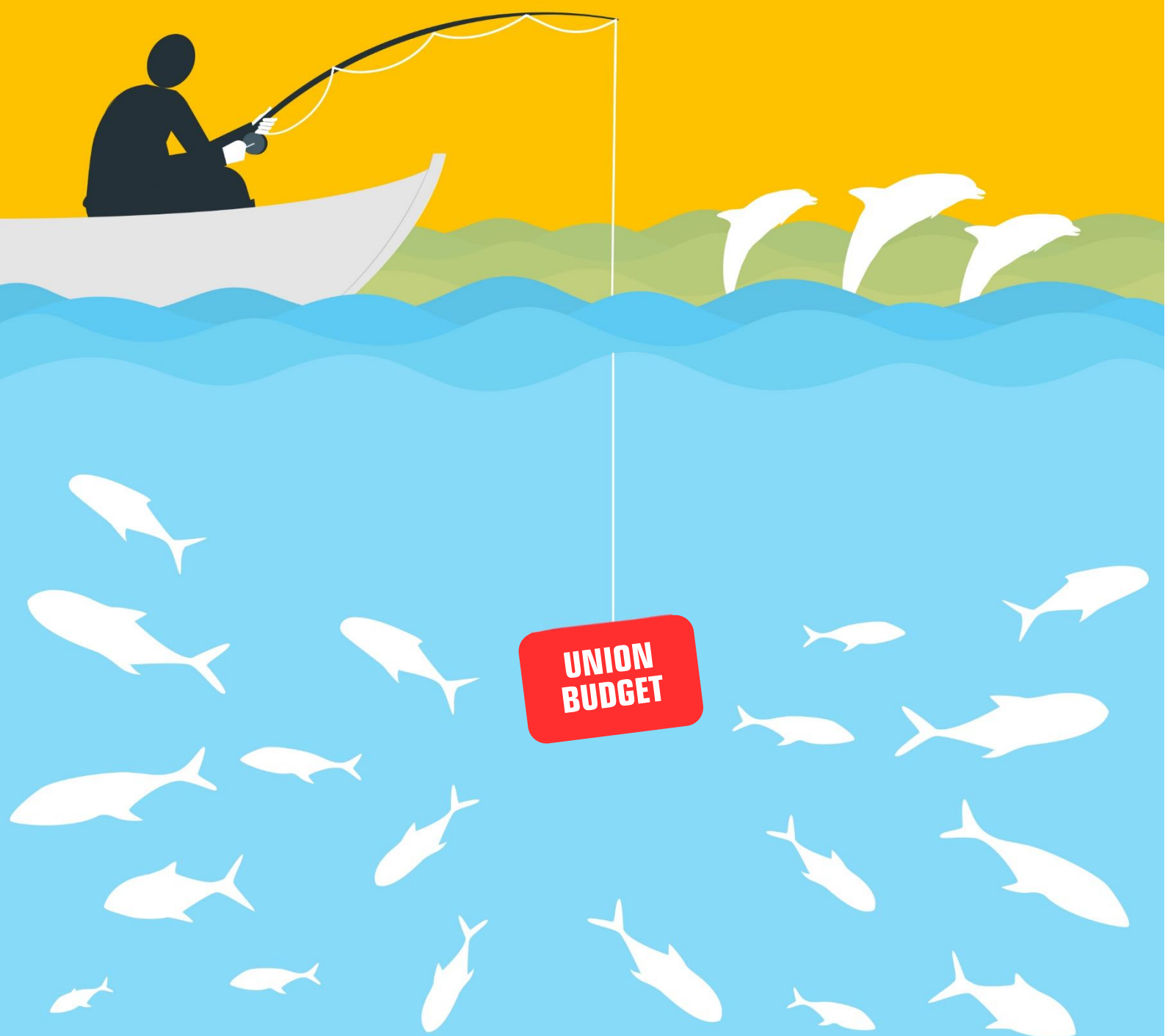


# NOT ENOUGH

## UNION BUDGET 20 20



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## FOREWORD

In the backdrop of the headwinds faced by the Indian Economy, Honourable Finance Minister Ms. Nirmala Sitharaman's Budget 2020 chose to continue on the path of fiscal discipline and incremental reforms without embracing big bang economy boosting initiatives.

Industry and individuals were expecting significant measures to stimulate consumption, incentivise infrastructure development, grow private and public investments, considering the need for employment generation and faster GDP growth. No significant incentives to jumpstart the investment process and the consumer demand were articulated by the FM in, what was, the longest budget speech in India's parliamentary history.

The slowdown in tax collections has forced the FM to deviate from the pre-set deficit targets and reset the budgeted fiscal deficit to 3.5% of the GDP for FY 21. The Government is banking on the IPO of LIC, the cash-rich PSU insurance company, to fund its budgeted expenditure of the current year. Further, tax incentives have been provided to sovereign funds to boost infrastructure investments to supplement the limited allocations made in the Budget.

On the Direct tax front, Budget 2020 offers a mixed bag. The removal of dividend distribution tax on companies is a strong positive for foreign investors and non-resident Indians. However, taxability of dividend for residents may effectively increase the net tax liability for a large number of investors and wealth creators. Introduction of Tax Collected at Source on sale of goods by entities having turnover of over INR 10 crores will increase compliance burden significantly.

Proposed 'simplification' of personal tax regime seems to be conflicted due to creation of dual tax regimes (with and without exemptions) and without any substantial savings to tax payers. Existence of two parallel personal tax regimes may add complexity for tax payers and defeat the stated objectives of tax simplification. Changes in taxation relating to non-resident Indians relating to residential status will impact them adversely.

To address the growing cases of fraudulent and improper availing of input credits under the GST, the Budget initiates a two-pronged approach, comprising of simplifying procedures to boost compliance and increasing levee of penalties to act as a effective deterrent.

The country had hoped for a blistering T20 knock from Budget 2020, but what it got is a long-haul test match.

**February 1, 2020**  
**Mumbai**

## KEY HIGHLIGHTS



**Ashok Shah**

Founding Partner

Reduction of tax rate for individuals is unlikely to benefit substantial number of tax payers. Instead of simplifying, the Union Budget has complicated many provisions and lacks the bold moves that the country expected from this Government. Fine prints and practical difficulties in implementation of many provisions has taken away the glamour of the Budget 2020.

Coupled with depreciating rupee, additional outflow of tax at source (5% or 10%, as case may be) for all remittances under Liberalised Remittance Scheme will be painful, particularly when the remittance is towards educational fees or medical expenses.



**Sandeep Shah**

Managing Partner



**Ajit Shah**

Partner - Direct Tax

The Budget 2020 has taken Indian tax laws to an uncharted territory by inking incidence of taxation to citizenship for the first time. Now the global income of NRI citizens, not liable to tax in any country, would be subject to Indian direct taxes. This might not go down well with high network stateless NRIs.

## KEY HIGHLIGHTS



**Rohit Adalja**

Partner - Direct Tax

Charitable trusts to gear up itself for multifold compliances. Renewal of 80G certificate which was dispensed off a decade ago, reintroduced. Removal of 80G benefit for individuals opting for new personal tax regime may impact garnering of donations.



**Naresh Sheth**

Partner – Indirect Tax

To curb Input tax credit frauds under the GST regime, stringent financial penalties and prosecutions have been extended to the beneficiaries and the person at whose instance the tax fraud was committed. This may instill fear of law amongst the wrongdoers and consequently plug the revenue leakages.



**Gopal Bohra**

Partner - Direct Tax

Rationalisation of tax treatment of ESOPs for start-ups was a much needed reform that was addressed in the current Budget. Deferring the payment of tax on exercise of ESOPs will, on one hand entrepreneurs to attract talent and on the other hand improve the participation of employees in ownership of business.

## I DIRECT TAXES<sup>1</sup>

### A TAX RATES

#### PERSONAL TAX

- No change in tax slab for individuals who opt for exemptions/ deductions:

Age below 60 Years	Age over 60 years but less than 80 years	Age over 80 years	Tax Rate
INR 250,000 to INR 500,000	INR 300,000 to INR 500,000	-	5%
INR 500,001 to INR 1,000,000	INR 500,001 to INR 1,000,000	INR 500,001 to INR 1,000,000	20%
Above INR 1,000,000	Above INR 1,000,000	Above INR 1,000,000	30%

- No tax on individual having taxable income upto INR 500,000 as a result of rebate of INR 12,500
- New tax regime for individuals and HUF who opt not to claim certain exemptions/ deductions:

Total Income	Tax Rate
INR 250,001 to INR 500,000	5%
INR 500,001 to INR 750,000	10%
INR 750,001 to INR 1,000,000	15%
INR 1,000,001 to INR 1,250,000	20%
INR 1,250,001 to INR 1,500,000	25%
Above INR 1,500,000	30%

- Option for new tax regime has to be exercised at the time of filing of the return of income:
  - o In case of no business income, option to be exercised every year; and

<sup>1</sup> Proposed amendments are effective from A.Y. 2021-22 unless otherwise specified

- In case of business income, option once exercised shall apply for all subsequent years. Facility is provided for withdrawing the option once and thereafter the tax payer shall never be eligible to exercise the option
- Exemptions/ deductions to be given up by the individual or HUF:
  - Standard deduction and profession tax paid from salary
  - Leave travel concession
  - House rent allowance
  - Allowances granted in the course of performance of duties
  - Allowances of Parliamentarians
  - Exemption on account of clubbing of income of minor child
  - Interest on home loan for self-occupied property
  - Set-off of loss from let-out house property against any other head of income
  - Additional depreciation on plant & machinery
  - Deductions of payment for scientific research/ programs for conservation of natural resources
  - Investment linked and profit linked deductions other than contribution to pension scheme under section 80CCD(2) and new workmen deduction under section 80JJAA
  - Deduction in respect of income from family pension
  - Set-off of brought forward losses pertaining to specified allowance or unabsorbed depreciation on account of additional depreciation on plant and machinery



## CORPORATE TAX

- Basic tax rates for domestic companies remain unchanged
- MAT for companies under old regime continues at 15%
- It is proposed to include domestic companies engaged in generation of electricity for concessional tax rate of 15%
- Basic tax rate for foreign companies remains unchanged at 40%
- Effective Tax Rate for Domestic Companies

Total Income	Not opting for concessional tax		Opting for concessional tax	
	Turnover not more than INR 400 crores	Turnover more than INR 400 crores	Others	New manufacturing
Up to INR 1 crore	26.00%	31.20%	25.17%	17.16%
INR 1 crore to INR 10crores	27.82%	33.38%	25.17%	17.16%
Above INR 10crores	29.12%	34.94%	25.17%	17.16%

## FIRMS

- Basic tax rate remains unchanged at 30%



#### CO-OPERATIVE SOCIETY

- No change in tax slab for co-operative societies which opts for exemptions/ deductions:

Total Income	Tax Rate
Upto INR 10,000	10%
INR 10,001 to INR 20,000	20%
Above INR 20,000	30%

- Tax rate for co-operative societies opting for new tax regime, is proposed to be 22%. AMT shall not be applicable

Exemptions/ deductions to be given up are as under:

- Exemption for SEZ incomes, additional depreciation, weighted deduction for scientific research expense and other specified/ profit linked deduction or deductions under Chapter VI-A;
- Set-off of loss, where such loss relates to any of the exemption/ deduction referred above;
- Set-off of unabsorbed additional depreciation; and
- AMT credit

#### SURCHARGE ON INCOME-TAX

- Surcharge for domestic and foreign companies remains unchanged as follows:

Particulars	Domestic Company Old regime	Domestic Company New regime	Foreign Company
Income upto INR 1 crore	-	10%	-
Income exceeding INR 1 crore but not exceeding INR 10 crore	7%	10%	2%
Income exceeding INR 10 crore	12%	10%	5%

- Surcharge for Individuals, HUF, AOP and BOI remains unchanged as follows:

Particulars	Surcharge
Income exceeding INR 50 Lakhs but not exceeding INR 1 crore	10%
Income exceeding INR 1 crore but not exceeding INR 2 crores	15%
Income exceeding INR 2 crores but not exceeding INR 5 crores	25%*
Income exceeding INR 5 crores	37%*

\* Higher surcharge shall not be applicable on capital gains arising on transfer of listed shares/ equity oriented mutual funds

- Surcharge for firms remains unchanged at 12% on the total income exceeding INR 1 crore
- Surcharge for co-operative societies

Particulars	Old regime	New regime
Income upto INR 1 crore	-	10%
Income exceeding INR 1 crore	7%	10%

#### HEALTH & EDUCATION CESS

- The Health & Education Cess remains unchanged at 4%

## **B REMOVAL OF DIVIDEND DISTRIBUTION TAX AND INCOME DISTRIBUTION TAX**

- ♦ Presently, DDT is payable by the company on dividend distributed/ paid to the shareholders
- ♦ Similarly, IDT is payable by the mutual funds on income distributed to unitholders
- ♦ Resident shareholders (other than domestic companies and specified trusts/ institutions) receiving dividend exceeding INR 10 Lakhs in a year, are subject to tax at 10 %
- ♦ Income distributed by mutual fund on units are exempt in the hand of the unit holder
- ♦ It is now proposed that:
  - The company would not pay DDT on dividend declared/ paid/ distributed after 31st March 2020;
  - Similarly mutual funds would not pay IDT on income paid/ distributed after 31st March 2020;
  - Such dividend/ income is chargeable in the hands of the shareholders/ unitholders;
  - Shareholders/ unitholder shall be allowed deduction of interest expense subject to maximum of 20% of such income. No other expenses shall be allowed; and
  - Dividend/ income would be taxable at normal rates
- ♦ Such dividend/ income would not be taxed in the hands of pass through entities
- ♦ Company receiving dividend shall be permitted to set-off to the extent of dividend declared till one month prior to the due date of return of income

- ◆ Consequential amendments are also made whereby TDS would be liable on such income at prescribed rates as tabulated hereunder:

Particulars	Rate	Non-applicability
TDS on dividend	10%	If does not exceed INR 5,000
TDS on income distributed on units of mutual fund	10%	If does not exceed INR 5,000
TDS on income distributed by business trusts	10% for resident 5% for non-resident in case of interest and 10% for dividend	No threshold limit
TDS on dividend/ income distributed on units to non-resident	At rates in force	No threshold limit

## C BUSINESS CONNECTION

### DEFERRING SIGNIFICANT ECONOMIC PRESENCE THRESHOLD

- ◆ The Finance Act, 2018 amended the definition of business connection to include significance economic presence (SEP) of a non-resident in India. Applicability of SEP provision is deferred to AY 2022-23

### INCOME FROM ADVERTISEMENT/ DATA COLLECTED FROM INDIA

- ◆ Income attributable in relation to the operation carried out in India, is expanded to include the following:
  - income earned from advertisement which targets Indian customer
  - income from sale of data collected from India; and
  - income from sale of goods/ services using data collected from India

- ♦ Rules for attribution of profit will be made applicable from A.Y 2022-23

#### **WIDENING THE SCOPE OF SAFE HARBOUR RULES AND ADVANCE PRICING**

- ♦ Presently the CBDT is empowered to frame safe harbour rules or enter into an APA for determining the ALP of specified international transactions.
- ♦ It is now proposed to extend the benefit of safe harbour rules and APA to specify the manner of computing the income attributable to a non-resident from its operations in India
- ♦ The amendment will take effect from 1st April, 2020

#### **RELAXATION OF CONDITION FOR BUSINESS CONNECTION - OFFSHORE FUND**

- ♦ An off-shore fund has to fulfil various conditions so as not to constitute business connection in India, such as;
- ♦ Aggregate investment from residents of India should not exceed 5% of the corpus of the fund; and
- ♦ The monthly average corpus of the fund shall not be less than INR 100 crore
- ♦ In order to avoid anomalies, it is now proposed to provide relaxation in above two conditions:
  - For the purpose of calculating aggregate investments, amount contributed by eligible fund manager during first 3 years upto INR 25 crores shall not be taken into account
  - In the year of incorporation of the fund, the monthly average of INR 100 crores of the corpus of the fund shall have to be fulfilled within 12 months from the end of the month of establishment or incorporation

- ◆ This amendment is applicable from AY 2020-21

## **D START-UPS**

### **RELAXATION FOR CLAIMING DEDUCTION**

- ◆ Presently, profits of eligible start-ups are 100% exempt for 3 consecutive years out of 7 years provided the total turnover of its business does not exceed INR 25 crores in any year
- ◆ It is now proposed to increase the turnover limit to INR 100 cores and time limit of 7 years to 10 years

### **TAX ON ESOP GRANTED BY START-UPS**

- ◆ Presently, perquisite tax on shares issued on exercise ESOPs to employees is payable at the time of exercise of the ESOP
- ◆ It is now proposed to defer payment of perquisite tax to 14 days from earlier of:
  - Expiry of 48 months from the end of assessment year in which the option is exercised; or
  - The date of sale of share/ security by the employee; or
  - the date when he ceases to be an employee
- ◆ Tax shall be payable at the rates applicable for the year in which option was exercised

## **E REAL ESTATE SECTOR**

### **COST OF ACQUISITION OF LAND AND BUILDING**

- ◆ Presently, cost of acquisition in respect of land or building or both, acquired on or before 1<sup>st</sup> April, 2001 shall be either actual cost of acquisition or FMV as on 1<sup>st</sup> April, 2001, whichever is higher
- ◆ It is proposed that the FMV shall not exceed the stamp duty value on 1<sup>st</sup> April 2001

#### **DEDUCTION OF INTEREST ON LOAN AVAILABLE FOR AFFORDABLE HOUSING**

- ♦ Presently, for an individual to avail deduction of interest on housing loan taken from a financial institution, the loan should have been sanctioned on or before 31<sup>st</sup> March, 2020
- ♦ It is proposed to extend the said time limit to 31<sup>st</sup> March, 2021

#### **EXTENSION OF TAX INCENTIVES FOR AFFORDABLE HOUSING**

- ♦ Presently, for availing deduction of profits from affordable residential housing project, the project has to be approved by the competent authority on or before 31<sup>st</sup> March, 2020
- ♦ It is proposed to extend the time limit for obtaining approval to 31<sup>st</sup> March, 2021

#### **INCREASE IN SAFE HARBOUR LIMIT**

- ♦ Presently, if stamp duty value exceed 5% of the consideration, such difference is to be included while computing business income or capital gains in the hands of seller and deemed income in the hands of the recipient
- ♦ It is proposed to extend the safe harbor limit from 5% to 10%

### **F TAX AUDIT AND TRANSFER PRICING**

#### **TAX AUDIT APPLICABILITY**

- ♦ Presently, tax audit is required if business turnover exceeds INR 1 crore
- ♦ In order to promote cashless economy it is now proposed to increase the turnover limit to INR 5 crores if cash receipts do not exceed 5% of all receipts and cash payments do not exceed 5% of all payments



- ◆ This amendment is applicable from AY 2020-21
- ◆ Though, it is proposed to increase monetary limit for applicability of tax audit from INR 1 crores to INR 5 crores, for businesses not having cash receipts/payments exceeding prescribed limit, for individual/HUF carrying on such business, the limit of INR 1 crore for TDS would continue to apply

#### **DUE DATE FOR TAX AUDIT REPORT**

- ◆ Presently, the due date for obtaining tax audit report is same as the due date for filing ROI. i.e. 30<sup>th</sup> September (where transfer pricing is not applicable)
- ◆ It is now proposed, to extend the due date for filing return of income to 31<sup>st</sup> October. However, tax audit report and various other reports under the ITA have to be obtained by 30<sup>th</sup> September
- ◆ This amendment is applicable from AY 2020-21

#### **DUE DATE FOR TRANSFER PRICING COMPLIANCES**

- ◆ Presently, the due date for transfer pricing compliances are aligned with the due date of filing return of income i.e. 30<sup>th</sup> November
- ◆ It is proposed that the due date for transfer pricing compliances shall be 31<sup>st</sup> October

### **G VIVAD SE VISHWAS SCHEME, 2020**

- ◆ In the last budget "Sabka Vishwas Scheme" was brought in to reduce litigation in indirect taxes which resulted into settlement of more than 1,89,000 cases. Currently, 4,83,000 direct tax cases are pending before various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court
- ◆ It is now proposed to bring a similar scheme, namely 'Vivad Se Vishwas scheme, in direct tax for reducing the pending litigations

- ♦ All taxpayers whose appeals are pending at any level can take benefit of this scheme by only paying the amount of the disputed taxes before 31<sup>st</sup> March, 2020 and will get immunity from interest, penalty and prosecution. Person availing the scheme after 31<sup>st</sup> March, 2020 will have to pay some additional amount. The scheme will remain open till 30<sup>th</sup> June, 2020
- ♦ This scheme shall be announced in due course

## **H TAXPAYER'S CHARTER**

- ♦ The CBDT has been mandated to adopt and declare a taxpayer's Charter and issue requisite instructions and guidelines to administer the Charter
- ♦ This is expected to avoid harassment of tax payers
- ♦ This new provision shall take effect from 1<sup>st</sup> April, 2020

## **I IMPROVING EFFECTIVENESS OF TAX ADMINISTRATION**

### **MODIFICATION OF E-ASSESSMENT SCHEME**

- ♦ Presently, e-assessment scheme does not cover best judgment assessment, which is now proposed to be made applicable
- ♦ This amendment shall take effect from 1<sup>st</sup> April, 2020

### **AMENDMENT IN DRP PROVISIONS**

- ♦ DRP provisions are now made applicable to all non-residents. This amendment shall take effect from 1<sup>st</sup> April, 2020

### **E-APPEAL**

- ♦ It is proposed to launch an e-appeal scheme on the similar lines as e-assessment scheme
- ♦ This amendment shall take effect from 1<sup>st</sup> April, 2020

#### **PROVIDING CHECK ON SURVEY OPERATIONS**

- ♦ Before conducting survey operations tax officials are subject to additional checks & approvals. These amendments shall take effect from 1<sup>st</sup> April, 2020

#### **STAY OF DEMAND BY INCOME TAX APPELLATE TRIBUNAL**

- ♦ Presently, the ITAT can pass stay order for period of 180 days, which can be extended for a further period not exceeding 185 days if it is satisfied that the delay in disposing of appeal is not attributable to the assessee
- ♦ It is now proposed that such stay upto 180 days would be granted subject to payment of 20% of demand or security of an equal amount is furnished
- ♦ These amendments shall take effect from 1<sup>st</sup> April, 2020

#### **E-PENALTY PROCEEDING**

- ♦ Proceedings for penalty are proposed to be made faceless for which an appropriate scheme will be notified
- ♦ This amendment shall take effect from 1<sup>st</sup> April, 2020

#### **PENALTY FOR FAKE INVOICES**

- ♦ It is proposed to levy penalty for:
  - recording false entry in the books of accounts; and
  - omission of an entry relevant for computation of total income to evade tax liability
- ♦ The penalty shall be equivalent to the aggregate amounts of such entries in the hands of the person recording/ omitting to record such entries

- ♦ Penalty shall be also levied on the person who causes the aforesaid person to record such false entries or to omit such entries
- ♦ The penalty shall be equivalent to the aggregate amounts of such entries, in the hand of such other person
- ♦ The above penalty shall be in addition to other penalties under the ITA

## **J RESIDENTIAL STATUS**

### **INDIAN CITIZEN OR PERSON OF INDIAN ORIGIN**

- ♦ Presently, an assessee is considered as resident in India if:
  - his period of stay in India during the year is 182 days or more
  - Having been in India in preceding 4 years for 365 days is in India for a period of 60 days. In respect of Indian citizen or POI who has come to India on visit, the period of 60 days is replaced by 182 days
- ♦ It is now proposed that such Indian citizen or POI, who come on visit to India, period of 182 days shall be replaced by 120 days

### **RESIDENT BUT NOT ORDINARILY RESIDENT**

- ♦ Presently, an individual or HUF is considered as “not ordinarily resident” if such individual or manager of the HUF:
  - is a non-resident in India in 9 out of the 10 preceeding years; or
  - Period of stay in India during the 7 preceeding years is 729 days or less
- ♦ It is proposed to substitute the above conditions with the sole criteria of being a non-resident in 7 out of 10 preceeding years, to be considered as “not ordinarily resident”

## **DEEMED RESIDENT IN INDIA**

- ♦ Presently, an individual being a citizen of India could arrange his affairs in a manner that he is not liable to tax in any country or jurisdiction during a previous year
- ♦ It is now proposed that an individual, being a citizen of India, who is not liable to tax in any country shall be deemed to be resident of India in such previous year, irrespective of his period of stay in India
- ♦ The effect of the amendment in definition of resident but not ordinarily resident may result in relief for few years to a person who otherwise becomes resident by virtue of deeming provision

## **K TAX TREATMENT OF EMPLOYER'S CONTRIBUTION TO CERTAIN FUNDS**

- ♦ Presently, the contribution by the employer in various funds is taxable in hands of the employee as under:
  - Contribution to recognized provident fund exceeding 12% of the salary;
  - Contribution to approved superannuation fund exceeding INR 150,000; and
  - Deduction for 14% of the salary contributed by Central Government to NPS and 10% in other cases is permitted
- ♦ It is now proposed to provide a combined upper limit of INR 750,000 in respect of employer's contribution in above funds and any excess contribution shall be taxable in the hands of the employee
- ♦ Any annual accretion to these funds by way of interest, dividend or any similar nature shall be treated as perquisite to the extent it relates to the employer's contribution in excess of INR 750,000

## **L RATIONALISATION OF PROVISION RELATING TO FORM 26AS**

- ♦ Form 26 AS will now also provide information such as purchase/ sale of shares/ immovable properties to enable the assessee to use such details for filing ROI and calculate correct tax liability
- ♦ These amendments will take effect from 1<sup>st</sup> June, 2020

## **M TAX DEDUCTION AT SOURCE**

### **TDS ON INTEREST INCOME**

- ♦ Presently TDS is not required to be deducted on interest income credited or paid by a co-operative society to its member or to any other co-operative society, on interest on deposits with primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank or co-operative bank engaged in carrying on business of banking
- ♦ It is now proposed to provide that co-operative society shall deduct tax at source if its:
  - total sales/ gross receipts/ turnover during the financial year immediately preceding the financial year in which interest is credited or paid exceeds INR 50 crores; and
  - aggregate amount of interest credited or paid as well as likely to be credited or paid during the year exceeds INR 50,000 in case of payee being senior citizen and INR 40,000 in other cases

### **TDS ON CONTRACTORS**

- ♦ Presently, the definition of “work” includes manufacturing or supplying a product according to the requirements or specification of a customer using material purchased from such customer

- ♦ It is proposed to amend the definition of “work” to provide that material purchased would also include supply by associate of the customer, being a related party

#### **TDS ON FEES FOR TECHNICAL SERVICES**

- ♦ Presently, TDS on fees for professional services or technical services is deducted at 10%
- ♦ It is proposed to reduce the rate of TDS on fees for technical services to 2%. In other cases rate would remain same at 10%

#### **TDS ON INTEREST TO NON-RESIDENTS ON BORROWINGS**

- ♦ Presently, TDS is required to be deducted at 5% on interest paid to non-resident on foreign currency borrowings under loan agreement on or after 1<sup>st</sup> July, 2012 but before 1<sup>st</sup> July, 2020 as well as on issue of long term bonds on or after 1<sup>st</sup> October, 2014 but before 1<sup>st</sup> July, 2020
- ♦ It is proposed to extend the time limit for availing loan/ issue of bonds from 1<sup>st</sup> July, 2020 to 1<sup>st</sup> July, 2023. Further, it is also proposed to reduce TDS rate to 4% on issue of long term bonds listed only on recognized stock exchange located in any IFSC

#### **TDS ON INTEREST TO FII AND QFI**

- ♦ Presently, TDS is required to be deducted at 5% on interest payment to FII and QFI on or after 1<sup>st</sup> June, 2013 but before 1<sup>st</sup> July, 2020 on investment in government securities and RDB of an Indian company
- ♦ It is proposed to extend the period from 1<sup>st</sup> July, 2020 to 1<sup>st</sup> July, 2023. It is also proposed to cover the applicability of TDS on municipal debt security subscribed by FII and QFI



### TDS ON ECOMMERCE TRANSACTIONS

- ♦ It is proposed to insert new section so as to provide for TDS at the rate of 1% on payment by e-commerce operator to e-commerce participant towards sale of goods or provision of services which are facilitated by e-commerce through its digital or electronic facility or platform. Payments would deem to include direct payments to an e-commerce participant
- ♦ The provisions shall not be applicable if:
  - e-commerce participant is an individual/ HUF;
  - gross amount of sale/ services made by him through e-commerce operator does not exceed INR 5 lakhs during the previous year; and
  - e-commerce participant has furnished PAN or Aadhar number
- ♦ Once TDS is deducted by e-commerce operator or is not liable to TDS as above, there shall not be any further liability with regards to TDS
- ♦ This exemption is not available for receipts by e-commerce operator towards hosting advertisements or providing any other services which are not in connection with sale of goods or services facilitated by it through its digital or electronic facility or platform
- ♦ Presently, in the absence of furnishing of PAN, tax was required to be deducted at higher of:
  - Rate specified in the relevant provisions of the ITA;
  - Rates in force; or
  - 20%
- ♦ It is proposed to provide that where tax is required to be deducted in respect of income from e-commerce transactions, rate of 20% will be substituted by 5%

## **N TRUST**

### **FURNISHING STATEMENT OF DONATIONS RECEIVED**

- ◆ Presently, the trusts or institutions are not required to furnish any details of donations received
- ◆ It is proposed that, trust or institutions receiving donations shall have to furnish statement in respect of donation received and issue certificates thereof to donor
- ◆ Deduction shall be allowed to the donor only if the statement is furnished by the donee and Form 26AS includes such donations
- ◆ It is proposed to levy penalty of not less than INR 10,000 but not exceeding INR 100,000 in case of failure to furnish the said statement. Further fees of INR 200 per day will be charged during which such failure continues

### **DEDUCTION UNDER SECTION 80GGAA**

- ◆ Presently, in order to claim deduction limit of cash donation paid to scientific research or rural development was INR 10,000
- ◆ It is now proposed to restrict such limit to INR 2,000

### **REGISTRATION OF TRUSTS/ SCIENTIFIC INSTITUTIONS**

- ◆ Section 12AA shall not be applicable on or after 1<sup>st</sup> June, 2020
- ◆ Presently, validity of certificate issued under section 12AA does not have any time limit. It is now proposed that already approved entities should apply to the Principal Commissioner or Commissioner under section 12AB before 31<sup>st</sup> August, 2020, pursuant to which the existing approval would be extended for 5 years. Thereafter, a fresh application would be required

- ♦ New charitable entities coming into existence after 1<sup>st</sup> June, 2020 would be required to make application within 1 year from the date of creation/establishment, to the Principal Commissioner or Commissioner who would grant provisional registration for 3 years irrespective of the commencement of the activity. Fresh application must be made 6 months before expiry of provisional registration or within 6 months of commencement of activity, whichever is earlier
- ♦ The Principal Chief Commissioner has the power to cancel registration in certain events
- ♦ Similar procedure would be required to be followed for approval under section 80G and for scientific research associations under section 35

## **O TAX COLLECTED AT SOURCE**

### **TCS ON LRS AND SELLING OF OVERSEAS TOUR PACKAGE**

- ♦ Presently, TCS is required to be collected in respect of business of trading in alcohol, liquor, forest produce, scrap etc
- ♦ It is proposed to apply TCS provisions:
  - On overseas remittances by authorised dealer if amount exceeds INR 7 lakhs in a financial year under LRS. TCS rate is 5% and in case of non-PAN/ Aadhaar at 10%
  - On sale of overseas tour package, TCS rate is 5% and in case of non-PAN/ Aadhaar at 10%
- ♦ Exemption is provided from above if:
  - The buyer has deducted TDS
  - Buyer is Central Government, State Government, embassy, High Commission, legation, commission, consulate, trade representation of foreign state, local authority or any person notified by Central Government in the official gazette

#### **TCS ON SALE OF GOODS**

- ♦ A seller of goods, whose total sales/turnover/gross receipts from business carried on by him exceeds INR 10 crores during the immediate preceding year shall be liable to collect TCS at 0.1% on consideration received from buyer on the transaction value exceeding INR 50 lakhs. In non-PAN/Aadhaar cases-the rate shall be 1%
- ♦ Exemption is provided from above if:
  - The buyer has deducted TDS
  - the buyer is Central/State Government, an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority or any other person as the Central Government may specify in this behalf
  - The proposed amendment has not provided any exception for export of goods

#### **P MISCELLANEOUS**

##### **THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY**

- ♦ Enabling power has now been given to the Government to align the provision of section 90 and section 90A of the ITA to deal with tax evasion or avoidance

##### **RATIONALIZATION OF DEFINITION OF ROYALTY**

- ♦ Sale, distribution or exhibition of cinematographic films is now included in the definition of royalty under ITA

##### **ALLOWING CARRY FORWARD OF LOSSES OR DEPRECIATION IN AMALGAMATIONS**

- ♦ It is proposed to give benefit of carry forward of accumulated losses and unabsorbed depreciation in case of amalgamation of:
  - one or more banking companies with one or more corresponding new banks; or

- banks with any other corresponding new bank; or
- Government Insurance companies.

#### **CARVE OUTS TO INTEREST LIMITATION**

- ◆ Presently, thin capitalisation rule is applicable to PE of all foreign companies including foreign banks
- ◆ It is now proposed to exclude PE of foreign bank from applicability of thin capitalisation rule

#### **Q HOLDING PERIOD AND COST OF ACQUISITION OF MUTUAL FUND**

- ◆ In order to give effect SEBI's recent circular permitting creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes, it is proposed that:
  - for calculating the period of holding of the units in the segregated portfolio, the period for which original units were held shall also be included
  - Cost of units of segregated portfolio shall be calculated by allocating original cost in the ratio of NAV of the segregated assets to NAV of total assets
  - Balance cost shall be treated as cost of acquisition of the original units in the main portfolio

#### **R EXEMPTING NON-RESIDENT FROM FILING ROI**

- ◆ Presently, non-residents are exempt from filing ROI in India, if their income consist of certain dividend or interest income on which tax is duly deducted
- ◆ It is proposed to give same exemption to non-resident having royalty or FTS

## II GOODS AND SERVICES TAX <sup>2</sup>

### A REORGANISATION OF UNION TERRITORIES

- ♦ It is proposed to include Ladakh in the definition of Union territory in consonance with Jammu and Kashmir Reorganisation Act, 2019
- ♦ It is further proposed to consider Dadra and Nagar Haveli and Daman and Diu as a single union territory in consonance with Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019
- ♦ Transitional provisions and rules prescribing the procedures to effectuate above referred amendments are awaited

### B RESTRICTION FOR COMPOSITION DEALER IN GOODS

- ♦ Presently dealer in goods who opts for composition scheme can provide services (whether within or outside the state) not exceeding 10% of turnover in State or INR 5 lakhs, whichever is higher
- ♦ It is now proposed that dealer in goods will not be entitled to composition scheme, if he undertakes the following supplies:
  - Services not leviable to GST
  - Inter-state supply of services
  - Supply of services through electronic commerce operator

### C RELAXATION OF TIME LIMIT FOR ITC CLAIM IN RESPECT OF DEBIT NOTE

- ♦ Presently the time limit for taking ITC on debit note is linked to the date of invoice pertaining to such debit note

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<sup>2</sup> Proposed amendments will be effective from date to be notified unless otherwise specified

- ♦ It is now proposed that time limit for claiming ITC in respect of debit note will be earlier of:
  - Due date of furnishing return for September month following the end of financial year to which such debit note pertains
  - Date of filling the relevant annual return

#### **D CANCELLATION OF VOLUNTARY REGISTRATION**

- ♦ Presently GST legislation does not allow person registered voluntarily to apply for cancellation of registration
- ♦ It is now proposed to allow such person to apply for cancellation of registration

#### **E REVOCATION OF CANCELLATION OF REGISTRATION**

- ♦ Person is entitled to apply for revocation of cancellation of registration within thirty days from date of service of cancellation order
- ♦ Presently there is no provision for condonation of delay in applying for such revocation
- ♦ It is proposed to empower:
  - Additional Commissioner or Joint Commissioner to condone the delay for application for such revocation by 30 days
  - Commissioner to condone such delay by additional 30 days

#### **F TAX INVOICE**

- ♦ Presently tax invoice for supply of services is to be raised within 30 days or 45 days from date of supply



- ♦ It is proposed to empower the Government to specify time limit within which the invoice is to be issued in respect of certain category of services or supplies

#### **G TDS CERTIFICATE**

- ♦ Person (presently only government) deducting tax at source will be required to issue TDS certificate in prescribed form and manner
- ♦ It is now proposed to omit existing penal provision for failure to furnish TDS certificate

#### **H APPELLATE TRIBUNAL**

- ♦ Government is now empowered to constitute a bench of Appellate Tribunal for State of Jammu and Kashmir along with other states

#### **I PENALTY ON BENEFICIARY (COUNTER-PARTY) FOR CERTAIN OFFENCES**

- ♦ Presently GST legislation provides for levy of penalty on 'taxable person' for following offences:
  - Making supply without invoice or on false invoice
  - Issuing invoice without supply
  - Taking or utilising ITC without actual receipt of supply
  - Taking or distributing ITC in contravention of ISD provisions
- ♦ It is now proposed to levy penalty for above offences also on:
  - Beneficiary (i.e. counter-party) of above referred transactions
  - Person at whose instance such transactions are conducted

#### **J PUNISHMENT TO BENEFICIARY FOR CERTAIN OFFENCES**

- ♦ Presently section 132 provides for imprisonment of and fine on a person committing specified offences

- ♦ It is proposed to extend above referred punishment to person who causes to commit such offence and retains benefits thereof
- ♦ It is further proposed to make offence of availing ITC without invoice as cognizable and non-bailable offence

#### **K POWER TO ISSUE REMOVAL OF DIFFICULTY ORDER**

- ♦ Presently the Government is empowered to issue removal of difficulty order for a period of 3 years starting from 1<sup>st</sup> July, 2017
- ♦ It is now proposed to empower the Government to issue removal of difficulty order upto a period of 5 years starting from 1<sup>st</sup> July, 2017

#### **L RETROSPECTIVE AMENDMENTS IN TRANSITIONAL PROVISIONS**

- ♦ Presently the CGST Act does not prescribe the time limit for claiming transitional credit. The judiciary have upheld this position
- ♦ It is proposed to amend the transitional provisions with effect from 1<sup>st</sup> July, 2017 so as to provide for time limit and manner of claiming transitional credit. This may nullify the decisions pronounced by judiciary

#### **M RETROSPECTIVE EXEMPTION**

- ♦ Supply of fishmeal (falling under heading 2301) is exempted retrospectively for the period 1<sup>st</sup> July, 2017 to 30<sup>th</sup> September, 2019
- ♦ No refund shall be granted of tax already paid

#### **N RETROSPECTIVE RATE CHANGE**

- ♦ Supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery (falling under heading 8432, 8433 and 8436) will be taxed at rate of 12% for the period 1<sup>st</sup> July, 2017 to 31<sup>st</sup> December, 2018
- ♦ No refund shall be granted of tax already paid at higher rate

## **O DENIAL OF REFUND OF UNUTILISED ITC WITH RETROSPECTIVE EFFECT**

- ♦ Retrospective amendment from 1<sup>st</sup> July, 2017 made to deny refund of unutilised ITC of compensation cess arising out of inverted rate structure in respect of tobacco and manufactured tobacco substitutes

## **P OTHER PROPOSITIONS**

- ♦ Simplified return system (currently in pilot run) is proposed to be introduced from 1<sup>st</sup> April, 2020 with following features:
  - SMS-based filing of NIL returns
  - Pre-filled returns
  - Improved input tax credit flow
- ♦ Aadhaar based verification of taxpayers for weeding out dummy and non-existent units
- ♦ Implementation of e-invoicing system in phased manner, starting optionally from February, 2020
- ♦ Dynamic QR-code for consumer invoices and capturing of GST parameters while making payment through the QR-code
- ♦ Cash rewards to incentivise customers to seek invoice

Usage of deep data analytics and AI tools for cracking down on GST input tax credit, refund and other frauds

### III ALLIED LAWS

#### A STAMP DUTY

- ♦ No stamp duty to be chargeable on instruments of transactions in stock exchanges and depositories established in any IFSC

#### B NBFC

##### NBFCs TO COVER MORE ENTITIES UNDER SARFAESI

- ♦ The eligibility limit for NBFCs for debt recovery under the SARFAESI is proposed to be reduced from existing asset size of INR 500 crores to INR 100 crores or loan size from existing INR 1 crore to INR 50 Lakhs

##### ALL NBFCs PART OF TReDS

- ♦ TReDS is an electronic platform for facilitating the financing / discounting of trade receivables of MSMEs through multiple financiers
- ♦ Currently, only banks, NBFCs registered as factoring NBFCs and financial institutions as permitted by RBI are allowed to participate as financiers on the TReDS platform
- ♦ It is now proposed to allow all NBFCs to be part of TReDS
- ♦ However, the requisite amendment to the regulations will need to be made for exempting NBFCs to fulfil the Principal business criteria of constituting 75% of income and assets from factoring business

#### C FINANCIAL MARKET

- ♦ Increase in investment limit for FPI in corporate bonds, from 9% to 15% of the outstanding stock of corporate bonds

- ♦ Certain specified categories of Government securities to be opened fully for non-resident investors, apart from being available to domestic investors as well
- ♦ A legislation to be formulated for laying down a mechanism for netting of financial contracts
- ♦ Government to float a new Debt-based ETF consisting of primarily government securities
- ♦ International Bullion exchange to be set up in GIFT-IFSC

#### **D INCREASE IN INSURANCE COVERAGE TO DEPOSITORS**

- ♦ Presently, a depositor's money in a bank is secured up to INR 1 Lakh per depositor. The DICGC has now been permitted to increase the Deposit Insurance Coverage for a depositor to INR 5 Lakhs per depositor

## GLOSSARY

AAAR	Appellate Authority for Advance Ruling
AIF	Alternate Investment Fund
AJP	Artificial Judicial Person
AOP	Association of Person
APA	Advance Pricing Agreement
AY	Assessment Year
BOI	Body Of Individuals
CBDT	Central Board of Direct Taxes
CG	Central Government
CGST	Central Goods and Services Tax
DDT	Dividend Distribution Tax
DICGC	Deposit Insurance and Credit Guarantee Corporation
DRP	Dispute Resolution Panel
EPFO	Employee's Provident Fund Organisation
ESOP	Employee Stock Option Plan
ETF	Exchange Traded Fund
FII	Foreign Institutional Investor
FPI	Foreign Portfolio Investor
FMV	Fair Market Value
FY	Financial Year
GST	Goods and Services Tax
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IFSC	International Financial Services Centre
IGST	Integrated Goods and Services Tax
IIM	Indian Institute of Management
ITA	Income-tax Act
ITAT	Income Tax Appellate Tribunal
MAT	Minimum Alternate Tax
MSME	Micro, Small and Medium Enterprises

NAAAR	National Appellate Authority for Advance Ruling
NAPA	National Anti-Profiteering Authority
NBFC	Non - Banking Finance Companies
NCLT	National Company Law Tribunal
NPS	National Pension System
PAN	Permanent Account Number
PE	Permanent Establishment
QFI	Qualified Foreign Investor
RDB	Rupee Denominated Bond
ROI	Return of Income
RSC	Registered Stock Exchange
SARFAESI	Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SCN	Show Cause Notice
SEP	Significant Economic Presence
SEZ	Special Economic Zone
SG	State Government
SGST	State Goods and Services Tax
STT	Securities Transaction Tax
TAN	Tax Deduction and Collection Account Number
TDS	Tax Deducted at Source
UT	Union Territory
UTGST	Union Territory Goods and Services Tax



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