transaction of sale of a commodity derivative;
- Sale of an option in goods, where option is exercised resulting in actual delivery of goods at the rate of 0.0001 per cent payable by purchaser;
- Sale of an option in goods, where option is exercised resulting in a settlement otherwise than by the actual delivery of goods at the rate of 0.125 per cent payable by purchaser, which is also the rate at which securities transaction tax is levied on a transaction of sale of an option in securities, where the option is exercised.

Further, the following changes are also proposed in the Finance Act, 2013–

- (a) The definition of taxable commodities transaction in clause (7) of section 116 is proposed to be amended to –
  - (i) include the transactions of "sale of option in goods" and "sale of commodity derivatives based on prices or indices of prices of commodity derivatives" and
  - (ii) substitute "recognised stock exchange" in place of "recognised association".
- (b) The reference to FCRA in clause (8) of section 116 is proposed to be changed to SCRA.
- (c) The table in section 117 to be amended to incorporate the taxable commodities transactions referred to in (a) above, specify the rate of CTT and specify the person by whom CTT is payable.

- (d) The value of taxable commodities transactions defined in section 118 is proposed to be amended to incorporate the taxable commodities transaction referred to in para (a) (i) above.

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

[Clause 147]

### G. IMPROVING EFFECTIVENESS OF TAX ADMINISTRATION

#### Modification of e-assessment scheme.

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

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

3. It is proposed to amend sub-section (3A) of section 143 of the Act to,-

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

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

[Clause 69]

#### Amendment in Dispute Resolution Panel (DRP).

Section 144C of the Act provides that in case of certain eligible assessee, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act, the Assessing Officer (AO) is required to forward a draft assessment order to the eligible assessee, if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee. Such eligible assessee with respect to such variation may file his objection to the DRP, a collegium of three Principal Commissioners or Commissioners of Income-tax. DRP has nine months to pass directions which are binding on the AO.

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

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

This amendment will take effect from 1st April, 2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.

[Clause 70]

#### Provision for e-appeal.

In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced. With the advent of the e-assessment scheme, most of the functions/ processes under the Act, including of filing of return, processing of returns, issuance of refunds or demand notices and assessment, which used to require person-to-person contact between the taxpayer and the Income-tax Department, are now in the electronic mode. This is a result of efforts by the Department to harness the power of technology in reforming the system. All these processes are now not only faceless but also very taxpayer-friendly. Now a taxpayer can manage to comply with most of his obligations under the Act without any requirement for physical attendance in the offices of the Department.

The filing of appeals before Commissioner (Appeals) has already been enabled in an electronic mode. However, the first appeal process under the Commissioner (Appeals), which is one of the major functions/ processes that is not yet in full electronic mode. A taxpayer can file appeal through his registered account on the e-filing portal. However, the process that follows after filing of appeal is neither electronic nor faceless. In order to ensure that the reforms initiated by the Department to eliminate human interface from the system reach the next level, it is imperative that an e-appeal scheme be launched on the lines of e-assessment scheme.

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

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

- Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.
- Optimizing utilization of the resources through economies of scale and functional specialisation.
- Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, by notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31st March 2022. It is proposed that every notification issued shall be required to be laid before each House of Parliament.

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

[Clause 95]

#### **Providing check on survey operations under section 133A of the Act.**

Under the existing provisions of section 133A of the Act, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction. To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso to sub-section (6) in the said section was inserted to provide that 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.

It is proposed to substitute the proviso to sub-section (6) of section 133A to provide that,-

- (A) 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
- (B) 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.

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

[Clause 65]

#### **Clarity on stay by the Income Tax Appellate Tribunal (ITAT).**

The existing provisions of the first proviso to sub-section (2A) of section 254 of the Act, *inter-alia*, provides that the ITAT may, after considering the merits of the application made by the assessee pass an order of stay for a maximum period of 180 days in any proceedings against the order of the Commissioner of Income-tax (Appeal). Second proviso to the said sub-section prescribes that where the appeal is not so disposed of, the ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the periods originally allowed and the period so extended shall not, in any case, exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed. The third proviso of the said sub-section also provides that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

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

It is also proposed to substitute second proviso to provide that no extension of stay shall be granted by ITAT, where such appeal is not so disposed of which the said period of stay as specified in the order of stay. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. The total stay granted by ITAT cannot exceed 365 days.

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

[Clause 97]

#### **Provision for e-penalty.**

In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced.

Section 274 of the Act provides for the procedure for imposing penalty under Chapter XXI of the Act. In response to a show cause notice issued by the Assessing Officer (AO), assessee or his authorised representative is still required to visit the office of the Assessing Officer. With the advent of the E-Assessment Scheme-2019 and in order to ensure that the reforms initiated by the Department to eliminate human interface from the system reaches the next level, it is imperative that an e-penalty scheme be launched on the lines of E-assessment Scheme-2019.

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

- (a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

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 are to be issued on or before 31st March, 2022. It is proposed that every notification issued shall be required to be laid before each House of Parliament.

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

[Clause 100]

#### **Insertion of Taxpayer's Charter in the Act.**

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.

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

[Clause 64]

### **H. PREVENTING TAX ABUSE**

#### **Modification of residency provisions.**

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

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

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

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

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

This category of persons has been carved out essentially to ensure that a non-resident is not suddenly faced with the compliance requirement of a resident, merely because he spends more than specified number of days in India during a particular year. The conditions specified in the present law in respect of this carve out have been the subject matter of disputes, amendments and further disputes. Further, due to reduction in number of days, as proposed, for visiting Indian citizen or person of Indian origin, there would be need for relaxation in the conditions.

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

tax residence make it possible for HNWI's and other individuals, who may be Indian citizen to not to be liable for tax anywhere in the world. Such a circumstance is certainly not desirable; particularly in the light of current development in the global tax environment where avenues for double non-taxation are being systematically closed.

In the light of above, 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. This new condition to replace the existing conditions in clauses (a) and (b) of sub-section (6) of section 6.
- (iii) an Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India.

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

[Clause 4]

#### **Amending definition of "work" in section 194C of the Act.**

Section 194C of the Act provides for the deduction of tax on payments made to contractors. The section provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of such credit or at the time of payment whichever is earlier deduct an amount equal to one per cent in case payment is made to an individual or an HUF and two per cent in other cases. Clause (iv) of the Explanation of the said section defines "work". Sub-clause (e) of this definition includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer within the definition. However, it excludes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

It has been noted that some assessee's 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.

Therefore, to bring clarity in the section and plug the leakage, it is proposed to amend the definition of "work" under section 194C to provide that in a contract manufacturing, the raw material provided by the assessee or its associate shall fall within the purview of the 'work' under section 194C. Associate is proposed to be defined to mean a person who is placed similarly in relation to the customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A of the Act.

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

[Clause 76]

#### **Penalty for fake invoice.**

In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

Therefore, it is proposed to introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability. The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It is also propose to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry. The false entries is proposed 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 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 do not exist.

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

[Clause 98]



## I. RATIONALISATION OF PROVISIONS OF THE ACT

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

Section 90 of the Act empowers the Central Government to enter into agreement with foreign countries or specified territories (commonly known as DTAA) 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.
- (b) avoidance of double taxation of income under the laws of both, India and that foreign country of territory,
- (c) exchange of information for prevention of evasion or avoidance of income-tax chargeable under the laws of both India and that foreign country or territory, or investigation of cases of such evasion or avoidance, or
- (d) recovery of income-tax under the laws of both India and that foreign country or territory.

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

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

The MLI is an outcome of the G20-OECD project to tackle Base Erosion and Profit Shifting (the BEPS Project), i.e. tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The MLI will modify India's 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.

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

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

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

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

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

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

[Clauses 41 & 42]

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

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

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

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

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

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

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

Therefore, for the purposes of determining SEP of a non-resident in India, threshold for the aggregate amount of payments arising from the specified transactions and for the number of users were required to be prescribed in the Rules. However, since discussion on this issue is still going on in G20-OECD BEPS project, these numbers have not been notified yet. G20-OECD report is expected by the end of December 2020. In the circumstances, it is proposed to defer the applicability of SEP to starting from assessment year 2022-23. Certain drafting changes have also been made while deferring the proposal.

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

[Clause 5]

Further, as per the discussion going on in international forum, countries generally agree that income from advertisement that targets Indian customers or income from sale of data collected from India or income from sale of goods and services using such data collected from India, needs to be accounted for in Indian revenue. Hence, it is proposed to amend the source rule to clarify this position.

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. However, for attribution of income related to SEP transaction or activities the amendment will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

[Clause 5]

Further, the Finance Act, 2012, *inter alia*, had inserted Explanation 5 to said clause to clarify that an asset or capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. Second proviso to said Explanation, inserted through the Finance Act, 2017, provides that the Explanation shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 [SEBI (FPI) Regulations, 2014].

Vide Gazette Notification No. SEBI/LAD-NRO/GN/2019/36, SEBI has notified Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [SEBI (FPI) Regulations, 2019] and repealed the SEBI (FPI) Regulations, 2014. The difference between these two regulations pertinent in the present context is that the SEBI has done away with the broad basing criteria for the purposes of categorization of portfolios and has reduced the categories from three to two. In view of the same, necessary modification needs to be made in the proviso so inserted. Hence, it is proposed that the exception from said Explanation 5 provided to an asset or a capital asset, held by a non-resident by way of investment in erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014 may be grandfathered. Further, similar exception may be provided in respect of investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.

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

[Clause 5]

Clause (vi) of sub-section (1) of section 9 deems certain income by way of royalty to accrue or arise in India. Explanation 2 of said clause defines the term “royalty” to, *inter alia*, mean the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with

television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films.

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

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

[Clause 5]

It is further proposed to amend section 295 of the Act so as to empower the Board for making rules to provide for the manner in which and the procedure by which the income shall be arrived at in the case of,-

- (i) operations carried out in India by a non-resident; and
- (ii) transaction or activities of a non-resident.

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

[Clause 103]

### **Removing dividend distribution tax (DDT) and moving to classical system of taxing dividend in the hands of shareholders/unit holders.**

Section 115-O provides that, in addition to the income-tax chargeable in respect of the total income of a domestic company, any amount declared, distributed or paid by way of dividends shall be charged to additional income-tax at the rate of 15 per cent. The tax so paid by the company (called DDT) is treated as the final payment of tax in respect of the amount declared, distributed or paid by way of dividend. Such dividend referred to in section 115-O is exempt in the hands of shareholders under clause (34) of section 10. In case of business trust, specific exemption is provided under sub-section (7) of section 115-O, subject to certain conditions. Similarly, exemption is provided for distributed profits of a unit of an International Financial Service Centre, on fulfilment of certain conditions, under sub-section (8) of section 115-O.

Similarly under section 115R, specified companies and Mutual Funds are liable to pay additional income-tax at the specified rate on any amount of income distributed by them to its unit holders. Such income is then exempt in the hands of unit holders under clause (35) of section 10.

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

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

- (i) amend section 115-O to provide that dividend declared, distributed or paid after 1st April, 2003, but on or before 31st March, 2020 shall be covered under the provision of this section.
- (ii) amend clause (34) of section 10 to provide that the provision of this clause shall not apply to any income, by way of dividend, received on or after 1st April, 2020.
- (iii) amend section 115R to provide that the income distributed on or before 31st March, 2020 shall only be covered under the provision of this section.
- (iv) amend clause (35) of section 10 to provide that the provision of this clause shall not apply to any income, in respect of units, received on or after 1st April, 2020.
- (v) amend clause (23FC) of section 10 so that all dividends received or receivable by business trust from a special purpose vehicle is exempt income under this clause.

- (vi) amend clause (23FD) of section 10 to exclude dividend income received by a unit holder from business trust from the exemption so that the dividend income is taxable in the hand of unit holder of the business trust.
- (vii) amend sub-section (3) of section 115UA to delete reference to sub-clause (a) so that distributed income of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 shall be deemed to be income of the unit holder and shall be charged to tax as income of the previous year. Thus dividend income distributed by a special purpose vehicle to business trust would be taxed in the hands of unit holder.
- (viii) remove reference of section 115-O dividend income in various sections like section 57, section 115A, section 115AC, section 115ACA, section 115AD and section 115C.
- (ix) remove the opening line of clause (23D) of section 10, as mutual fund no longer required to pay additional tax.
- (x) insert new section 80M as it existed before its removal by the Finance Act, 2003 to remove the cascading effect, with a change that set off will be allowed only for dividend distributed by the company one month prior to the due date of filing of return, in place of due date of filing return earlier.
- (xi) amend section 115BBDA which taxes dividend income in excess of ten lakh rupee in the hands of shareholder at ten per cent., to only dividend declared, distributed or paid by a domestic company on or before the 31st day of March, 2020.
- (xii) amend section 57 to provide that no deduction shall be allowed from dividend income, or income in respect of units of mutual fund or specified company, other than deduction on account of interest expense and in any previous year such deduction shall not exceed twenty per cent. of the dividend income or income from units included in the total income for that year without deduction under section 57.
- (xiii) amend section 194 to include dividend for tax deduction. At the same time the rates of ten per cent. is proposed to be prescribed and threshold is proposed to be increased from Rs 2,500/- to Rs 5,000/- for dividend paid other than cash. Further, at present the mode of payment is given as "an account payee cheque or warrant". It is proposed to change this to any mode.
- (xiv) amend section 194LBA to provide for tax deduction by business trust on dividend income paid to unit holder, at the rate of ten per cent. for resident. For non-resident, it would be 5 per cent for interest and ten per cent. for dividend.
- (xv) insert a new section 194K to provide that any person responsible for paying to a resident any income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or units from the administrator of the specified undertaking or units from the specified company shall at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax there on at the rate of ten per cent. It may also be provided for threshold limit of Rs 5,000/- so that income below this amount does not suffer tax deduction. It is also proposed to define "Administrator", "specified company", as already defined in clause (35) of section 10. It is also proposed to define "specified undertaking" as in clause (i) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. It is also proposed to provide that where any income is credited to any account like suspense account, in the books of account of the person liable to pay such income, the liability for tax deduction under this section would arise at that time.
- (xvi) amend section 195 to delete exemption provided to dividend referred to in section 115-O.
- (xvii) amend section 196A to revive its applicability on TDS on income in respect of units of a Mutual Fund. It is also proposed to substitute "of the Unit Trust of India" with "from the specified company defined in Explanation to clause (35) of section 10" and "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".
- (xviii) amend section 196C to remove exclusion provided to dividend under section 115-O. It is also proposed to substitute "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".
- (xix) amend section 196D to remove exclusion provided to dividend under section 115-O. It is also proposed to substitute "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

Amendments at clause (i) to (xii) above will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. Amendments at clause (xiii) to (xix) will take effect from 1st April, 2020.

*[Clauses 7,30,40,47,48,49,50,54,55,59,60,62,74,80,81,85,86,87 & 88]*

#### **Rationalization of provisions of section 55 of the Act to compute cost of acquisition.**

The existing provisions of section 55 of the Act provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 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.

It is proposed to rationalise the provision and to insert a proviso below sub-clause (ii) of clause (b) of Explanation under clause (ac) of sub-section (2) of the said section to provide that in case of a capital asset, being land or building or both, the

fair market value of such an asset on 1st April, 2001 shall not exceed the stamp duty value of such asset as on 1st April, 2001 where such stamp duty value is available. It is also proposed to insert an Explanation so as to provide that for the purposes of sub-clause (i) and (ii), "stamp duty value" shall mean the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

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

[Clause 28]

### **Rationalisation of provisions relating to trust, institution and funds.**

#### **Amendment of sub-section (7) of section 11 to allow entities holding registration under section 12A/12AA to apply for notification under clause (46) of section 10**

Section 11 of the Act provides for grant of exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act.

Sub-section (7) of section 11 of the Act, inserted by the Finance (No. 2) Act, 2014 with effect from 1st April, 2015, provides that where a trust or an institution has obtained registration under section 12AA [as it stood immediately before its proposed amendment] or under section 12A [as it stood immediately before its amendment by the Finance (No 2) Act, 1996] and said registration is in force for any previous year, then, exemption under section 10 [except under clauses (1) and (23C)] shall not be allowed.

This sub-section was inserted on the basis that the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act constitute a complete code and that once any trust or institution has voluntarily opted for it by obtaining registration required for exemption of income, it should comply with the conditions of such exemption and in case of violation of such condition, if its income or part thereof becomes ineligible for exemption, no other provision of the Act should operate so as to exclude such income or part thereof from total income and that whether income which needs to be applied or accumulated under section 11 of the Act should include income which is exempt under section 10 of the Act.

It has been noticed that there is some anomaly by providing exclusion to institutions or fund registered under clause (23C) of section 10, but the same exclusion is not available to entities claiming exemption under clause (46) of section 10 which are established or constituted under a Central or State Act or by a Central or State Government. Such entities are, thus, not able to get notified under clause (46) of section 10 if they are holding registration under section 12A/12AA.

The anomaly pointed out above, needs to be addressed. However, as the provisions relating to charitable entities constitute a complete code and that once any trust or institution has voluntarily opted for it by obtaining the requisite registration, it flows that the conditions in relation thereto should be complied with and the option of switching at convenience should not be available. Accordingly, while request for exclusion of clause (46) may be acceded to for exemption thereunder even in those cases where registration under section 12AA or 12A remains in force, there should be only one mode of exemption available and also, that the switching may be allowed only once so that such switching is not done routinely and also it remains efficient to be administered.

#### **Rationalising the process of registration of trusts, institutions, funds, university, hospital etc and approval in the case of association, university, college, institution or company etc**

The present process of registration of trusts, institutions, funds, university, hospital etc under section 12AA or under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, and approval of association, university, college, institution or company etc need improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/ approval/ notification before actually starting the activities.

It is also felt that the approval or registration or notification for exemption should also be for a limited period, say for a period not exceeding five years at one time, which would act as check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption. This would in fact also be a reason for having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis, in general, as in any case they would be revisiting the concerned authorities for new registration before expiry of the period of exemption. This new process needs to be provided for both existing and new exempt entities.

#### **Filing of statement of donation by donee to cross-check claim of donation by donor**

It may further be mentioned that certain provisions of the Act provide that an exempt entity may accept donations or certain sum for utilisation towards their objects or activities in respect of which the payer, being the donor, gets deduction in computation of his income. At present, there is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum. With the advancement in technology, it is now feasible to standardise the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. This standardisation may be similar to the provisions relating to the tax collection/ deduction at source, which already exist in the Act. Therefore, the entities receiving donation/ sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed on that basis only. In order to

ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is failure to furnish the statement.

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

- (i) similar to exemptions under clauses (1) and (23C), exemption under clause (46) of section 10 shall be allowed to an entity even if it is registered under section 12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it would not be entitled for deduction under clause (46) from the date on which the registration becomes operative.
- (ii) the registration under section 12AA would also become inoperative in case of an entity exempt under clause (23C) of section 10 as well, to have uniformity. The condition about making it operative again would also be similar to what is proposed for clause (46) of section 10.
- (iii) an entity approved, registered or notified under clause (23C) of section 10, section 12AA or section 35 of the Act, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1st April, 2020.
- (iv) an entity already approved under section 80G shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five years at one time.
- (v) application for approval under section 80G shall be made to Principal Commissioner or Commissioner.
- (vi) an entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.
- (vii) the application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.
- (viii) 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.
- (ix) similar to section 80G of the Act, deduction of cash donation under section 80GGA shall be restricted to Rs 2,000/- only.

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

[Clauses 7,9,11,12,17,33,34,61,94,96 & 99]

#### **Expanding the eligibility criteria for appointment of member of Adjudicating Authority under the Prohibition of Benami Property Transaction Act, 1988.**

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

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

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

[Clause 143]

#### **Rationalisation of provisions relating to tax audit in certain cases.**

Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed or exceeds one crore rupees in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, fifty lakh rupees in any previous year.

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.

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 assessee at least one month prior to the due date of filing of return of income. This requires amendments in all the sections of the Act which mandates filing of audit report along with the return of income or by the due date of filing of return of income. 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 115VV of the Act are proposed to be amended accordingly.

Further, the due date for filing return of income under sub-section (1) of section 139 is proposed to be amended by:-

- (A) providing 31st October of the assessment year (as against 30th September) as the due date for an assessee referred to in clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act;
- (B) removing the distinction between a working and a non-working partner of a firm with respect to the due date as mentioned in sub-clause (iii) of clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act.

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

[Clauses 7,8,10,14,15,16,19,20,23,24,26,35,37,39,45,56,57,63 & 66]

The amendment relating to extending threshold for getting books of accounts audited will have consequential effect on TDS/TCS provisions contained in sections 194A, 194C, 194H, 194I, 194J and 206C as these provisions fasten liability of TDS/TCS on certain categories of person, if the gross receipt or turnover from the business or profession carried on by them exceed the monetary limit specified in clause (a) or clause (b) of section 44AB.

Therefore, it is proposed to amend these sections so that reference to the monetary limit specified in clause (a) or clause (b) of section 44AB of the Act is substituted with rupees one crore in case of the business or rupees fifty lakh in case of the profession, as the case may be.

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

[Clauses 75,76,77,78,79 & 93]

#### **Rationalisation of provision relating to Form 26AS**

Section 203AA of the Act, *inter-alia*, requires the prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) of section 200, to prepare and deliver a statement in Form 26AS to every person from whose income, the tax has been deducted or in respect of whose income the tax has been paid specifying the amount of tax deducted or paid.

The Form 26AS as prescribed in the Rules, *inter-alia*, contains the information about tax collected or deducted at source. However, with the advancement in technology and enhancement in the capacity of system, multiple information in respect of a person such as sale/purchase of immovable property, share transactions etc. are being captured or proposed to be captured. In future, it is envisaged that in order to facilitate compliance, this information will be provided to the assessee by uploading the same in the registered account of the assessee on the designated portal of the Income-tax Department, so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability.

As the mandate of Form 26AS would be required to be extended beyond the information about tax deducted, it is proposed to introduce a new section 285BB in the Act regarding annual financial statement. This section proposes to mandate the prescribed income-tax authority or the person authorised by such authority to upload in the registered account of the assessee a statement in such form and manner and setting forth such information, which is in the possession of an income-tax authority, and within such time, as may be prescribed.

Consequently, section 203AA is proposed to be deleted.

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

[Clauses 90]

#### **Rationalisation of the provisions of section 49 and clause (42A) of section 2 of the Act in respect of segregated portfolios.**

Section 49 of the Act provides for cost of acquisition for the capital asset which became the property of the assessee under certain situations. Further, clause (42A) of section 2 of the Act provides the definition of the term "short-term capital asset". It also provides for determination of period of holding of the capital asset held by the assessee.

SEBI has, vide circular SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018, permitted creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes. As per the SEBI circular, all the existing unit holders in the affected scheme as on the day of the credit event shall be allotted equal number of units in the segregated portfolio as held in the main portfolio. On segregation, the unit holders come to hold same number of units in two schemes –the main scheme and segregated scheme.

In view of the above, it is proposed to amend sub-section (42A) of section 2 of the Act to provide that in the case of a capital asset, being a unit or units in a segregated portfolio, referred to in sub-section (2AG) of section 49, there shall be included the period for which the original unit or units in the main portfolio were held by the assessee.

Further, a new sub-section (2AG) is proposed to be inserted in section 49 of the Act to provide that the cost of acquisition of a unit or units in the segregated portfolio shall be the amount which bears to the cost of acquisition of a unit or units held by the assessee in the total portfolio, the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios.

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

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

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

*[Clauses 3 & 25]*

**Amendment in the provisions of Act relating to verification of the return of income and appearance of authorized representative.**

Section 140 of the Act provides that in case of company the return is required to be verified by the managing director (MD) thereof. Where the MD is not able to verify for any unavoidable reason or where there is no MD, any director of the company can verify the return. It is also provided that in case of a company in whose case application for insolvency resolution process has been admitted by the Adjudicating Authority (AA) under the Insolvency and Bankruptcy Code, 2016 (IBC), the return has to be verified by the insolvency professional appointed by such AA. Similarly, in case of a limited liability partnership (LLP), the return has to be verified by the designated partner of the LLP or by any partner, in case there is no such designated partner.

Therefore, it is proposed to amend clause (c) and (cd) of section 140 of the Act so as to enable any other person, as may be prescribed by the Board to verify the return of income in the cases of a company and a limited liability partnership.

Further, section 288 of the Act provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee, as its "authorised representative", in connection with any proceedings under that Act. While the IBC empowers the Insolvency Professional or the Administrator to exercise the powers of the Board of Directors or corporate debtor, it has been reported that lack of explicit reference in section 288 of the Act for an Insolvency Professional to act as an authorised representative of the corporate debtor has been raising certain practical difficulties.

Therefore, it is proposed to amend sub-section (2) of section 288 to enable any other person, as may be prescribed by the Board, to appear as an authorised representative.

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

*[Clauses 67 & 102]*