UNION BUDGET 2020

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Union Budget 2020-21

Summary of the budget proposals

Contents

1. Foreword

The Modi Government is probably facing the worst slowdown in the economy coupled with increasing unemployment and against this background the Finance Minister has the most daunting task ahead of her to put certain measures to steer the economy out of the current situation. What we saw today was a marathon speech by the FM on the various measures undertaken by the Government in the past and certain proposals brought about today in the Budget.

The first obstacle was the resource constraint in direct taxes given the planned incentive doled out by the huge reduction of corporate taxes in 2019 for new manufacturing companies combined with the short fall in direct taxes collection. So what the FM had was very limited play and probably no scope to undertake any bold measures to bolster the economy and this is clearly evident from the proposals.

The FM went about a great deal on the 3 themes she modelled this year's budget on but if one were to analyse the allocation it was more or less similar to the previous year.

She did give away some relief to the middle class by juggling the tax slab rates but this will not give much impetus to their disposable incomes. On the corporate tax some good measures such as abolition of DDT and bringing a scheme to settle tax disputes by the 'Vivad se Vishwas Scheme'. One has to see whether this one will garner the same level of success like the indirect tax scheme.

There are a number of amendments brought about in the tax proposals to plug certain loop holes and to incentivise 'Make in India" fair amount of tinkering has been done by increasing the customs duty structure.

In effect this Budget 2020-21 is a mixed bag a calibrated approach given the fiscal constraints, one would have to wait for more time to see buoyancy to return to the economy.

K R Girish

2. Economic Survey – Key Highlight

The Finance Minister, Smt. Nirmala Sitharaman, tabled the 'Economic Survey 2019-20' in the Parliament on January 31, 2020. It is an annual document which reviews the developments in the Indian Economy in the running financial year.

As per the survey, in the World Bank's Index of Ease of Doing Business India has jumped from 142nd rank in 2014 to 63rd rank in 2019. It has progressed on seven out of the 10 parameters. The Goods and Service Tax (GST) and the Insolvency and Bankruptcy Code (IBC) top the list of reforms that have propelled India's rise in rankings. The previous Economic Survey had argued that the single biggest constraint to ease of doing business in India is its inability to enforce contracts and to resolve disputes.

The key takeaways from the Economic Survey related are enumerated below:

2.1. Economy and fiscal:

- GDP growth for 2020-21 between 6.00 to 6.50%; revised growth rate for 2019-20 at 5%.
- Fiscal deficit as a % of the budget estimate for the period April 2019 to November 2019 at a similar level to the corresponding period of the last year; to revive growth in the economy, fiscal deficit target may be relaxed.
- Aspire to become a $5 trillion economy by 2025.
- Net tax revenue growth at 2.6% during April 2019 to November 2019.
- Improved Balance of Payment ('BoP') position – Increase in forex reserves and improvement in BoP was contributed by easing of external financial conditions, impressive FDI, rebounding of portfolio flows and receipt of robust remittances. Key Highlights of the Economic Survey 2019-20 are as under
- Exports of services have outperformed exports of merchandise, thereby increasing the share in the world's commercial services exports. 1. Economy and fiscal:
- Thalinomics – Affordability for veg thali improved by 29%; for non-veg thali, by 18%.

2.2. Trust and transparency:

- Enabling invisible hand of market with role of trust will lead to wealth creation - it should be ethical wealth creation.
- Emphasis on need for 'pro-business' policy for generating wealth and infrastructure investment of over INR 100 Lakh Crore over the next 5 years.
- Improving governance and build trust in public sector banks through more disclosure of information.
- New model to sell-off government stake in Central Public Sector Enterprises ('CPSEs') – Create a separate corporate entity which would be managed by an independent board.

2.3. Employment generation:

- Widening scope of Make in India to create 4 crore jobs by 2025 – integrating 'assemble in India for the world' into 'Make in India'.
- Frame strategies and policies similar to China by concentrating in labour intensive sectors, enabling assembling operations in large scale and increase exports to rich countries.

2.4. Direct Taxation

Budget 2019-20 had estimated the gross tax revenue of Rs. 24.61 lakh crores (11.7% of the GDP). The direct taxes, comprising mainly of corporate and personal income tax, constitute around 54% of Gross-tax revenue. The direct taxes were estimated at 6.3% of the GDP in the financial year 2019-20. Receipts from corporate and personal income tax have improved over the last few years. Better tax administration, widening of TDS net over the years, anti-tax evasion measures and increase in effective taxpayers base have contributed to direct tax buoyancy. The actual realisation of net tax revenue during the year 2019-20 (up to November 2019) to the Centre has been 7.51 lakh crore which was only 45.5% of the Budgeted estimates.

Measures taken in the field of direct taxation

- To remove the existing human interface and personal interaction prevailing in the assessment procedure, a scheme of faceless electronic assessment was launched by the Govt.
- The turnover limit for the reduced corporate tax rate of 25% was increased to Rs. 400 crore (in the financial year 2017-18) benefiting around 99.1% companies incorporated in India.
- MAT rate has been reduced from 18.5% to 15%
- Special tax rates at the rate of 15% and 22% have been introduced with respect to specified domestic companies.
- Insertion of Section 194M for deducting tax at the rate of 5% from payment made to contractors or professionals exceeding Rs. 50 lakhs and Section 194N for deduction of tax at the rate of 2% from cash withdrawn in excess of one crore.
- Gifts made to non-residents were also brought under the ambit of Income Tax, wherein certain gifts made to non-residents on or after 05-07-2019 were deemed as income of such non-residents subject to the provisions of DTAA between India and other countries.
- PAN and Aadhaar had been made interchangeable implying that a person who has not yet been allotted PAN or who does not own PAN can furnish Aadhaar in its place.
- Department has tried to reduce the litigations by raising the threshold limit for filing of appeals before ITAT, High Court and Supreme Court.
- Incentives were taken to promote Start-ups by the formation of dedicated grievance cell, clarifications on the assessment of start-ups relating to additions made with respect to Angel Tax.
- The enhanced surcharge was introduced at the rate of 25% and 37% on the super-rich class of assessees.

2.5. Goods and Services Tax

GST collection grew by 4.1 per cent for the Centre during April 2019 to November 2019. The GST collection for Centre as well as States for the month of November 2019 was the third-highest monthly collection since the introduction of GST. From April to December 2019, gross GST revenue collection has crossed the mark of Rs. 1 lakh crore by five times.

The increase in GST collections was a result of numerous efforts taken by the Government including extensive automation of business processes, application of e-way bill mechanism, targeted action on compliance verification, enforcement based on risk assessment and proposed introduction of electronic invoice system.

2.6. Corporate Law

India has jumped 79 positions in World Bank's index of Ease of Doing Business, improving from 142nd rank in 2014 to 63rd rank in 2019. However, it continues to trail in parameters such as Ease of Starting Business (rank 136), Registering Property (rank 154), Paying Taxes (rank 115), and Enforcing Contracts (rank 163).

Setting up and operating a service or manufacturing business in India face a maze of laws, rules and regulations. Many of these are local requirements, such as burdensome documentation for police clearance to open a restaurant. This must be cleaned up and rationalized one segment at a time.

2.7. Miscellaneous:

Government intervention hurts the smooth functioning of the market, especially in areas related to commodities (e.g. sugar, dal, and onions), pharmaceutical drugs and food-grain markets. Debts waived off by states / centres have turned less productive as the same disrupt the credit culture and the attitude / behaviour of the beneficiaries, particularly full waiver beneficiaries.

- ESOPs to incentivise employees of PSU banks.
- Housing for all by 2022 – Pradhan Mantri Yojana Schemes have garnered success.
- Boost to tourism sector by foreign tourist arrivals on e-visas.
- Mineral output – Notable turnaround on account of reforms by government.

The Economic Survey has set the tone for the expectations from the Union Budget in areas of infrastructure development, ease of doing business, employment generation, socio-economic development, etc. During the year there have been taxation reforms; however, the Survey is silent on Direct tax Code and does not make any reference or recommendations. Here again there are expectations of further simplification and rationalisation of tax structure in the Union Budget.

3. Direct Tax

3.1. Individuals and HUF

Simplified personal income tax regime

The Union Budget proposes to bring a new and simplified personal income tax regime wherein income tax rates will be significantly reduced for the individual taxpayers who forgo deductions and exemptions. Further, the new tax regime shall be optional for the tax payers and an individual who is currently availing more deductions and exemptions under the Income Tax Act may choose to avail them and continue to pay tax in the old regime.

The New personal Income tax regime proposes the following tax structure:

Taxable Income Slab (Rs.)	0-2.5 Lakhs	2.5-5 Lakhs	5 - 7.5 Lakhs	7.5-10 Lakhs	10-12.5 Lakhs	12.5-15 Lakhs	Above 15 Lakhs
Existing tax rates	Exempt	5%	20%	25%	30%	30%	30%
New tax rates	Exempt	5%	10%	15%	20%	25%	30%

Extending time limit for sanctioning of loan for affordable housing for availing deduction under section 80EEA

An additional deduction of Rs. 1.5 lakhs in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property was provided where the loan was sanctioned by financial institution during the period 1st April 2019 to 31st March 2020.

To promote purchase of affordable housing, the period of sanctioning loan by financial institution is proposed to be extended to 31st March 2021.

Modification of residency provisions

The Government believes that the current provisions of section 6 provides relaxation to an Indian citizen or a person of Indian origin allowing them to visit India for longer duration of 182 days without becoming resident of India. It is also 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, typically employed by high net worth individuals (HNWI).

Considering the 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 is 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.

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

3.2. Corporate and International Taxation

Modification of concessional tax scheme for domestic companies under section 115BAA & 115BAB

Section 115BAA and 115BAB of the Act provides domestic companies an option to be taxed at concessional tax rates provided they do not avail specified deductions and incentives. Accordingly, except deduction under section 80JJAA under Chapter VI-A, no other deductions were available. It is now proposed to amend the provisions of section 115BAA and section 115BAB to allow deduction under section 80JJAA **or** 80M under Chapter VI-A. 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.

Settlements for Tax Disputes

The Government has proposed 'Vivad se Viswas Scheme' or 'No Dispute but Trust Scheme'. As per the said proposal, the taxpayer will be required only to pay the disputed tax involved in the litigation and will gain complete waiver of the ancillary charge of interest and penalty with a rider that the obligation to pay disputed tax is discharged by 31 March 2020. The benefits conferred by the above said proposal can be availed post 31 March 2020 until 30 June 2020 subject to payment of additional amount. The taxpayers can accordingly avail the benefit at any level of the appellate proceedings.

The detailed scheme is to be announced shortly.

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

Interest paid or payable by the Indian Company in respect of loan from the Permanent Establishment of a non-resident Bank may attract provisions of interest limitation provided for section 94B of the Act. Hence, it is 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.

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

- At present, while taxing income from capital gains (section 50C), business profits (section 43CA) and other sources (section 56) arising out of transactions in immovable property, no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration.

- In this regard, it is proposed to increase the limit to ten per cent. Accordingly no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than ten percent of the sale consideration.

- 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.

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

Currently, domestic company opting for concessional tax rate under section 115BAA or section 115BAB of the Act cannot claim deduction on capital expenditure under section 35AD of the Act. Further, it would also be denied normal depreciation under section 32 due to operation of sub-section (4) of section 35AD of the Act, which provides that no deduction is allowable under any other section in respect to the capital expenditure incurred by the assessee on which 100 percent deduction is claimed.

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.

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

- Currently, provisions of section 115A of the Act provide relief to non-residents from filing of return of income where the non-resident’s total income consists of dividend or interest income and is not liable to pay tax other than the TDS which has been deducted on such income.

- Now it is proposed to amend the provisions of section 115A by extending the relief to non-residents from filing of return of income where the non-resident’s total income consists of the income by way of royalty or fee for technical service and TDS on such income has been deducted under the provisions of Chapter XVII-B at the rates which are not lower than the prescribed rates under sub-section (1) of section 115A of the Act. Hence, if TDS on such income has been deduced as per the Treaty, which is less than the prescribed rates under sub-section (1) of section 115A of the Act, then non-residents shall continue to file the return of income.

- 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.

Deduction under section 80-IBA

In order to incentivise building affordable housing to boost the supply of such houses, the period of approval of affordable housing project by the competent authority is proposed to be extended to 31st March 2021, thereby extending the time limit for availing deduction under section 80-IBA.

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. One of the conditions for eligibility requires that the aggregate participation or investment in the fund by persons resident in India does not exceed five per cent of the corpus of the fund. Another condition 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.

It is proposed to amend section 9A of the Act to relax these two conditions and provide that:

- for the purpose of calculation of the aggregate participation or investment in the fund, 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

- 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.

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

This 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.

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 effective from 1st April 2020.

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

The Safe harbour rules (SHR) were introduced to provide tax certainty for relatively smaller cases for future years on general terms, and advance pricing agreement (APA) was introduced to provide tax certainty on case to case basis not only for future years but also Rollback years. Both SHR and the APA were introduced for reducing litigation in determination of the ALP.

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.

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. Further, section 43B of the Act provides for allowance of certain deductions, only in the previous year in which such sum is actually paid.

Rule 5 of the said Schedule provides no specific provision, 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.

Hence, 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.

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

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 DTAAs 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. It will be applied alongside existing DTAAs, modifying their application in order to implement the BEPS measures.

To include the text provided in MLI in the provisions of the Act, 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, 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.

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 creates a legal fiction that certain incomes shall be deemed to accrue or arise in India.

Significant Economic Presence

Finance Act, 2018, inserted Explanation 2A to clause (i) so as to clarify that the SEP of a non-resident in India shall constitute "business connection" in India. 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. Discussion on this issue is still going on in G20-OECD BEPS project. Accordingly, it is proposed to defer SEP to starting from assessment year 2022-23.

Further, certain drafting changes have also been made while deferring the proposal. 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.

Indirect transfer provisions

Explanation 5 to the said section is also proposed to be 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.

Royalty

Royalty as defined in clause (vi) of sub-section (1) of section 9 excludes consideration for the sale, distribution or exhibition of cinematographic films.

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.

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

Presently, the incidence of tax on distributed profits is, thus on the payer company/Mutual Fund under section 115O or 115R of the Act and not on the recipient.

These provisions are proposed to be amended 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.

Further, section exemption under section 10(34) and section 10(35) shall be withdrawn. In order to avoid cascading effect of tax, 80M will be inserted to allow set off dividend distributed by the company one month prior to the due date of filing of return.

Section 115BBDA which levies tax on dividend income in excess of ten lakh rupee in the hands of shareholder at ten per cent will apply only to dividend declared, distributed or paid by a domestic company on or before the 31st day of March 2020.

Section 194, 194LBA, 194K shall include dividend for tax deduction. Also, section 195 shall delete exemption provided to dividend referred to in section 115-O.

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.

It is proposed to rationalise the provision and 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 2001where such stamp duty value is available.

3.3. Start-up Taxation

Rationalization of provisions of start-ups

To further rationalise the provisions relating to start-ups, section 80-IAC is proposed to be amended to provide:

- Deduction under section 80-IAC to be eligible for a period of three consecutive assessment years out of ten years beginning from the year in which it is incorporated;

- Deduction 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 from the year in which it is incorporated

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

Currently, ESOPs are taxable under section 17(2) of the Act as perquisites at the time of exercise. In order to reduce 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 being an eligible start-up, responsible for paying any income to the assessee being perquisite under section 17(2)(vi) of the Act, shall 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 earlier.

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

3.4. Compliance

Modification of e-assessment scheme

It is proposed to amend section 143(3A) to expand the scope of the section and included section 144 of the Act relating to best judgement assessment under the ambit of section 143(3A) of the Act. This amendment will take effect from 1st April, 2020.

Amendment in Dispute Resolution Panel (DRP)

- It is proposed that the provisions of amend section 144C of the Act to 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. Whereas earlier only those assessees in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act were eligible to approach DRP.

- Further it is proposed to expand the scope of section 144C of the Act 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.

Provision for e-appeal

With an intention to bring the appellate proceedings before Commissioner (Appeals) in line with faceless assessment a new sub section 6A to section 250 of the Act has been introduced to eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.

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

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

- Currently, first proviso to section 254(2A) of the Act provides that, 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. Further, second proviso further period of maximum 365 days.

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

- Further, it is also proposed to substitute second proviso to section 254(2A) to provide that, further stay can be granted 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

E- Penalty

- In order to be in line of E-assessment Scheme-2019. 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.

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

Penalty for fake invoice

It is proposed to introduce a new section 271AAD of 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 false entry or any entry relevant for computation of total income of such person has been omitted to evade tax liability equal to the aggregate amount of such false or omitted entry.

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

In order to widen and deepen the tax net, it is proposed to amend section 206C to levy collection of tax at source (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 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.

Exemption has been provided for applicability of the above provisions for certain buyers.

3.5. Withholding tax provisions

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 TDS at five per cent by a specified company or a business trust, on interest paid to non-residents on certain forms of borrowings (approved by the Central Government) made in foreign currency from sources outside India.

In order to attract fresh investment, create jobs and stimulate the economy, it is proposed to extend the time limit and also for further concessional rate of TDS:

- Extend the period of said concessional rate of TDS of five per cent to 1st July 2023 from 1st July 2020;

- 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.

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 certain conditions.

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

- 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;

- The concessional rate of TDS 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.

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

To reduce the 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, 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 will remain the same.

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 (3) of said section provides for circumstances in which interest income shall not be subject to tax withholding.

Clause (v) of the said sub-section refers to income credited or paid by a co-operative society (other than a co-operative bank) to a member or to any other co-operative society. Further, clause (viia) refers to 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, 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 (viia) of said sub-section (3) shall be liable to deduct income-tax, 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 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.

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

In order to widen the tax net, section 194-O is proposed to be inserted as to provide for a new levy of TDS at the rate of one per cent on *e-commerce* participants on the gross amount of such sales or service or both. Certain key points to be noted on this levy are:

- 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.

- 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

  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

  "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

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. 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*.

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.

3.6. Other Amendments

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

In the Finance Bill 2020, it is proposed to substitute the proviso to sub-section (6) of section 133A of the Act to provided 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. In any other case no income-tax authority below the rank of Commissioner or Director, shall conduct survey without prior approval of the Commissioner or the Director.

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

Modification of the definition of "business trust"

- Currently, as per section 2(13A) of the Act, trust registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations made under the SEBI Act, 1992 and the units of which are required to be listed on a recognised stock exchange in accordance with the relevant regulations are considered as Business Trust.

- Since, Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 vide notification No.SEBI/LAD-NRO/GN/2019/10 has, has removed the mandatory listing requirement for InvITs. It is proposed 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.

Exemption in respect of income of wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA) and Sovereign Wealth Fund

To promote investment of sovereign wealth fund, including the wholly owned subsidiary ADIA in India, a new clause is proposed to be inserted in section 80-IA of the Act exempting income 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 an enterprise carrying on the business of developing, operating or maintaining any infrastructure facility.

Exemption in respect of certain income of Indian Strategic Petroleum Reserves Limited

A new clause is proposed to be inserted in section 10 to provide exemption 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, within three years of its removal in pursuance to directions of the Central Government in this behalf.

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

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

Any excess contribution is proposed to be taxable. Further, any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the extent it relates to the employer's contribution which is included in total income may be treated as perquisite.

Widening the scope of Commodity Transaction Tax (CTT)

It is 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 0.01 per cent payable by the seller on sale of a commodity derivative, 0.0001 per cent payable by purchaser on sale of an option in goods, 0.125 per cent payable by purchaser on sale of an option in goods

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.

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, the Budget highlighted that exclusion of clause (46) of section 10 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 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. is proposed to be 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.

Further, the approval or registration or notification for exemption is also proposed to be limited for shorter 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.

New process will thereby be provided for both existing and new exempt entities.

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

In the present reporting requirement, only donor discloses details of donation in return of income while claiming exemption. There is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum.

It is proposed standardise the process through one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. 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. 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.

Rationalisation of provisions relating to tax audit in certain cases.

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.

Rationalisation of provision relating to Form 26AS

As the mandate of Form 26AS would be required to be extended beyond the information about tax deducted, it is proposed to introduce a new section 285BB in the Act 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 that prescribes is proposed to be deleted.

Rationalisation of the provisions of section 49 and clause (42A) of section 2 of the Act in respect of segregated Portfolios

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, section 2(42A) of the Act that defines short-term capital asset is proposed to be amended 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.

Amendment in the provisions of Act relating to verification of the return of income and appearance of authorized Representative

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 is proposed to be amended to enable any other person, as may be prescribed by the Board, to appear as an authorised representative

4. Indirect Tax

4.1. GST

A simplified GST return shall be implemented from the 1st April, 2020. It will make return filing simple with features like SMS based filing for nil return, return pre-filling, improved input tax credit flow and overall simplification. Dynamic QR-code is proposed for consumer invoices. GST parameters will be captured when payment for purchases is made through the QR-code.

4.2. Customs

On the Customs side, India has taken a quantum leap in the “Trading Across Border” parameter of Ease of Doing Business rankings by the World Bank. India’s rank has improved from 146 to 68.

Imports under Free Trade Agreements are on the rise. Undue claims of FTA benefits have posed threat to domestic industry. In the coming months, Rules of Origin requirements shall be reviewed, particularly for certain sensitive items, so as to ensure that FTAs are aligned to the conscious direction of our policy.

Labour intensive sectors in MSME are critical for employment generation. Cheap and low-quality imports are an impediment to their growth. Keeping in view the need of this sector, customs duty is being raised on items like footwear and furniture. Rate of Duty for footwear is being raised from 25% to 35%; and for “parts of footwear” from 15% to 20%. Rate of Duty for specified Furniture goods is being raised from 20% to 25%.

To give impetus to domestic industry, and to generate resource for health services, it is proposed to impose a nominal health cess of 5% on imports of specified medical equipment. Basic customs duty on imports of newsprint and light-weight coated paper is being reduced from 10% to 5%.

An increase is proposed in National Calamity Contingent Duty (NCCD) on Cigarettes and Tobacco products. NCCD on Bidis remains unchanged.