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Analysis of Provisions of Finance Bill, 2020

Dear Readers,

Everything that we do, all of us do, is for this beautiful country.

The Finance Minister Nirmala Sitharaman on Saturday February 1, 2020 unveiled the budget for fiscal year 2020-2021, vowing to boost income of Indians and their purchasing power, in a bid to revive and spurring the domestic economic growth that has slumped. This is the second budget after Narendra Modi led National Democratic Alliance returned to power for a second term. This year's Union Budget centres around three ideas- Aspirational India, Economic Development and a Caring Society.

The Finance Minister has announced a balanced budget in spite of existing challenges in hand. It has focused on generation of employment and inclusive growth through increased expenditure on rural economy, infrastructure, MSME and healthcare. The abolition of DDT, tax relief to middle class and lower middle-class segments along with simplification of the tax regime which will improve public sentiment and augur well for the economy.

The year 2019 has been a bit challenging in terms of economic growth and development globally as well as nationwide. A steep decline in the GDP growth rate was witnessed during the July-September 2019 in India; GDP stood at its lowest at 4.5 percent. India's aspiration to become a $5 trillion economy depends critically on strengthening the invisible hand of the market. It is required to be done with the hand of trust through government intervention by facilitating pro-business policies.

A ''Vivaad se Vishwas Scheme'' to reduce litigation has been proposed. Under this, only tax amount will have to be paid and there will be a full waiver of interest and penalty. In case of penalty and interest dispute which is not related to income, only 25 per cent of such interest and penalty will have to be paid.

Amongst the government's other priorities are reviving infrastructure spending on roads and railways, clearance of all government dues in construction and other projects, providing for re-capitalisation of banks and non-banking financial companies and further simplification of GST.

In this publication, we discuss in detail the tax proposals of theFinance (No. 26) Bill, 2020 and the recent changes that have come up in the Indirect Taxes. We are grateful for the efforts of the entire team who have helped in bringing out this publication.

"Our country is like the blooming Shalimar Bagh; our country is like a lotus blooming in the Dal Lake; it is like the hot blood of the youth; my country, your country, our country is the most beloved among all".

Regards

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A. DIRECT TAX PROPOSALS

I. RATES OF INCOME TAX

1. Income Tax Rates – Old Regime

(no change in existing tax structure, the assessees now have the option to continue with the existing tax regime or to opt for new Tax Regime)

The existing tax structure can be summarized as below:

1.1 Individuals (Resident Individuals), HUF, AOP, BOP and AJP-

- Other than Senior Citizen and Super Senior Citizen

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

- Senior Citizen (60 years or more but below the age of 80 years)

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

- Super Senior Citizen (80 years and above)

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

- Surcharge: The amount of Income-Tax computed as above, shall be increased by:
    - Surcharge @ 10% of such Income-Tax if total income > Rs.50 Lacs < Rs.1 Crore.
    - Surcharge @ 15% of such Income-Tax if total income >Rs.1 Crore < Rs. 2 Crore.
    - Surcharge @ 25% of such Income-Tax if total income >Rs. 2 Crore < Rs. 5 Crore
    - Surcharge @ 37% of such Income-Tax if total income >Rs. 5 Crores

- Cess: "Health and Education Cess" is payable at the rate of four per cent on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such cess.

1.2 Firms: Tax rate 30%. Cess @ 4%, Surcharge @ 12% if Taxable Income exceeds Rs. 1 Crore.

1.3 Domestic Company: Tax rate 30%. Cess @ 4% on tax.

Taxable Income	Surcharge
Upto Rs. 1 crore	NIL
>Rs. 1 crore<Rs. 10 Crores	7 per cent
Rs. 10 Crores or above	12 per cent

1.4 Foreign Company: Tax rate 40%. Cess @ 4% on tax

Taxable Income	Surcharge
Upto Rs. 1 crore	NIL
>Rs. 1 crore<Rs. 10 Crores	2 per cent
Rs. 10 Crores or above	5 per cent

- Marginal Relief on Surcharge:

  - In case of Individuals/HUF/ AOP/ BOI/ AJP, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore as the case may be shall not exceed the tax payable on Total Income of Rs. 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore by more than the amount of Income that exceeds Rs. 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore.

  - Similarly, in the case of certain companies, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 1 Crore (or Rs. 10 Crore) shall not exceed the tax payable on Total Income of exceeding Rs. 1 Crore (or Rs. 10 Crore) by more than the amount of Income that exceeds Rs. 1 Crore (or Rs. 10 Crore).

2. Income Tax Rates (For Assessment Year 2021-22 onwards) – New Tax Regime

As per the Finance bill, 2020, “a new and simplified personal income tax regime” is proposed to be introduced as follows:

2.1. <u>Individuals (Resident Individuals), HUF, AOP, BOP and AJP-</u>

Total Income	Tax Rate - New Regime	Tax Rate- Old Regime
Upto Rs. 2,50,000	NIL	NIL
Rs. 2,50,001 to 5,00,000	5 per cent	5 per cent
Rs. 5,00,001 to 7,50,000	10 per cent	20 per cent
Rs. 7,50,001 to 10,00,000	15 per cent	20 per cent
Rs. 10,00,001 to 12,50,000	20 per cent	30 per cent
Rs. 12,50,001 to 15,00,000	25 per cent	30 per cent
Above Rs. 15,00,000	30 per cent	30 per cent

2.2. This option may be exercised for every previous year by an Individual and HUF having no business income, however, for other cases i.e. for person exercising this option and having business income, the option once exercised for a previous year shall be valid for that previous year and all subsequent years.

2.3. The option can be withdrawn only once and thereafter, the individual of HUF will not be eligible to exercise the option of the concessional rate again, except in case where such individual of HUF ceases to have business income.

2.4. The person availing concessional rate will not be allowed to claim any exemption or deduction for allowance or perquisites, by whatever name called, provided under any other law for the time being in force.

2.5. The option is to be exercised along with the Return of Income to be furnished u/s 139(1) of the Act.

2.6. It is proposed provisions of section 115JC- AMT will not apply to such Individuals and HUF having business income.

2.7. It is proposed provisions of section 115JD- carry forward and set off of AMT credit will not apply to such Individuals and HUF having business income.

2.8. The individual or HUF opting for taxation under the newly inserted section 115BAC of the Act shall not be entitled to the following exemptions/ deductions:

i. Leave travel concession as per clause (5) of section 10;
ii. House rent allowance as per clause (13A) of section 10;
iii. Some of the allowance as contained in clause (14) of section 10;
iv. Allowances to MPs/MLAs as per clause (17) of section 10;

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

Comments:

- *Provisions of Section 115BAC is riddled with endless conditions, including surprisingly that, in order to be eligible, neither standard deduction nor house rent allowance (both relevant to a salaried employee) can be claimed, nor U/s 80 C (which is the largest and most relevant deduction overall for individuals). Additionally, it is an irreversible option and not a year on year operation. In our opinion if the said option were to be exercised, it would lead to trivial benefits, if at all. Meaningful reduction in rates would have been beneficial in a slowing economy where public sentiment is quite poor and it would helped people with more disposable income.*

<u>Domestic Company:</u>

2.9. Concessional Tax Rate – 22 per cent (Section 115BAA)

2.10. For New Manufacturing domestic companies – 15 per cent (Section 115BAB)

2.11. The tax rate prescribed U/s 115BAA is 22% which shall be further increased by a surcharge of 10% and health and education cess of 4%. Hence, the effective tax rate U/s 115BAA is 25.168%. However, such companies will not be required to pay minimum alternate tax (MAT) U/s 115JB of the Act.

2.12. Sections 115BAA and 115BAB were inserted via the Taxation Law (Amendment) Act, 2019. The scope of non-availment of deductions for the companies opting for the concessional rate has been widened to exclude all deduction under chapter VIA except deduction under section 80JJAA and Section 80M.

2.13. The restriction to claim the deduction to avail the concessional tax rate under section 115BAA was earlier limited to deductions under Chapter VIA under the heading “C”- Deductions in respect of certain income. However, with the proposed Finance Bill, 2020, companies are now restricted to avail any deduction under whole of chapter VIA except Section 80 JJAA and Section 80M.

2.14. Companies opting for concessional tax rate will get the benefit of section 80M in respect of dividend income received by it during the previous year and distributed by it. MAT provisions are not applicable on such companies.

2.15. However, if the company continues to pay the tax under old regime, where provisions of Section 115JB are applicable, dividend income received by the company during the year will get added to the book profit for the calculation of MAT and reduction thereof would not available which would be detrimental to the Company.

Co-operative Society:

2.16. Concessional Tax Rate – 22 per cent plus surcharge 10 per cent

2.17. In line with section 115BAA and section 115BAB introduced via the Taxation Law (Amendment) Act, 2019, a new section 115BAD is proposed to be introduced for cooperative societies with the following:

- This option so exercised cannot be withdrawn
- The option is to be exercised in the prescribed manner on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the returns of income and such option once exercised shall apply to subsequent assessment years;
- Provision of section 115JC- AMT will not apply to such co-operative society.
- The co-operative society opting for concessional tax rate under the newly inserted section 115BAD of the Act shall not be entitled to the following exemptions/ deductions:

  (i) Exemption for SEZ unit as per section 10AA;

  (ii) Additional deprecation under clause (iia) of sub-section (1) of section 32;

  (iii) Deductions under section 32AD, 33AB, 33ABA;

  (iv) Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;

  (v) Deduction under section 35AD or section 35CCC;

  (vi) Any deduction under chapter VIA

II. TAX ON DISTRIBUTION OF INCOME

3. Removal of Dividend Distribution Tax (DDT) and taxing of income in the hands of the recipients

3.1. Section 115-O provides that, in addition to the income-tax chargeable in respect of the total income of a domestic company, any amount declared, distributed or paid by way of dividends shall be charged to additional income-tax at the rate of 15 per cent. The tax so paid by the company (called DDT) is treated as the final payment of tax in respect of the amount declared, distributed or paid by way of dividend. Such dividend referred to in section 115-O is exempt in the hands of shareholders under clause (34) of section 10. However, under section 115BBDA, dividend income in excess of ten lakh rupee is taxable in the hands of shareholder at ten per cent.

3.2. In case of business trust, specific exemption is provided under sub-section (7) of section 115-O, subject to certain conditions. Similarly, exemption is provided for distributed profits of a unit of an International Financial Service Centre, on fulfilment of certain conditions, under sub-section (8) of section 115-O.

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

3.4. The incidence of tax generally is, thus, on the payer company/Mutual Fund and not on the recipient (except under section 115BBDA), where it should normally be. The dividend is income in the hands of the shareholders and not in the hands of the company. The incidence of the tax should therefore, be on the recipient. Moreover, the present provisions levy tax at a flat rate on the distributed profits, across the board irrespective of the marginal rate at which the recipient is otherwise taxed.

3.5. Thus in the government's view, these provisions are considered iniquitous and regressive. The present system of taxation of dividend in the hands of company/ mutual funds was re- introduced by the Finance Act, 2003 (with effect from the assessment year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself.

3.6. In view of above, it is proposed to carry out amendments so that dividend or income from units are taxable in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT.

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

Comments:

- *Dividend taxation in India is such that it subjects the same income to tax thrice – twice in the hands of the Company via corporate taxes on profits and DDT on distributed profits and once in the hands of the shareholder under section 115BBDA on specified dividends. Thus the present tax regime can be summed up as "One Income, Two Entities and Three Taxes".*
- *Triple taxation is a perversion of the tax system, and systematically drives up the cost of capital for Indian businesses. The fairest system is the system of dividend imputation, followed by countries like Australia and New Zealand, wherein tax is paid on the difference between the tax rate for the corporate and the tax rate for the shareholder. Barring this, either DDT or the tax paid by the shareholder under section 115BBDA was expected to be removed, or rationalized to reduce the overall tax rate on corporates to below the current levels and the Government responded with removal of DDT. However, whether the new regime is actually beneficial to the ultimate investor or not has been examined hereinafter.*
- *In the current scenario, a company earning an income of Rs. 100 crores and choosing to pay tax at the reduced rate of 22% ends up distributing Rs. 59.09 crores to its shareholders after paying corporate taxes and DDT. This is again subjected to tax in the hands of the individual and he is left with Rs. 50.67 crores in case he is subjected to surcharge (@37%) or Rs. 52.94 crores in case he is not liable to surcharge but pays tax at 30%. Alarmingly, this residue in the hands of the ultimate shareholders shall now be reduced to Rs. 42.58 crores and Rs. 51.17 crores under the new tax regime. Thus any individual who pays tax @ 30% in the new regime (with or without surcharge) shall end up with a reduced residue in the new tax regime.*
- *However, individuals subjected to tax at a rate lower than 30% shall be better off and this section of people cannot be ignored in the general parlance as there is a huge plethora of retail investors falling into this category who shall stand benefitted in the new regime.*
- *The loss to the investors shall be even higher in case of unit holders of mutual funds whose income was exempt under section 10(35). This is because, under the present regime, there was no tax on receipt of income by unit holders of mutual funds akin to tax on specified dividends under section 115BBDA. Thus, the new imposition of tax on their income at slab rates shall in most cases result in reduced residues in the hands of the unit holders as compared to the earlier tax regime.*
- *Interestingly, no change has come up in taxation of distribution of income by companies by way of buy back of securities and the government has left this area open to three layers of taxation as before.*
- *Abolition of DDT will help to avoid litigation under section 14A substantially and shall also be beneficial from the point of view of foreign investors.*

3.8. It is also proposed to amend section 57 to provide that no deduction shall be allowed from dividend income, or income in respect of units of mutual fund or specified company, other than deduction on account of interest expense and in any previous year such deduction shall not exceed twenty per cent of the dividend income or income from units included in the total income for that year without deduction under section 57.

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

Comments:

- *The proposed amendment is harsh on companies using borrowed funds to invest into other companies and generating income in the form of dividends. This is because they shall not be allowed a deduction of interest as an expense in excess of twenty percent of the dividends earned. Thus, if a considerate interest rate of 7% is considered, dividends of 35% shall have to be earned to get a deduction of the entire interest cost while computing income.*
- *Also, deduction under section 57 against dividend income is allowed only in respect of interest and no deduction shall be allowed for any other administrative expenses incurred by the entity for earning such dividend income.*

3.10. It is also proposed to insert new section 80M as it existed before its removal by the Finance Act, 2003 to remove the cascading affect, with a change that set off will be allowed only for dividend distributed by the company one month prior to the due date of filing of return, in place of due date of filing return earlier.

Comments:

- *The proposed amendment is in relation to dividends declared by a domestic company which has earned dividend income during a previous year from a domestic company. The clause provides deduction equal to an amount of dividend received by the company but limited to the amount of dividend declared by the company before the "due-date".*
- *It is pertinent to note here that the "due-date" has been specifically defined under this section to mean the date one month prior to the due date of furnishing the return under section 139(1). Thus, if due date of furnishing the return under section 139(1) is 31st October, 2020, deduction for dividends distributed on or before 30th September, 2020 only shall be available.*
- *Also, deduction can only be claimed against dividend income received from a domestic company and no deduction under this section is allowable in case dividend income is received from a foreign company.*
- *It is also important to note that the section uses the words "amount of dividend distributed" "on or before the due date". There can be a debate as to what constitutes a distribution of dividend. Whether it is declaration of dividend, transfer of dividend amount to separate bank account or actual payment of dividend to shareholders. While the third option seems a remote possibility, there can be a jugglery between the first two options while allowing deduction under section 80M by the department.*

3.11. With the withdrawal of DDT provisions and introduction of taxability of dividend income in the hands of the recipient, the Government has also introduced TDS provisions on dividend or income distributed by companies or mutual funds in various forms.

3.12. It is proposed to amend section 194 to include dividend for tax deduction. At the same time the rates of ten per cent is proposed to be prescribed and threshold is proposed to be increased from Rs 2,500/- to Rs 5,000/- for dividends paid other than cash.

Further, at present the mode of payment is given as "an account payee cheque or warrant". It is proposed to change this to "any mode".

3.13. It is also proposed to amend section 194LBA to provide for tax deduction by business trust on dividend income paid to unit holder, at the rate of ten per cent for resident. For non-resident, it would be 5 per cent for interest and ten per cent for dividend.

3.14. It is also proposed to insert a new section 194K to provide that any person responsible for paying to a resident any income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or units from the administrator of the specified undertaking or units from the specified company shall at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax there on at the rate of ten per cent. It may also be provided for threshold limit of Rs 5,000/- so that income below this amount does not suffer tax deduction. It is also proposed to define "Administrator", "specified company", as already defined in clause (35) of section 10. It is also proposed to define "specified undertaking" as in clause (i) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. It is also proposed to provide that where any income is credited to any account like suspense account, in the books of account of the person liable to pay such income, the liability for tax deduction under this section would arise at that time.

3.15. It is also proposed to amend section 196A to revive its applicability on TDS on income in respect of units of a Mutual Fund. It is also proposed to substitute "of the Unit Trust of India" with "from the specified company defined in Explanation to clause (35) of section 10"and "in cash or by the issue of a cheque or draft or by any other mode" with "by any mode".

3.16. Similar amendments are also proposed in section 195, 196C and 196D to delete exemption provided therein to dividend referred to in section 115-O.

3.17. These amendments will take effect from 1st April, 2020 and any dividend payments on or after 1st April, 2020 shall be covered under the TDS provisions even though they might relate to Financial Year 2019-2020.

Comments:

- *The proposed amendments seek to bring dividend distribution under the net of TDS and hence TDS provisions on all distributions of income by companies and mutual funds have been proposed.*
- *Earlier TDS was not deductible on dividends paid by account payee cheques only and within the threshold limits. However, new law allows payment in any mode other than cash thus aligning the law with new digital payment methods.*
- *The threshold limit have also been increased from Rs. 2,500/- to Rs. 5,000/- for non deduction of taxes.*

III. TDS/ TCS RELATED PROPOSALS

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

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

4.2. Payment of TDS by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;

4.3. Every 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.

4.4. The tax at one percent is required to be deducted on the gross amount of such sales or service or both.

4.5. 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.

4.6. 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.

4.7. A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to deduction under the exemption discussed in the previous bullet, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Act. This is to provide clarity so that same transaction is not subjected to TDS more than once.

4.8. It has been clarified that this exemption will not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in sub-section (1) of the proposed section.

4.9. Consequential amendments are being proposed in section 197 (for lower TDS), in section 204 (to define person.

4.10. Responsible for paying any sum) and in section 206AA (to provide for tax deduction at 5 per cent. In non-PAN/ Aadhaar cases).

4.11. The new section proposed will take effect from 1st April, 2020.

Comments:

- *E-commerce operator has been defined in the Finance Bill, 2020 as 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 has been defined in the Finance Bill, 2020 as 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.*
- *The proposed section 194-O of the Act states that when any e-commerce participant uses the electronic portal of the e-commerce operator then e-commerce operator is required to deduct TDS at the rate of one percent on the aggregate value of sale of goods/service made by the e-commerce participant using the e-commerce portal of e-commerce operator.*
- *When the purchaser (end user) buys any goods/receives any service from the e-commerce participant and payment is made to the e-commerce participant directly, even then such payment shall be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant.*
- *It is further clarified that TDS under the proposed section 194-O of the Act is supposed to be deducted by the e-commerce operator at the rate of one percent of the gross amount of the said sale of goods or services or both, irrespective of the mode of payment (Cash/Debit Card/Net banking/Credit Card) made by the customer to the e-commerce participant or the e-commerce operator.*
- *There is a special exemption available to Individuals and HUF's. The provision of the aforementioned section shall not apply when payment made to an e-commerce participant (being an individual or HUF) by the e-commerce operator, if the gross amount of sales or services 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.*
- *The proposed section 194-O shall supersede any other section of the TDS provisions of the Act. Thus, a transaction is not subjected to TDS more than once. A transaction in respect of which tax has been deducted by the e-commerce operator under the proposed section or which is not liable to deduction under the exemption, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Act.*
- *For example: An uber driver is an e-commerce participant and uber is e-commerce operator. All payments received by the uber driver directly from the customer or from uber shall be liable to TDS at the rate of one percent. Uber shall be responsible to deduct such TDS of the uber driver. Payment by the end user i.e. the passenger can be directly to uber driver by cash or it can we made to uber by credit/debit card/paytm. In both the cases it shall be deemed to be transaction between Uber and uber driver and TDS shall be applicable at the rate of one percent on the entire transaction. In case if the uber driver does not disclose his PAN/Adhar Number then the TDS rate shall be five percent.*

5. 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

5.1. Tax Collection at Source, more popularly known as TCS provisions mandate the seller to collect tax from the buyer and deposit the same to the Government. The provisions of tax collection at source is contained under Section 206C of the Income Tax Act, 1961. The section requires the specified seller to collect the tax from the specified buyer of the specified goods and at specified rates. The seller is liable to collect the tax at earlier of the following dates: at the time of debiting of the account of the buyer; or at the time of receipt of the amount from the buyer in cash/ cheque/ draft or any other mode.

5.2. The Union Budget in order to widen and deepen the tax net, have proposed to amend section 206C to levy TCS on overseas remittance and for sale of overseas tour package as below-

(i) An authorised dealer receiving an amount or an aggregate of amounts of seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of five per cent. In non PAN/Aadhaar cases the rate shall be ten per cent.

(ii) 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.

5.3. The above TCS provisions shall not apply where the buyer has already deducted such amount as applicable under any other provisions of the Act.

5.4. The bill proposed to define “Overseas tour program package” to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto. Wherein, “authorised dealer” to mean a person authorised by the Reserve Bank of India as defined under sub-section (1) of section 10 of FEMA Act, 1999.

5.5. Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. Further, resident individuals can avail of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of FEM (CAT) Amendment Rules 2015, dated May 26, 2015, within the limit of USD 2,50,000 only. The Scheme was introduced on February 4, 2004, with a limit of USD 25,000. The LRS limit has been revised in stages consistent with prevailing macro and micro economic conditions.

Comments:

- *The Union Budget proposed to extend the TCS provisions on the remittances made by Indians under the Liberalised Remittance Scheme (LRS) and Indians who buy overseas tour package from tour operator. In case of LRS, authorised dealers (bankers) are required to collect TCS @ 5% on LRS remittance of more than Rs. 7 Lakhs. In case of tour operators, the tour operator would have to collect TCS @5% in case of overseas tour program and there is no threshold limit here.*
- *TCS can only be collected by authorised dealer in case of overseas tour program package as defined under sub-section (1) of section 10 of FEMA Act, 1999. The power to give authorisation to a dealer is with the Reserved Bank of India.*
- *The challenge faced will be foreign tickets and tours booked over sites like make-my-trip, bookings.com, trip-advisor etc. Even an economical flight fare to neighbouring countries may attract TCS provisions.*
- *Further all foreign education and medical treatments amounting to more than rupees seven lacs shall now be subject to TCS at the rate of five percent.*

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

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

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

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

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

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

Comments:

- *According to Section 194J of the Income Tax Act, 1961, a person must deduct Tax Deducted at Source (TDS) at the rate of 10% when certain payments are made on account of professional service fee, technical service fee, non-compete fee, royalty and such other fees.*
- *Under the proposed section under Finance bill 2020, the bill has differentiated between professional service, technical service and contractual services.*
- *Professional services under section 194J of the Act implies to services carried out in the field of medical, architectural, legal, or engineering profession. It also includes accountancy, interior decoration, advertising, technical consultancy or any other profession that is accepted by the Board under Section 44AA of the Act. Other services that are accepted under Section 44AA of the Act are film artists, company secretary, sports persons, event managers, commentators, anchors, umpires and referees, coaches and trainers, physiotherapists, team physicians and sports columnists.*
- *Technical Services implies rendering of any managerial, consultancy, or technical services. It includes the provision of services of technical or other personnel. The term 'Fees for technical services' doesn't include consideration for any construction, mining, assembly or like project undertaken by the recipient or consideration chargeable under the head 'salary'.*
- *Section 194C of the Income Tax Act deals with TDS deducted on any payment made to a person who is a resident contractor or a subcontractor for any kind of contract work. Under Section 194C of the Income Tax Act, the term 'work' includes:*
- *Any work related to the manufacture or supply of any good or product in accordance to the specifications and needs of a client, wherein the manufacture of the product takes place by utilising materials bought from the client in question and not from any other person,*

  Any work related to advertising,

  Any work related to catering,

  Any work related to the production, telecast or broadcast of any programs for the same purpose,

  Any work related to the transport of goods, products and passengers through any means of transport with the exception of transport via rail.
- *The proposed amendment in section now allows TDS to be deducted at a rate of two per cent from existing ten per cent on technical services which comprises of managerial services, consultancy services and technical services. However the following services shall not receive the benefit of lower rate of TDS namely medical services, architectural, legal, engineering profession, accountancy, interior decoration, advertising, film artists, company secretary, sports persons, event managers, commentators, anchors, umpires, referees, coaches, trainers, physiotherapists, team physicians and sports columnists.*
- *The amendment in the Finance bill is to curb the litigation arising on account of technical services being considered as contractual services liable for TDS under section 194C of the Act.*

- *For Eg: Director Remuneration is liable for deduction of TDS u/s 194J. After introduction of the proposed amendments in the Finance bill 2020, such remuneration shall be liable to TDS at a lower rate of two percent since it is in the nature of managerial service and not professional service.*

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

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

7.2. It has been noted that some assessees are using the escape clause of the section by getting the contract manufacturer to procure the raw material supplied through its related parties. As a result, a substantial amount of income escapes the tax net.

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

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

Comments:

- *According to the existing provisions of Section 194C of the Income Tax Act, 1961, one such instance when TDS is required to be deducted from the contractor under works contract in case of manufacturing or supplying a product by the contractor in accordance with requirement or specification of a customer using material purchased from such customer. However, it does not include material purchased from person other than customer.*
- *In view of the above provision, customers started taking advantage of the above provision by supplying goods and material from sister concern in order to avoid the TDS provisions. Hence in order to curb the same, goods and material provided by the customer or its associate shall fall within the purview of 'work' under section 194C and shall not be excluded from the provisions of TDS. Associate shall have the same definition as under provisions in clause(b) of sub-section (2) of section 40A of the Act.*

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

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

8.2. Sub-section (3) of said section provides for circumstances in which the provisions of sub-section (1) shall not apply.

8.3. Clause (i) thereof provides the circumstance where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person to the account of, or to, the payee, does not exceed a certain threshold. Clause (v) provides circumstance to be the income credited or paid by a co-operative society (other than a co-operative bank) to a member or to income credited or paid by a co-operative society to any other co-operative society. Clause (viia) provides circumstance to be the income credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank and deposits (other than time deposits) with a co-operative bank other than a co-operative society or bank engaged in carrying on the business of banking.

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

(a) the total sales, gross receipts or turnover of the co-operative society exceeds fifty crore rupees during the financial year immediately preceding the financial year in which the interest referred to in sub-section (1) is credited or paid; and

(b) The amount of interest, or the aggregate of the amount of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than fifty thousand rupees in case of payee being a senior citizen and forty thousand rupees, in any other case.

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

Comments:

- *According to the existing provisions of Section 194A of the Income Tax Act, 1961, co-operative society is required to deduct TDS at the rate of ten percent when the interest payable/ being paid exceeds rupees forty thousand. No TDS is applicable if income is credited or paid by a co-operative society (other than a co-operative bank) to a member or by a co-operative society to any other co-operative society.*
- *The proposed amendment under the Finance Act 2020, states that co-operative society shall be liable to deduct TDS when income is credited or paid to a member or any other co-operative society only if the turnover of such cooperative society exceeded rupees fifty crore rupees during the financial year immediately preceding the financial year in*

which the interest is payable/being paid. Further the limit shall be rupees fifty thousand in case of senior citizen and for others shall remain at rupees forty thousand. However the turnover criteria of rupees fifty crores is not applicable when payment is being made by co-operative society to a non-member. Which means that for a non-member, TDS shall be applicable even if the turnover was less than fifty crores in the proceeding financial year.

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

9.1. The current taxation pattern of ESOPs is split into two components –

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

The tax on perquisite under section 17(2) of the Act read with Rule 3(8)(iii) of the Rules is required to be paid at the time of exercising of option which leads to cash flow problem as this benefit of ESOP is in kind.

9.2. In order to boost the start-up ecosystem, the bill proposes the deferring of tax payments on ESOPs by amending section 192 of the Act and inserting sub-section (1C) therein to clarify that for the purpose of deducting or paying tax under sub-sections (1) or (1A) thereof, as the case may be, a person, being an eligible start-up referred to in section 80-IAC, responsible for paying any income to the assessee being perquisite of the nature specified in clause (vi) of sub-section (2) of section 17 of the Act, in any previous year relevant to the assessment year 2021-22 or subsequent assessment year, deduct or pay, as the case may be, tax on such income within fourteen days —

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

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

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

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

Comments:

- *The deferment of payment of tax from the point of allotment of shares to a later point is a big relief for the employees of start-ups in view of lack of liquidity at the time when ESOPs are exercised and shares are allotted by the employer.*
- *It is also a welcome amendment for the start-ups since ESOPs constitute a significant portion of compensations to employees of such start-ups, and this taxation system would thus benefit the start-ups to hire talented employees.*

IV. ASSESSMENTS, APPEALS AND PENALTIES

10. Insertion of Taxpayer's Charter in the Act

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

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

11. No Dispute but Trust Scheme – 'Vivad Se Vishwas'Scheme

11.1. The Hon'ble Finance Minister in Para No.126 of Budget Speech proposed the so called **'Vivad se Viswas Scheme' alternatively 'No Dispute but Trust Scheme'**.

11.2. Nothing is mentioned in the Finance Bill regarding this Scheme. It is expected that Government will come out this Scheme in near future.

11.3. As per the said proposal, the taxpayer will be required only to pay the disputed tax involved/locked 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 31st March, 2020.

11.4. The benefits conferred by the above said proposal can be availed post 31st March, 2020 until 30th June, 2020 subject to payment of additional amount and the taxpayers can accordingly avail the benefit at any level of the appellate proceedings.

Comments:

- *The proposed Scheme seems to be similar to Sabka Vishwas Scheme which was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are 4,83,000 direct tax cases pending in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court.*
- *It is to be noted that Chapter X of the Finance Act, 2016 introduced Direct Tax Dispute Resolution Scheme (DTDRS Scheme) in order to ease out burden of amounts locked in direct tax litigation before Commissioner (Appeals). However, 'No Dispute but Trust Scheme – Vivad Se Vishwas' Scheme aims to settle direct tax cases pending in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court.*
- *Under the DTDRS Scheme, the declarant was required to pay tax at the applicable rate plus interest upto the date of assessment. However, in case of disputed tax exceeding rupees ten lakh, twenty-five percent of the minimum penalty leviable was also required to be paid. However, as per Budget Speech, the taxpayer shall be require to pay only tax as per assessment order under 'No Dispute but Trust Scheme – Vivad Se Vishwas' Scheme. The tax payer shall not be required to pay any interest and penalty under this Scheme.*
- *Introduction of 'No Dispute but Trust Scheme – Vivad Se Vishwas' was the need of the hour as it will help to settle many Direct Taxes pending cases pending at various*

levels. With this Scheme, Government will generate revenue by collecting taxes within 31st March 2020 / 30th June 2020 as the case may be on one hand and the taxpayer will be required to pay only the disputed tax and will gain complete waiver of interest and penalty.

12. Amendment in section 139 of the Act – Extension of return filing date

12.1. Section 139 mandates all companies, firms and persons whose total income exceeded the maximum amount chargeable to tax to file their return of income on or before the due date.

12.2. It is proposed to amend Explanation 2(a) of the section wherein the due date for assessees (other than an assessee required to furnish report under section 92E) being-

i. a company; or

ii. a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

iii. a partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force,

shall be 31st October of the assessment year.

12.3. Further, the word “working” has been removed before the word “partner” and thereby the bill proposes to remove the distinction between a working and a non-working partner in sub-clause (iii) above.

12.4. 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.

Comments:

- *The proposed amendment would bring a relaxation in the time frame for filing of returns and thus provide major relief.*

13. Check on survey operations under section 133A of the Act

13.1. Under the existing provisions of section 133A of the Act, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction. To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso to sub-section (6) in the said section was inserted to provide that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be.

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

(a) In a case where the information has been received from the prescribed authority, no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be.

(b) In any other case, no income-tax authority below the rank of Commissioner or Director, shall conduct any survey under the said section without prior approval of the Commissioner or the Director, as the case may be.

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

Comments:

- *Survey under section 133A are being conducted sometimes by investigation Wing or by assessment unit or by TDS unit. It is now proposed that Survey action shall require approval from CIT or DIT unless information has been received from the "prescribed authority".*
- *The term prescribed authority has not been defined in the Act.*

14. Modification of E Assessment Scheme

14.1. E-assessment Scheme, 2019 was notified under sub-section (3A) of Section 143 vide CBDT notification no. 61 & 62 dated 12.09.2019, which was followed by launch of National E-Assessment Centre on 07.10.2019. This Scheme was notified in terms of Section 143(3A) of the Act, which incidentally allows order to be passed u/s 143(3) only.

14.2. It is proposed to amend sub-section (3A) of section 143 of the Act to,- (i) expand the scope so as to include the reference of section 144 of the Act relating to best judgment assessment in the said sub-section; (ii) provide that Central Government may issue any direction under sub-section (3B) of the said section upto 31st March, 2022.

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

Comments:

- *The amendment has been proposed to empower NeAC to pass Best Judgment assessment order u/s 144 in certain circumstances. The proposed amendment seems to cover up unintended omission in the existing provisions.*

15. Provision for E-Appeal

15.1. It is proposed to insert sub-section (6A) in section 250 of the Act to empower Central Government to notify an e-appeal scheme for disposal of appeal, so as to eliminate the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.

15.2. It is also proposed to introduce an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

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

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

Comments:

- *In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced. With the advent of the e-assessment scheme, most of the functions/ processes under the Act, including of filing of return, processing of returns, issuance of refunds or demand notices and assessment, which used to require person-to-person contact between the taxpayer and the Income-tax Department, are now in the electronic mode. This is a result of efforts by the Department to harness the power of technology in reforming the system. Now a taxpayer can manage to comply with most of his obligations under the Act without any requirement for physical attendance in the offices of the Department.*
- *The filing of appeals before Commissioner (Appeals) has already been enabled in an electronic mode. However, the first appeal process under the Commissioner (Appeals), which is one of the major functions/ processes that is not yet in full electronic mode. A taxpayer can file appeal through his registered account on the e-filing portal. However, the process that follows after filing of appeal is neither electronic nor faceless. In order to ensure that the reforms initiated by the Department to eliminate human interface from the system reach the next level, the e-appeal scheme has been launched on the lines of e-assessment scheme.*
- *Since the proposed e appeal Scheme is proposed to be effective from 01.04.2020, it is expected that the Scheme shall be launched within March 2020.*

16. Provision for E-Penalty

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

16.2. Therefore, it is proposed to insert a new sub-section (2A) in the said section so as to provide that the Central Government may notify an e-scheme for the purposes of imposing penalty so as to eliminate the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible and introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

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

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

Comments:

- *Under the present e assessment Scheme, the jurisdictional assessing officer generally have power to levy penalty. However, it is expected that with the introduction of e penalty scheme, the power to levy penalty may also be delegated to the non-jurisdictional officer.*
- *Since the e- penalty Scheme is proposed to be effective from 01.04.2020, it is expected that the Scheme shall be launched within March 2020.*

17. Penalty for fake invoice

17.1. It is proposed to introduce a new section 271AAD in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a

(i) false entry or

(ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability.

17.2. The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry.

17.3. It is also propose to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry.

17.4. The false entries is proposed to include use or intention to use –

(i) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

(ii) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

(iii) invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

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

Comments:

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

- *Section 271AAD starts with "Without prejudice to any other provisions of this Act" and unlike section 271AAC of the Act, it has not been mentioned in section 271AAD of the Act that no penalty under the provisions of section 270A shall be imposed upon the assessee in respect of such additions. As such, penalty provisions under section 271AAD is in additional to other penalty provisions. This seems to be unintended and may be corrected before passing of the Finance Bill. For Instance, if additions are made by the Ld. Assessing Officer for making false entry in books of accounts, then he may initiate penalty under section 270A of the Act and simultaneously under section 271AAD of the Act.*
- *Prima facie, it seems that section 271AAD is applicable only when the books of accounts are maintained. Thus, if not books are maintained, then penalty under this section may not be applicable, though it may be initiated under other provisions of the Act.*
- *Instances of False entries:*

Particulars	*For instances*
(i) forged or falsified documents such as a false invoice or a false piece of documentary evidence	*Purchasing goods from one party and Invoice from another party* *Purchasing goods at a lower rate and shown in books of accounts that goods was purchased at a higher rate*
(ii) invoice in respect of supply or receipt of goods or services or both without actual supply or receipt of such goods or services or both issued by the person or any other person; or	*Bogus Purchases and Sales*
(iii) invoice in respect of supply or receipt of goods or services or both to or from non-existing person.	*Entries from jamakharchi / shell companies*

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

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

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

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

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

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

19. Clarity on stay by the Hon'ble Income Tax Appellate Tribunal (ITAT)

19.1. The existing provisions of the first proviso to sub-section (2A) of section 254 of the Act, inter-alia, provides that the Hon'ble ITAT may, after considering the merits of the application made by the assessee pass an order of stay for a maximum period of 180 days in any proceedings against the order of the Commissioner of Income-tax (Appeal).

19.2. Second proviso to the said sub-section prescribes that where the appeal is not so disposed of, the Hon'ble ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the periods originally allowed and the period so extended shall not, in any case, exceed 365 days and the Hon'ble ITAT shall dispose of the appeal within the period or periods of stay so extended or allowed.

19.3. The third proviso of the said sub-section also provides that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

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

19.5. It is also proposed to substitute second proviso to provide that no extension of stay shall be granted by Hon'ble ITAT, where such appeal is not so disposed of which the said period of stay as specified in the order of stay.

19.6. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.

19.7. The total stay granted by Hon'ble ITAT cannot exceed 365 days.

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

Comments:

- *Earlier the assessee was not required to make any payment in order to get stay of demand at ITAT level. Now, with the proposed amendment, the assessee has to deposit atleast twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions.*

20. Rationalization of provisions relating to Form 26AS – insertion of Section 285BB

20.1. Section 203AA of the Act provided that the prescribed income-tax authority or the person authorized by such authority referred to in sub-section (3) of section 200, inter-alia, to prepare and deliver a statement in Form 26AS to every person from whose income, the tax has been deducted or in respect of whose income the tax has been paid specifying the amount of tax deducted or paid. Therefore if an assessee had paid taxes on his income or tax had been deducted from his income, the Income tax department already had these details in their database. These details were mentioned in Form 26AS, accessible from the income-tax website using his Permanent Account Number (PAN).

20.2. However, with the advancement in technology and enhancement in the capacity of systems, multiple information in respect of an assessee such as sale/purchase of immovable property, share transactions etc. are proposed to be captured.

20.3. In the light of the above, and to expand the scope of Form 26AS, it is proposed to omit section 203AA and insert a new section, i.e. section 285BB to mandate the income tax authority to upload in the registered account of the assessee an annual information statement, containing such information (containing such information such as sale/purchase of immovable property, share transactions, TCS, TDS, tax paid, etc) which is in the possession of an income-tax authority, as may be prescribed in such form and manner, within such time as may be prescribed.

20.4. This amendment will take effect from 1st June, 2020.

Comments:

- *This is a welcome amendment enabling taxpayers to use such annual information for pre-filling their income tax returns and calculating their correct tax liability.*

V. TRUSTS AND CHARITABLE INSTITUTIONS

21. Renewal of Registration of Existing Trust and registration of new trust

21.1. The existing provisions of granting registration under section 12AA or under section 10(23C) is perpetual, implying that once a registration has been given, the trust or institution continue to get exemption benefit unless specifically withdrawn.

21.2. It is proposed to introduce to make amendment in section 12A of the Act, to provide that the approval of registration should be for a limited period, say for a period not exceeding five years at one time, which would act as a check to ensure that compliance of conditions of approval or registration. Accordingly a 12AB is proposed to be inserted to provide that every existing trust or new trust or institution registered under section 12AA shall apply for registration under section 12A(ac)(i) within three months from 1st June 2020.

21.3. On receipt of said application, the PCIT or CIT shall pass an order in writing registering the trust for a period of five years, within a period of three months from the end of the month in which application was received.

21.4. Further provisions have been introduced by inserting 12A(1)(ac) to provide for application for registration at least six months prior to the expiry of the registration period.

21.5. In respect of new trust, the PCIT or CIT shall pass an order under section 12AB by provisionally registering the trust or institution for a period of three years from the assessment year from registration is sought. Such order shall be passed within one month from the end of the month in which the application was received. Such trust or institution shall apply for registration under six month prior to the expiry of the said period of three years.

21.6. As per new section 12AB(1)(b), wherein an application for registration is made before the expiry of the registration period, the PCIT or CIT shall call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution; and the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its object and after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),-- (a) pass an order in writing registering the trust or institution for a period of five years; (b) If he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard.

21.7. Accordingly, existing section 12AA shall have no application from 1st June 2020.

21.8. The new provisions are proposed to be effective from 1st June 2020.

Comments:

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

- *The proposed amendment is one of the significant proposal in the Finance Bill. Now all the trusts or institution registered under section 12AA need to reapply for registration within three months from 1st June 2020. As per the provisions of bill in the present form, the registration shall be granted for a period of five years. At this stage there is no requirements for calling of documents or information or making enquiry.*
- *The procedure of registration of the new trust has been made quite easier as the registration shall be granted within one month from the end of the month in which application was made. Again at this stage there is no requirements for calling of documents or information or making enquiry.*
- *However on application for registration before the expiry of initial registration period of three years or five years as referred above, the PCIT or CIT shall call for documents or information or make such enquiry in order to satisfy himself regarding the genuineness of the trust or compliance with the requirements of other laws for the time being in force.*

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

22.1. At present, there is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum. With the advancement in technology, it is now feasible to standardize the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. This standardization may be similar to the provisions relating to the tax collection/ deduction at source, which already exist in the Act.

22.2. Therefore, the entities receiving donation/ sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed on that basis only. In order to ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is failure to furnish the statement.

23. Modification of the definition of "business trust"

23.1. Section 2(13A) of the Act defines Business Trust to mean a trust registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations made under the Securities and Exchange Board of India (SEBI) Act, 1992 and the units of which are required to be listed on a recognised stock exchange in accordance with the relevant regulations.

23.2. The Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 vide notification No.SEBI/LAD-NRO/GN/2019/10 has, inter alia, done away with the mandatory listing requirement for InvITs. In order to give the private unlisted InvITs the same status as of public listed InvITs in the Act, the definition of business trust under the Act is proposed to be brought in line with the amended SEBI Regulations.

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

23.4. 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.

Comments:

- *This is also a welcome amendment and will remove the mandatory listing requirement for private unlisted InviTs. And also encourage various private unlisted InviTs.*

24. Other Provisions

24.1. Similar to exemptions under clauses (1) and (23C), exemption under clause (46) of section 10 shall be allowed to an entity even if it is registered under section 12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it would not be entitled for deduction under clause (46) from the date on which the registration becomes operative.

24.2. The registration under section 12AA would also become inoperative in case of an entity exempt under clause (23C) of section 10 as well, to have uniformity. The condition about making it operative again would also be similar to what is proposed for clause (46) of section 10.

24.3. An entity approved, registered or notified under clause (23C) of section 10, section 12AA or section 35 of the Act, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1st April, 2020.

24.4. An entity already approved under section 80G shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five years at one time.

24.5. Application for approval under section 80G shall be made to Principal Commissioner or Commissioner.

24.6. An entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.

24.7. The application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.

24.8. Deduction under section 80G/ 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.

24.9. Similar to section 80G of the Act, deduction of cash donation under section 80GGA shall be restricted to Rs. 2,000/- only.

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

Comments:

- *Now, similar to aforesaid section 12AB, similar provisions has been introduced under section 10(23C), 10(46) and 80G. Thus all the trusts or institution registered under these sections need to reapply for registration.*

VI. INTERNATIONAL TAXATION

25. Modification of residency provisions

25.1. Sub-section (1) of section 6 of the Act provide for situations in which an individual shall be resident in India in a previous year. Clause (c) thereof provides that the individual shall be Indian resident in a year, if he,- (a) has been in India for an overall period of 365 days or more within four years preceding that year, and (b) is in India for an overall period of 60 days or more in that year.

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

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

25.4. In the light of above, it is proposed that the exception provided in clause (b) of Explanation 1 of sub-section (1) to section 6 for visiting India in that year be decreased to 120 days from existing 182 days.

25.5. 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.

Comments:

- *No amendment has been proposed in the Sub Section 1(a) of Section 6 and in Explanation (a) to sub section 1(c) of section 6. Thus the proposed amendment only effects Explanation (b) to sub section 1(c) of section 6.*
- *It is important to note that Explanation (a) is applicable only to a person being a citizen of India. On the other hand, Explanation (b) is applicable not only to a person being a citizen of India, but also a person of Indian origin. Hence, the proposed amendment effects not only the citizens of India but also persons of Indian origin.*
- *Also, Explanation (a) would be applicable only to the year in which the person leaves India for employment and not for subsequent years. In subsequent years, Explanation (b) shall become operative. In other words, a person may enjoy the benefit of a stay in India for 182 days in the year in which he/she goes out of India for employment but from the subsequent year onwards, he/she cannot visit India for a period exceeding 120 days to qualify as a non-resident.*
- *Also, for Explanation (b) to apply, the individual, before his visit to India, must be outside India. In common parlance, this shall mean a continued physical presence outside India for at least some time before coming to a visit in India. Therefore, the relaxation of substituting 60 days in subsection (1) with 182 days or 120 days might not be available to a person originally based in India and not on a "visit" to India.*

- *Residential status of an Indian citizen or a person of Indian origin for the Financial Year 2019-2020 shall continue to be determined in accordance with the older relaxation of 182 days of stay in India.*
- *This amendment has been brought in to curb the practice of High Net-worth Individuals who manage their stay in India for the purpose of avoiding payment of taxes in India on the income they earn. With the new amendment, they will now be required to stay out of India for an even longer duration to qualify as non-resident and remain out of the ambit of the Indian tax net.*

25.6. With an intention to close the above avenue of double non-taxation, it is proposed to insert a new sub-section in section 6 of the Act whereby an Indian citizen who is not liable to tax in any other country or territory shall be deemed to be a resident in India.

25.7. 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.

Comments:

- *The issue of stateless persons has been bothering the tax world for quite some time. It is entirely possible for an individual to arrange his affairs in such a fashion that he is not liable to tax in any country or jurisdiction during a year. This arrangement is typically employed by high net worth individuals (HNWI) to avoid paying taxes to any country/ jurisdiction on the income they earn.*
- *The intention behind the aforesaid seems to be to discourage a situation where a person is not liable to tax in any country. The current rules governing tax residence make it possible for HNWIs and other individuals, who may be Indian citizen to not to be liable for tax anywhere in the world. Such a circumstance is certainly not desirable; particularly in the light of current development in the global tax environment where avenues for double non-taxation are being systematically closed.*
- *It is pertinent to note in this amendment that the provision of deeming residential status under the Act shall be invoked only if he is "not liable to tax" in any other country or territory by reason of his domicile or residence or any other criteria of similar nature. Therefore, the meaning of the phrase "liable to tax" assumes a lot of importance. Whether a person residing in a country like UAE will be considered as not liable to tax in UAE and hence a resident of India? This question has to be answered with reference to thorough analysis of the phrase "liable to tax".*
- *It is also pertinent to note in this regard that there is a distinction between the phrase "liable to tax" and "subject to tax". The distinction between the two phrases is that the expression "liable to tax" requires only an abstract liability to tax (i.e. a person is within the scope of tax generally irrespective of whether the country actually exercises the right to tax) and therefore has a much broader meaning than the phrase "subject to tax" which requires that tax is actually levied on the income. Merely because a country or a territory chooses to not tax a particular income or any income does not mean that the person is not "liable to tax" in that territory or country.*
- *Hence, it is quite possible that an individual does not pay any taxes in any other country or a territory because such other country or territory chooses not to charge tax on his income and he/she can still continue to be classified as a non-resident in India and is not subjected to deeming residential status.*

25.8. Sub-section (6) of the said section provides for situations in which a person shall be "not ordinarily resident" in a previous year. Clause (a) thereof provides that if the person is an individual who has been non-resident in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for an overall period of 729 days or less, then he shall be treated as a resident but not ordinarily resident in the year in which he becomes a resident in terms of sub section (1) of that section. Clause (b) thereof contains similar provision for a HUF.

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

25.10. In the light of above, it is proposed that an individual or an HUF shall be said to be "not ordinarily resident" in India in a previous year, if the individual or the manager of the HUF has been a non-resident in India in seven out of ten previous years preceding that year. This new condition shall replace the existing conditions in clauses (a) and (b) of sub-section (6) of section 6.

25.11. 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.

Comments:

- *Considering the proposed change in the explanation to clause (1) as stated above, this change is welcome to avoid unnecessary hassles to genuine non-residents. This amendment shall enable a person to be classified as "not ordinarily resident" in India if he qualifies as a non-resident in any seven out of the ten previous years preceding that year instead of the earlier requirement of nine out of ten previous years preceding that year.*

26. Profit attribution to PE – measures to provide tax certainty

26.1. The determination of permanent establishment (PE) and quantum of profits attributable to a PE has been one of the most litigated areas in international tax.

26.2. With a view to reduce litigation and to provide tax certainty to non-residents, it has been proposed to extend the provisions of safe harbor rules and Advance Pricing Arrangement (APA) for determining the amount of income to be attributed to the PE to the non-resident in India.

26.3. Safe harbor rules provide tax certainty for relatively smaller cases for future years on general terms, while Advance Pricing Arrangement provides tax certainty on a case to case basis not only for future years but also Rollback years.

26.4. As per Explanation 1 to section 9 of the Income Tax Act, whenever non-residents have Business Connection in India, only such part of the income as is reasonably attributable to the operations carried out in India is considered taxable in India.

26.5. Under the existing regulations, a PE needs to maintain books of accounts in India. Attribution of the profits can be done based on actual profits made by the PE based on the books of accounts (Direct Accounting Method). However, in absence of books of accounts or failure to determine actual profits to PE from such books of accounts, the AO is given vide powers under Rule 10 –'Determination of Income in the case of Non-Residents' of the IT Rules for attribution of profits to PE in India under following methods (Indirect Apportionment Method):

- at such percentage of the turnover as the AO may consider to be reasonable, or
- on any amount which bears the same proportion to the total profits and gains of the business of such person (the foreign enterprise) as the receipts so accruing or arising bear to the total receipts of the business, or
- in such other manner as the AO may deem suitable.

26.6. The extending of the provisions of safe harbor and APA is a welcome step for providing tax certainty to the non-residents.

27. Deferring Significant Economic Presence (SEP) proposal, Extending source rule

27.1. The discussion for the purpose of determining SEP of a non resident in India, threshold for aggregate amount of payments arising from specified transactions are still going on in G20-OECD BEPS project and thus, it is proposed to defer applicability of SEP to assessment year 2022-23. It is also proposed to amend source rule to account for income from advertisement targeting Indian customers or income from sale of data collected from India as Indian revenue. However, the same will take effect from assessment year 2022-23 onwards.

28. Relaxation of the conditions for offshore funds' exemption from "business connection"

28.1. 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.

28.2. One of the conditions for eligibility requires that the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund. This condition was difficult to comply in the initial years when the fund manager, a resident of India, is required to invest his money as "skin in the game" to create reputation to attract investment.

28.3. Another condition which caused difficulty was the requirement for the newly incorporated fund to achieve a corpus of Rs. 100 crores before the end of a period of six months from the last day of the month of its incorporation, or at the end of such previous year, whichever is later. This results in anomaly as certain funds due to its date of establishment and incorporation get favoured or discriminated against.

Budget proposals

28.4. It is proposed to relax the aforesaid conditions to provide that:

(i) for the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during first three years up to twenty-five crore rupees shall not be accounted for;

(ii) if the fund has been established or incorporated in the previous year, the condition of monthly average of the corpus of the fund to be at one hundred crore rupees shall be fulfilled within twelve months from the last day of the month of its establishment or incorporation.

28.5. 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.

29. Exclusion of interest paid payable to a PE of a non-resident Bank for the purpose of interest disallowance under Section 94B

29.1. Section 94B provides that interest exceeding Rs. 1 crore of an Indian Company or a PE of a foreign company, paid or payable to the AE shall be restricted to 30% of its EBIDTA or interest paid or payable to AE, whichever is less. Further, a loan is deemed to be from an AE, if an AE provides implicit or explicit guarantee in respect of that loan. AE for the purposes of this section has the meaning assigned to it in section 92A of the Act.

29.2. This section was inserted in the Act through the Finance Act, 2017 in order to implement the measures recommended in final report on Action Plan 4 of the Base Erosion and Profit Shifting (BEPS)

29.3. It is proposed to amend Section 94B of the Act so as to provide that the provisions of interest limitation will 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 business.

29.4. 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.

Comments

- *There are many foreign banks in India which function as branches of the foreign companies such as HSBC, Citibank and the like. These branches are therefore for tax purposes PE of a foreign company and therefore, non-resident for taxation purposes.*
- *The definition of the AE in section 92A, inter alia, deems two enterprises to be AE, if during the previous year a loan advanced by one enterprise to the other enterprise is at 50 per cent. or more of the book value of the total assets of the other enterprise. Thus, there could be a possibility that loans advanced by these branches of foreign banks in India to Indian Companies may exceed 50% of the book value of the total assets and thus treated as loans from AE in the books of the Indian Companies. As a result, interest*

paid or payable to the branch of a foreign bank may attract the provisions of interest limitation under Section 94B.

- *To avoid this anomaly, it is proposed to amend Section 94B of the Act to provide that the provisions of interest limitation shall not apply in respect of interest paid on such borrowings.*
- *Although this is a welcome amendment, this may create issues in interpretation of AE for the purpose of compliance with transfer pricing provisions. On a reading of the intent of the proposed amendment, it appears that the transactions between the Indian Company (Borrower) and the branch of a foreign bank (PE), are international transactions between AE, requiring compliance with transfer pricing provisions.*

30. Aligning purpose of entering into DTAA with MLI

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

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

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

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

31. Exempting non-resident from filing returns in certain conditions

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

- Certain dividend or interest income
- Royalty or fees for technical services

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

31.3. The current provisions provide relief to non-residents from filing the return of income only in respect of dividend or interest income provide necessary tax has been deducted. The same relief is proposed to be extended to non-residents whose income consists only of the income by way of royalty or FTS of the nature described in Section 115A.

32. Amendment in Dispute Resolution Panel(DRP)

32.1. The Dispute Resolution Panel (‘DRP’) is one of several bodies established in under the Income Tax Act, 1961 to allow settlement of disputes with the help of an alternative dispute resolution mechanism. The Finance Act, 2009 added section 144C to the IT Act which lay the foundation for the DRP.

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

32.3. It is proposed to amend provisions of Section 144C of the Act to include cases which include other variations prejudicial to the interest of the assessee apart from transfer pricing adjustments wherein appeal can be filed with DRP. Further, the scope of an eligible assessee is also proposed to be changed to a non resident not being a company or a foreign company.

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

33. Extension of period and scope of concessional rate under Sections 194LC and 194LD

33.1. Sections 194LC and 194LD provides concessional rate of tax deductible at source (TDS) @ 5% for interest paid to non-residents on specific borrowings such as external commercial borrowings, long-term infrastructure bonds, rupee denominated bonds and government securities. The concessional rate was available upto 1st July 2020.

33.2. With a view to attract fresh investment, create jobs and stimulate the economy, the following are proposed:

- Extend the period of concessional rate of TDS of 5% to 1st July 2023.
- Provide that the rate of TDS shall be 4% on interest payable to non-resident in respect of bonds listed on a recognized stock exchange located in any IFSC.
- Provide that the concessional rate shall also be applicable on interest payable to FII and QFI in respect of investment made in municipal debt security.

VII. STARTUPS

34. Rationalization of provisions for Start-up Companies

34.1. Under the existing provisions of section 80-IAC, an eligible Start-up is allowed deduction of 100% of its profits for any three consecutive assessment years out of seven years beginning from the year in which the start-up is incorporated if the total turnover does not exceed Rs. 25 crores in the assessment year in which it claims such deduction.

34.2. In order to extend this benefit to larger start-ups, the Bill has proposed to extend the turnover limit from existing Rs. 25 crores to Rs. 100 crores. Moreover considering the fact that in the initial years, a start-up may not have adequate profit to avail this deduction, the Bill proposes to extend the period of eligibility for claim of deduction from the existing 7 years to 10 years.

34.3. 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.

Comments:

- *This measure would provide a seed fund to support early stage start-ups thereby creating employment opportunities.*

VIII. OTHERS

35. Amendment in provisions relating to tax audit under section 44AB

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

35.2. In order to reduce the compliance burden on small retailers, traders, shop keepers who comprise the Medium, Small and Micro Enterprise (MSME) sector, and in order to boost a cashless economy, it is proposed to increase the threshold limit for tax audit for a person carrying on business from one crore rupees to five crore rupees only in cases where -

(i) Aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(ii) Aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent. of the said payment,

35.3. Moreover, for persons carrying on business/profession required to get their accounts audited and furnish a tax audit report under this section, the due date shall stand modified to a month prior to the due date as specified in section 139(1).

35.4. 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.

Comments:

- *This is also a very welcome amendment as it proposes to filter the small taxpayers out of the tax audit bracket and reduce compliance burden for them. However, shopkeepers and retailers which mainly have their sales over the counter in cash will not be benefitted. There seems to be a drafting anomaly insofar as the words "five per cent of the said amount" or "five per cent of the said payment" have been used. It seems that the aggregate of all amounts received will include receipts on both revenue and capital account and similarly aggregate of all amounts paid would include all payments of revenue and capital nature. In substance, it seems that the aggregate of the receipts and payments of whatsoever nature received by the assessee will be considered for calculating the threshold of five per cent. No change has been contemplated in case of limit for tax audit in case of persons carrying on business/profession and covered under sections 44AE, 44BB, 44BBB, 44ADA or 44AD.*
- *Further, this amendment would be a step toward the flagship programme of the Government, i.e. "Digital India".*

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

36.1. The existing provisions of following sections provide a safe harbour of limit of 5% -

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

The said section also provides that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration;

36.2. Similarly, Section 50C of the Act also provides the same tax treatment in respect of computation capital gains in respect of land or building or both, being a capital asset as required under section 48 of the Act and;

36.3. Similarly, section 56(2)(x) of the act provides that where any person receives any immovable property from any person(s) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "income from other sources". This section also provides that where stamp duty value of such property exceeds 5% of consideration or 50,000/- whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head “Income from other sources”.

36.4. The limit of 5% is proposed to increase to 10%.

36.5. 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.

Comments:

- *This is also a welcome amendment and a lenient approach and will reduce many litigations by increasing the limit to 10%.*

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

37.1. The existing provisions of section 55 of the Act provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 1st April, 2001, the assessee has been allowed an option of either to take the fair market value of the asset as on 1st April, 2001 or the actual cost of the asset as cost of acquisition.

37.2. It is proposed to rationalize the provision and to insert a proviso below sub-clause (ii) of clause (b) of Explanation under clause (ac) of sub-section (2) of the said section to provide that in case of a capital asset, being land or building or both, the fair market value of such an asset on 1st April, 2001 shall not exceed the stamp duty value of such asset as on 1st April, 2001 where such stamp duty value is available. It is also proposed to insert an Explanation so as to provide that for the purposes of sub-clause (i) and (ii), "stamp duty value" shall mean the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

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

Comments:

- *There is an option available to the assessee to substitute cost of acquisition of capital assets acquired before 1st April, 2001 with the fair value of such assets as on that date. However, the mode of computation of fair market value was not specifically mentioned in the provisions of the section. However, the proposed amendment is restrictive and it specifies that the fair market value cannot exceed the stamp duty value of the capital asset, being land or building or both, if such stamp duty value is available.*
- *Hence, if fair value is higher than the stamp duty value available as on 1st April, 2001, the assessee does not have an option to such higher value and has to restrict himself up to a maximum of the stamp duty value only.*

38. Amendment of Section 115BAB of the Act to include generation of electricity as manufacturing

38.1. The Taxation Law Amendment Ordinance, inter-alia, inserted section 115BAB in the Act. The newly inserted section provides that new manufacturing domestic companies set up on or after 1st October, 2019, which commence manufacturing or production by 31st March, 2023 and do not avail of any specified incentives or deductions, may opt to pay tax at a concessional rate of 15 per cent.

38.2. Explanation to clause (b) of sub-section (2) thereof provides that for the purposes of the said section, businesses engaged in development of computer software, mining, conversion of marble blocks or similar items into slabs, bottling of gas into cylinder, printing of books or production of cinematograph film or any other business as may be notified by the Central Government will not be considered as manufacturing or production.

38.3. 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.

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

Comments:

- *The meaning of the term "Manufacturing" has been subject matter of litigation over the years. In the landmark Judgment in the case of Union of India vs. Delhi Cotton and general Mills Company Limited, (1963 AIR 79, SC), the apex court has held that the term manufacture imply the change but every change is not a manufacture. To bring about the change qualifying as manufacture, something more is necessary, and that something more is transformation, i.e., new and different article or thing having a different name, character or use. In another recent judgment, the Supreme Court in CIT vs. Oracle Software India Limited (320 ITR 546), observed that test of new article may not be relevant in the new technology arena. It was held that if a process renders a commodity fit for use, which otherwise was not fit to use, it falls within the letter and spirit of manufacture.*
- *Subsequently, section 2 (29BA) was inserted in the statute book with effect from 01.04.2009 which has defined the term manufacture as below:*

  "Manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,—

  (i) Resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use.

  (ii) Bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.
- *By virtue of aforesaid definition of manufacture, it was difficult to treat power generation within the purview of manufacture.*

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

39.1. The existing provisions of section 80EEA of the Act inter alia, provide a deduction up to one lakh fifty thousand rupees in respect of interest on loan taken from any financial institution during the period from 1st April, 2019 to 31st March, 2020 for acquisition of an affordable residential house property and is subject to certain conditions specified therein. The deduction of up to one lakh fifty thousand rupees is aimed to encourage assesse being an individual to invest in residential house property whose stamp duty value does not exceed forty-five lakh rupees

39.2. In order to encourage the assessee being an individual, the period of sanctioning of loan by the financial institution is proposed to be extended to 31st March, 2021.

39.3. 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.

Comments:

- *The proposed amendment of extending the tax benefit for housing loans for another year would benefit first time buyers of residential house properties.*

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

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

40.2. In order to give impetus to and make more homes available under the said scheme, the time frame for taking approval of such project by the competent authority is proposed to deferred by one year, i.e. 31st March, 2021.

40.3. 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.

Comments:

- *The proposed amendment will generate more number of such developers under this project and boost the real estate sector.*

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

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

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

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

42. Allowing carry forward of losses or depreciation in certain amalgamations

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

42.2. Therefore, in order to extend the benefits of this section, it is proposed that this section will also apply to amalgamation of:

a. one or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or both, as the case may be, or

b. one or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government under section 16 of the General Insurance Business (Nationalisation) Act, 1972.

42.3. It is also proposed for this section that:

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

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

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

42.4. 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.

Comments:

- *This is also a welcome amendment extending benefits to public sector banks and public sector General Insurance Companies.*

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

43.1. SEBI had, vide circular dated 28.12.18, permitted creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes. As per the circular, all the existing unit holders 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.

43.2. It is proposed to amend sub-section (42A) of section 2 of the Act to provide that in the case of a capital asset, being a unit/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/units in the main portfolio were held by the assessee.

43.3. Further, a new sub-section (2AG) is proposed to be inserted in section 49 of the Act to provide that the cost of acquisition of a unit in the segregated portfolio shall be the amount which bears to the cost of acquisition of a unit held in the total portfolio, the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios. Similarly, another sub-section (2AH) in the said section is proposed to be inserted to provide that the cost of the acquisition of the original units held in the main portfolio shall be deemed to have been reduced by the amount as so arrived at under the proposed sub-section (2AG).

43.4. These amendments will apply in relation to the assessment year 2020-21 and subsequent assessment years.

B. INDIRECT TAX PROPOSALS

1. List of State and UTs

1.1. In accordance with the central government's announcement dated August 5, 2019 withdrawing the state's special status under Article 370 and bifurcating the state of Jammu and Kashmir into two UTs and in pursuance of the merger of UTs of Dadra and Nagar Haveli and Daman and Diu which came into effect on January 26, 2020 , it is proposed to amend section 2 clause (114), of the CGST Act and section 1 and section 2 of the UTGST Act, to merge Dadra and Nagar Haveli and Daman and Diu to a single entry and insert Ladakh in the list of UTs. Accordingly, section 109 of the CGST Act, has also been amended.

2. Composition Scheme

2.1. In the Finance Bill 2019 a new sub-section was inserted in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year upto Rs 50 lakhs. In furtherance of the same it is proposed to amend section 10 sub-section (2) to include supply of services.

3. Registration

3.1. **Cancellation in case of Voluntary Registration:** In GST, cancellation of registration can be only opted by a registered person as per clauses laid down in Section 29(1) of CGST Act 2017. Till 23.01.2018, in case of voluntary registration (taken despite not being liable for), registration could not be cancelled until expiry of one year. However, the rule was amended to allow voluntary registration to be cancelled any time in Notification No. 03/2018-CT Dt. 23.01.2018. Clause (c) of sub-section (1) of Section 29 is proposed to be amended to give effect to the above notification.

3.2. **Revocation of cancellation:** When the registration has been cancelled by the Proper Officer (Superintendent of Central Tax) on his own motion and not on the basis of an application by the registered person, then the registered person, whose registration has been cancelled, can submit an application for revocation of cancellation of registration, in FORM GST REG-21, to the Proper Officer (Assistant or Deputy Commissioners of Central Tax), within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

3.3. The Bill proposes to amend section 30, the time period for application of revocation can be extended by Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days and by the Commissioner, for a further period not exceeding thirty days.

4. Invoice

4.1. As per Section 31 of the CGST/SGST Act, a registered taxable person shall within the prescribed period, issue a tax invoice showing the description and value of the goods/service, the tax payable, and other particulars. The proviso clause to sub-section (2) of the act contains circumstances in which the government may stipulate to issue an invoice in a particular manner. An addition in the proviso is proposed, wherein the Government, on the recommendation of the council will be able to specify the categories of supplies for which the time and manner to issue tax invoice may be directed.

5. Issue of TDS Certificates

5.1. As per the section 51 sub-section(4) of CGST Act, 2017 the person deducting tax is required to issue the TDS certificate in form GSTR-7A to the concerned person within 5 days of depositing the tax to the government. Failure to do so attracts a late fee of Rs. 100 per day up to a maximum of Rs. 5000. The same is omitted from the Act.

6. Retrospective amendments in GST

6.1. Fishmeal falling under the tariff heading 2310 is being exempt from tax (CGST, UTGST and IGST) from 1.07.2017 to 30.09.2019.

6.2. Supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery (falling under headings 8432, 8433 and 8436) shall attract a tax rate of 12% for the period 1.07.2017 to 31.12.2018.

6.3. With effect from 1st October 2019, Notification No. 3/109 - Compensation Cess (Rate) dated 30th September 2019 disallowed refund of accumulated credit of compensation cess on tobacco products arising out of inverted duty structure of Compensation cess. This notification has been given retrospective effect from 1st July 2017.

7. Financing of Health and Infrastructure Services

7.1. For the purpose financing the health infrastructure and services, the Bill proposes to impose Health Cess on import of medical devices falling under the headings 9018 to 9022, at the rate of 5% ad valorem on the import value of such goods as determined under section 14 of Customs Act, 1962. Health cess shall be imposed on medical devices which are exempt from BCD and shall be a duty of customs. It should be noted that export promotion scrips may not be used for the payment of said cess.

8. Other Indirect Tax changes

8.1. Dynamic QR-code is proposed for consumer invoices. GST parameters will be captured when payment for purchases is made through the QR-code.

8.2. A system of cash reward is envisaged to incentivise customers to seek invoice.

8.3. Simplified return with features like SMS based filing for nil return, pre-filling and improved input tax credit flow to be implemented from 1st April, 2020.

8.4. Section 172 of the CGST Act gives an opportunity to Government for a period of 3 years from the date of its implementation to make such provisions that are not inconsistent with the provisions of this Act or the rules or regulations made thereunder as may be necessary or expedient for the purpose of removing the difficulty. The sun-set of 3 years has now been changed to 5 years.

8.5. Customs duty raised on footwear to 35% from 25% and on furniture goods to 25% from 20%.

8.6. Basic customs duty on imports of newsprint and light-weight coated paper reduced from 10% to 5%. Customs duty rates revised on electric vehicles and parts of mobiles.

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