MBG CORPORATE SERVICES

UNION BUDGET 2020

Detailed Overview

THROUGH
INSIGHTS ON THE
BUDGET 2020

Contents

FOREWORD

On **February 01, 2020**, **Hon'ble Finance Minister Smt. Nirmala Sitharaman** presented second budget for **Financial Year ("FY") 2020-21** ("Budget") of Narendra Modi 2.0 Government.

The Indian economy has witnessed a slowdown in growth in the Fiscal Year 2019-20 as GDP grew at **5%** and is expected to stabilize at **6-6.5%** for the year 2020-21. The fiscal deficit is estimated at **3.5%** of GDP for 2020-21. The inflation rate is at **7.4%.**

In September 2019, the government had slashed tax rates to 15 per cent for new manufacturers and 22 per cent for existing companies from about 30 per cent to energize the Indian corporate sector. Continuing with the same momentum, the government has considered a cut in personal income-tax rates especially for lower income group leading to annual potential tax saving of INR 78,000/- . This is expected to spur consumption and demand. The Government has also announced scheme to unlocking tax dues stuck in litigation.

The Budget mainly focuses on the Government's vision to drive India to higher economic growth and become a five trillion-dollar economy in the next few years. The Budget lists down the Government's macro-economic plans for boosting sustained economic growth. The focus of the government has been on increasing the ease of living through three themes — Aspirational India, Economic Development and Caring Society.

We are pleased to provide you with the synopsis of the Union Budget of 2020 and hope the same shall be useful at your end.

Thanking You,
To your success,

MBG Corporate Services
01st February 2020

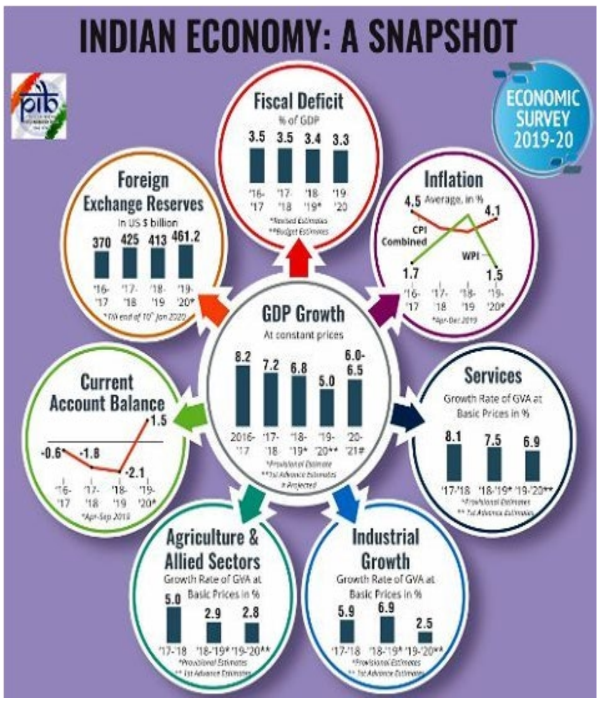
UNION BUDGET 2020: SYNOPSIS

MACRO-ECONOMIC OVERVIEW

A. Indian Economy: Snapshot

The Economic survey talks about overall economic progress made in the previous fiscal year and the challenges faced to achieve the targeted GDP Growth rate.

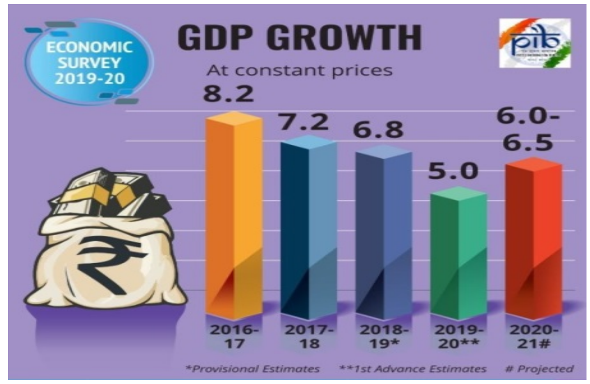
The following is a snapshot of Indian Economy:



B. Macro-Economic Indicators

- **GDP Growth**

The India GDP is expected to rebound from 5% estimated in current financial year to 6-6.5% in 2020-21. This positive growth is expected due to tentative signs of bottoming out of slowdown in manufacturing sector and global trade.

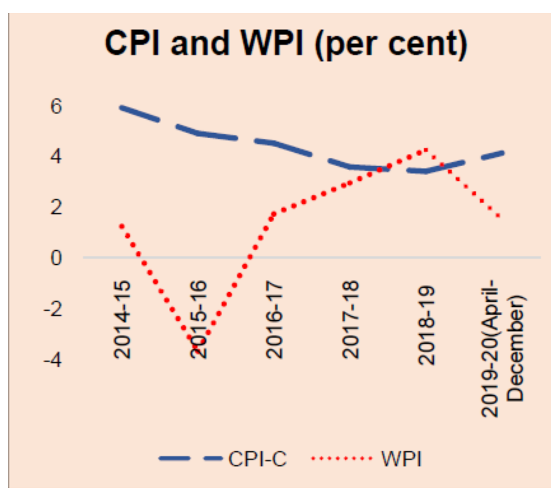


- **Inflation**

According to Economic Survey 19-20, CPI-C headline inflation stood at 7.4% in December 2019, CPI- food inflation at 14.1% and CPI-core at 3.8%.

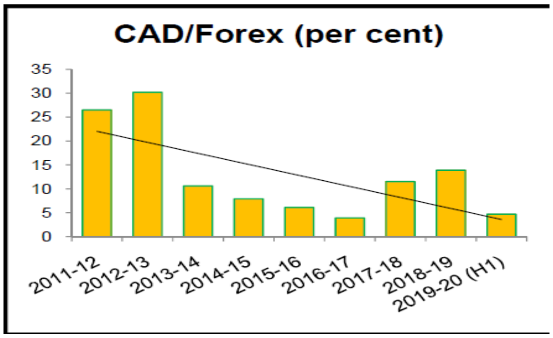
- WPI based inflation was on continuous decline in 2019-20 until December 2019, where it increased marginally to 2.6%.
- The mineral oils group in WPI showed an inflation of 5.8% in April 2019 and thereafter showed continuous decline till December 2019 to reach at 3.2%. Similar trends were shown by fuel components of CPI in the same direction.

Food inflation has been the major driver of inflation during 2019-20 as prices of onions, tomato and pulses showed high Inflation rate.



- ### Deficit position

Current Account Deficit (CAD) narrowed from 2.1 per cent in 2018-19 to 1.5 per cent of GDP in 1st half of 2019-20 contributing to BoP improvement. CAD contraction has originated from easing of crude prices.

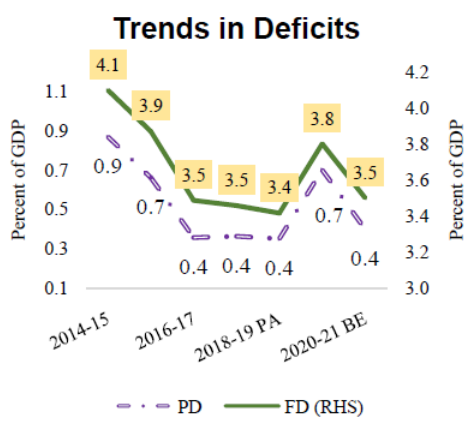


Current account deficit (CAD) as per cent of GDP

2009-14	2014-19	2018-19	2019-20 H1
-3.3	-1.4	-2.1	-1.5

Source: Reserve Bank of India

Trade Deficit as a per cent of GDP has slightly improved from -6.8 in 2018-19 to -6.3 in 1st half 2019-20.



Gross Fiscal Deficit (Centre) as a per cent of GDP slightly improved from -3.4 in 2018-19 (RE) to -3.3 (BE) in 1st half 2019-20.

Fiscal Indicators (Centre) - % of GDP

Data Categories	2016-17	2017-18	2018-19	2019-20
Gross fiscal deficit	3.5	3.5	3.4	3.3
Revenue Deficit	2.1	2.6	2.2	2.3

Data Categories	2016-17	2017-18	2018-19	2019-20
Primary Deficit	0.4	0.4	0.2	0.2

Source: Economic Survey of India, 2020

The fiscal deficit is estimated at **3.5%** of GDP for 2020-21.

- ### Forex Reserves

As per Economic Survey, Foreign exchange reserves have increased from US$ 302 billion in end March, 2019 to US$ 461.2 billion as on 10th January 2020.

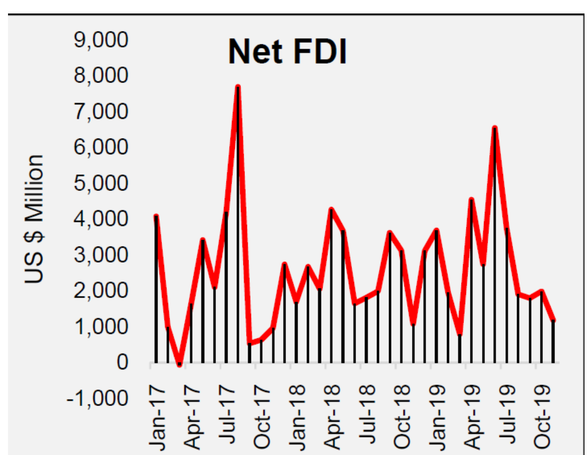
- ### Foreign Direct Investment

- Net FDI in Apr to Nov 2019-20 stood at US$ 24.4 billion. Net FDI inflows have improved in 2019-20 attracting in the first half itself a considerably higher amount compared to previous year level.

Net FDI (US$ billion)

2009-14	2014-19	2018-19	2019-20 H1
92.51	163.87	30.7	21.3

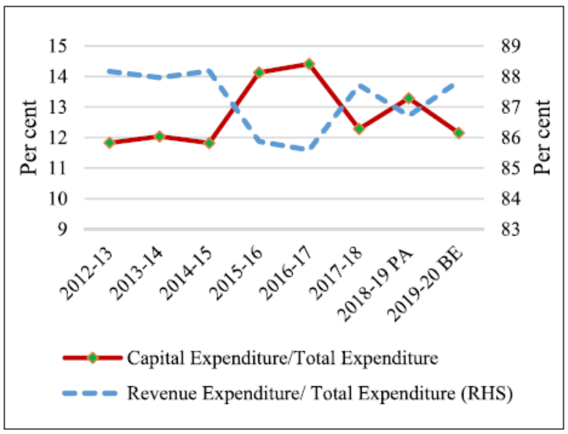
Source: Reserve Bank of India



- ## Revenue and Expenditure

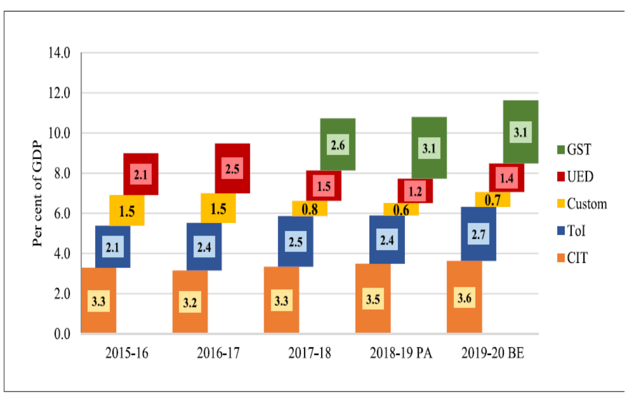
Net Tax revenue to the Centre, which was envisaged to grow at more than 25% in 2019-20 budget estimates relative to 2018-19 provisional actuals, grew at 2.6% during April- November 2019, which is nearly half its growth rate for the corresponding period last year. During first eight months of 2019-20, capital expenditure grew at roughly three times as compared to same period of 2018-19 and revenue expenditure had grown considerably as well during 2019-20.

Figure 6: Share of Revenue and Capital Expenditure in Total Expenditure



Source: Union Budget Documents & CGA
BE: Budget Estimate, PA: Provisional Actuals.

Figure 4: Taxes as a percent of GDP

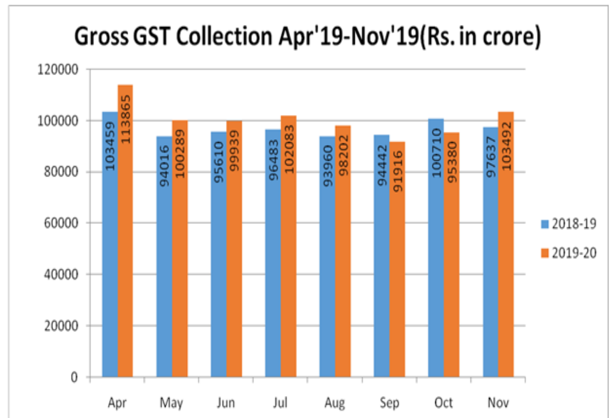


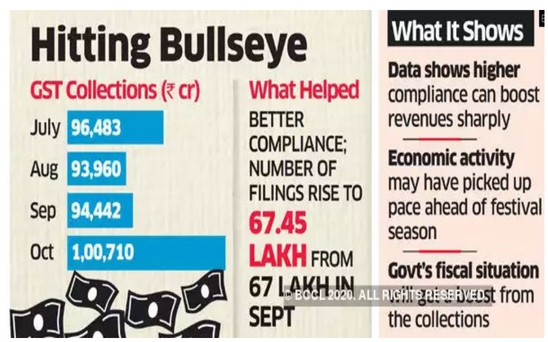
Source: Union Budget Documents & CGA
Note: 1. CIT: Corporation Tax, ToI: Taxes on Income other than Corporation Tax (includes STT), UED: Union Excise Duties, GST: Goods and Services Tax, 2. GST includes CGST, IGST and Compensation Cess

- ## Direct Tax and Indirect Tax Revenues

Upto November 2019, the actual realization of Net Tax Revenue to the center has been 7.51 lakh crores, which is 45.5% of budgeted estimates.

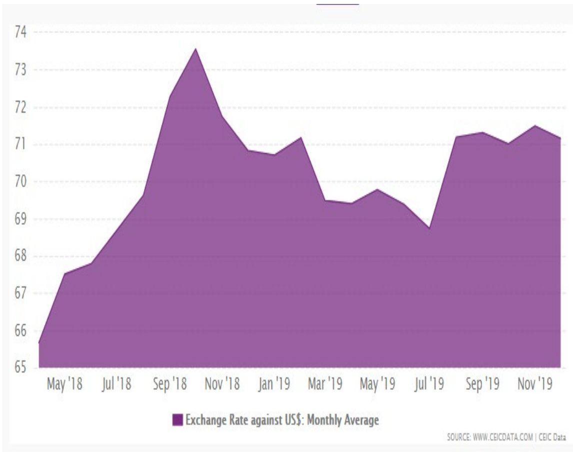
The indirect tax receipts have registered a growth of -0.9% in the first eight months of this fiscal year. Notably, upto December 2019, the gross monthly GST collection has crossed Rs. One lakh crores which is a result of concerted efforts taken by government.





- ## Indian Currency

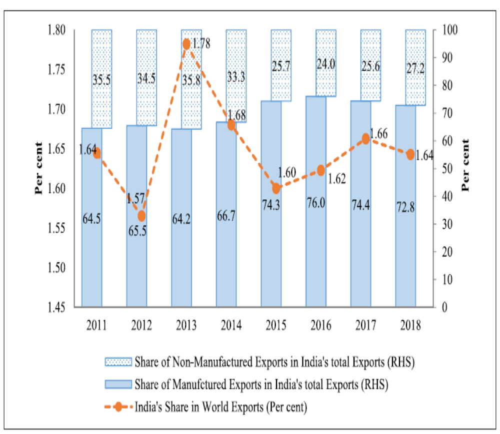
In economic survey, it is projected that Indian rupee may depreciate owning to US-Iran geo political tensions and many other downside risks.



- ## Export and Imports

Export growth remains subdued with external demand weakened by slowdown in global investment, output and heightened trade tensions, notwithstanding resilient service exports.

Figure 7: India's share in World Exports, Share of Manufactured &Non-Manufactured Items in India's Total Merchandise Exports



Source: Trademap.org.
Note: The years mentioned are calendar years.

- The merchandise exports to GDP ratio has declined, entailing a negative impact on BoP position.

Merchandise Exports as per cent of GDP

2009-14	2014-19	2018-19	2019-20 H1
15.7	12.7	12.1	11.3

Source: Department of Commerce & Central Statistics Office (CSO)

- The merchandise imports to GDP ratio has been declining for India entailing to a net positive impact on the BoP position.

India's Merchandise Imports as percent of GDP

2009-14	2014-19	2018-19	2019-20
24.3	18.7	18.9	17.6

Source: Department of Commerce & Central Office (CSO)

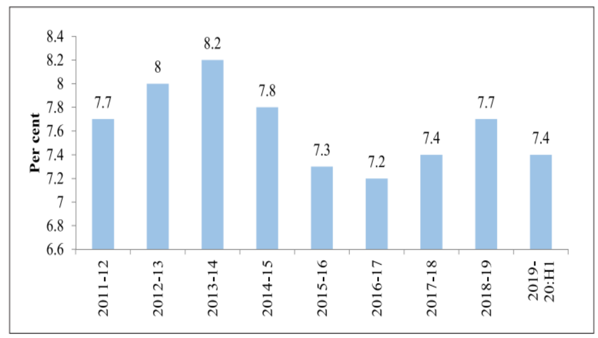
- India's Service Export have consistently hovered between 7.4 to 7.7 % of GDP reflecting the steadiness of this source in contributing stability of BoP

Service Exports as per cent of GDP

2009-14	2014-19	2018-19	2019-20 H1
7.7	7.5	7.7	7.4

Source: Reserve Bank of India

Figure 20: Service exports as per cent of GDP



Source: Reserve Bank of India.

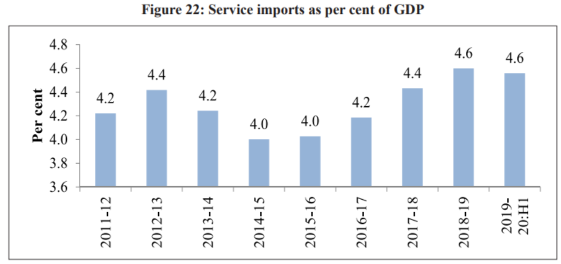
- Over the years, service imports in relation to GDP has been steadily rising putting pressure on BoP to worsen. However, increase in service imports to GDP ratio is inevitable giving a rising level of FDI and a gradual upscaling of the 'Make-in-India' program.

Service Imports as per cent of GDP

2009-14	2014-19	2018-19	2019-20 H1
4.4	4.3	4.6	4.6

Source: Reserve Bank of India

Figure 22: Service imports as per cent of GDP



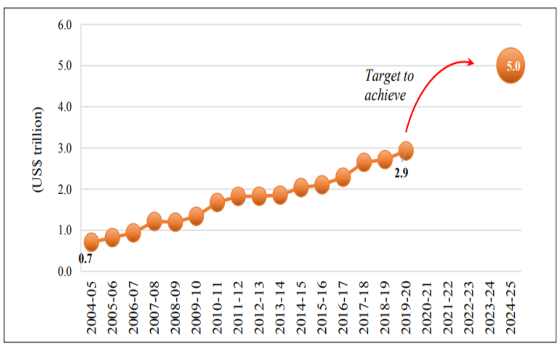
Source: Reserve Bank of India.

C. Move towards 5 Trillion Dollar Economy

The Economic Survey focuses on wealth creation for Indians and outlines a multi-faceted strategy to achieve a USD 5 trillion economy through enterprise, exports and the ease of doing business.

Due to decline in world output and resultant less than expected growth of India's GDP so far, posed challenge to achieve this milestone. Yet, given India's record of growth with macroeconomic stability over the last five years, India's economic growth is expected to "strongly rebound" to 6-6.5 per cent in 2020-21 from 5 per cent estimated in the current fiscal.

Figure 7: Increasing size of the Indian economy (GDP at current US$)



Data Source: National Statistical Office, Reserve Bank of India (RBI) and IMF

'Enable Markets, Promote 'Pro-Business' Policy & Strengthen 'Trust' in Economy'

The survey has proposed 10 new Ideas to achieve its theme: **Enable Markets, Promote 'Pro-Business' Policy & Strengthen 'Trust' in Economy.**

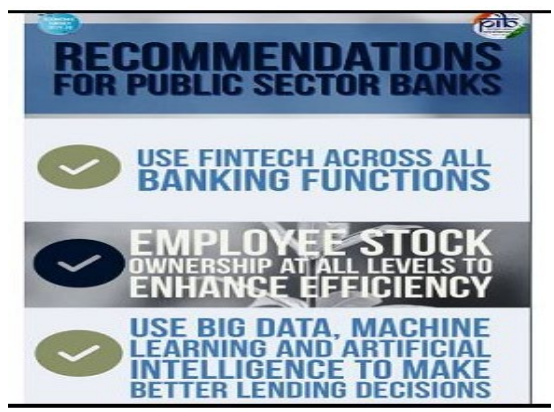
- Wealth creation benefits for all
- Markets enable wealth creation
- Trust: A Public good that increases with use
- Grass-root Entrepreneurs create wealth in their districts
- Pro-business policies providing equal opportunity
- Removing government interventions
- Job creation by'Assemble in India'
- Changes to Ease of Doing Business to improve global ranking
- Banking sector sub-scale compared to Economy
- Thalinomics

Out of the aforementioned, some of the key measures as a move towards 5 Trillion Dollar Economy are analyzed as under:

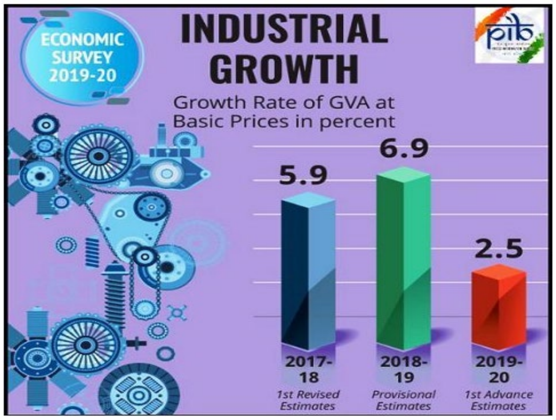
- **Creation of Job opportunities:** As per Economic Survey 2020, the ongoing international trade environment presents India with an unprecedented chance to have a China-like job growth and can follow the export-led labour- intensive growth model to create unparalleled job opportunities for its youth. The Survey advocates combing "make in India" with "Assemble in India" to create as many as 4 crore well-paid jobs by 2025 and 8 crore by 2030;

- **Infrastructure Spending**: The country needs to spend $1.4 trillion on infrastructure to remove constraints in growth, as power shortages, inadequate transport and poor connectivity affects overall growth performance and to achieve a GDP of $5 trillion by 2024-25;

- **Banking Reforms:** The survey suggests following solutions that can make Public sector banks more efficient:



- **Industry:** The Industrial growth is estimated at 2.5% in 2019-20 as compared to 6.9% growth in 2018-19. The Industrial sector based on Index of Industrial production (IIP) registered a growth of 0.6% for (April-November) 2019-20 as compared to 5% during 2018-19(April-November).



- **Agriculture and Services Sector:** The share of agriculture and allied sectors in the total GVA of the country has been continuously declining on account of relatively higher growth performance of non-agriculture sectors.

Table 1: Share of Agriculture and Allied Sectors in total GVA of the Country at Current Prices

Items	Year					
	2014-15	2015-16*	2016-17#	2017-18@	2018-19**	2019-20$
GVA of agriculture and allied sectors (₹ in Crore)	2093612	2227533	2496358	2670147	2775852	3,047,187
Share of GVA of agriculture & allied sectors in GVA of total economy (per cent)	18.2	17.7	17.9	17.2	16.1	16.5
Share of crops	11.2	10.6	10.6	10.0	-	-
Share of livestock	4.4	4.6	4.8	4.9	-	-
Share of forestry & logging	1.5	1.5	1.4	1.2	-	-
Share of fishing	1.0	1.1	1.1	1.1	-	-

The service sector's significance in the India economy has continued to increase for around 55% of total size of the economy and GVA growth.

Table 1: Services Sector Performance in GVA

Sector	Share in GVA (per cent)	Growth (per cent YoY)				
	2019-20 (1st AE)	2017-18 (RE)	2018-19 (PE)	2019-20 (1st AE)	2019-20 Q1	2019-20 Q2
Total Services	**55.3**	**8.1**	**7.5**	**6.9**	**6.9**	**6.8**
Trade, hotels, transport, communication & services related to broadcasting	18.3	7.8	6.9	5.9	7.1	4.8
Financial, real estate & professional services	21.3	6.2	7.4	6.4	5.9	5.8
Public administration, defence & other services	15.6	11.9	8.6	9.1	8.5	11.6

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DIRECT TAX PROPOSALS

The major direct tax amendments as proposed by Finance Bill, 2020 are as under:

RATES OF INCOME TAX

Individual Income Tax Rates

Income tax rates are proposed to be reduced for the individual taxpayers who will forgo certain deductions and exemptions

The amendment shall be effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Proposed effective tax rates for Individuals

Taxable income level (in INR)	Existing Tax Regime	New Tax Regime*	Decrease in tax rates
Up to 2.5 lakhs	NIL	NIL	No change
Above 2.5 lakhs up to 5 lakhs	5.20%	5.20%	No change
Above 5 lakhs up to 7.5 lakhs	20.80%	10.40%	10.40%
Above 7.5 lakhs up to 10 lakhs	20.80%	15.60%	5.20%
Above 10 lakhs up to 12.5 lakhs	31.20%	20.80%	10.40%
Above 12.5 lakhs up to 15 lakhs	31.20%	26.00%	5.20%
Above 15 lakhs up to 50 lakhs	31.20%	31.20%	No change
Above 50 lakhs up to 1 crore	34.32%	34.32%	No change
Above 1 crore up to 2 crore	35.88%	35.88%	No change
Above 2 crore up to 5 crore	39%	39%	No change
Above 5 crore	42.74%	42.74%	No change

**The person opting for new tax regime shall not be entitled to following prominent deductions such as Leave Travel Concession (LTC), House Rent Allowance (HRA), Standard Deduction u/s 16 and Interest u/s 24 etc.*

The new tax regime shall be optional for the taxpayers. An individual who is currently availing more deductions & exemption under the ITA may choose to avail them and continue to pay tax in the old regime.

Impact of proposed tax rates for Individuals

S. No.	Particulars	Existing Tax Regime	New Tax Regime
Case 1: Without impact of Chapter VI-A deduction			
1	Total Income	15,00,000	15,00,000
2	Income Tax	2,73,000	1,95,000
3	Tax Saved in new tax regime		78,000
Case 2: Considering impact of Chapter VI-A deduction			
1	Total Income	15,00,000	15,00,000
2	Deduction under Chapter VI-A	1,50,000	-
3	Taxable Income	13,50,000	15,00,000
4	Income Tax	2,26,200	1,95,000
5	Tax Saved in new tax regime		31,200

Reduction of Corporate Tax Rates

It has been proposed to extend the beneficial corporate tax rate of 25% to all companies whose turnover in FY 2018-19 does not exceed INR 400 crores. Earlier, the exemption was available only to companies whose turnover in FY 2017-18 did not exceed INR 400 crores.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Tax on Co-operatives societies reduced to 22% from existing rate of 30%

It is proposed that on satisfaction of certain conditions, a co-operative society resident in India shall have the option to pay tax at 22 percent for Assessment year 2021-22 onwards in respect of its total income so however that if it fails to satisfy the conditions in any previous year, the option shall become invalid and other provisions of the ITA shall apply.

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

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

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Additional deduction allowable in concessional tax schemes for domestic companies

Presently, section 115BAA and section 115BAB provides domestic companies an option to be taxed at concessional tax rates by prohibiting deductions under Chapter VI-A under the heading "C. Deduction in respect of certain incomes" other than the provisions of section 80JJAA.

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

The amendment is effective from Assessment Year 2020-2021 relevant to Financial Year 2019-2020.

TAX INCENTIVES

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

The existing provisions of section 80EEA of the ITA provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. The deduction allowed is up to INR 1,50,000 and is subject to certain conditions.

One of the conditions is that loan has been sanctioned by the financial institution during the period from 1st April, 2019 to 31st March, 2020.

It is proposed to be extended to 31st March, 2021.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Incentives for start-ups

As per section 80-IAC of the ITA, deduction of an amount equal to one hundred per cent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of seven years is allowed, at the option of the assessee, subject to the condition that the eligible start-up is incorporated on or after 1st April, 2016 but before 1st April, 2021 and the total turnover of its business does not exceed twenty-five crore rupees.

It is proposed to amend section 80-IAC of the ITA so as to provide that-

(i) the deduction under section 80-IAC shall be available to an eligible start-up for a period of three consecutive assessment years out of ten years beginning from the year in which it is incorporated;

(ii) the deduction under the said section shall be available to an eligible start-up, if the total turnover of its business does not exceed one hundred crore rupees in any of the previous years beginning from the year in which it is incorporated.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Incentives for building affordable housing

As per section 80-IBA of the ITA, The conditions contained in the section, prescribe that the project is approved by the competent authority during the period from 1st June, 2016 to 31st March, 2020.

It is proposed to extend the period of approval of the project by the competent authority up to 31st March, 2021.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Amendment of Section 194LC

To attract fresh investment, create jobs & stimulate the economy, it is proposed to; -

i. extend the period of concessional rate of TDS of 5% u/s 194LC to 1st July, 2023 from 1st July, 2020;

ii. provide that rate of TDS shall be 4% on the interest payable to a Non-resident, in respect of monies borrowed in foreign currency from a source outside India, by way of issue of any long term bond or RDB on or after 1st April, 2020 but before 1st July, 2023 & which is listed only on a recognized stock exchange located in any IFSC.

Effective from 1st April, 2020.

Amendment of Section 194LD

To attract fresh investment, create jobs & stimulate the economy, it is proposed to:

(i) extend the period of rate of TDS of 5% u/s 194LC to 1st July, 2023 from 1st July, 2020;

(ii) provide that the concessional rate of 5% shall also apply on the interest payable, on or after 1st April, 2020 but before 1st July, 2023, to a FII or QFI in respect of the investment made in municipal debt security.

Effective from 1st April, 2020.

Relaxation in conditions for exemption of offshore funds from constituting a ‘business connection’

Relaxation in conditions for exemption of offshore funds from constituting a ‘business connection’ pertaining to:

a) Time-period of participation or investment in the fund by the eligible fund manager has been extended to 3 years shall not be accounted for;

b) For newly incorporated funds, time-limit of 6 months for computing monthly average corpus of INR 100 crores extended to 12 months

The amendment is effective with effect from 01st April 2020

REMOVE DIFFICULTIES FACED BY TAXPAYERS

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

Currently, ESOPs are taxed as perquisites under section 17(2) (vi) of the ITA. It is proposed that 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 section 17(2) (vi) of the ITA, in any previous year, deduct or pay, as the case may be, tax on such income within fourteen days:

(i) after the expiry of forty eight months from the end of the relevant assessment year; or

(ii) from the date of the sale of such specified security or sweat equity share by the Assessee; or

(iii) from the date of which the Assessee ceases to be the employee of the person; whichever is the earliest on the basis of rates in force of the financial year in which the said specified security or sweat equity share is allotted or transferred .

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

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

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

As per section 35AD of the ITA, deduction in respect of expenditure on specified business, provides for 100 per cent. No deduction is allowable under any other section in respect to the expenditure. At present, an assessee does not have any option of not availing the incentive under this section.

It is proposed to amend section 35AD of the ITA to make the deduction thereunder optional.

The amendment is effective from Assessment Year 2020-2021 relevant to Financial Year 2019-2020.

Increase in safe harbour limit under section 43CA, 50C and 56 of the ITA

Presently, safe harbor limit is 5% under section 43CA, 50C, 56 of the ITA.

It is proposed to increase the safe harbor limit to 10% under section 43CA, 50C, 56 of the ITA.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021

Interest paid/ payable to PE of a non-resident Bank excluded from ambit of section 94B

It is proposed to amend section 94B to provide that interest limitation would not apply to interest paid in respect of a debt issued by a lender which is a PE of a Non-Resident Bank.

Amendment is effective from Assessment Year (AY) 2021-22 relevant to Financial Year (FY) 2020-21.

Non-Resident exempted from filing return in certain cases

It is proposed to amend section 115A to provide that a non-resident, shall not be required to file return of income if, -

(i) his or its total income consists of only dividend or interest income or royalty or fee for technical services (FTS) income under section 115(1), and

(ii) the TDS on such income has been deducted at rates not lower than the prescribed rates u/s 115A(1).

Amendment is effective from AY 2020-21 relevant to FY 2019-20.

Vivad se Vishwas Scheme - Direct Tax Amnesty Scheme

A direct amnesty scheme has been proposed for settling direct tax litigations. Under the proposed “Vivad se Vishwas Scheme”, taxpayers would be required to pay the amount of the disputed taxes only and will get complete waiver of interest and penalty where payment of disputed taxes is made by 31 March 2020. In case where the dispute relates to penalty, or interest or fee not connected with the disputed tax, taxpayers would be required to pay 25% of the same by 31 March 2020 for settlement of the dispute. Further, in case payment is made after 31 March 2020, taxpayer will be required to pay 110% of the disputed tax (the excess 10% shall be limited to the amount of related penalty and interest, if any) and 30% in case of penalty, interest and fee.

The scheme will remain open till 30 June 2020. No proposal has been introduced in the Finance Bill 2020 in this regard.

MEASURES TO PROVIDE TAX CERTAINTY

Change in TDS rate in respect of fees for technical services (other than professional services)

Section 194J of the ITA provides that any person, not being an individual or a HUF, paying fees for professional services, or fees for technical services, or any remuneration or fees or commission (other than salary to a director), or royalty or any sum referred to in section 28(va) of ITA, to a resident shall deduct an amount equal to ten per cent as income-tax.

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

It is proposed to reduce TDS rate in section 194J of the ITA in case of fees for technical services (other than professional services) to two per cent from existing ten per cent.

The amendment will take effect from 1 April 2020.

Safe harbor and APA to apply to attribution of profits to PE as well

Section 92CB & 92CC proposed to be amended to cover even the determination of attribution of profits to a PE within scope of Safe Harbour Rules (SHR) and Advance pricing agreement (APA).

This has been done as the attribution of profits to PE of a non-resident also results in avoidable disputes and thus to provide certainty, such cases are also required to be clearly covered under the SHR and the APA.

SHR Amendment is effective from AY 2020-21 relevant to FY 2019-20. APA amendment to take effect for APAs entered into on/after 1st April, 2020.

IMPROVING EFFECTIVENESS OF TAX ADMINISTRATION

Modification of residency provisions

Section 6 of the ITA provide for situations in which an individual shall be resident in India in a previous year. The individual shall be Indian resident in a year, if he,-

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

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

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.

It is proposed that-

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

(ii) an individual or an HUF shall be said to be “not ordinarily resident” in India in a previous year, if the individual or the manager of the HUF has been a non-resident in India in seven out of ten previous years preceding that year. This new condition to replace the existing conditions in clauses (a) and (b) of section 6(6).

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

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Provision for e-penalty

Section 274 of the ITA provides for the procedure for imposing penalty. The taxpayer is required to visit the office of the Assessing Officer in response to the notice issued by the Assessing Officer (AO). In order to eliminate human interface, it is imperative that an e-penalty scheme be launched on the lines of E-assessment Scheme-2019.

The amendment will take effect from 1 April 2020.

Provision for e-appeal

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.

It is proposed to provide for the following:

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

• Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.

• Optimizing utilization of the resources through economies of scale and functional specialization.

• Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

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

Option of DRP route now available to non-residents other than companies as well

Section 144C [Reference to Dispute resolution panel (DRP)] is proposed to be amended to include cases where Assessing Officer (AO) proposes to make 'any variation' prejudicial to the interest of an 'eligible assessee', now expanded to include non-resident other than company as well within its ambit.

Also, the words "in the income or loss returned" in section 144C(1) are proposed to be omitted having the effect that non-residents can also take the DRP route for any order (i.e. penalty, TDS order etc.) apart from order of assessment proposing variation in income or loss.

The amendment is effective from 1st April, 2020.

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

As per section 254 of the ITA, Income Tax Appellate Tribunal (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). Where the appeal is not so disposed of, the ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the periods originally allowed and the period so extended shall not, in any case, exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

It is proposed to provide that ITAT may grant stay subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty etc. or furnish security of equal amount in respect thereof.

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

RATIONALISATION OF TAX PROVISIONS

Rationalization of the provisions of section 49 and clause (42A) of section 2 of the ITA in respect of segregated portfolios

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

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

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

The amendment is effective from Assessment Year 2020-21 relevant to Financial Year 2019-20.

Rationalization of provisions relating to tax audit

As per section 44AB of the ITA, 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 INR 1 Crore 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, INR 50 lakh in any previous year.

It is proposed to increase the threshold limit for a person carrying on business from INR 1 Crore to INR 5 Crore in cases:

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

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

It is also proposed to shift the filing of tax audit report at least one month prior to the due date of filing of return of income which requires changes in the relevant sections of the ITA.

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

- Providing 31st October of the assessment year (as against 30th September);
- Removing the distinction between a working and a non-working partner of a firm with respect to the due date.

The amendment is effective from Assessment Year 2020-2021 relevant to Financial Year 2019-2020.

As a consequential effect of the above amendment, it is proposed to amend the provisions contained in sections 194A, 194C, 194H, 194I, 194J and 206C.

The amendment will take effect from 1 April 2020.

Removing Dividend Distribution Tax (DDT)

As per section 115-O dividends shall be charged to additional income-tax at the rate of 15 per cent. The dividend referred to in section 115-O is exempt in the hands of shareholders under section 10(34) of the ITA.

Similarly as per section 115R of the ITA, 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 exempt in the hands of unit holders under section 10(35) of the ITA.

It is proposed to tax dividend or income from units in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT. It is also proposed to provide that the deduction for expense under section 57 of the ITA shall be maximum 20 per cent of the dividend or income from units.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

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

To align purpose of MLI with DTAA, section 90 of the ITA is proposed to be amended to include the preamble text of Article 6 of MLI 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 ITA and under the corresponding law in force in that country or specified territory, 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).

Similar amendment is proposed for section 90A with respect to an agreement with a specified association in specified territory.

Amendment is effective from AY 2021-22 relevant to FY 2020-21.

Significant Economic Presence (SEP) Deferred

Applicability of the SEP provisions have been deferred to AY 2022-23 relevant to FY 2021-22 onwards since OECD is expected to finalize the G20 - BEPS 2.0 report by Dec 2020.

Source Rule expanded u/s 9 of ITA

Clarificatory explanation has been inserted to include following income as accruing or arising in India:

(i) Income from advertisements targeting Indian customers or
(ii) income from sale of data collected from India or
(iii) income from sale of goods and services using such data collected from India.

This explanation to take effect from AY 2022-23 for SEP cases and from AY 2021-22 for all other cases.

Aligning exemption for FPIs from indirect transfer provisions

Exemption from indirect transfer provisions granted to Category I/ II Foreign Portfolio Investors (FPIs) registered under the erstwhile SEBI (FPI) 2014 Regulations to be grandfathered. Only Category I FPIs under the SEBI (FPI) 2019 Regulations will be exempted.

Amendment is effective from Assessment Year (AY) 2020-21 relevant to Financial Year (FY) 2019-20.

Rationalizing definition of royalty

Due to exclusion of consideration for the sale, distribution or exhibition of cinematographic films from the definition of royalty, such royalty is not taxable in India even if the DTAA gives India the right to tax such royalty. Such a situation is discriminatory against Indian residents, since

India is foregoing its right to tax royalty in case of a non-resident from another country without that other country offering similar concession to Indian resident. Hence, it is proposed to amend the definition of royalty so as not to exclude consideration for the sale, distribution or exhibition of cinematographic films from its meaning.

Amendment is effective from AY 2021-22 relevant to FY 2020-21.

WIDENING AND DEEPENING OF TAX BASE

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

Section 194-O in the ITA is introduced for TDS at the rate of one per cent on payment by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;

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.

This amendment will take effect from 1st April 2020

Enlarging the scope for tax deduction on interest income under section 194A

Currently, co-operative society referred to section 194A (3) (v) or 194A (3)(viia) of the ITA is not liable to deduct income-tax on payment of interest.

It is proposed that such society shall be liable to deduct income-tax in accordance with the provisions of section 194A (1) of the ITA, if-

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

and

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

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

Widening Scope of TCS to include foreign remittance through Liberalized Remittance Scheme (LRS) on selling overseas tour package and sale of goods

It is proposed to expand the scope of TCS to include sales of overseas tour packages @ 5% and 10%, for non-PAN / Aadhar cases, subject to certain other conditions.

Further, scope of TCS has also been extended to sales of goods on consideration received from a buyer exceeding INR 50 lacs, @ 0.1% and 1% for PAN-Non Aadhar cases, subject to certain conditions.

The amendment shall take effect from 01st April 2020.

REVENUE MOBILIZATION

Rationalization of tax treatment of employer’s contribution to recognize provident funds, superannuation funds and national pension scheme

Currently, the contribution by the employer to the account of an employee in a recognized provident fund exceeding twelve per cent of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding one lakh fifty thousand rupees is treated as perquisite in the hands of the employee. Similarly, the Assessee is allowed a deduction under National Pension Scheme (NPS) for the 14% of the salary contributed by the Central Government and ten percent of the salary contributed by any other employer. However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer.

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

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

PREVENTION OF TAX ABUSE

Rationalization of provisions of section 55 of the ITA to compute cost of acquisition

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

It is proposed to 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.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Amendment in definition of "work" in section 194C of the ITA

Currently, the definition of work excludes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

It is proposed to amend the definition of "work" under section 194C of the ITA 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.

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

INDIRECT TAX PROPOSALS

Customs

- Customs duty reduced on telecom equipments;
- Customs duty rates are being revised on electric vehicles, and parts of mobiles as part of carefully conceived Phased Manufacturing Plan;
- Increase in Custom duty on imported footwear & furniture;
- Pruning and review of Custom duty concessions and exemptions in vogue;

- Remaining Custom duty exemptions would be comprehensively reviewed by September 2020;
- Customs duty on imports of news print and light-weight coated paper reduced from 10% to 5%;
- Custom duty increased on Construction Material, Precious metals, Automobile Parts, Electronic & Electrical Equipments, Iron & Steel and other base metals;
- National Calamity Contingent Duty is being raised on Cigarettes and other tobacco products;
- Anti-dumping duty on PTA (Purified Terepthalic Acid) is being abolished. Earlier the Anti-Dumping duty was imposed on import of PTA from South Korea, Thailand, China, Iran, Indonesia, Malaysia and Taiwan;
- Customs Act is being amended so as to empower the Central Government to prohibit either absolutely or conditionally the import or export of **any goods** to prevent injury to the economy on account of uncontrolled import or export of such goods;
- Section 28 of the Custom Act being clarified that any notice issued under the said Act prior to enactment of Finance Act, 2018, shall continue to be governed by the erstwhile Section 28 as it existed before the said enactment;
- Section 51B being introduced in the Custom Act to provide for the creation of Electronic Duty Credit Ledger in the Customs system;
- A new section 28DA is introduced in the Customs Act so as to provide for administration of **rules of origin** under a trade agreement and to lay down procedure regarding claim of preferential rate of duty on goods imported under a trade agreement entered into between the Government of India and the Government of a foreign country or territory or economic union;
- Section 8B of the Customs Tariff Act is substituted so as to empower the Central Government to apply safeguard measures including tariff rate quota to curb increased quantity of imports of an article to prevent serious injury to domestic;
- Anti-dumping rules are being made more comprehensive and wider in scope to strengthen the anti-circumvention measures;
- Countervailing Duty Rules are being amended to enable investigation into case of circumvention of countervailing duty for imposition of such duty.

Goods & Service Tax (GST)

- Simplified GST returns to be implemented from 01st April, 2020;
- Aadhar based verification of taxpayer is introduced;
- E-invoicing to be introduced in a phased manner starting February 2020;
- Dynamic QR-code is proposed for Consumer invoices;
- Deep data analytics and AI tools are being used for crackdown on GST input tax credit, refund and other frauds;
- Ladakh has been added as Union Territory under CGST Act ;
- A registered person shall not be eligible to opt for Composition Supply if he is engaged in making services which are not leviable to GST or making Inter- State supply of services or supplying services through electronic commerce operator who requires to deduct TDS;
- The Proper officer may on his own motion or on application received can cancel the registration even where the taxpayer has applied for voluntarily registration, which was not allowed earlier;
- The time limit to apply for revocation of cancellation of registration which is provided under Section 30 of the CGST Act may further be extended on sufficient cause being shown and reasons to be recorded in writing for 30 days by Additional or Joint Commissioner. Additionally, the Commissioner may further condone the delay by another 30 days;
- Late fees on delay in issue of TDS certificate has been has been omitted from the CGST Act;
- CGST Act amended to provide that Person availing fraudulent Input Tax Credit shall also be liable Penalty and Punishment as per the provisions of CGST Act;

- Provision for transition of credits unutilized under the erstwhile law is being retrospectively amended with effect from 01st July, 2017 to prescribe the time limit as provided under the rules. This would have a far reaching impact on companies which could not comply with the transition of credit of erstwhile regime within the due dates provided by the CGST Rules;
- Section 172 of the CGST Act being amended to extend the time limit of 3 years to 5 years to allow the Central government to issue removal of difficulty orders, whenever required;
- A retrospective amendment being introduced under the CGST Act to provide for Transfer of business assets or goods held for the purpose of business shall no longer be supply, if made without consideration by or under a direction of person carrying on the business.

Health Cess

- A new levy with a name of Health Cess being introduced as part of Finance Bill 2020, to be imposed on import of medical devices & equipments covered under the heading of 9018 to 9022 at the rate of 5% on the import value of such goods as determined under Section 14 of the Customs Act, 1962;
- Health Cess shall not be imposed on medical devices which are exempt from BCD;
- The proceeds from Health cess shall be used particularly for creating infrastructure for health services;
- Export Promotion scrips cannot be used for payment of Health Cess.

REGULATORY & POLICY REFORMS

- The government proposes to have a new education policy in consultation with State Education Ministries and other stake-holders.
- In order to create better education system, the government proposes to open the education sector for External Commercial Borrowings and FDI.
- Deepening Bond Market.
  - Certain specified categories of Government securities to be opened fully for non - resident investors also.
  - FPI limit in corporate bonds increased to 15% from 9% of its outstanding stock.
- Government proposes to expand Debt-based Exchange Traded Fund (ETF) by floating a new Debt-ETF consisting primarily of government securities to give retail investors access to government securities as much as giving an attractive investment for pension funds and long-term investors.

Amendments in Companies Act-2013 and Allied Laws

- Companies Act- 2013 to be further amended to remove the criminal liability for certain acts that are civil in nature and other laws with such provisions are to be corrected after examination.

Amendments in Contract Act-1872

- In order to have a stable and predictable business environment, the government shall deliberate upon strengthening the existing provisions of the Contract Act-1872.

Reforms in Banking and Non-Banking Financial Sector

- To safeguard the interest of depositor, the Deposit Insurance and Credit Guarantee Corporation (DICGC) has permitted to increase Deposit Insurance Coverage to INR 5 lakh from INR 1 lakh per depositor.
- Co-operative Banks to be strengthen by amending Banking Regulation Act for:
  - Increasing professionalism.
  - Enabling access to capital.
  - Improving governance and oversight for sound banking through the RBI.
- NBFCs eligibility limit under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002 for debt recovery reduced from:
  - INR 500 crore to INR 100 crore asset size.
  - INR 1 crore to INR 50 lakh loan size.
- Government has proposes to sell its balance holding in IDBI Bank to private,

retail and institutional investors through the stock exchange.

- Necessary amendments to be made in Factor Regulation Act 2011 to enable the NBFCs to extend invoice financing to the MSMEs through TReDS, thereby enhancing their economic and financial sustainability.

New Economy

- To take advantage of new technologies:
  - Policy to enable private sector to build Data Centre parks throughout the country to be brought out soon
  - Fiber to the Home (FTTH) connections through Bharatnet to link 100,000 gram panchayats this year.
  - INR 6000 crore proposed for Bharatnet programme in 2020-21.

MSMEs

- To aid the working capital credit issue of the MSMEs, it is proposed to introduce a scheme to provide subordinate debt for entrepreneurs of MSMEs. This subordinate debt to be provided by banks would count as quasi-equity and would be fully guaranteed through the Credit Guarantee Trust for Medium and Small Entrepreneurs (CGTMSE).
- The Debt- restructuring window which was valid till March 31, 2020 to be extended till March 31, 2021.
- To prevent the problem of delayed payments and consequential cash flows mismatches an app-based invoice financing loans product will be launched.

Economic Development

- **Investment Clearance Cell** proposed to be set up to provide "end to end" facilitation and support, including pre-investment advisory, information related to land banks and facilitate clearances at Centre and State level through a portal.
- New scheme **NIRVIK** to be launched to achieve higher export credit disbursement, which provides for:
  - Higher insurance coverage;
  - Reduction in premium for small exporters; and
  - Simplified procedure for claim settlements.
- A National Logistics Policy will be formulated to clarify the roles of the Union Government, State Governments and key regulators and to create a single window e-logistics market and focus on generation of employment, skills and making MSMEs competitive.

Disinvestment

Government to sell a part of its holding in LIC by way of Initial Public Offer (IPO).

Other Measures

- A scheme focused on encouraging manufacture of mobile phones, electronic equipment and semi-conductor packaging to be launched.

- A National Technical Textiles Mission is proposed with a four-year implementation period from 2020-21 to 2023-24 at an estimated outlay of INR 1480 crore

- Delhi-Mumbai Expressway and two other packages would be completed by 2023.

- A policy to enable private sector to build Data Centre parks throughout the country to be introduced

- Knowledge Translation Clusters would be set up across different technology sectors including new and emerging areas

- Proposed to provide an outlay of INR 8000 crore over a period five years for the National Mission on Quantum Technologies and Applications

Key Measures:

- 550 wi-fi facilities have been commissioned at railway successfully;
- Successful elimination unmanned level crossings;
- Aim to achieve electrification of 27,000 kilometers of tracks.
- Government aims for INR 100 lakh crore investments in infrastructure which includes modern railway stations, airports, housing for all, irrigation projects etc.
- Indian Railway's move of shifting from manual inspection to machine-assisted automatic identification of defects will help in providing safe, efficient as well as economical services.

Cost Optimization through:

- Large solar power capacity to be set up alongside the rail tracks, on the land owned by the railways;
- Four station re-development projects and operation of 150 passenger trains would be done through Public-private partnership (PPP) mode. The process of inviting private participation is underway;
- More Tejas type trains will connect iconic tourist destinations;
- High speed train between Mumbai to Ahmedabad would be actively pursued;
- 148 km long Bengaluru Suburban transport project at a cost of INR 18,600 crores, would have fares on metro model;
- The Indian Railways will set up a Kisan Rail through PPP model. The freight trains will help farmers transport their perishable products easily.

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Tax Proposals 2020: Detailed Direct Taxes

Personal and Corporate Tax

Individual Income Tax Rates

Income tax rates are proposed to be reduced for the individual taxpayers who will forgo certain deductions and exemptions

The amendment shall be effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Proposed effective tax rates for Individuals

Taxable income level (in INR)	Existing Tax Regime	New Tax Regime*	Decrease in tax rates
Up to 2.5 lakhs	NIL	NIL	No change
Above 2.5 lakhs up to 5 lakhs	5.20%	5.20%	No change
Above 5 lakhs up to 7.5 lakhs	20.80%	10.40%	10.40%
Above 7.5 lakhs up to 10 lakhs	20.80%	15.60%	5.20%
Above 10 lakhs up to 12.5 lakhs	31.20%	20.80%	10.40%
Above 12.5 lakhs up to 15 lakhs	31.20%	26.00%	5.20%
Above 15 lakhs up to 50 lakhs	31.20%	31.20%	No change
Above 50 lakhs up to 1 crore	34.32%	34.32%	No change
Above 1 crore up to 2 crore	35.88%	35.88%	No change
Above 2 crore up to 5 crore	39%	39%	No change
Above 5 crore	42.74%	42.74%	No change

**The person opting for new tax regime shall not be entitled to following prominent deductions such as Leave Travel Concession (LTC), House Rent Allowance (HRA), Standard Deduction u/s 16 and Interest u/s 24 etc.*

The new tax regime shall be optional for the taxpayers. An individual who is currently availing more deductions & exemption under the ITA may choose to avail them and continue to pay tax in the old regime.

Impact of proposed tax rates for Individuals

S. No.	Particulars	Existing Tax Regime	New Tax Regime
Case 1: Without impact of Chapter VI-A deduction			
1	Total Income	15,00,000	15,00,000
2	Income Tax	2,73,000	1,95,000
3	Tax Saved in new tax regime		78,000
Case 2: Considering impact of Chapter VI-A deduction			
1	Total Income	15,00,000	15,00,000
2	Deduction under Chapter VI-A	1,50,000	-
3	Taxable Income	13,50,000	15,00,000
4	Income Tax	2,26,200	1,95,000
5	Tax Saved in new tax regime		31,200

Reduction of Corporate Tax Rates

It has been proposed to extend the beneficial corporate tax rate of 25% to all companies whose turnover in FY 2018-19 does not exceed INR 400 crores. Earlier, the exemption was available only to companies whose turnover in FY 2017-18 did not exceed INR 400 crores.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Tax on Co-operatives societies reduced to 22% from existing rate of 30%

It is proposed that on satisfaction of certain conditions, a co-operative society resident in India shall have the option to pay tax at 22 percent for Assessment year 2021-22 onwards in respect of its total income so however that if it fails to satisfy the conditions in any previous year, the option shall become invalid and other provisions of the ITA shall apply.

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

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

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Additional deduction allowable in concessional tax schemes for domestic companies

Presently, section 115BAA and section 115BAB provides domestic companies an option to be taxed at concessional tax rates by prohibiting deductions under Chapter VI-A under the heading “C. Deduction in respect of certain incomes” other than the provisions of section 80JJAA.

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

The amendment is effective from Assessment Year 2020-2021 relevant to Financial Year 2019-2020.

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

The existing provisions of section 80EEA of the ITA provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. The deduction allowed is up to INR 1,50,000 and is subject to certain conditions.

One of the conditions is that loan has been sanctioned by the financial institution during the period from 1st April, 2019 to 31st March, 2020.

It is proposed to be extended to 31st March, 2021.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Incentives for start-ups

As per section 80-IAC of the ITA, deduction of an amount equal to one hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of seven years is allowed, at the option of the assessee, subject to the condition that the eligible start-up is incorporated on or after1st April, 2016 but before 1st April, 2021 and the total turnover of its business does not exceed twenty-five crore rupees.

It is proposed to amend section 80-IACof the ITA so as to provide that:

(i) the deduction under section 80-IAC shall be available to an eligible start-up for a period of three consecutive assessment years out of ten years beginning from the year in which it is incorporated;

(ii) the deduction under the said section shall be available to an eligible start-up, if the total turnover of its business does not exceed one hundred crore rupees in any of the previous years beginning from the year in which it is incorporated.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Incentives for building affordable housing

As per section 80-IBA of the ITA, The conditions contained in the section, prescribe that the project is approved by the competent authority during the period from 1st June, 2016 to 31st March, 2020.

It is proposed to extend the period of approval of the project by the competent authority up to 31st March, 2021.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

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

Currently, ESOPs are taxed as perquisites under section 17(2) (vi) of the ITA.

It is proposed that 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 section 17(2) (vi) of the ITA, in any previous year, deduct or pay, as the case may be, tax on such income within fourteen days:

(i) after the expiry of forty eight months from the end of the relevant assessment year; or

(ii) from the date of the sale of such specified security or sweat equity share by the Assessee; or

(iii) from the date of which the Assessee ceases to be the employee of the person; whichever is the earliest on the basis of rates in force of the financial year in which the said specified security or sweat equity share is allotted or transferred .

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

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

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

Section 35AD of the Act, relating to deduction in respect of expenditure on specified business, provides for 100 per cent. As per section 35AD(1) of the ITA, the said deduction of 100 per cent. of the capital expenditure is allowable during the previous year in which such expenditure has been incurred. Further, section 35(4) of the ITA provides that no deduction is allowable under any other section in respect to the expenditure referred to in section 35AD(1) of the ITA. Currently, an assessee does not have any option of not availing the incentive.

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

The amendment is effective from Assessment Year 2020-2021 relevant to Financial Year 2019-2020.

Increase in safe harbour limit under section 43CA, 50C and 56 of the ITA

Presently, safe harbor limit is 5% under section 43CA, 50C, 56 of the ITA.

It is proposed to increase the safe harbor limit to 10% under section 43CA, 50C, 56 of the ITA.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021

Modification of the definition of "business trust"

It is proposed to amend section 2(13A) of the ITA 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 recognized stock exchange.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021

Change in TDS rate in respect of fees for technical services (other than professional services)

Section 194J of the ITA provides that any person, not being an individual or a HUF, paying fees for professional services, or fees for technical services, or any remuneration or fees or commission (other than salary to a director), or royalty or any sum referred to in section 28(va) of ITA,to a resident shall deduct an amount equal to ten per cent as income-tax.

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

It is proposed to reduce TDS rate in section 194J of the ITA in case of fees for technical services (other than professional services) to two per cent from existing ten per cent.

The amendment will take effect from 1 April 2020.

Modification of residency provisions

Section 6 of the ITA provide for situations in which an individual shall be resident in India in a previous year. The individual shall be Indian resident in a year, if he,-

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

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

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.

It is proposed that-

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

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

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

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

The Central Board of Direct Taxes (CBDT) has released press release on 2 February 2020 to clarify that the new provision is not intended to include in tax net those Indian Citizens who are bonafide workers in other countries. It is also clarified that in case of an Indian Citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession.

Provision for e-penalty

Section 274 of the ITA provides for the procedure for imposing penalty. The taxpayer is required to visit the office of the Assessing Officer in response to the notice issued by the Assessing Officer (AO). In order to eliminate human interface, it is imperative that an e-penalty scheme be launched on the lines of E-assessment Scheme-2019.

The amendment will take effect from 1 April 2020.

Provision for e-appeal

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.

It is proposed to provide for the following:

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

• Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.

• Optimizing utilization of the resources through economies of scale and functional specialization.

• Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

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

Clarity on stay of demand by the Income Tax Appellate Tribunal

The ITAT as per the provisions of section 254 of the ITA has the power to grant stay for a period of 180 days based on merits of the application made. It is proposed that in order for the ITAT to grant stay a payment of 20% of the disputed amount of tax, interest, fee, penalty, or any other sum payable under the provisions of the ITA or on furnishing of security of same amount shall be provided by the assessee.

The above provision of deposit of 20% of disputed amount or furnishing of security shall be equally applicable to the assessee in respect of the extension of stay by the ITAT beyond 180 days due to pendency of appeal subject to a maximum combined period of 365 days.

It is also proposed that the Tribunal shall dispose the appeal within the period of stay/ extended period of stay.

The proposed amendment will be effective from 1 April 2020.

Rationalization of the provisions of section 49 and clause (42A) of section 2 of the ITA in respect of segregated portfolios

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

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

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

The amendment is effective from Assessment Year 2020-21 relevant to Financial Year 2019-20.

Rationalization of provisions relating to tax audit

As per section 44AB of the ITA, 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 INR 1 Crore 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, INR 50 lakh in any previous year.

It is proposed to increase the threshold limit for a person carrying on business from INR 1 Crore to INR 5 Crore in cases:

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

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

It is also proposed to shift the filing of tax audit report at least one month prior to the due date of filing of return of income which requires changes in the relevant sections of the ITA.

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

- Providing 31st October of the assessment year (as against 30th September);
- Removing the distinction between a working and a non-working partner of a firm with respect to the due date.

The amendment is effective from Assessment Year 2020-2021 relevant to Financial Year 2019-2020.

It is proposed to amend the provisions contained in sections 194A, 194C, 194H, 194I, 194J and 206C.

The amendment will take effect from 1 April 2020.

Removing Dividend Distribution Tax (DDT)

As per section 115-O dividends shall be charged to additional income-tax at the rate of 15 per cent. The dividend referred to in section 115-O is exempt in the hands of shareholders under section 10(34) of the ITA.

Similarly as per section 115R of the ITA, 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 exempt in the hands of unit holders under section 10(35) of the ITA.

It is proposed to tax dividend or income from units in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT. It is also proposed to provide that the deduction for expense under section 57 of the ITA shall be maximum 20 per cent of the dividend or income from units.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

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

It is proposed to amend section 140 of the ITA so as to enable any other prescribed person to verify the return of income in the cases of a company and a limited liability partnership.

It is also proposed to amend section 288 of the ITA to enable any other prescribed person to appear as an authorized representative to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee.

The amendment will take effect from 1 April 2020.

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

At present, there is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum. It is proposed 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 assesse, which may be similar to the provisions relating to the tax collection / deduction at source. The entities receiving donation / sum may be made to furnish a statement and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed accordingly. The fee and penalty may be provided in cases where there is failure to furnish the statement.

It is proposed to amend following relevant provisions of the ITA:

(i) similar to exemptions under section 10(23C)(1) exemption under section 10(46) 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 section 10(46) from the date on which the registration becomes operative.

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

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

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

(v) application for approval under section 80G shall be made to Principal Commissioner or Commissioner.

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

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

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

(ix) similar to section 80G of the ITA, deduction of cash donation under section 80GGA shall be restricted to INR 2,000/- only.

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

Rationalization of provision relating to Form 26AS

It is proposed to make arrangement of in the Form 26AS to capture multiple information in respect of a person such as sale / purchase of immovable property, share transactions etc. This information will be provided to the assessee by uploading the same in the registered account of the assessee on the designated portal of the Income-tax Department, so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability.

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

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

Section 194-O in the ITA is introduced for TDS at the rate of one per cent on payment by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;

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.

This amendment will take effect from 1st April 2020

Enlarging the scope for tax deduction on interest income under section 194A

Currently, co-operative society referred to section 194A(3)(v) or 194A(3)(viia) of the ITA is not liable to deduct income-tax on payment of interest.

It is proposed that such society shall be liable to deduct income-tax in accordance

with the provisions of section 194A (1) of the ITA, if-

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

and

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

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

Widening scope of TCS provisions on foreign remittance through Liberalized Remittance Scheme (LRS) and on sales of overseas tour package as well as on sale of goods

The provisions of Tax Collected at source have been deepened and widened to cover the following transactions:

a) In case of receipts by an authorized dealer for remittance out of India under LRS of RBI of an aggregate amount exceeding INR 7.5 lacs in a financial year from a buyer being a person remitting such amount out of India, TCS shall be collected by such authorized dealer @ 5% *(10% for non-PAN / Aadhar cases)*

b) Seller of an 'overseas tour program package' would be required to collect TCS @ 5% *(10% for non-PAN / Aadhar cases)* on the amount received from any buyer purchasing such package, subject to the following conditions:

- The above provision shall not be applicable where buyer is liable or has deducted TDS under any provision of ITA;
- No TCS shall be collected where the buyer is Central Government, a State Government , an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority or any other person notified by the Central Government in the Official Gazette for this purpose.

c) It is also further proposed to levy TCS on sale of goods at the rate of 0.1% *(1% for non-PAN / Aadhar cases),* subject to the following conditions:

- Consideration received from the buyer in excess of INR 50 lacs in a Financial Year;

- Total sales, gross receipts or turnover of seller from the business carried on by it exceeds INR 10 crores during the immediately preceding the Financial Year;

- No TCS shall be collected where the buyer is Central Government, a State Government , an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority or any other person notified by the Central Government in the Official Gazette for this purpose;

- No TCS shall be collected where the buyer is liable to deduct TDS or seller is liable to collect TCS any other provision of ITA.

The above amendments are effective from 01st April 2020.

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

Currently, the contribution by the employer to the account of an employee in a recognized provident fund exceeding twelve per cent of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding one lakh fifty thousand rupees is treated as perquisite in the hands of the employee. Similarly, the Assessee is allowed a deduction under National Pension Scheme (NPS) for the 14% of the salary contributed by the Central Government and ten percent of the salary contributed by any other employer. However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer.

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

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Rationalization of provisions of section 55 of the ITA to compute cost of acquisition

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

It is proposed to 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.

The amendment is effective from Assessment Year 2021-2022 relevant to Financial Year 2020-2021.

Amendment in definition of "work" in section 194C of the ITA

Currently, the definition of work excludes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

It is proposed to amend the definition of "work" under section 194C of the ITA 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.

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

Vivad se Vishwas Scheme - Direct Tax Amnesty Scheme

A direct amnesty scheme has been proposed for settling direct tax litigations. Under the proposed "Vivad se Vishwas Scheme", taxpayers would be required to pay the amount of the disputed taxes only and will get complete waiver of interest and penalty where payment of disputed taxes is made by 31 March 2020. In case where the dispute relates to penalty, or interest or fee not connected with the disputed tax, taxpayers would be required to pay 25% of the same by 31 March 2020 for settlement of the dispute. Further, in case payment is made after 31 March 2020, taxpayer will be required to pay 110% of the disputed tax (the excess 10% shall be limited to the amount of related penalty and interest, if any) and 30% in case of penalty, interest and fee.

The scheme will remain open till 30 June 2020. No proposal has been introduced in the Finance Bill 2020 in this regard.

INTERNATIONAL TAX & TRANSFER PRICING

Modification of conditions for offshore funds' exemption from 'business connection'

Investment funds registered or incorporated outside India that collect funds from its members for the purposes of investment where eligible fund managers situated in India carry out fund management activity on behalf of the fund, do not constitute 'business connection' in India under section 9A of the ITA subject to fulfilment of certain conditions.

One of the conditions for eligibility of the fund provided under clause (c) of said sub-section (3) of Section9A of the ITA requires that the aggregate participation or investment in the fund, directly or indirectly, by persons' resident in India does not exceed 5% of the corpus of the fund. This condition is very stringent especially in the initial years of the fund as it locks up investment of the fund manager to create fund reputation in order to attract investment.

Another condition as laid down in clause (j) of said sub-section (3) where the fund has been established or incorporated in the previous year in which case, the corpus of fund shall not be less than INR 100 crores at the end of a period of 6 months from the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later.

The Budget 2020 proposes to relax the aforementioned conditions as under:

a) 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;

b) 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.

   The above amendments are effective from 01st April 2020 and accordingly apply to AY 2020-21.

Deferment of provisions of Significant Economic Presence (SEP) proposal

In determining Significant Economic presence of a non-resident, the following factors are determinant:

a) Threshold limit for the aggregate amount of payments arising from the specified transactions;

b) The number of users need to be taken into consideration.

As the discussion is still on going in G-20-OECD BEPS Project, the aforesaid limits have not yet been notified.

Accordingly, it is proposed to defer the aforesaid provision of SEP to be effective from 01st April 2022 and will accordingly apply in relation to AY 2022-23 and subsequent years.

Amendment of Source Rule and Widening Scope of Income attributable to Indian Operations

It is proposed to expand the scope of attribution of income to operations in India by way of insertion of new Explanation to Section 9(1) (i) of the ITA to provide that the income attributable to the operations carried out in India shall include the following:

- Income from advertisement which targets a customer who resides in India or who uses an IP address located in India;
- Income from sale of data collected from a person who resides in India or who uses an IP address located in India;
- sale of goods or services using data collected from a person who resides in India or who uses an IP address located in India.

The above provisions shall also be applicable to income attributable to transactions carried out through SEP, effective from AY 2022-23.

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

Amendment to ‘Indirect’ Transfer provisions pursuant to SEBI (Foreign Portfolio Investors) Notification, 2019

In terms of existing provisions contained in Explanation 5 to section 9(1) (i) of the ITA, provision of ‘indirect’ transfers do not apply to an asset or capital asset situated in India, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 [SEBI (FPI) Regulations, 2014].

Vide Gazette Notification No. SEBI/LAD-NRO/GN/2019/36, SEBI has notified Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [SEBI (FPI)

Regulations, 2019] and repealed the SEBI (FPI) Regulations, 2014.

Accordingly, the aforesaid provisions of explanation 5 to Section 9 have been amended to restrict the exemption to investments in a category-I FPI under the 2019 SEBI FPI Regulations. Further, investment by non-residents in category-I and category-II of erstwhile 2014 SEBI FPI Regulations are proposed to be grandfathered.

The above proposals are effective from 01st April 2020 and accordingly apply in relation to AY 2020-21 onwards.

Widening of definition of 'royalty'

The current definition of 'royalty' as per clause (v) of Explanation-2 to section 9(1)(vi) of the ITA excludes consideration for sale, distribution and exhibition of cinematographic films from its purview.

It is proposed to amend the definition so as to remove such exclusion i.e. to amend the definition of royalty such that the consideration for sale, distribution and exhibition of cinematographic films is not excluded from the definition of royalty under the ITA.

This amendment shall be effective from 1 April 2021 and will accordingly apply in relation to AY 2021–22 onwards.

Power of the CBDT to make rules in respect of business connection of Non-Residents in India

It is proposed to amend section 295 of the ITA to empower the Board to make rules that provide for the manner and procedure through which income shall be arrived at in the case of:

i) Operations carried out in India by a non-resident and

ii) Transaction or activities of a non-resident

The amendment at clause (i) shall be effective from AY 2021-22 and subsequent years and amendment at clause (ii) shall be effective from AY 2022-23 and subsequent years.

Aligning purpose of DTAAs with Multilateral Instrument (MLI)

India has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS MLI) along many other countries, which has since been ratified. India has since deposited the Instrument of Ratification to OECD 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 Oct, 2019 and its provisions will be applicable on India's DTAAs from FY 2020-21 onwards.

To align purpose of MLI with DTAA, section 90 of the ITA is proposed to be amended to include the preamble text of Article 6 of MLI 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 ITA and under the corresponding law in force in that country or specified territory, 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).

Similar amendment is proposed for section 90A with respect to an agreement with a specified association in specified territory.

Amendment is effective from AY 2021-22 relevant to FY 2020-21.

Non-Resident exempted from filing return in certain cases

Section 115(5) of ITA provides that a non-resident (NR) is not required to furnish its return of income, if its total income consists only of certain dividend or interest income u/s 115(1) and TDS on such income has been deducted.

While, the current section 115A of ITA provide relief to NRs from filing of return where the NR is not liable to pay tax other than TDS which has been deducted on the dividend or interest income u/s 115(1), the same relief has not been extended to NRs whose total income consists only of the income by way of royalty or fee for technical services (FTS).

It is proposed to extend this benefit to royalty and FTS income and accordingly amend section 115A as well to provide that a non-resident, shall not be required to file return of income if, -
(i) his or its total income consists of only dividend or interest income or royalty or FTS income u/s 115(1), and
(ii) the TDS on such income has been deducted at rates not lower than the prescribed rates u/s 115A(1).

Amendment is effective from AY 2020-21 relevant to FY 2019-20.

Amendment of Section 194LC with respect to TDS on interest payments on foreign currency borrowings

Section 194LC of ITA provides for a concessional rate of TDS of 5% by a specified company or a business trust, on interest paid to non-residents on certain prescribed borrowings (approved by the Central Government) made in foreign currency in from sources outside India.

The following changes in this respect are proposed to be made by Union Budget 2020:

i) extend the period of concessional rate of TDS of 5% u/s 194LC to 1st July, 2023 from 1st July, 2020;

ii) provide that rate of TDS shall be 4% on the interest payable to a Non-resident, in respect of monies borrowed in foreign currency from a source outside India, by way of issue of any long term bond or Rupee Denominated Bonds (RDB) on or after 1st April, 2020 but before 1st July, 2023 & which is listed only on a recognized stock exchange located in any IFSC.

The amendment is effective from 1st April, 2020.

Amendment of Section 194LD with respect to TDS on interest payments to FIIs and QIBs

Section 194LD of ITA provides for lower TDS of 5% in case of interest payments to Foreign Institutional Investors (FII) and Qualified Foreign Investors (QFIs) on their investment in Government securities and RDB of an Indian company subject certain prescribed conditions.

The following changes in this respect are proposed to be made by Union Budget 2020:

(i) extend the period of rate of TDS of 5% u/s 194LC to 1st July, 2023 from 1st July, 2020;
(ii) provide that the concessional rate of 5% shall also apply on the interest payable, on or after 1st April, 2020 but before 1st July, 2023, to a FII or QFI in respect of the investment made in municipal debt security.

Effective from 1st April, 2020.

Option of DRP route now to non-residents other than companies as well

The words “in the income or loss returned” in section 144C(1) are proposed to be omitted and the definition of eligible assesse u/s 144C(15) is proposed to be amended to include “a non-resident other than company” also.

Thus, AO passing any prejudicial order against a foreign company or a non-resident (other than company) has to follow the procedure laid down u/s 144C and such foreign company or non-resident (other than company) shall have choice to dispute such order before DRP. This means DRP route is now available to non-residents other than company also.

Existing provision defines eligible assessee to be foreign companies and any person in whose case TP adjustment has been made.

Moreover, the non-residents can also take the DRP route for any order (Penalty, TDS order etc.) apart from order of assessment proposing variation in income or loss.

Effective from 1st April, 2020. Thus, if the AO proposes to make any variation after this date, which is prejudicial to the interest of the eligible assessee, this provision shall apply.

Interest paid/ payable to PE of a non-resident Bank excluded from ambit of section 94B

Section 94B of ITA provides that deductible interest or similar expenses exceeding INR 1 crore rupees of an Indian company, or A PE of a foreign company, paid to the associated enterprises (AE) shall be restricted to 30% of its EBITDA or interest paid/ payable to AE, whichever is less.

Thus, the interest paid/ payable in respect of loan from the branch of a foreign bank may attract provisions of interest limitation provided for under this section, as the said non-resident branch is deemed to be an AE of the borrowing entity.

It is proposed to amend section 94B to provide that interest limitation would not apply to interest paid in respect of a debt issued by a lender which is a PE of a Non-Resident Bank.

Amendment is effective from Assessment Year (AY) 2021-22 relevant to Financial Year (FY) 2020-21.

Safe harbor and APA to apply to attribution of profits to PE as well

Section 92CB of ITA empowers CBDT to make safe harbour rules (SHR) for determination of arm's length price (ALP). “Safe Harbour” means circumstances in which the Income-tax Authority shall accept the transfer price declared by the assessee. Purpose of SHR is to provide certainity, reduce the number of TP audits & prolonged disputes especially in case of relatively smaller assessees.

Further, section 92CC of ITA empowers CBDT to enter into an advance pricing agreement (APA) with any person, determining ALP or specifying the manner in which ALP is to be determined for an international transaction to be entered into by that person. APA provides tax certainty in determination of ALP for 5 future years as well as for 4 earlier years (Rollback)

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

The attribution of profits to PE of a non-resident also results in avoidable disputes and accordingly to provide certainty, such cases are also required to be clearly covered under SHR and APA. Thus, Section 92CB & 92CC are proposed to be amended to cover even the determination of attribution of profits to a PE within scope of SHR and APA.

SHR Amendment is effective from AY 2020-21 relevant to FY 2019-20. APA amendment to take effect for APAs entered into on/after 1st April, 2020.

Preponement of due date for filing Accountant’s Report in Form 3CEB

Section 92F of the Act provides that the due date for filing Accountants’ Report in Form 3CEB would be the same due date for filing the ROI.

It is proposed to amend the due date of filing Form 3CEB one month prior to the due date of filing of return of income. Hence, accordingly, the due date of filing Transfer Pricing report in Form 3CEB shall be 31st October of the assessment year.

The said amendment shall take effect from 01st April 2020 and will accordingly apply in relation to AY 2020-21.

TAX PROPOSALS 2020: DETAILED INDIRECT TAXES

CUSTOMS

- **Custom Duty**: Basic Custom Duty ('BCD') maintained at 10 percent.

  <u>Exemption and Change in Rate of Custom Duties</u>

Increase in effective duty:

- Exemptions withdrawn/ rates revised for parts and components of products, including for mobile phones, refrigerators, air conditioners, printers etc.
- Electric motor vehicles to attract higher duties for CBU, SKD and CKD w.e.f 01 st April 2020.
- Imposition of 5% BCD on naphtha for generation of electrical energy by generating company; and higher duties on specified goods used for power transmission projects.
- BCD imposed on specified goods for construction of roads.
- BCD increased on dairy products
- Imported toys, dolls to attract 60% BCD
- Furniture from 20% to 25%

Reduction in BCD

- Calcined petroleum coke from 10% to 7.5%
- Newsprint and specified paper used for printing of newspaper and magazine
- Specified part of microphones
- Bunker fuel from 10% to NIL

Applicability of changes in Custom Duty rate:

All changes proposed in the Custom Duty rate to be effective from 02nd February, 2020.

Increase in Custom Duty:

In order to promote Make in India, Basic custom Duty is being increased on following items:

Commodities	Rate of Duty	
	From	To
Household goods & appliances		
Tableware, kitchenware, water filters (of a capacity not exceeding 40 litres) and other household articles, of porcelain or china	10%	20%
Ceramic table-ware, kitchen-ware, clay articles and other household articles	10%	20%
Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)	10%	20%
Table kitchen or other household articles and parts thereof, of iron or steel, iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel, including pressure cookers pans utensils, miscarticles such as iron & steel wool, polishing pads, gloves etc	10%	20%
Padlocks and locks (key, combination or electrically operated) of base metal; clasps and frames with clasps, incorporating locksof base metals; keys for any of the foregoing articles, of	10%	20%

base metals (other than lock of a kind used for automobiles.)		
Table Fans, Ceiling Fans, Pedestal Fans, Blowers, Portable	10%	20%
Food Grinders, Hair-removing appliances, Water heaters and immersion heaters, Coffee and Tea Makers, Toasters, Other Appliances, Storage heating radiators, Electrical or electronic devices for repelling insects, Electric smoothing irons	10%	20%
Electronic Sector		
Static Converters	15%	20%
Dip bridge rectifier	10%	20%
Populated, loaded or stuffed printed circuit boards	10%	20%
Parts of mobile phones		
PCBA of Cellular mobile phones	10%	20%
Vibrator/Ringer of Cellular mobile phones	Nil	10%
Display Panel and Touch Assembly of Cellular mobile phones	Nil	10%
Automobile and automobile parts		
Catalytic Convertors	10%	15%
Noble metal solutions and noble metal compounds used in manufacture of catalytic converter and their parts	5%	10%

Parts of catalytic converter for manufacture of catalytic converters	5%	7.5%
Completely Built Units (CBUs) of commercial vehicles (other than electric vehicles) (applicable with effect from 01 April, 2020)	30%	40%
Completely Built Units (CBUs) of commercial electric vehicles (applicable with effect from 01 April, 2020)	25%	40%
Electric Vehicles		
Completely Built Units (CBUs) of commercial vehicles (other than electric vehicles)	30%	40%
Completely Built Units (CBUs) of commercial electric vehicles	25%	40%
Semi Knocked Down (SKD) forms of electric passenger vehicles	15%	30%
Semi Knocked Down (SKD) forms of electric vehicles-Bus, Trucks and Two wheelers	15%	25%
Completely Knocked Down (CKD) forms of electric vehicles - Passenger vehicles, Three wheelers, Two wheelers, Bus and Trucks	10%	15%
Labour Intensive Sector		
Footwear	25%	35%
Parts of footwear	15%	20%
Other Furniture and parts	20%	25%

- **Reduction in Custom Duty:** In order to promote domestic industry, Custom Duty has been proposed to be reduced on certain raw materials and capital goods which are as follows:

Commodity	Rate of Duty	
	From	To
Newsprint Sector		
Newsprint, if the importer, at the time of import is an establishment registered with the Registrar of Newspapers, India (RNI)	10%	5%
Uncoated paper used for printing newspaper , if the importer, at the time of import is an establishment registered with the Registrar of Newspapers, India (RNI)	10%	5%
Lightweight coated used for printing magazines, subject to end-use conditions	10%	5%
Electronic sector		
Specified parts used in the manufacture of microphone	10%	Nil
Micro-fuse base, sub-miniature fuse base, Micro-fuse Cover and sub-miniature fuse cover for use in manufacture of micro fuse and sub-miniature fuse	7.5%	Nil
Other sectors		
Polyester Liquid Crystal Polymers (LCP) for use in manufacture of connectors	7.5%	Nil
Calendared plastic sheets for use in manufacturing of smart cards	10%	5%

Key Legislative Changes in Customs Act, 1962

Prohibition of import or export of goods in specified cases

Section 11 of Customs Act has been amended to enable the Central Government to prohibit either absolutely or conditionally the import or export of any goods to prevent injury to the economy on account of uncontrolled import or export of such goods; Earlier, this prohibition was limited to the import of gold and silver.

Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

An explanation in section 28 has been substituted to clarify that any notice issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to enactment of Finance Act, 2018, shall continue to be governed by Section 28, as it existed before the said enactment, notwithstanding order of the Appellate Tribunal, Court or any other provisions of Custom Act or rules made thereunder;

Introduction of electronic duty credit ledger under customs

Section 51B is newly inserted to implement the facility of electronic duty credit ledger in the custom system in lieu of duty remission to be given in respect of exports. The provisions for recovery of duties provided under section 28AAA of the Custom Act are also being expanded to include such electronic credit of duties;

Procedure regarding claim of preferential rate of Duty

A new Chapter VAA and a new Section 28DA has been inserted in the Customs Act to tighten the regime of preferential origin of imported goods. It seeks to impose certain obligations on importer and time bound verification from exporting country. Pending verification, preferential tariff treatment shall be suspended and goods shall be cleared only on furnishing security equal to differential duty;

New clause (q) under section 111 is inserted to allow confiscation of goods which are improperly imported on a claim of preferential rate of duty contravening the provisions of Section 28DA or any rule made thereunder;

Anti-dumping Duty

Anti-circumvention measures are made more comprehensive and wider in scope by amending rules governing identification, assessment, and collection of following:

- Anti-dumping duty for dumped articles
- Countervailing duty on subsidized articles

Social welfare surcharge

It is proposed to exempt certain products from the levy of customs duty and on certain products exemption of social welfare surcharge, which was available earlier on certain products, has been withdrawn. The illustrative list of goods is as follows:

Illustrative list of goods	**Impact**
All commercial vehicles (including electric vehicles),* if imported or completely built unit, cheese, bulbs or tubers, other live plants, walnuts in shell, walnuts shelled, maize, orange juice, etc.	Exempted
Specified goods falling under Chapters 84, 85 and 90 (word processing machines, calculating machines, accounting machines, personal computers, MP3 players, audio compact disc player, etc.)	Exemption withdrawn

Anti- dumping duty on PTA

Revoked the anti-dumping duty imposed on 'Purified Terephthalic Acid' including its variants 'Medium Quality Terephthalic Acid' and 'Qualified Terephthalic Acid' exported from China, Iran, Indonesia, Malaysia, Taiwan, Korea and Thailand;

Changes in Customs Tariff Act, 1975

Safeguard Measure

The Government has been empowered to apply safeguard measures if any article is imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to domestic industry. The safeguard measure shall include the imposition of safeguard duty or application of a tariff rate quota or any other measure considered appropriate.

Imposition of health cess on import of medical devices into India

5% health cess to be imposed on the imports of medical devices, to support health infrastructure.

Tariff heading on which health cess is applicable	**Description of goods as per tariff**	**Rate of health cess imposed**
All	Instruments and	5%

goods under chapter heading 9018 of the First Schedule to the Customs Tariff Act, 1975	appliances used in medical, surgical, dental or veterinary sciences, including scientigraphicapparatus, other electromedical apparatus and sight-testing instruments	
All goods under chapter heading 9019 of the First Schedule to the Customs Tariff Act, 1975	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus	5%
All goods under chapter heading 9020 of the First Schedule to the Customs Tariff Act, 1975	Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filter	5%
All goods under chapter heading 9021 of the First Schedule to the Customs Tariff Act, 1975	Orthopaedic appliances, including crutches, surgical belts And trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances that are worn or carried, or implanted in the body, to compensate for a defect or disability	5%
All goods falling under headings 9022 of the First Schedule to the Customs Tariff Act, 1975	Apparatus based on the use of x-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or Veterinary uses, including radiography or radiotherapy apparatus, x-ray tubes and other x-ray generators, high tension generators, control panelsand desks, screens, examination or treatment tables, chairs and the like	5%

Notes:

- The health cess levied as a duty of customs, will be applicable with immediate effect, and will be levied at the value computed in accordance with the provisions of section 14 of the Customs Act, 1962.
- Export Promotion Scrips shall not be used for payment of said cess.
- Health cess will not be imposed on the following:
  Medical devices that are exempt from BCD;
  Inputs/ parts used in the manufacture of medical devices;

  All goods falling under heading 9022, other than those for medical, surgical, dental or veterinary uses.

CENTRAL EXCISE

Excise duty rates on cigarettes and other tobacco products (excluding bidis) have been increased.

Commodity	Rate of Duty (INR) per thousand	
	From	**To**
Other than filter cigarettes of length: • Not exceeding 65mm • Exceeding 65 mm but not exceeding 70mm	90 145	200 250
Filter cigarettes of length: • Not exceeding 70 mm • Exceeding 70 mm but not exceeding 75mm • Other	90 145 235	440 545 735
Cigarettes of tobacco substitutes	150	600
Commodity	**Rate (%)**	
	From	**To**
Hookah or gudaku tobacco	10	25
Smoking mixtures for pipes and cigarettes	45	60
Other manufactured tobacco products, such as chewing tobacco, Jarda scented tobacco, snuff, tobacco extracts, essence etc	10	25

GOODS & SERVICE TAX (GST)

- The definition of UT has been amended to give effect to the merger of Dadra and Nagar Haveli and Daman and Diu into a single Union Territory & Recognition of Ladakh as a separate Union Territory under CGST Act [Section 2(114)(c) & (d)];

- Section 10(2) of the CGST Act is being amended so as to a registered person shall not be eligible to opt for Composition Scheme if-
  a) he is engaged in making any supply of services which are not leviable to tax under this Act;
  b) he is engaged in making any Inter-State outward supply of services;
  c) he is engaged in making any supply of services through an electronic commerce operator who is required to collect at source under section 52 of CGST Act;

- Sec 16(4) of the CGST Act being amended to provide the last date for availing input tax credit in respect of debit note/s which is to be counted from the date of issuance of such debit note/s rather than from the date of issuance of the invoice relating to such debit note/s;

- The Proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration where;

  The taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25.

- The time limit to apply for revocation of cancellation of registration which is provided under Section 30 of the CGST Act may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended-

a) By the Additional or Joint Commissioner, as the case may be, for a period not exceeding thirty days;
b) By the Commissioner for a further period not exceeding thirty days, beyond the period specified in clause (a);

- The Central Government has been empowered to notify categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed, in addition to the similar power enjoyed by the government in respect of goods. [As per section 31(2)];

- The Central Government has been empowered to make rules to provide for the form and manner in which a certificate of tax deduction at source shall be issued;

- Section 51 of the CGST Act is being amended to omit the Late fees for delay in issuance of TDS certificate;

- A new sub-section (1A) has been inserted in section 122 to levy penalty equivalent to tax evaded or input tax credit availed or passed on the beneficiary of such transactions at whose instances such transactions are conducted;

- Fraudulent availment of input tax credit without invoice or bill has been made a cognizable and a non-bailable offence under sub-section (1) of section 69. Further, any person who retains the benefit of certain transactions and at whose instance such transactions are consulted shall also be liable for punishment [section 132(1)];

- Provision to prescribe the time limit and manner of availing transitional credit of unavailed credit under the erstwhile law as provided under Section 140 of the CGST Act, 2017 is being retrospectively amended with effect from 01st July, 2017. This would have a far reaching implication on companies which could not comply with the transition of credit of erstwhile regime within the due dates provided by the CGST Rules;

- The jurisdictional Commissioners have been empowered to issues instructions or directions without prior approval of the board in relation to expenses of special audit conducted under section 66 and extension of time period for bringing back/ supplying inputs sent to the premises of job worker within one/ three years [Section 168(2)];
- Section 172 of the CGST Act being amended to extend the time limit of three years to five years to allow the Central government to issuance of removal of difficulty order from the date of the commencement of the Act, whenever required;

- A retrospective amendment being introduced under the CGST Act to provide for Transfer of business assets or goods held for the purpose of business shall no longer be supply, if made whether or not for a consideration by or under a direction of person carrying on the business.

The disallowance of refund of compensation cess in case of inverted duty structure for tobacco and manufactured tobacco substitutes has been made applicable retrospectively w.e.f. 01.07.2017.

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RECENT DEVELOPMENTS: DIRECT TAX

SUPREME COURT

No further profit attribution once arm's length principle is established during Transfer Pricing proceedings- Dismissal of review petition

(DCIT v/s Honda Motors Co. Ltd. Japan arising out of SLP)

The Hon'ble Supreme Court (SC) dismissed a review petition filed by the Revenue wherein it held that re-assessment proceedings U/s 147 of the Income Tax Act cannot be sustained when the arm's length principle has already been satisfied during the course of Transfer pricing proceedings. Further, it upheld it's the original order that where once arm's length principle has been followed, there can be no further profit attributable to a person even if it has permanent establishment in India.

Address as per PAN database is a sufficient compliance for issue of notice u/s 143(2) of the Income Tax Act, 1961

(PCIT V/s M/s I-Ven Interactive Ltd- 18.10.2019)

Recently the Apex Court held that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and thereby without getting the PAN database updated, is not enough and sufficient. Further, updation of address in the ROC records cannot be in any manner construed as an intimation to the AO.

Payment of interest u/s 244A cannot be denied to deductor who has deducted the tax and deposited the same to treasury

(Universal Cables Ltd. V/s CIT- Civil Appeal No. 3826 of 2012)

It was held by the Apex court, that where tax collection was not justified, there is corresponding obligation on revenue department to refund the amount with interest u/s 244A even when amount of tax was paid by assessee pursuant to special order passed by Income Tax department.

HIGH COURT

AO cannot undertake detailed inquiry regarding existence of PE at the stage of deciding the application for issuance of certificate under section 197

(National Petroleum Construction Co. Vs DCIT Appeal no 35220 of 2019)

The question of existence of permanent establishment (PE) of a non-resident assessee, which requires a detailed enquiry is not envisaged at the stage of deciding the application for issuance of certificate under section 197. However, the full-fledged investigation in said regard can be done by the Assessing Officer during the course of Assessment proceedings.

Re-opening of assessment u/s 147 is bad in law if non-deduction of TDS on payment of management consultancy fees was already disclosed both in accounts and audit report during assessment u/s 143(3)

(Vedanta Ltd Vs ACIT Appeal no 47020 of 2017)

The appellant (Vedanta Ltd) filed before the Assessing Officer, it made disclosure in respect of consultancy and management fees paid to VR PLC. This was in the sum of INR 23.71 crores. Likewise, in the Form 3-CEB, disclosure was made regarding the aforementioned sum paid to VR PLC.

The appellant had submitted that the payment was not in the nature of fees for technical services chargeable to tax under the provisions of the Act and thus obligation to deduct tax for the appellant did not arise. The AO completed assessment u/s 143(3) wherein details of commission expenses paid unit wise and details of TDS was submitted before him. Later on, a notice was issued to the appellant by the Assessing Officer under section 148 seeking to reopen the assessment. It was held by the Court that where during assessment under section 143(3), payment of management consultancy fees without deduction of TDS was already disclosed both in accounts and audit report, reopening of assessment on ground of non-deduction of TDS on said payment was bad in law.

Initiation of prosecution proceedings on failure to deposit tax deducted at source (TDS)

(Dr Viloo Patel and M/s Avesthagen Limited Vs DCIT)

The Karnataka High Court in the instant case dismissed the writ petition filed by the appellant against prosecution proceedings initiated by the tax department on failure to deduct TDS. It further held that that where the amount of TDS was remitted before issue of show-cause notice, the proof of thereof should have been provided when opportunity was given, so as to avoid criminal prosecution.

Reliance was place on the Apex Court judgment in case of Standard Chartered Bank stating that there is no immunity available to company in respect of offences for which the punishment prescribed was mandatory fine and imprisonment.

INCOME TAX APPELLATE TRIBUNAL

Violation of section 195(6) and failure to file Form 15CA and 15CB cannot be ground of disallowance u/s 40(a)(i), however attracts penalty u/s 271

(DCIT v/s Integra Software Services (P) Ltd. - IT appeal Nos. 598 & 2189 of 2017)

The Chennai Bench of Income Tax Appellate Tribunal in the instant case observed that translation of a text from one language to another cannot be considered to be technical services and hence such services rendered by non-residents are not taxable in India and thus it is not necessary to deduct tax under section 195. However, non-filing of Form 15CA and 15CB is a violation of section 195(6) of the Act which is punishable separately under section 271 of the Act. Further, such failure to furnish Form 15CA and 15CB cannot form ground for disallowance of payment u/s 40(a)(i).

Sale on principal to principal basis to its sole distributor in India, will not result in PE or business connection in India

(Audi AG v/s Additional DCIT – IT appeals no. 7335 of 2012 & 1781 of 2014)

The Appellant (Audi AG) appointed Volkswagen Group Sales India Private Limited (VGS) as sole distributor of Audi Cars in India.

AO observed that VGS's only source of income was from Audi business. Further, activities of appellant and VGS competed each other and VGS was functioning as an extended arm of the appellant in India. Thus, it was held by AO that appellant had a business connection in India and considered VGS as a PE of the appellant and thus income attributable to VGS was taxable in India.

The Mumbai bench of ITAT observed that the activities related to manufacturing of car is completed by assesse outside India which effectively constituted separate and independent activity. VGS is not acting on behalf of Audi AG in India and cars are sold by appellant on principal to principal basis to VGS and thereafter by VGS sales on principal to principal basis to dealers in India. Accordingly, it was held there was no business connection or PE in India, on sale of cars on principal to principal basis in India to its associated enterprise.

TDS is required to be deducted when payees are identifiable and provisions are for ascertained liabilities

(Inter Globe Aviation Ltd v/s ACIT)

The Delhi Bench of Income Tax Appellate Tribunal recently in case of Inter Globe Aviation Ltd held that in case provision is made under specified head, is made on certain basis and payee is identified then it is ascertained liability and it is not ad hoc provision.

Thus, tax was required to be deducted on the year-end provisions made by the taxpayer which constitute ascertained liabilities.

Liaison Office (LO) carrying on core business activities of the parent entity to constitute Permanent establishment (PE) in India

(Hitachi High Technologies Singapore Pte Ltd v/s DCIT- ITA Nos. 2683 to 2688/DEL/2015)

In the instant case, appellant established Liaison Office ('LO') in India for rendering preparatory and auxiliary services, including market research and liaison activities in India. Apart from the aforesaid activities for which the permission was granted by RBI, the LO was engaged in ascertaining customer requirements, price negotiation, receipt of purchase orders, following up delivery of material and payments. The assesse contended that such activities are ancillary activities of LO and do not form core business activities of the office. However, the tax department contended that the LO was acting on behalf of the parent entity and constituted it as a PE of the parent entity.

The Delhi bench of ITAT upheld the contention of the DRP and observed that the activities carried out by LO were in the nature of core business activities of the parent entity and cannot be termed as preparatory or ancillary activities. It further held that the exclusion clause in the India-Singapore DTAA is restrictive in nature and cannot include under its ambit the activities which were carried out by the LO in the instant matter. Accordingly, it was held LO constituted a PE of assesse in India.

Further, with respect to attribution of profits the ITAT observed that as the LO was performing routine and limited functions, it was operating in a limited risk environment and, therefore, the allocation of profit should be done by applying the transactional net margin method as the most appropriate method. The ruling was based on the law, also finding support in Article 7(2) of the India-Singapore DTAA, that when a PE is treated as if it were an independent enterprise, its profits should be determined on the basis that it was an independent enterprise.

Foreign Tax Credit (FTC) will be available in respect of foreign taxes paid overseas even if the income is not subjected to tax in India

(Tata Consultancy Services Ltd. v/s ACIT- IT Appeal Nos. 5713 & 5823 of 2016)

The Mumbai bench of ITAT held that credit of state taxes paid outside India shall be eligible for foreign tax credit even if the corresponding income is not subject to tax in India. However, it is essential to review the respective tax treaties as treaty do not provide for such benefit unless such income is taxable in India. Further, said taxes are not disallowed under section 40(a) (ii) of the Act.

TPO to only determine services provided by AEs were at ALP and analysis of nature and benefits from such services held to be beyond its scope

(Nalco Water India Ltd. Vs ACIT- IT Appeal no. 742 of 2017)

The Pune bench of ITAT observed that there is no merit in the order of TPO in holding that as to whether the said concern has given services or whether it is qualified to give the services and the cost incurred by the AEs. This is outside the domain of TPO. Further, it was held the TPO while benchmarking the transactions has to determine whether the price paid by the assessee for the services availed is what an independent enterprise would have paid for the same services. The analysis done by TPO of the nature and need of the services and benefits arising to the assessee on availing such services was beyond the scope of Transfer Pricing provisions.

PRESS RELEASES

Central Board of Direct Taxes (CBDT) enters into 26 Advance pricing agreements (APA)

(CBDT press release, dated 04.09.2019)

For the first 5 months of financial year 2019-20, CBDT entered into 26 APAs, resulting in total number of 297 APAs entered into by CBDT, which includes 32 bilateral APAs.

Out of these 26 APAs signed, one is bilateral APA with UK and the rest being unilateral APAs.

The international transactions covered in all these agreements includes contract manufacturing, provision of software development services , back office engineering support service , provision of back office (ITeS) support services, provision of marketing support services, payment of royalty for use of technology and brand , trading and distribution, payment of charter charges , corporate guarantee ,intra-group services, interest on financial instruments. The progress of the APA scheme strengthens the Government's resolve of fostering a non-adversarial tax regime.

Enhancement of Monetary limits for filing of appeals by the department before ITAT, High Court (HC) and SLPs/appeals before Supreme Court (SC)

(Circular No. 17/2019 dated 08.08.2019)

In order to reduce taxpayer grievances and litigation, the monetary limits for filing of appeals by the department before ITAT, High court and Supreme Court have been revised as below.

Appellate Forum	Existing Monetary Limit (INR)	Revised Monetary Limit (INR)
Before ITAT	20,00,000	50,00,000
Before HC	50,00,000	1,00,00,000
Before SC	1,00,00,000	2,00,00,000

This will reduce time, efforts and resources presently deployed in litigation to focus on issues involving litigation of substantial value.

NOTIFICATIONS

CBDT Notifies rules and form related to reference to Approval Panel for the purpose of General Anti-Avoidance Rules (GAAR) Provisions

(Notification No. 67/2019 dated 17.09.2019)

As per provisions of Section 144BA of Income Tax Act, 1961, where AO intending to declare an arrangement as an impermissible avoidance arrangement under GAAR makes reference to principal commissioner/ commissioner and thereby, taxpayer objects application of GAAR and Principal Commissioner/ commissioner is not satisfied by the explanation given, he shall make reference to the Approving Panel. Recently CBDT issued notification inserting new rules and forms with respect to Approving panel that came into effect from 17.09.2019.

Rule / Form	Remarks
Rule 10UD	Reference to Approval Panel (Reference to be made in Form No. 3CEIA and 3CEI)
Rule 10UE	Procedure before the Approving Panel
Rule 10UF	Remuneration for attending the meeting of Approval Panel
Form No. 3CEIA	Form for making reference to the Approving Panel

CBDT Notifies e-Assessment Scheme, 2019

(Notification no. 61/2019 dated 12th September 2019)

The CBDT vide notification dated 12th September 2019 notified e-assessment scheme as a step forward towards faceless assessment as announced by government in Union Budget 2019.

The Scheme envisages a structural set-up wherein the CBDT would set up the below 'centres' and 'units' and specify their respective jurisdiction:

- A 'National e-Assessment Centre' to facilitate and centrally control the e-assessment.
- 'Regional e-Assessment Centres' under the jurisdiction of the regional Principal Chief Commissioner for making assessment.

- 'Assessment units' for identifying points or issues, material for the determination of any liability (including refund), analysing information, and such other functions.

- 'Verification units' for enquiry, cross verification, examination of books of accounts, witness and recording of statements, and such other functions.

- 'Technical units' for technical assistance including any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter.

- 'Review units' for reviewing the draft assessment order to check whether the facts, relevant evidence and law and judicial decisions have been considered in the draft order.

All the communications between all the units mentioned above, for the purpose of making an assessment under this scheme would be through the National e-Assessment Centre.

A person is not required to appear either personally or through authorized representative in connection with any proceedings under this scheme before the income tax authority at the National e-Assessment Centre or Regional e-Assessment Centre or any unit set up under this scheme.
In a case where a modification is proposed in the draft assessment order, the taxpayer will be given an opportunity to make submissions against such modifications. The taxpayer or his authorized representative is also entitled to a personal hearing before income tax authority in any unit under this scheme. Such hearing would be conducted exclusively through video conferencing, including through video telephony, in accordance with the procedure laid down by the CBDT.

An income tax authority has the power to examine a taxpayer or record the statement of any taxpayer under this scheme. The income tax authority would do the same through video conferencing or video telephony.

For the purpose of facilitating the scheme, the CBDT shall establish suitable facilities for video conferencing and video telephony at such locations as may be necessary.

Thus, the scheme specifies for a complete e-mode of assessment and communication with the taxpayer in order to avoid harassment, save time and ensuring greater transparency in assessment proceedings.

TAXATION LAWS (AMENDMENT) ORDINANCE

The Government has brought in the Taxation Laws (Amendment) Ordinance, 2019 to make certain amendments in the Income Tax Act, 1961 and the Finance (No.2) Act, 2019. The Tax Ordinance announced key changes to corporate tax rates and surrender of certain specified deductions/ incentives. The following is a tabulated summary for reference:

Particulars	Section 115BAA	Section 115BAB
Type Of company	All Domestic companies	Domestic company engaged in manufacturing / production or research/ distribution of such manufactured article/thing
Effective from	AY 2020-21	AY 2020-21
Eligibility	N.A	Set-up and registered on or after 01.10.2019 and commenced manufacturing on or before 31.03.2023
Base Tax Rate	22%	15%
Surcharge	10%	10%
Cess	4%	4%
Effective Tax Rate	25.168%	17.16%

Particulars	Section 115BAA	Section 115BAB
Allowability of prescribed deduction/loss	Not Available	Not Available
Restriction for entities formed by splitting/restructuring, use of old plant & machinery, use of building previously used as hotel/convention Centre.	NO	YES
Applicability of Special domestic transaction provisions	N.A	YES
Applicability of MAT provisions	Not applicable	Not applicable

TAX TREATIES: SYNTHESIZED TEXTS

Recently, the CBDT has released the synthesized text of India-Japan and India-UAE DTAA (Tax Treaties), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to prevent base erosion and profit shifting (i.e. MLI). The following is a brief summary of the synthesized texts of the treaties:

India-Japan

The MLI enters into force for Japan on 1 Jan 2019 and for India on 1 Oct 2019 and has effect as follows:

The provisions of the MLI shall have effect in each Contracting State with respect to the Convention:

(a) in Japan:

i. with respect to taxes withheld/ deducted at source (TDS) on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2020; and
ii. with respect to all other taxes levied by Japan, for taxes levied with respect to taxable periods beginning on or after April 1, 2020; and

(b) in India:

i. with respect to TDS on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after April 1, 2020; and
ii. with respect to all other taxes levied by India, for taxes levied with respect to taxable periods beginning on or after April 1, 2020.

India-UAE

The MLI enters into force on 1st Oct 2019 for India and 1st Sep 2019 for UAE

The provisions of the MLI shall have effect in each Contracting State with respect to the Agreement:

a) in India:

i. with respect to TDS on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after 1st April, 2020; and
ii. with respect to all other taxes levied by India, for taxes levied with respect to taxable periods beginning on or after 1st April, 2020.

b) in United Arab Emirates:

i. with respect to taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after 01st January, 2020;

ii. with respect to all other taxes levied by United Arab Emirates, for taxes levied with respect to taxable periods beginning on or after 01st April, 2020.

Brief highlights of key changes in the synthesized text are tabulated as under:

Relevant Article of MLI	Brief of the provision	Article of DTAA where included	
		India-Japan DTAA	India-UAE DTAA
MLI Article 4 – Dual resident entities	It provides a new tie breaker test for a person other than individual (entity) who is a resident of more than one contracting state. The residency of such entities shall be determined by the Competent Authorities through mutual agreement considering the place of effective management (POEM), the place of incorporation or other relevant parameters. In absence of such agreement, the dual-resident entity shall not be entitled to any relief or exemption from tax under the DTAA.	DTAA Article 4	Not included - These articles of MLI were not adopted by the contracting jurisdictions i.e. India and UAE; hence, they are not included in the document containing synthesised text
MLI Article 6 – Purpose of a Covered Tax Agreement (a DTAA)	Scope of "Preamble" to DTAA is expanded to include MLI minimum standard (MLI Article 6). Certain text has been inserted in the "Preamble" to specifically provide that the intention of the DTAA is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty shopping arrangements).	Included in DTAA Preamble	Included in DTAA Preamble
MLI Article 7 - Prevention of treaty abuse	An anti-abuse measure, "Principal purpose test (PPT)" is introduced; to provide that a benefit under the tax treaty shall denied if it is reasonable to conclude that obtaining such benefit was one of the principal purposes of any arrangement or transaction. However, benefit shall be available if it can be established that granting the benefit in the given circumstances would be in accordance with the object & purpose of the relevant provisions of the DTAA.	DTAA Article 27	DTAA Article 29
MLI Article 9 - Capital gains from alienation of shares or interests of entities deriving their values principally from immovable properties	Presently existing Article 13 of DTAA provides that capital gains derived by a resident of a state from the alienation of any property shall be taxed in the country in which the property is located. Now the synthesized text expands scope of Article 13 to provide that capital gains derived by resident of a contracting state from alienation of shares or comparable interests may be taxed in the other contracting state if, at any time during 365 days preceding the alienation, these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property situated in that other contracting state.	DTAA Article 13	Not included

Relevant Article of MLI	Brief of the provision	Article of DTAA where included	
		India-Japan DTAA	India-UAE DTAA
MLI Article 10 - Anti-abuse rule for permanent establishment (PE) in third country	Benefit of the tax treaty shall not apply to any income (subject to certain exceptions) on which the tax rate in the third jurisdiction in which an exempt PE is located is less than 60% of the tax that would be imposed in the country of residence.	DTAA Article 27	Not included
MLI Article 12: Artificial avoidance of PE status through commissionaire arrangements and similar strategies	The scope of agency PE has been expanded to include cases where the agent plays principal role leading to the conclusion of contracts that are routinely concluded without material modification. Further, the meaning of independent agent has been expanded to provide that when a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, it will not be considered as an independent agent, with respect to any such enterprise.	DTAA Article 5	Not included
MLI Article 13 - Artificial avoidance of PE status through the specific activity exemptions	The activities previously considered specifically exempt from constituting a PE (activity-based exemption) have been restricted to provide that such activities would not constitute a PE, only if the activities are preparatory or auxiliary in character. Moreover, activity-based exemption shall not be available where splitting-up/ fragmentation of business activities is done between closely related enterprises.	DTAA Article 5	Not included
MLI Article 15 - Definition of closely related persons	Definition of a “person closely related to an enterprise” has been specified.	DTAA Article 5	Not included
MLI Article 16 - Mutual Agreement Procedure	Existing Article 27(1) of India-UAE DTAA dealing with MAP provides that case under MAP must be presented within 2 years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Treaty. Now post MLI, Competent Authority can be approached within 3 years when taxation is not in accordance with the provisions of tax treaty.	Already existing in the tax treaty	DTAA Article 27

Relevant Article of MLI	Brief of the provision	Article of DTAA where included	
		India-Japan DTAA	India-UAE DTAA
MLI Article 17 - Corresponding adjustments	Availability of compensatory or corresponding adjustments in case there is economic double taxation arising from transfer pricing adjustments.	DTAA Article 9	DTAA Article 9

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Recent Developments: Indirect Tax

Customs Act, 1962

ITC Limited] Vs. The Commissioner of Central Excise, Kolkata, (Supreme court)

Supreme Court in its recent ruling held that "the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings".

The Assessee's contention in the present case was that in the case of self-assessment, the duty paid under a mistake can be claimed without filing an appeal, which was rejected by the Supreme Court.

SC concluded that if a person is aggrieved by any order which would include self-assessment, he has to get the order modified by filing an appeal or through other provisions of the relevant Act

Goods and Service Tax, 2017

High Court set aside IGST on Ocean Freight

(Mohit Minerals Pvt Ltd Vs Union of India reported in 2020-TIOL164-HC-Ahm-GST)

Gujarat High Court in above ruling has set aside IGST on Ocean Freight and held that no tax is leviable under the IGST Act, 2007, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.

The Hon'ble High Court categorically observed that in a case of CIF contract, the contract for transportation is entered into by the seller, i.e. the foreign exporter, and not the buyer, i.e. the importer, and the importer is not the recipient of the service of transportation of the goods, hence IGST on Ocean Freight would not be taxable in the hands of the importer.

Provisional Attachment not permissible u/s 83 when proceedings u/s 62, 63, 64, 67 or 74 of CGST Act not pending

Kushal Ltd Vs UoI reported in 2019-TIOL-2943-HC-AHM-GST

High Court quashed the order of attaching the petitioner's bank accounts in exercise of power u/s 83 and held that, a reading of Section 83 of the CGST Act makes it clear that a condition for exercising powers under this provision is that proceedings should be pending u/s 62, 63, 64, 67 or 74 of the CGST Act. In the given case, the proceedings u/s 67 is no longer pending and pursuant to search, proceedings under any of the other sections mentioned in Section 83 were not initiated. In these circumstances, on the date when the orders of provisional attachment came to be passed, the basic requirement for exercising powers u/s 83 have not been satisfied.

Recovery Proceedings under Section 79 cannot be initiated directly without determination of tax liability

(VN Mehta and Company Vs Assistant Commissioner reported in 2019-TIOL-2594-HC-MAD-GST)

The petitioner claimed that the proceedings under section 79 had been initiated straightaway, without framing assessment or initiating proceedings to determine the tax, cess, interest or penalty as claimed.

The High Court held that Section 79 of the Act contemplates that any amount payable by a person to the Govt under any of the provisions of the Act and Rules made thereunder is not paid, the proper officer could recover the amount by one or more modes. Hence, it is evident that the term amount payable by a person is to mean that such liability arises only after determining such amount in a manner known to law. Moreover, provisional attachment u/s 83 can be resorted to only if proceedings are pending u/s 62, 63, 64, 67, 73

& 74. No proceedings are pending under any such provisions. Hence, Section 83 is of no avail to the Revenue. Thus the proceedings are not maintainable and are therefore being set aside.

Staggering of filing of returns

Presently the last date of filing GSTR-3B returns for every Regular Taxpayer is 20th of every month. However considering the difficulties being faced by the trade and industry in filing of GST returns due to last moment rush of filling and technical glitches faced near the due date, the Finance Ministry vide press release dated January 22, 2020 has decided to introduce a system where GST taxpayers can file their GSTR-3B returns in a staggered manner.

In this regard, Central Government has provided three dates for different categories of taxpayers, a move aimed at de-stressing the system.

The new due dates for filing of GSTR 3B on the basis states in which taxpayer is registered is as below:

S.No.	Particulars	Due Dates
1.	Taxpayers having annual turnover (in the previous financial year) of Rs 5 Crore or above irrespective of any states	20th of Every month
2.	Taxpayers having annual turnover (in the previous financial year) less than Rs 5 Crore and registered Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh	22nd of Every Month
3.	Taxpayers having annual turnover (in the previous financial year) less than Rs 5 Crore and registered in 22 States/UTs of Jammu and Kashmir, Laddakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha	24th of Every Month

The Finance Ministry said that the required notification for the above changes would be issued later by the competent authority.

This Staggered filling system may continue, perhaps up to this Financial Year end, as from April onwards new Returns Filling System will be operationalized.

Rules notified for issuance of e-invoice

Central Government vide **Notification No. 68/ 2019-Central Tax** has notified rules for issuance of e-invoicing by inserting new sub-rule 4,5 & 6 in existing rule 48 of CGST Rules, 2017. It states that notified class of registered persons shall be required to prepare e-Invoice containing particulars as mentioned in FORM GST INV-01. Invoices prepared otherwise by the prescribed manner shall not be treated as invoice under GST Rules.

Central Government vide **Notification No. 70/ 2019-Central Tax** has notified for mandatory e-invoicing for registered person, whose aggregate turnover in a financial year exceeds one hundred crore rupees (>100 crores) w.e.f 01.04.2020.

Class of registered person required to issue invoice having QR Code

QR Code on B2C Invoice are mandatory for registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees (>500 crores) w.e.f 01.04.2020 [**Notification No. 72/ 2019 (CT)**].

Restriction on availment of 10% of eligible ITC

With effect from 01.01.2020, Input Tax Credit (ITC) to be availed by a registered person in respect of invoices or debit notes which are not reflecting in GSTR 2A shall not exceed 10 per cent of the eligible ITC. Earlier this limit was 20% of the eligible credit. **[Notification No. 75/2019–Central Tax dated 26.12.2019]**

New Scheme of Returns

As per the decision taken on **20 September 2019 at the 37th GST Council Meeting**, the implementation of the new GST return system (Form GST ANX-1 and GST ANX-2) for all taxpayers and for all forms stands deferred to April 2020

From April, 2020 onwards, FORM GST ANX-1 to be made compulsory. Large taxpayers (having aggregate turnover of more than INR 5 crores in previous year) to file FORM GST ANX-1 on monthly basis whereas small taxpayers to file first FORM GST ANX-1 on quarterly basis.

Due date extension of FORM GSTR-9 and 9C

CBIC vide **order no. 08/2019-Central Tax** dated 14.11.2019 has extended the due dates of filing annual return in Form GSTR-9 and reconciliation statement in Form GSTR-9C for F.Y. 2018-19 to March 31, 2020

Amendment in GST Rules (Primarily for simplification of the Annual Return / Reconciliation Statement)

Central Government has issued **Notification No. 56/ 2019-Central Tax dated 14.11.2019** to amend the CGST Rules 2017. Major amendments are summarized below:

Changes in GSTR -9

- No Separate details of Credit notes/ Debit Notes are required in Table-4I & 4J. Thus details of Credit notes/ Debit Notes can be merged with details given in Table-4B to Table-4E;
- Bifurcation of Input Tax Credit among Inputs, Capital Goods and Input Services is not required;
- Option to not provide Information on supplies received from composition taxpayers, deemed supply under section 143 and goods sent on approval basis (Table- 16A to 16C)
- Option to not provide HSN Wise Summary of Outward & Inward supplies (Table-17 & 18)

Changes in GSTR-9C

- Detail of turnover adjustments required in Table 5B to 5N made optional and all the adjustment required to be reported can be reported in Table 5O.

Table 12B, 12C and 14 (ITC reconciliation) has also been made optional, some minor changes in Declaration part also.

RECENT DEVELOPMENTS: REGULATORY

CORPORATE LAWS

Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

The amendment has substituted Rule 8A and amended Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, it shall be applicable in respect to Financial Years commencing on and from April 1st, 2020.

The amendment has substituted the rule 8A by providing that following companies are mandatorily required to appoint a whole-time Company Secretary;

1. Listed Company,

2. Unlisted Public Company having paid-up share capital of INR 10 Crore or more,

3. Private Company having paid-up share capital of INR 10 Crore or more.

According to the amended Rule 9, the following companies are mandatorily required to conduct a Secretarial Audit;

a) Every public company having a paid-up share capital of fifty crore rupees or more; or
b) Every public company having a turnover of two hundred fifty crore rupees or more; or
c) Every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.

Explanation:

For the purposes of this sub-rule, it is hereby clarified that the paid-up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of the latest audited financial statement shall be taken into account.

MCA notifies Winding up Rules, 2020

MCA vide its notification dated 24th day of January, 2020 published Companies (Winding Up) Rules, 2020 laying down procedures for winding up by the Tribunal under Part I of Chapter XX of the Companies Act, 2013 which will be effective from 1st day of April, 2020.

With the enforcement of these rules, the chapter XX is applicable on below class of companies:

1. Companies having book value of not more than INR 1,00,00,000 (Indian Rupees One crore) and which has taken deposit and total outstanding deposits is not exceeding INR 25,00,000 (Indian Rupees Twenty Five lakh); or
2. Companies having book value of not more than INR 1,00,00,000 (Indian Rupees One crore) and which has total outstanding loan including secured loan of not more than INR 50,00,000 (Indian Rupees fifty lakh); **or**
3. Companies having book value of not more than INR 1,00,00,000 (Indian Rupees One crore) and which has turnover upto INR 50,00,00,000 (Indian Rupees fifty crore); **or**
4. Companies having book value of not more than INR 1,00,00,000 (Indian Rupees One crore) and which has paid up share capital not more than INR 1,00,00,000 (Indian Rupees one crore).

The Companies (Winding Up) Rules, 2020 provides rules for filing of petition by (i) the Company; (ii) any contributory or contributories; (iii) the Registrar; (iv) any person authorised by the Central Government in that behalf; and (v) Central or State Government in case the Company has acted against the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality on matters provided in the prescribed rules.

Companies (Accounts) Amendment Rules, 2019

With effect from the 1st day of December, 2019, in the Companies (Accounts) Rules, 2014, rule 8, in sub-rule (5), after clause (iii), the following clause shall be inserted namely:—

"(iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year".

In consonance with the above amendment, now the Board Report shall also contain the disclosure regarding the opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.

Explanation: For the purposes of this clause, the expression "proficiency" means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

Companies (meetings of Board and its power) Second Amendment Rules, 2019

[Issued by the Ministry of Corporate Affairs vide F. No. 1/32/2013-CL-V-Part dated 18.11.2019]

Where a related party transaction exceeds certain thresholds specified in the Rules, then the company concerned is required to obtain prior approval from its shareholders for effecting such transaction.

The rules shall come into force with effect from 18th November, 2019 through which clause (a) sub rule (3) of rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014, pertaining to Contract or Arrangement with a Related Party has been amended as under;

1. sale, purchase or supply of any goods or material, directly or through appointment of agent, [amounting to ten percent or more] of the turnover of the company, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
2. selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, [amounting to ten percent or more] of net worth of the company, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
3. leasing of property any kind [amounting to ten per cent or more of the turnover of the company], as mentioned in clause (c) of sub-section (1) of section 188;
4. availing or rendering of any services, directly or through appointment of agent, [amounting to ten percent or more] of the turnover of the company as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Explanation- It is hereby clarified that the limits specified in sub-clause (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019

[Issued by the Ministry of Corporate Affairs dated 22.10.2019.]

Compliances required by a person eligible and willing to be appointed as an independent director:

(1) Every individual –

(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he/she continues to hold the office of an independent director in any company:

rule (2) to the Board, each time he/she submits the declaration required under sub-section (7) of section 149 of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of one year from the date of inclusion of his/her name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that the individual who has served for a period of not less than ten years as on the date of inclusion of his/her name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees ten crore or more shall not be required to pass the online proficiency self-assessment test:

Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies at the same time shall be counted only once.

Companies (Meetings of Board and its Powers) Amendment Rules, 2019

The above rules shall come into force with effect from 11th October, 2019 through which sub rule (2) of rule 11 of Companies (Meetings of Board and its Powers) Rules, 2014, pertaining to Loan and Investment by a Company under section 186 of the Act has been amended as under;

For the purpose of clause (a) of sub section (11) of section 186, the expression of business of financing industrial enterprises shall include, with regard to the Non-Banking Financial Company registered with RBI, "business of giving of any loan to a person or providing any guarantee or security for due repayment of any loan availed by any person in the ordinary course of its business".

SPICe+ (Government of India's Ease of Doing Business (EODB) initiatives)

The Ministry of Corporate Affairs would be shortly notifying & deploying a new Web Form christened 'SPICe+' (pronounced 'SPICe Plus') replacing the existing SPICe form.

SPICe+ would be an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra) and Opening of Bank Account. It will also facilitate allotment of GSTIN wherever so applied for by the Stakeholders. After deployment of SPICe+ web form, RUN shall be applicable only for change of name of existing companies.

INSOLVENCY AND BANKRUPTCY CODE, 2016

Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019, has been notified on 15th day of November, 2019 w.e.f 1st day of December, 2019

IBC-2016 shall apply to insolvency resolution process for personal guarantors to corporate debtors, bringing personal guarantors of Corporate Debtors into the insolvency framework will have enormous repercussions on fiscal discipline and the recovery of dues by creditors. Till date, the banks have found it difficult to go after the assets of directors of a defaulting company even if they are guarantors because of the long delay associated with legal proceedings. Now, the banks should be able to recover a windfall from defaulting guarantors in a time-bound manner.

The Insolvency and Bankruptcy Code (Amendment) Act, 2019 has been passed, which will be effective from date yet to be notified. The main objective of amendments is to accelerate insolvency resolution process and ensure timely action under the Insolvency Code

The Key Highlights of Insolvency and Bankruptcy Code Amendments are as follows -

Section 5(26) - Resolution plan can contain provision for restructuring:

It is now clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger - explanation to Section 5(26) of Insolvency Code, 2016 inserted vide Insolvency and Bankruptcy Code (Amendment) Act, 2019 to be effective from date to be notified. Thus, the resolution plan can include provision for restructuring like amalgamation, merger or demerger, even if there are separate provisions under Companies Act, 2013 for the same. Thus, CIRP is a 'single window clearance' process.

Section 7(4) proviso - Recording reason if NCLT cannot ascertain whether there is default in payment to financial creditor:

If the Adjudicating Authority has not ascertained the existence of default and (has not) passed an order under section 7(5) of Insolvency Code within 14 days, it shall record its reasons in writing for the same - proviso to section 7(4) of Insolvency Code, inserted vide Insolvency and Bankruptcy Code (Amendment) Act, 2019 to be effective from date to be notified. This is to ensure speedy disposal of cases.

Section 12(3) - Mandatory upper time limit of 330 days including time spent in legal process to complete resolution process:

Prior to the Amendment, the Code required that the CIRP should be concluded within a maximum period of 180 days (with a maximum one-time extension of 90 days) from the insolvency commencement date (the Code denotes this to be the date of appointment of interim resolution professional). However, many CIRPs were exceeding this overall 270-day limit on account of legal proceedings initiated either against the corporate debtor, the CoC or the Resolution Professional

The Amendment provides that the CIRP must mandatorily be completed within an overall timeline of 330 days from the insolvency commencement date (including all or any extensions granted as well as any litigations and related legal proceedings). Additionally, for an ongoing CIRP, in case the 330-day overall timeline has already been breached at the time the Amendment comes into force, the Amendment provides for an additional relaxation of 90 days as a transitory measure.

Voting by an authorised representative on behalf of certain classes of financial creditors;

It is provided vide section 25A(3A) of Insolvency and Bankruptcy Code (Amendment) Act, 2019 to be effective from date to be notified, that the authorised representative shall cast all votes in accordance with decision taken by vote of more than 50% of voting shares, (except voting under section 12A). For example, if 52% of financial creditors give instructions in favour of resolution and 48% against, his entire 100% voting will be in favour of resolution.

However, in case of voting under section 12A of Insolvency Code (for withdrawal of application for CIRP admitted by adjudicating authority), the voting of authorised representative shall be in accordance to the sub section 3.

Section 30(2)(b) - Resolution plan to provide for payment of debts of operational creditors and financial creditors in accordance with priority as per section 53 of Insolvency Code:

The most important change brought by the Amendment is in terms of the inter-creditor distribution of payments during CIRP. Prior to the Amendment, the Code provided that payment to operational creditors under a resolution plan must not be less than the amount that the operational creditors would have received in a liquidation scenario.

However, the Amendment has included an additional requirement – stating that the payment received by operational creditors must not be less than the higher of:

(i) the amount such operational creditors would have received in the event of a liquidation of the corporate debtor as per section 53 of the Code; or

(ii) the amount such operational creditors would have received if the amount distributed under the resolution plan was distributed in accordance with the priority specified as per the liquidation waterfall under section 53 of the Code.

The Amendment also provides for retrospective application of the above minimum payments to financial and operational creditors under all pending CIRP proceedings namely, those CIRPs:

(i) where the resolution plan has not been approved or rejected by the NCLT; or

(ii) where an appeal has been preferred before the NCLAT/Supreme Court or such appeal is not time-barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the NCLT in respect of a resolution plan.

The Amendment clarifies that the manner of distribution of claims must take into account the order of priority amongst creditors as specified under the liquidation waterfall provided under section 53 of the Code, including the priority and value of the security interest of a secured creditor.

Section 238 of Insolvency Code provides for overriding effect to provisions of Insolvency Code over other laws.

Thus, provisions of Insolvency Code will prevail over provisions under Employees Provident Funds Act, ESIC Act etc.

PROPOSED LABOUR REFORMS

CODE ON OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS, 2019 (BILL NO. 186 OF 2019)

The Occupational Safety, Health and Working Conditions Code, 2019 contains one hundred thirty four clauses which have been divided into thirteen Chapters.

Code on Occupational Safety, 2019 - What Get Subsumed into it

The Preamble to the Code on Occupational Safety, 2019 states that a bill to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and the matters connected therewith or incidental thereto. Clause 134 (Repeal and Saving) of the Code on Occupational Safety, 2019 clearly mentions the acts which will be repealed once this Code gets the force of law. These acts are: -

1. The Factories Act, 1948;
2. The Mines Act, 1952;
3. The Dock Workers (Safety, Health and Welfare) Act, 1986;
4. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
5. The Plantations Labour Act, 1951;
6. Contract Labour (Regulation and Abolition) Act, 1970;
7. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
8. The Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955;
9. The Working Journalist (Fixation of Rates of Wages) Act, 1958;
10. The Motor Transport Workers Act, 1961;
11. The Sales Promotion Employees (Conditions of Service) Act, 1976;
12. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; and
13. The Cine Workers and Cinema Theatre Workers Act, 1981.

Where it Impacts Most

- The Bill proposes one registration for an establishment instead of multiple registrations. Presently 6 labour acts out of 13 provide for separate registration of the establishment. This will create a centralized data base and promote ease of doing business. At present, separate registration is required to be obtained under 6 different Acts.
- Employer to provide free of cost annual health checks-up for employees above prescribed age for prescribed tests and for prescribed establishments. Increases productivity as it would be possible to detect diseases. Coverage of employees above a certain age for health check-up would promote inclusion.
- First time statutory provision to issue appointment letter to every employee of the establishment with the minimum information prescribed by the appropriate government. The provision of appointment letter will result in formalization of employment and prevent exploitation of the worker.
- The multiple committees under five labour Acts have been substituted by one National Occupational Safety and Health Advisory Board. The National Board is of tripartite nature and has representation from trade unions, employer associations, and State governments. This will result in reduction in multiplicity of bodies/committees in various Acts and simplified and coordinated policy-making.
- Enabling provision for constituting a bi-partite Safety Committee in any class of establishment by appropriate government. It will promote safe and healthy working conditions in an establishment. The participatory nature of the committee will encourage implementation of decisions taken by the management.
- A part of the penalty for contravention of provisions relating to duties of employer leading to death or serious bodily injury to any person may be given to the victim or the legal heirs of the victim by the Court. The part of penalty would help in rehabilitation of

injured worker or would provide financial support to the family of deceased.

- Presently, different applicability thresholds exists for welfare provisions like crèche, canteen, first aid, welfare officer etc in different Acts. The proposed Code has envisaged uniform threshold for welfare provisions for all establishment as far as practicably feasible.
- Women permitted to work beyond 7 PM and before 6 AM subject to the safety, holidays, working hours or any other condition as prescribed by appropriate government in respect of prescribed establishments. However, only after taking their consent for night work. This will promote gender equality and is in tune with demands from the various forums including international organizations as it leads to protective discrimination. Further, the condition of taking consent/ willingness of the women employee for night work would avoid any kind of misuse of the provision.

CODE ON SOCIAL SECURITY, 2019

The Code on Social Security, 2019 contains one hundred and fifty seven clauses in addition to seven schedules. These one hundred and fifty seven clauses have been divided into thirteen Chapters.

Social Security, 2019 - What get subsumed into it

The Preamble to the Code on Social Security, 2019 states that a bill to amend and consolidate the laws relating to social security of the workers and the matters connected therewith or incidental thereto. Clause 157 (Repeal and Savings) of the Code specifies that following Acts (explained in brief) will be repealed once this Code becomes effective.

1. Employees' Compensation Act, 1923;
2. Employees' State Insurance Act, 1948;
3. Employees' Provident Fund and Miscellaneous Provisions Act, 1952;
4. Maternity Benefit Act, 1961;
5. Payment of Gratuity Act, 1972;
6. The Cine Workers Welfare Fund Act, 1981;
7. The Building and Other Construction Workers Cess Act, 1996; and
8. The Unorganized Workers' Social Security Act, 2008.

Code on Social Security, 2019 – Where it Impacts Most

The proposed Bill seeks to consolidate eight labour laws and specifies that if any establishment is already registered under any other enactments for the time being in force then the establishment is not required to register under the proposed law again and the Central Government will allot the same registration number to that establishment. Therefore, it will save the establishments from the hassle of registering again. Since all social security schemes such as ESI, PF, and pension has to be managed by establishments in accordance with a single umbrella code, compliance hassles are expected to be far less compared to the existing regime.

It is also provided that Central Government shall formulate and notify suitable welfare schemes for unorganized workers on matter relating to life and disability cover, health and maternity benefits etc.

THE INDUSTRIAL RELATIONS CODE, 2019

The Industrial Relations Code, 2019 was introduced in Lok Sabha by the Minister of Labour and Employment, Mr. Santosh Kumar Gangwar, on November 28, 2019. It seeks to replace three labour laws: (i) the Industrial Disputes Act, 1947, (ii) the Trade Unions Act, 1926, and (iii) the Industrial Employment (Standing Orders) Act, 1946.

- Trade unions: Under the Code, seven or more members of a trade union can apply to register it. Trade unions that have a membership of at least 10% of the workers or 100 workers, whichever is less, will be registered. Further, a registered trade union must always have at least seven workers who are employed in the establishment or the connected industry, as its members. The central or state government may recognise a trade union or a federation of trade unions as Central or State Trade Unions respectively.
- Negotiating unions: The Code provides for a negotiation union in an industrial establishment for negotiating with the employer. If there is only one trade union in an industrial establishment, then the employer is required to recognise such trade union as the sole negotiating union of the workers. In case of multiple trade unions, the trade union with support of at least 75% of workers will be recognised as the negotiating union by the central or state government.
- Unfair labour practices: The Code prohibits employers, workers, and trade unions from committing any unfair labour practices listed in a Schedule to the Code. These include: (i) restricting workers from forming trade unions, (ii) establishing employer sponsored trade union of workers, and (iii) coercing workers to join trade unions.
- Standing orders: All industrial establishments with at least 100 workers must prepare standing orders on matters listed in a Schedule to the Code. The central government will prepare model standing orders on such matters, based on which industrial establishments are required to prepare their standing orders. These matters relate to: (i) classification of workers, (ii) manner of informing workers about hours of work, holidays, paydays, and wage rates, (iii) termination of employment, (iv) suspension for misconduct, and (v) grievance redressal mechanisms for workers.
- Notice of change: Employers who propose changes in the conditions of service are required to give a notice to the workers. The conditions of service for which a notice is required to be given are listed in a Schedule to the Code and include wages, contribution, and leave.
- Lay-off and retrenchment: The Code defines lay-off as the inability of an employer, due to shortage of coal, power, or breakdown of machinery, from giving employment to a worker. It also provides for employers to terminate the services of a worker, i.e., retrenchment. Employers of industrial establishments such as mines, factories and plantations with at least 100 workers are required to take prior permission of the central or state government before lay-off, retrenchment or closure. The central or state government can modify this threshold number of workers by notification. Any person who contravenes this provision is punishable with a fine between one lakh rupees and Rs 10 lakh.
- Industrial establishments in which 50 to 100 workers are employed, are required to: (i) pay 50% of basic wages and dearness allowance to a worker who has been laid off, and (ii) give one month's notice and wages for such period to a worker who has been retrenched. Any person who contravenes this provision is punishable with a fine between Rs 50,000 and two lakh rupees. Further, if an employer proposes to re-employ retrenched workers, such workers will have preference over other persons.
- Voluntary arbitration: The Code allows for industrial disputes to be voluntarily referred to arbitration by the employer and workers. The parties to the dispute must sign a written agreement referring the dispute to an arbitrator. After investigating the dispute, the arbitrator will submit the arbitration award to the government.
- Resolution of industrial disputes: The central or state governments may appoint conciliation officers to mediate and promote settlement of industrial

disputes. These officers will investigate the dispute and hold conciliation proceedings to arrive at a fair and amicable settlement of the dispute. If no settlement is arrived at, then any party to the dispute can make an application to the Industrial Tribunal.

- Industrial Tribunals: The Code provides for the constitution of Industrial Tribunals for the settlement of industrial disputes. An Industrial Tribunal will consist of two members: (i) a Judicial Member, who is a High Court Judge or has served as a District Judge or an Additional District Judge for a minimum of three years; and (ii) an Administrative Member, who has over 20 years of experience in the fields of economics, business, law, and labour relations.
- The central government may also constitute National Industrial Tribunals for settlement of industrial disputes which: (i) involve questions of national importance, or (ii) could impact industrial establishments situated in more than one state. Members of the National Industrial Tribunal will include: (i) a Judicial Member, who has been a High Court Judge, and (ii) an Administrative Member, who has been a Secretary in the central government.

COMPETITION LAW

Notification F. No. CCI/CD/Amend/Comb. Regl./2019(2) dated 30 October 2019

The Amendment has enhanced the filing fee which is payable along with the merger notification to the CCI for a pre-merger approval. The Amendment marks the third instance where the filing fee has been increased by the CCI. The first such amendment was in February 2012 followed by a further enhancement in the filing fee in March 2014.

The revised filing fees are as set out below:

a. The filing fee to be remitted for a Form I filing has been increased from INR 1,500,000 (Indian Rupees One million five hundred thousand) to INR 2,000,000 (Indian Rupees Two million).Form I is a short Form and typically filed where the market shares of the parties are comparatively lower.
b. The filing fee to be remitted for a Form II has been increased from INR 5,000,000 (Indian Rupees Five million) to INR 6,500,000 (Indian Rupees Six million five hundred thousand).Form II is filed where the combined market share of the parties to the transaction who are horizontally placed in the relevant market, i.e. are competitors, is more than 15% or if the combined market share of the parties is more than 25%, in case the parties are vertically placed in the downstream/upstream relevant market.

FEMA

Notification No. FEMA 5 (R)/2016-RB dated April 01, 2016, dated November 13, 2019

The Reserve Bank of India (RBI) on November 13, 2019, notifies the Foreign Exchange Management (Deposit) (Third Amendment) Regulations, 2019 to further amend the Foreign Exchange Management (Deposit) Regulations, 2016.

The amendments are made in Schedule 4 related to “Special Non-Resident Rupee Account - SNRR account” of the Foreign Exchange Management (Deposit) Regulations, 2016 has been substituted, stating that any person resident outside India, having a business interest in India, may open Special Non-Resident Rupee Account (SNRR account) with an authorised dealer for the purpose of putting through bona fide transactions in rupees.

The business interest, apart from generic business interest, shall include the following INR transactions, namely:-

- Investments made in India in accordance with Foreign Exchange Management (Non-debt Instruments) Rules, 2019 dated October 17, 2019 and Foreign Exchange

Management (Debt Instruments) Regulations, 2019;

- Import and export of goods and services in accordance with the Foreign Exchange Management Act 1999;
- Trade credit transactions and lending under External Commercial Borrowings (ECB) framework in accordance with Foreign Exchange Management (Borrowing and Lending) Regulations, 2018;
- Business related transactions outside International Financial Service Centre (IFSC) by IFSC units at GIFT city like administrative expenses in INR outside IFSC, INR amount from sale of scrap, government incentives in INR, etc. The account will be maintained with bank in India (outside IFSC).

The SNRR account shall carry the nomenclature of the specific business for which it is in operation. Indian bank may, at its discretion, maintain separate SNRR Account for each category of transactions or a single SNRR Account for a person resident outside India engaged in multiple categories of transactions provided it is able to identify or segregate and account them category-wise.

The tenure of the SNRR account shall be concurrent to the tenure of the contract or period of operation or the business of the account holder and in no case shall exceed seven years.

The amount due or payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO/NRE account of the nominee with an authorised dealer or authorised bank in India or by remittance through normal banking channels.

Ease of Norms for Investment by Foreign Portfolio Investors in Debt

RBI had on 23rd day of January 2020 vide its A.P. (DIR Series) Circular No.18 has eased the norms for investment by Foreign Portfolio Investors (FPIs) in Debt. These directions are issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999.

The amendments are listed as under:

- The limit of short-term investments by an FPI in either Central Government Securities (including Treasury Bills) or State Development Loans without any minimum residual maturity requirement has been increased from 20% to 30% of the total investment of that FPI.
- The limit of short-term investments by an FPI in corporate bonds with minimum residual maturity of above one year has been increased from 20% to 30% of the total investment of that FPI.
- Investments by FPI in Security Receipts are currently exempted from the short-term investment limit. These exemptions have now been extended to FPI investments in Debt instruments issued by Asset Reconstruction Companies; and Debt instruments issued by an entity under the Corporate Insolvency Resolution Process as per the resolution plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016.

NBFC

On 15th November 2019, Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 has been notified by the MCA. The rules read with the code (IBC) shall apply to:

'non-banking financial companies (which include housing finance companies) with asset size of 500 cr or more, as per last audited balance sheet.

Appropriate Regulator as per Rule3(1)(a) shall be Reserve bank of India (Subject to Change as per sector or Appropriate Regulator)

Adjudicating Authority shall be National Company Law Tribunal.

Hence, RBI has the power to initiate the Corporate Insolvency Resolution Process (CIRP) in accordance with the Code before NCLT. The resolution framework has replaced the Reserve Bank's 12th February, 2018 Circular on "Resolution of Stressed Assets", which was earlier struck down by the Supreme Court of India vide its order dated 2nd April, 2019. The resolution framework applies to all scheduled commercial banks, All India term financial institutions, small finance banks and systemically important non-deposit taking and systemically important deposit taking NBFCs (collectively referred to as the lenders). These directions under the resolution framework has been issued with a view to provide a framework for early recognition, reporting and time bound resolution of stressed assets. Dewan Housing Finance Limited (DHFL) is the first Financial Service provider to come under the ambit IBC.

KEY JUDGMENTS: REGULATORY

CORPORATE LAW

Companies Act,1956- section 108- share transfer- belated lodgment of share transfer form by lender - company refused to register the shares- Whether correct- Held, No.

(DOVE INVESTMENTS PVT. LTD. & ORS v. GUJARAT INDUSTRIAL INV. CORPORATION LTD & ORS [SC])

The core issue raised in this appeal is whether shares could be transferred to the transferee when the share transfer form is lodged beyond the prescribed lodgment period. Appellant company took loan from Respondent No.1 and Respondents 2-4 pledged their shares in the appellant company to Respondent No.1 as security. Upon delay in payment of loan, Respondent No.1 lodged the share transfer form with the Appellant which was refused on the ground of belated lodgment. The CLB and the Madras High Court upheld the transfer in favour of Respondent No.1, which has been challenged in this appeal.

Companies Act, 2013- sections 230-232- amalgamation investigation pending with respect to a group company- whether amalgamation could be rejected on this ground alone-Held, No.

(FLIPKART LOGISTICS PVT. LTD & ORS V. REGIONAL DIRECTOR, SOUTH EAST REGION & ORS [NCLAT])

The present appeal has been filed by the Appellants challenging the order date 16th January, 2019 passed by the National Company Law Tribunal (NCLT), Bengaluru Bench in C.P. (CAA) No. 07/BB/2018.

The Appellants Jointly filed petition for amalgamation before the NCLT, wherein Appellants 1&2 were the transferor companies and appellant No.3 was the transferee company. The first motion was allowed and the second motion was rejected on the sole ground that there was an enquiry pending against group company "Flipkart Internet Private Limited". Hence the present appeal is allowed.

INSOLVENCY AND BANKRUPTCY CODE, 2016

RP is not empowered to 'decide' whether resolution plan contravenes any provision of law.

(ARCELORMITTAL INDIA PRIVATE LIMITED (APPELLANT) V.SATISH KUMAR GUPTA AND ORS. (RESPONDENTS) DTD. 04.10.2018 (S.C))

The RP shall ensure that the resolution plan submitted by resolution applicant(s) should be complete in all respects, before it's submission to the CoC. The RP doesn't supposed to take any decision, except to ensure that the resolution plans submitted are complete in all respects before placing it to CoC.

The RP is also required to confirm that a resolution plan shall not contravene any of the provisions of law for the time-being in force.

RP cannot hold or decide the eligibility under Section 29A

(RAJPUTANA PROPERTIES PVT. LTD. (APPELLANT) VS. ULTRA TECH CEMENT LTD. & ORS. (RESPONDENTS) DTD. 15.05.2018)

While scrutinizing the resolution plan under Section 30 (2), the RP has no right to validate the eligibility of Resolution Applicants under

Section 29A. Neither Section 30 (2) nor any other provision in the Code confers such power on the RP to scrutinize the eligibility of Resolution Applicants.

The resolution plan submitted by one or other Resolution Applicant being confidential cannot be disclosed to any competitor Resolution Applicant

The RP is required to examine whether the resolution plan confirms the provisions as mentioned therein or not and the RP shall maintain the secrecy and should not disclose it to any other person, including other resolution applicant(s).

RP's duty with respect to service of notice for the Meetings of CoC

It's a duty of RP to ensure, that the notice of the meeting to be served to the members of CoC along with the members of suspended Board or partners of the corporate person, as the case may be.

LABOUR AND INDUSTRIAL LAWS

Industrial Disputes Act,1947- contract between petitioner and service provider- respondent workers are employed by the service provider- termination of service contract- dismissal of workmen by service provider- industrial dispute preferred against the petitioner- whether tenable- Held, No.

(AIRPORTS AUTHORITY OF INDIA v. A.S.YADAV & ORS. [DEL])

The petitioner entered into an agreement with M/s Ex Servicemen Air Link Transport Services Ltd. (hereinafter referred to as 'EATS') to run the services of retrieving passengers' luggage trollies at the Delhi Airport, which agreement was extended from time to time. As per the terms of this license, EATS was to be a paid a fixed license fee and was required to engage at least eight porters to carry out the work assigned to it. Later on, after some years, the above agreement was terminated and consequently, the services of the respondent- workmen who had been engaged by EATS were terminated, whereupon they raised an industrial dispute against the petitioner, and not EATS. The impugned award has been passed in the proceedings, directing the petitioner to reinstate the respondents with back wages.

Decision: Appeal allowed.

Reason:

After hearing the learned counsel for the parties and with their assistance perused the record. The petitioner's entire case is that as per the respondents own averments in their demand notice, statement of claim and their evidence before the Labour Court, they had admitted that they were employed by EATS, which admissions have not been appreciated by the Labour Court while rendering its findings. In these circumstances, it would be appropriate to refer that merely because the petitioner was directing the manner in which work was expected to be carried out by the respondents, it could not imply that they were employees of the petitioner.

For the aforesaid reasons, the impugned Award cannot be sustained and is, accordingly, set aside.

Employee remained absent without permission- re-joined to face disciplinary proceedings- failed to appear before the enquiry officer - dismissed from services- on appeal Tribunal set aside the dismissal and reduced three increments – whether tenable-Held, No.

(SR. DIVISIONAL MANAGER, LIC OF INDIA v. RENUKA SHARMA [DEL])

The respondent applied for and was granted leave for 35 days to visit Singapore. The respondent failed to join back the duties despite letters and a show-cause notice-cum-charge sheet was issued to the respondent to show cause as to why penalty of removal be not imposed. The respondent joined back the duties subject to the enquiry proceedings but again proceeded on unauthorized leave thereafter.

The respondent chose not to appear before the Enquiry Officer to contest the enquiry despite repeated written intimations. The Enquiry Officer fairly conducted the enquiry after affording a reasonable opportunity to the respondent. The disciplinary authority imposed the penalty of removal on the respondent for unauthorized absence of 373 days.

The respondent filed an appeal before the Appellate Authority, Zonal Manager which was rejected. The respondent, thereafter, filed a memorial to the Chairman which was also rejected. Thereafter, respondent raised an industrial dispute, in which the impugned judgment was passed by the Industrial Tribunal.

The petitioner has challenged the award of the Industrial Tribunal whereby the Industrial Tribunal set aside the penalty of removal from service of the respondent and imposed penalty of reduction of three stages of basic pay of time scale in lieu of penalty for removal from service.

Decision: Petition allowed

EPF Act- section 14B- damages- delay in deposit of contribution levy of damages- authorities failed to appreciate the reasons given by the appellant- whether the levy of damages valid-Held, No

(M/S ARIYAKUDI PRIMARY AGRICULTURAL COOPERATIVE BANK v. EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL & ORS [MAD])

The short issue which arises for consideration in this case is to whether mere delay in depositing the contribution to the Provident Fund is sufficient to attract levy of damages or not. The admitted fact in this case is that the appellant company failed to remit the PF dues in time and consequently in the proceedings conducted under Section 14-B of the Act, intimation was sent to the appellant to show cause as to why damages should not be remitted. The reason given by the appellant herein was that there was severe financial crisis faced by the company and therefore, non-deposit of the PF was unintentional. Ongoing through the facts of the case, the second respondent passed the order levying damages which was challenged before the appellate Tribunal.

The appellate Tribunal also dismissed the appeal on the ground that there was a delay in depositing the funds.

Neither the Assistant Provident Fund Commissioner nor the Appellate Tribunal looked into the issue as to whether delay in deposit was intentional or not. The order of the Tribunal was challenged by filing the instant writ petition.

The learned Single Judge dismissed the writ petition again on the ground that mere delay is sufficient to impose damages. The same is assailed before for in this instant writ appeal.

Decision: Appeal allowed and remanded back for fresh adjudication

COMPETITION ACT

Competition Act-section 4- rice procurement by government agency- non settlement of dues and losses of the miller- whether falls under abuse of dominance- Held, Yes. Whether investigation required- Held, Yes.

(MAA METAKANI RICE INDUSTRIES v STATE OF ODISHA & ANR [CCI])

Odisha State Civil Supplies Corporation Ltd (OP) is the largest agency involved in paddy procurement in the State of Odisha as it purchases more than 90% of the total paddy produced in the State and all the rice mills in the State including that of the Maa Metakani Rice Industries (Informant), are totally dependent on OP to run their rice mills.

Custom Milled Rice ('CMR') is manufactured by milling the paddy procured by State Government/State agencies and FCI.

The Informant alleged that OP directly and/or indirectly imposed unfair and discriminatory conditions in purchase of service from the Informant and it could be deduced that OP acted in an exploitative and exclusionary manner. The Informant also alleged that it is being subjected to high handedness, arbitrariness and complete abuse of dominant position by the OP, which is not tenable in the eyes of law.

Based on the basis of the above facts and circumstances, the Informant has prayed that an enquiry be instituted and it be held and declared that OP has indulged in anti-competitive practice and that the policy and the actions of OP are opposed to the freedom of trade;

Decision: Investigation of OP ordered.

Reason: It is clear that OP holds a significant market share in the total rice delivery, indicating it to be an equally significant player in the procurement of rice milling services. Though market share is not the sole or conclusive factor for determination of dominance. From the documents placed on record, it appears there is high-handedness on the part of OP. The Commission, at this stage, without delving into the specifics of the abuse, as alleged, is of the prima facie opinion that the issue requires investigation.

Accordingly, the Director General is directed to investigate into the matter and submit its report within a period of 60 days from receipt of this order. It is made clear that, if during the course of the investigation, the DG comes across anti- competitive conduct of any other entity/person in addition to those mentioned in the information, the DG shall be at liberty to investigate the same.

CONSUMER PROTECTION ACT

Consumer protection Act,1986- Consumer complaint- housing project not commenced – applicant filed complaint against the owner and developer-compensation allowed and the owner and developer were directed to pay in the proportion of 70:30- whether tenable-Held, Yes.

(CHANDIGARH HOUSING BOARD v. PARASVANATH DEVELOPERS PVT.LTD & ANR)

The Petitioner is the owner of the land and the Respondent No.1 is the developer and the Respondent No.2 is the applicant of flat and complainant before the National Commission. The complainant applied for a flat in the housing project floated by the petitioner and Respondent No.1 and paid the consideration in 2006. The project was to be completed in 36 months but till 2009 the project was not started at all. The complainant filed complaint before the National Commission and the Commission allowed the complaint and directed the petitioner and Respondent No.1 to pay the compensation and costs in the proportion of 70:30.

Decision: Appeal dismissed.

Reason: Upon perusing the record and hearing the arguments advanced by the parties, the court does not find any reason to interfere with the same, as the increase was made by the National Commission in exercise of its discretionary power. It is possible that the National Commission chose to enhance the interest rate in view of the fact that it had already imposed lesser compensation than the significantly higher compensation stipulated under Clause 9(c). Thus, the contention of the Appellant on this front is liable to be dismissed.

In view of the foregoing observations, we find that the National Commission was right in directing the Developer and CHB to pay the principal sum of INR 1, 03, 31,250/- at 10% p.a. to the Complainant herein. Further, it is found that the direction to pay INR 2 lakhs towards mental harassment and litigation costs in the ratio of 70:30 between the Developer and CHB, is also correct. Accordingly, the instant appeal deserves to be dismissed.

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Brief Sectoral Analysis

Iron & Steel

Overall Budget Impact

State of the Industry[1]

India was the world's second-largest steel producer in 2019. The production capacity has expanded to 137.975 million tonnes in FY 2019

The Indian steel industry in India has always strived for continuous modernization and up-gradation of older plants and higher energy efficiency levels.

Market Size

Till November 2019, crude steel and finished steel production stood at 73.17 MT and 67.52 MT respectively as compared to 106.56 MT and 131.57 MT in 2018-19.

Upto November 2019, export and imports of finished steel stood at 5.75 MT and 5.07 MT, respectively.

Investments

Steel industry and its associated sectors have seen a number of major investments and developments in the recent past.

According to the data released by Department for Promotion of Industry and Internal Trade (DPIIT), the Indian metallurgical industries attracted Foreign Direct Investments (FDI) to the tune of US$ 11.38 billion in the period April 2000–June 2019.

Budget Impact[2]

- The Union Budget, 2019-20 has laid a clear emphasis on the infrastructure development which will give a massive push to connected avenues including steel, which has been welcomed by the Industry.
- Further, there has been increase in custom duty of specific items enabling more market play for MSMEs and promoting Make in India initiative.

Custom Duty on certain Steel Products increased[3]

S.No.	Iron/Steel Products	Rate of Custom Duty	
		Earlier	Now
1.	Tableware and kitchenware made of **iron, steel**, , etc.	10%	20%

On overall analysis of the budget, it provides a positive reinforcement to the Iron & Steel sector.

Chemicals & Fertilizers

Overall Budget Impact

State of the Industry[4]

Chemical and fertilizer sector is one of the pioneer sectors of the economy. It is one of the oldest industries in India but also the third largest in Asia with GVA around 7.21% in manufacturing sector and about 1.2% in national GVA. The sector is poised to reach USD 300 billion by 2025.

India also ranks second in the production of nitrogenous fertilizers and third in phosphatic fertilizers.

The chemical industry is targeting chemical exports of YSD 18 billion by 2020 from USD 12 billion in FY-17.

The petrochemical market in India is expected to grow at a CAGR of 10% to reach USD 100 billion by 2022.

The market size of specialty chemicals is expected to reach USD 70 billion by 2020

Budget Impact[5]

[1] *https://www.ibef.org/industry/steel.aspx*

[2] *Source: Union Budget 2020*

[3] *Source: Budget Speech 2020*

[4] *https://www.indianchamber.org/wp-content/uploads/2019/03/Chemicals-Fertilizers-Sector-Note-2019.pdf*

Government revokes anti-dumping duty on chemical used in textile industry.

- Anti-dumping duty on import of Purified Terephthalic Acid (PTA) from seven countries has been revoked with intent to boost textile industries.

- Following changes are made in Import Duties on certain **inputs/raw materials:**

S.No.	Chemical Products	Rate of Custom Duty	
		Earlier	Now
1.	Very low sulphur fuel oil meeting ISO 8217:2017 RMG380 Viscosity in 220-400 CST standards/Marine Fuel 0.5% (FO)	10%	NIL
2.	Calcined Petroleum Coke	10%	7.5%

- The budget increased custom duty on following products:-

S.No.	Chemical Products	Rate of Custom Duty	
		Earlier	Now
1.	Butyl Acrylate	5%	7.5%
2.	Other prepared binders for foundry molds or cores; Chemical products and preparations of the chemical or allied industries	10%	17.5%

Another proposal in the budget that hit Fertilizer industries is balancing the use of chemical fertilizers with a change in incentives.

[5] *Source : Budget Speech 2020*

The government also announced a renewed focus on zero-budget farming which will significantly cut down fertilizer consumption.

On overall analysis, the budget does not provide a positive push to the fertilizer and chemical industry.

PHARMACEUTICALS

OVERALL BUDGET IMPACT

State of the Industry & Market Size[6]

- The Indian pharmaceutical industry is the world's third largest of drugs by volume. The Industry's journey to annual revenues of about USD 38 billion today can be attributed to world-class capabilities in formulation development, the entrepreneurial ability of the firms.

- The industry generates over USD 11 billion of trade surplus every year and is amongst the top five sectors contributing to the reduction of India's trade deficit.

- India accounts for 60 percent of global vaccine production.

- Estimates suggest that one in every three pills consumed in the United States is produced by an Indian generics manufacturer. In the UK, approximately 25 percent of the medicines used are made in India

- The industry is likely to grow at 11-12% CAGR, and grow to annual revenues of about USD 65 billion by 2024 and about USD 120 to 130 billion by 2030.

Investments and Recent Developments

- The Indian pharmaceutical industry has attracted more than USD 2 billion in FDI inflows over the last three years, making it one of the top eight sectors attracting FDI.

[6] *https://www.ipa-india.org/static-files/pdf/publications/position-papers/2019/ipa-way-forward.pdf*

- Indian pharmaceutical exports are likely to touch $22 billion in FY 2019-2020.

Budget Impact and Announcements[7]

- To promote exports in selected sectors such as pharmaceuticals and others, for technology up gradations, R&D, business strategy etc., a scheme of INR 1000 crore will be anchored by EXIM Bank together with SIDBI.

- Health cess @ 5% by way of custom duty to be imposed on imports of medical equipments.

- In the Union Budget 2020, it is proposed to expand the scheme of Jan Aushadhi to all districts, and offer 2,000 medicines and 300 surgicals by 2024. The central government's push for generic or unbranded medicines through Jan Aushadhi stores across the country could dent the branded drugs market.

On overall analysis of the budget it provides a positive reinforcement to the 'Make in India' initiative.

ENGINEERING & CAPITAL GOODS

OVERALL BUDGET IMPACT

State of the Industry[8]

The Indian Engineering sector has witnessed a remarkable growth over the last few years driven by increased investments in infrastructure and industrial production. The engineering sector, being closely associated with the manufacturing and infrastructure sectors, is of strategic importance to India's economy.

India on its quest to become a global superpower has made significant strides towards the development of its engineering sector. The Government of India has appointed the Engineering Export Promotion Council (EEPC) as the apex body in charge of promotion of engineering goods, products and services from India. India exports transport equipment, capital goods, other machinery/equipment and light engineering products such as castings, forgings and fasteners to various countries of the world. The Indian semiconductor industry offers high growth potential areas as the industries which source semiconductors as inputs are themselves witnessing high demand.

India became a permanent member of the Washington Accord (WA) in June 2014. The country is now a part of an exclusive group of 17 countries who are permanent signatories of the WA, an elite international agreement on engineering studies and mobility of engineers.

Market Size[9]

Turnover of capital goods industry is estimated to have reached US$ 70 billion in 2017^.

India exports its engineering goods mostly to the US and Europe, which accounts for over 60 per cent of the total exports. Engineering exports for the period of FY19 were US$ 81.02 billion as against US$ 76.20 million in the same period previous year. Engineering exports grew 6.32 per cent year-on-year to US$ 81.02 billion in FY19. Engineering exports reached US$ 38.74 billion in FY20 (up to September 2019). Exports of electrical machinery grew at a CAGR of 8.94 per cent during FY10-19. It stood at US$ 11.10 billion in FY20 (April-September'19).

The electrical equipment industry observed a witnessed a record seven-year high growth of 12.8 per cent in 2017-18, on the back of increase in government spending on rural and household electrification schemes and programmes to improve power distribution.

Construction equipment industry of India is expected to grow over 18 per cent in 2018-19.

Investments[10]

The engineering sector in India attracts immense interest from foreign players as it enjoys a comparative advantage in terms of manufacturing costs, technology and

[7] *Source: Budget Speech, 2020*
[8,9,10] https://www.ibef.org/industry/ engineering-india.aspx

innovation. The above, coupled with favourable regulatory policies and growth in the manufacturing sector has enabled several foreign players to invest in India.

The Foreign Direct Investment (FDI) inflows into India's miscellaneous mechanical and engineering industries during April 2000 to June 2019 stood at around US$ 3.59 billion, as per data released by the Department for Promotion of Industry and Internal Trade (DPIIT).

In the recent past there have been many major investments and developments in the Indian engineering and design sector:

- In June 2019, Joysons Safety Systems (JSS) announced merger of its two joint ventures in India into a tri-party joint venture called as Joyson Anand Abhishek Safety Systems Private Limited (JAASS).

- In December 2019, KEC International bags orders worth Rs 1,520 crore (US$ 217.48 million) for various business verticals.

- As of December 2019, ELGi Compressors USA, Inc., a subsidiary of Elgi Equipments Limited, a global supplier of compressed air solutions, acquired Michigan Air Solutions.

- As of December 2019, L&T Technology Services bagged a multi-million-dollar engineering, procurement and construction management project in Europe.

- Schneider Electric and Temasek acquired Larsen & Toubro's (L&T) electrical and automation business in May 2018.

Government Initiatives[11]

The Indian engineering sector is of strategic importance to the economy owing to its intense integration with other industry segments. The sector has been de-licensed and enjoys 100 per cent FDI. With the aim to boost the manufacturing sector, the government has relaxed the excise duties on factory gate tax, capital goods, consumer durables and vehicles.

- Government has planned an investment of INR 100 lakh crore (US$ 1.43 trillion) in infrastructure sector over the next five years.

- The government announced Rs 150,000 (US$ 2,250) income tax deduction on interest paid on loans for purchase of electric vehicles the Union Budget 2019-20.

- The Union Cabinet has approved incentives up to Rs 10,000 crore (US$ 1.47 billion) for investors by amending the M-SIPS scheme, in order to further incentivize investments in electronics sector, create employment opportunities and reduce dependence on imports by 2020.

Road Ahead[12]

Turnover of capital goods industry is expected to increase to US$ 115.17 billion by 2025F. India's engineering R&D market will increase from US$ 28 billion in FY18 to US$ 42 billion by FY22F. Sales of construction equipment are expected to reach 90,115 and 100,000 in 2018 and 2022, respectively, while the market size of construction equipment industry is expected to grow from US$ 4.3 billion in FY18 to US$ 5 billion by FY20. India needs Rs 235 trillion (US$ 3.36 trillion) of investments in Infrastructure in the next decade.

The export of engineering goods is expected to reach US$ 200 billion by 2030.

Budget Impact[13]

The Union Budget 2020 has laid down several proposals for Capital Goods Industry which are as under:

- Custom duty increased on Iron & Steel and other base metals;

- Customs Act is being amended so as to empower the Central Government to

[11 & 12] https://www.ibef.org/industry/ engineering-india.aspx

[13] Union Budget Speech 2020 and Finance Bill 2020

prohibit either absolutely or conditionally the import or export of any goods to prevent injury to the economy on account of uncontrolled import or export of such goods;

- A new section 28DA is introduced in the Customs Act so as to provide for administration of rules of origin under a trade agreement and to lay down procedure regarding claim of preferential rate of duty on goods imported under a trade agreement entered into between the Government of India and the Government of a foreign country or territory or economic union;

- Anti-dumping rules are being made more comprehensive and wider in scope to strengthen the anti-circumvention measures;

- Government to help 15 lakh solarized grid-connected pump sets.

- Hike in import duty on refrigerator/ACs compressors from 10% to 12.5% will have negative impact due to higher import cost.

On overall analysis of the budget it provides a positive reinforcement to the 'Make in India' initiative.

RETAIL

OVERALL BUDGET IMPACT

State of the Industry[14]

The Indian retail industry has emerged as one of the most dynamic and fast-paced industries due to the entry of several new players. Total consumption expenditure is expected to reach nearly US$ 3,600 billion by 2020 from US$ 1,824 billion in 2017. It accounts for over 10 per cent of the country's Gross Domestic Product (GDP) and around 8 per cent of the employment. India is the world's fifth-largest global destination in the retail space.

India is the world's fifth largest global destination in the retail space. In FDI Confidence Index, India ranks 16th (after U.S., Canada, Germany, United Kingdom, China, Japan, France, Australia, Switzerland and Italy).

Market Size[15]

Retail industry reached to US$ 950 billion in 2018 at CAGR of 13 per cent and expected to reach US$ 1.1 trillion by 2020. Online retail sales are forecasted to grow at the rate of 31 per cent year-on-year to reach US$ 32.70 billion in 2018. Revenue generated from online retail is projected to grow to US$ 60 billion by 2020.

Revenue of India's offline retailers, also known as brick and mortar (B&M) retailers, is expected to increase by Rs 10,000-12,000 crore (US$ 1.39-2.77 billion) in FY20.
India is expected to become the world's fastest growing e-commerce market, driven by robust investment in the sector and rapid increase in the number of internet users.

Various agencies have high expectations about growth of Indian e-commerce markets.
Luxury market of India is expected to grow to US$ 30 billion by the end of 2018 from US$ 23.8 billion 2017 supported by growing exposure of international brands amongst Indian youth and higher purchasing power of the upper class in tier 2 and 3 cities, according to Assocham.

Investments[16]

The Indian retail trading has received Foreign Direct Investment (FDI) equity inflows totaling US$ 1.85 billion during April 2000–June 2019, according to the Department for Promotion of Industry and Internal Trade (DPIIT).

With the rising need for consumer goods in different sectors including consumer electronics and home appliances, many companies have invested in the Indian retail space in the past few months.

India's retail sector investments doubled to reach Rs 1,300 crore (US$ 180.18 million) in 2018.

[14,15]https://www.ibef.org/industry/ engineering-india.aspx

- Walmart Investments Cooperative U.A has invested Rs 2.75 billion (US$ 37.68 million) in Wal-Mart India Pvt Ltd.

Government Initiatives[17]

The Government of India has taken various initiatives to improve the retail industry in India. Some of them are listed below:

- The Government of India may change the Foreign Direct Investment (FDI) rules in food processing, in a bid to permit e-commerce companies and foreign retailers to sell Made in India consumer products.
- Government of India has allowed 100 per cent Foreign Direct Investment (FDI) in online retail of goods and services through the automatic route, thereby providing clarity on the existing businesses of e-commerce companies operating in India.

Road Ahead[18]

E-commerce is expanding steadily in the country. Customers have the ever-increasing choice of products at the lowest rates. E-commerce is probably creating the biggest revolution in the retail industry, and this trend would continue in the years to come.

India's e-commerce industry is forecasted to reach US$ 53 billion by 2018. Retailers should leverage the digital retail channels (e-commerce), which would enable them to spend less money on real estate while reaching out to more customers in tier-2 and tier-3 cities. The Union Budget 2019-20 is expected to give boost to the rural consumption in India.

It is projected that by 2021 traditional retail will hold a major share of 75 per cent, organised retail share will reach 18 per cent and e-commerce retail share will reach 7 per cent of the total retail market.

Nevertheless, the long-term outlook for the industry is positive, supported by rising incomes, favourable demographics, entry of foreign players, and increasing urbanization.

Budget Impact[19]

The Union Budget 2020 has laid down several proposals impacting Retail Industry which are as under:

- Increase in Custom duty on imported footwear & furniture;
- Pruning and review of Custom duty concessions and exemptions in vogue;
- National Calamity Contingent Duty is being raised on Cigarettes and other tobacco products;
- Customs Act is being amended so as to empower the Central Government to prohibit either absolutely or conditionally the import or export of any goods to prevent injury to the economy on account of uncontrolled import or export of such goods;
- Section 8B of the Customs Tariff Act is substituted so as to empower the Central Government to apply safeguard measures including tariff rate quota to curb increased quantity of imports of an article to prevent serious injury to domestic;
- Anti-dumping rules are being made more comprehensive and wider in scope to strengthen the anti-circumvention measures;

On overall analysis of the budget it provides a positive impact on retail sector.

INFRASTRUCTURE

OVERALL BUDGET IMPACT

The budget 2020 continues to focus on the infrastructure sector. This sector has the potential to kick start the economy, boost capex cycle and create jobs. Initiatives like expansion of national gas grid and piped water

[16,17 & 18] https://www.ibef.org/industry/ engineering-india.aspx

[19] Union Budget Speech 2020 and Finance Bill 2020

supply to households will boost infrastructural demand.

Infrastructure is the lifeblood of an economy. The Government has given a massive push to improve infrastructure which includes railways, roads and highways, aviation, water transport and suburban infrastructure.

INR 100 Lakh Crores investment proposed for infrastructure over the next five years.

Government has launched the national Infrastructure pipeline (NIP) which consists more than 6500 projects across sectors such as housing, water & sanitation, education and healthcare, logistics, among others.

A huge employment opportunity exists for India's youth in construction, operation and maintenance of infrastructure. National Skill Development Agency will give special thrust to infrastructure focused skill development opportunities. The following is a sector wise key policy measures as proposed in the budget:

Roads, Highways & Aviation

Government proposes to invest about 1.70 Lakh Crore under transport infrastructure in 2020-21.

Accelerated development of highways will be undertaken. This will include development of 2500 Km access control highways, 9000 Km of economic corridors, 2000 Km of coastal and land port roads and 2000 Km of strategic highways.

100 new airports to be developed in the country in order to support UDAN scheme which aims at improving regional connectivity.

Water, Oil & Gas and Electricity

India's sea-ports need to be more efficient by using technology to improve performance. A governance framework keeping with global benchmarks needs to be put in place. Further, government would consider corporatizing & stock listing of at least one major port of India.

Inland Waterways received a boost in the last five years. The Jal Vikas Marg on National Waterway-1 will be completed. Further, the 890 Km Dhubri-Sadiya connectivity will be done by 2022

Developing waterways has its impact on the eco-system on both the banks of the river. Government has conceptualized "Arth Ganga". Now Government is envisaging plans to energize economic activity along river banks.

Taking electricity to every household has been a major achievement. However, the distribution sector, particularly the DISCOMS are under financial stress. The Ministry intends to promote "smart" metering. Hence, It has been proposed to replace conventional energy meters by prepaid smart meters in the next 3 years. Also, this would give consumers the freedom to choose the supplier and rate as per their requirements.

In the upstream sector of oil and gas, the Open Acreage Licensing Policy (OALP) is a success having awarded 1,37,000 sq km for exploration to private sector and to the CPSEs.

City gas distribution rights are also awarded. Now it is proposed to expand the national gas grid from the present 16200 km to 27000 km. Further in order to deepen gas markets in India, reforms will be undertaken to facilitate transparent price discovery and ease of transactions.

National Technical Textile Mission

India imports significant quantity of technical textiles worth $16 billion every year. To reverse this trend and to position India as a global leader, a National Technical Textiles Mission is proposed. National Technical Textile Mission is proposed in the budget with an outlay of INR 1,480 crore over four years to cut down imports.

On an overall basis, the budget has recognized a big push in the infrastructure sector as a key measure to achieve 5 Trillion dollar economy benchmark.

AUTOMOBILE & AUTO-COMPONENTS

OVERALL BUDGET IMPACT **NIL** ⟷

State of the Industry

The automobile industry in India is world's fourth largest, with the country currently being the world's fourth largest manufacturer of cars and seventh largest manufacturer of commercial vehicles in 2018. Indian automotive industry (including component manufacturing) is expected to reach Rs 16.16-18.18 trillion (US$ 251.4-282.8 billion) by 2026

Two-wheelers dominate the industry and made up 81 per cent share in the domestic automobile sales in FY19. The passenger vehicle sales in India crossed the 3.37 million units in FY19 and is further expected increase to 10 million units by FY20. Production of passenger vehicles rose 2.8 per cent. Also, Luxury car market in India is expected to grow at a 25 per cent CAGR till 2020.

The Government of India expects automobile sector to attract US$ 8-10 billion in local and foreign investments by 2023. India will be part of Global Automotive Triumvirate - the global Big 3 in coming 20 years and will also exceed the Indian automotive sales from US market by mid 2030s.

Impact of Union Budget 2020

The following are some of the key budget proposals and impact[20]:

- Off budget announcements generally, lends policy direction. No major direct impact on automobiles has been touched upon;
- Discretionary spending resulting from surplus arising out of removal of tax exemptions are not likely to make a major impact;
- Earlier announcements in this sector stated here-below in *Italics* are likely continue;
- Phase II of Fame India Scheme (Faster Adoption and Manufacturing of Hybrid and Electric Vehicles) for three years commencing from April 1, extending total budgetary support of Rs 10,000 crore;
- Income tax deduction of up to Rs 1.5 lakh on the interest paid on loan for purchase of electric vehicle;
- Upfront incentive proposed on purchase and charging infrastructure, to encourage faster adoption of Electric Vehicles;
- Global Hub for Electric Vehicle

Thrust on E-Vehicles- A New Beginning[21]

The Government has approved Phase II of Fame India Scheme (Faster Adoption and Manufacturing of Hybrid and Electric Vehicles) for three years commencing from April 1, extending total budgetary support of Rs 10,000 crore as per last budget announcement. Under the Phase II of Fame, the Government intends to support about 7,000 e-buses with a total outlay of Rs 3,500 crore by extending demand incentives for deployment of electric buses using operational cost model to be adopted by State and City Transport Corporations. All efforts are being made to make this scheme a success.

The Budget 2020 was expected to offer huge benefits for the Indian automotive. However considering a muted response from the industry, there seems an inverse relationship between actuals and anticipated outcomes of the budget. The automobile industry had been looking forward to reduction in GST in order to compensate for the hike in prices during the BSVI transition, while lithium-ion battery manufacturers expected a five per cent reduction in custom duty. However, the Indian government has announced 'handholding support' for the Indian automotive component industry for technology upgradation, research and development and business strategy planning.

The Budget 2020 focuses more on localization. Effective from 1 April 2020, custom duty on completely built units (CBUs) of commercial EVs will be increased to 40 per cent as against the current custom duty of 25 per cent. As for passenger EVs, the finance minister has proposed to surge customs duty on semi knocked down (SKD) to 30 per cent as against the currently applicable 25 per cent. Additionally, the government has also proposed hiking the duty on SKD forms of electric buses, two-wheelers and trucks to 25 per cent as against the current custom duty of 15 per cent.

[20] *SBI Report on Union Budget 2020*

[21] *SBI Report on Union Budget 2020*

The government proposed to introduce a new scheme to promote electronics, semi-conductor manufacturing and assembly to attract foreign investment. It is anticipated that the initiative will help with EV manufacturing in the country. As revealed by the finance minister, a scheme of Rs 1,000 crore will be anchored in the Exim bank together with SIDBI and both these institutions will contribute Rs 50 crore each and it will be achieved towards equity and technical assistance. Additionally, debt-funding of Rs 900 crore from banks would also be made available.

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GLOSSARY

A

AAR : Authority for Advance Ruling
ADD : Anti-Dumping Duty
AE : Associated Enterprises
ALP : Arm`s Length Price
AMT : Alternative Minimum Tax
AO : Assessing Officer
APA : Advance Pricing Agreement
ARE : Alternate Reporting Entity
AY : Assessment Year

B

BCD : Basic Custom duty
BEPS : Base Erosion and Profit Shifting
BO : Branch Office

C

CbCR : Country by Country Report
CBDT : Central Board of Direct Taxes
CBU : Completely Built Units
CCI : Competition Commission of India
CE : Constituent Entity
CGST : Central Goods and Service Tax
CIRP : Corporate Insolvency Resolution Process
CIT : Commissioner of Income Tax
CKD : Completely knocked Down
CNC : Computerized Numerical Control
CoC : Committee of Credit
CPI : Consumer Price Index
CRISIL : Credit Rating Information Services of India Limited
CSO : Central Statistical Organization
CVD : Countervailing Duty

D

DDT : Dividend Distribution Tax
DIPB : Department of Industrial and Promotion
DRP : Dispute Resolution Panel
DTAA : Double Taxation Avoidance Agreement

E

ECB : External Commercial Borrowing

F

FD : Fiscal Deficit
FDI : Foreign Direct Investment
FEMA : Foreign Exchange Management Act
FII : Foreign Institutional Investor

K

KMS : Kilometers

L

LIBOR : London Inter-Bank Offered Rate
LRS : Liberalized Remittance Scheme

M

MAT : Minimum Alternate Tax
MCA : Ministry of Corporate Affairs, Govt of India.
MF : Master File
MLC : Multilateral Convention
MLI : Multilateral Instrument
MSME : Micro, Small & Medium Enterprises

N

NBFC : Non-Banking Financial Institution
NCLT : National Company Law Tribunal
NPS : National Pension Scheme
NR : Non-resident

O

OC : Operating Costs
OECD : Organization for Economic Corporation and Development
QIB : Qualified Institutional Buyer
OP : Operating Profits

P

PAN : Permanent Account Number
PBCA : Printed circuit board assembly
PE : Permanent Establishment
PO : Project Office
POEM : Place of Effective Management

R

RBI : Reserve Bank of India
RDB : Rupee denominated Bond
RFID : Radio-frequency identification
ROC : Registrar of Companies
ROI : Return of Income
RP : Resolution Professional

S

SBI : State Bank of India
SCN : Show cause notice
SEBI : Securities & Exchange Board of India
SEP : Significant Economic Presence
SEZ : Special Economic Zone
SGST : State Goods and Service Tax

FIPB : Foreign Investment Promotion Board

FM : Finance Minister

FPI : Foreign Portfolio Investors

FY : Financial Year

G

GDP : Gross Domestic Product

GST : Goods and Service Tax

H

HC : High court

HUF : Hindu Undivided Family

I

IBBI : Insolvency and Bankruptcy Board of India

IBC : Insolvency and Bankruptcy Code

IFSC : International Financial Services Centre

IGST : Inter State Goods and Service Tax

IMF : International Monetary Fund

ITA : The Income Tax Act, 1961

ITAT : Income Tax Appellate Tribunal

IRP : Insolvency Resolution Professional

ITR : The Income Tax Rules, 1962

SKD : Semi Knocked Down

STT : Securities Transaction Tax

T

TCS : Tax Collected at Source

TDS : Tax Deducted at Source

TP : Transfer Pricing

TPO : Transfer Pricing Officer

TRC : Tax Residency Certificate

U

U/S : Under Section

UPI : Unified Payment Interface

W

W.R.T : With respect to

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