



KAASYAPA

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Seminar on Budget 2020

Direct Tax Proposals



2020
BUDGET

The image shows a wooden desk with various office supplies. A magnifying glass is held over a small, spiral-bound calendar. The calendar's cover is black with the text '2020 BUDGET' in white, bold, sans-serif font. Surrounding the calendar are several items: two yellow pencils at the top left, a set of keys with a black fob at the top right, a small light green piggy bank on the right, a black pen at the bottom right, and a wooden stamp with a light-colored handle on the left. The background is a dark, textured wooden surface.

RATES OF INCOME-TAX

The rates of personal income tax for Assessment year 2020-2021 are as follows:

Income Slab	Tax rate
Upto Rs. 2,50,000	Nil.
Rs. 2,50,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs 10,00,000	30%

Surcharge @ 10% on Income tax (if taxable income is between 50 Lakhs to 1 Crore)#

Surcharge @ 15% on Income tax (if taxable income is between 1 Crore to 2 Crores)#

Surcharge @ 25% on Income tax (if taxable income excluding income u/s 111A and 112A is between 2 Crores to 5 Crores)#

Surcharge @ 37% on Income tax (if taxable income excluding income u/s 111A and 112A is more than 5 Crores)#

Surcharge @ 15% on Income tax (if taxable income including income u/s 111A and 112A is more than 2 Crores)#, if it not covered in above points.

“Health and education cess on income tax” @ 4%

#Subject to marginal relief

RATES OF INCOME-TAX

Insertion of New **section 115BAC** – New Personal Tax Regime:

- w.e.f AY 2021-22, An Individual or HUF have an option to pay tax in respect of the total income at following rates:

Income Slab	Tax rate
Upto Rs. 2,50,000	Nil.
Rs. 2,50,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs. 7,50,000	10%
From 7,50,001 to 10,00,000	15%
From 10,00,001 to 12,50,000	20%
From 12,50,001 to 15,00,000	25%
Above 15,00,000	30%

- No Business Income - Option shall be exercised for every previous year
- Other Cases - Option once exercised for a previous year shall be valid for that previous year and all subsequent years. Once exercised, option may withdrawn ONLY ONCE.

RATES OF INCOME-TAX

Conditions for opting new regime in **Sec115BAC** are as follows:

- No exemptions or deductions under the provisions of section 10(5) , 10(13A), 10(14), 10(17), 10(32), 10AA, 16, 24(b), 32(1)(iia), 32AD, 33AB, 33ABA, 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA), 35AD, 35CCC, 57(iia) or under any provisions of Chapter VI-A other than 80CCD(2), 80JJAA.
- No Setoff of any losses such as carried forward or depreciation from any earlier Assessment years which is relating to deductions covered in earlier point
- No setoff of losses from House property against any other head.
- No exemptions or deductions are available for allowances or perquisites provided under any other law for the time being in force
- It is also proposed to amend section 115JC of the Act so as to provide that the provisions relating to AMT shall not apply to such individual or HUF having business income.

RATES OF INCOME-TAX

■ Tax rates for domestic company

Income Slab	Tax rate
Total Income upto 1 Crore	Tax rate as applicable [^] + Nil Surcharge
Rs 1,00,00,001/- upto Rs 10,00,00,000/-	Tax rate as applicable [^] + 7% surcharge *
Above Rs 10,00,00,000/-	Tax rate as applicable [^] + 12% surcharge **

[^] Proposed Tax Rate for Companies with turnover/ gross receipts of FY 2018-19 is less than or equal to Rs.400 Crores is 25%. For other Companies the tax rate is 30%.

* For companies other than domestic companies it is 2%.

** For companies other than domestic companies it is 5%.

Domestic companies also have an option to opt for taxation under section 115BAA or section 115BAB of the Act on fulfilment of conditions contained therein. The tax rate is 15 % in section 115BAB and 22 % in section 115BAA with Surcharge @ 10 % in both the cases.

RATES OF INCOME-TAX

Insertion of New section 115BAA by the Taxation Laws (Amendment) Act, 2019

- A domestic company shall at its option, pay tax at a lower rate of 22 per cent for any previous year relevant to the Assessment Year beginning on or after 1st April 2020, subject to certain conditions
- the option is required to be exercised by the company before the due date of furnishing return of income: and
- the option once exercised cannot be subsequently withdrawn and shall apply to all subsequent assessment years.
- Under this optional scheme, the total income of the company shall be computed as follows:
 - i. No exemptions or deductions under the provisions of section 10AA, 32(1)(iia), 32AD, 33AB, 33ABA, 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;
 - ii. No set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions covered in earlier point
 - iii. No set off of any loss or allowance for unabsorbed depreciation u/s. 72A, if such loss or depreciation is attributable to any of the deductions covered in earlier point and
 - iv. Can claim depreciation u/s. 32, except u/s. 32(1)(iia).
- Such companies will not be required to pay minimum alternate tax (MAT) under section 115JB of the act.

W.E.F AY 2021-22 and subsequent AY's

RATES OF INCOME-TAX

Insertion of New section 115BAB by the Taxation Laws (Amendment) Act, 2019

- A domestic company shall at its option, pay tax at a lower rate of 15 % on or after 1st April 2020, subject to certain conditions.
- the option is required to be exercised by the company before the due date of furnishing return of income: and
- the option once exercised cannot be subsequently withdrawn and shall apply to all subsequent assessment years.
- Under this optional scheme, the following conditions shall apply:

RATES OF INCOME-TAX

Insertion of New section 115BAB by the Taxation Laws (Amendment) Act, 2019

- (a) the company has been set-up and registered on or after the 1st day of October, 2019, and has commenced manufacturing or production of an article or thing on or before the 31st day of March, 2023
- (b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.
- (c) the total income of the company shall be computed similar to section 115BAA :

W.E.F AY 2021-22 and subsequent AY's

RATES OF INCOME-TAX

Incentives to resident co-operative societies.(Insertion of new **section 115BAD)**

- It is proposed to insert a new section 115BAD. As per the said Section, a co-operative society which is resident in India shall have the option to pay tax at 22 percent with a surcharge of 10% w.e.f AY 2021-22
- Conditions for concessional rate shall be that the total income of the co-operative society is computed
 - Without any exemptions or deductions under the provisions of 10AA, 32(1)(iia), 32AD, 33AB, 33ABA, 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA), 35AD, 35CCC, under any provisions of Chapter VI-A
 - With no setoff of any loss carried forward or depreciation relating to income covered in above point
 - Only Depreciation u/s 32 except 32(1)(iia) is allowed
- Alternate Minimum Tax (AMT) and set off AMT credit shall not apply to such co-operative society.
- The option so exercised once cannot be withdrawn later;

W.E.F AY 2021-22 and subsequent AY's

RATES OF INCOME-TAX

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

Existing :

- domestic companies may opt to pay tax u/s **115BAA** or u/s **115BAB**, provided that they do not avail specified deductions and incentives. Some of the deductions prohibited are deductions under any provisions of Chapter VI-A under the heading “C. Deduction in respect of certain incomes” other than the provisions of section 80JJAA.

Proposed:

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

W.E.F AY 2020-21 and subsequent AY's

RATIONALIZATION OF PROVISIONS OF START-UPS. (SECTION 80-IAC)

– CLAUSE 36

Existing

- Deduction of 100% of profits for 3 consecutive years out **7 years**
- provided
 - The eligible startup incorporated between 1st April 2016 and 31st March 2021
 - Total turnover of the company is not more than **25 Crores** from the date of incorporation till completion of 7 eligible years for deduction.

Proposed

- Deduction of 100% of profits for 3 consecutive years out **10 years**
- provided
 - The eligible startup incorporated between 1st April 2016 and 31st March 2021
 - Total turnover of the company is not more than **100 Crores** from the date of incorporation till completion of 10 eligible years for deduction.
- **w.e.f 1st April, 2021** will accordingly apply in relation to the **AY 2021-22 and subsequent AYs.**

MODIFICATION IN CONDITIONS FOR OFFSHORE FUNDS' EXEMPTION FROM "BUSINESS CONNECTION". (SECTION 9A)

- CLAUSE 6

Existing

- Section 9A of the Act provides for a special regime in respect of offshore funds by providing them exemption from creating a "business connection" in India on fulfilment of certain conditions.
- One of the conditions provided requires that the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund.
- One other condition provided under clause (j) of said sub-section (3) requires that the monthly average of the corpus of the fund shall not be less than one hundred crore rupees except where the fund has been established or incorporated in the previous year in which case, the corpus of fund shall not be less than one hundred crore rupees at the end of a period of six months from the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later. This condition does not apply in a case where the fund has been wound up.
- Conditions for the monthly average of the corpus of the fund were in place.

MODIFICATION IN CONDITIONS FOR OFFSHORE FUNDS' EXEMPTION FROM "BUSINESS CONNECTION". (SECTION 9A)

- CLAUSE 6

Proposed

- It proposed that for the purpose of calculation of **the aggregate participation or investment** in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager **during first three years up to twenty-five crore rupees shall not be accounted for** and
- 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.

w.e.f 1st April, 2020 and will, accordingly, apply in relation to the AY 2020-21 and subsequent assessment years.

AMENDMENT OF SECTION 115BAB OF THE ACT - GENERATION OF ELECTRICITY AS MANUFACTURING. -

CLAUSE 52

Existing

- Concessional rate of Tax @15% for the manufacturing companies subject to exceptions
- Provided
 - Plant should setup on or after 1st October, 2019,
 - Commence manufacturing or production by 31st March, 2023 and
 - Should not avail any specified incentives or deductions

Proposed

- The benefit of concessional rate under this section of the Act was now proposed **to be extended for business of generation of electricity.**

w.e.f 1st April, 2020 and will accordingly apply in relation to the AY 2020-21 and subsequent years.

EXCLUDING INTEREST PAID OR PAYABLE TO PERMANENT ESTABLISHMENT OF A NON-RESIDENT BANK - SECTION 94B. [CLAUSE 46]

Existing:

- Under Sec. 94B, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding Rs. 1Crore which is deductible in computing income chargeable under the head "PGBP" in respect of **any debt issued by a non-resident, being an associated enterprise of such borrower**, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest,

Proposed:

- It is now proposed to **amend section 94B of the Act** so as to provide that provisions of interest limitation would not apply to interest paid in respect of a debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking, in India.

w.e.f. 1st April, 2021

PROVIDING AN OPTION TO THE ASSESSEE FOR NOT AVAILING DEDUCTION UNDER **SECTION 35AD**. **[CLAUSE 18]**

Existing:

- Section 35AD of the Act, relating to deduction in respect of expenditure on specified business, provides for 100 per cent. deduction on capital expenditure incurred by the assessee on certain specified businesses.
- Under the current Sec 35AD as per subsection (1) it is mandatory to avail the benefit of this section if the business of the Assessee is an eligible business as specified under this section.
- Further as per subsection (4), the expenditure relating to sub-section (1) shall not be allowed under any other section in any previous year.

Proposed:

- Now it is proposed to amend subsection (1) to **make the deduction optional** and further proposed to amend subsection (4) to keep it in line with subsection (1) so that the **Assessee will be restricted to claim expenditure as specified in subsec (1) only if the Assessee opt to claim deduction under the section 35AD** of the Act.

w.e.f. 1st April, 2021

EXEMPTING NON-RESIDENT FROM FILING OF INCOME-TAX RETURN IN CERTAIN CONDITIONS U/S 115A.

[CLAUSE 47]

■ **Existing:**

As per Sec.115A(5) Non resident need not file his/her income tax return in India if its total income consists of only dividend or interest income provided TDS on such income has been deducted appropriately.

■ **Proposed:**

Now it is proposed to extend the benefit of “Non filing of Income Tax Return” as specified in Sec.115A(5) to Non-resident whose total income consists of only royalty or FTS provided TDS on such income has been deducted appropriately.

w.e.f. 1st April, 2021

DEFERRING TDS OR TAX PAYMENT IN RESPECT OF INCOME PERTAINING TO EMPLOYEE STOCK OPTION PLAN (ESOP) OF START-UPS.

[CLAUSE 68, 71, 72 & 73]

■ Existing:

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

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

■ Proposed:

An employer, being an eligible start-up referred to in section 80-IAC, which is responsible for issuing ESOPS to their employees (being perquisite in nature)

Employer shall deduct or pay, as the case may be, tax on such income within **14 days** —

- (i) after the expiry of **48 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 specified shares are allotted to the employee

w.e.f. 1st April, 2021

AMENDMENT FOR PROVIDING ATTRIBUTION OF PROFIT TO PERMANENT ESTABLISHMENT IN SAFE HARBOUR RULES UNDER SECTION 92CB AND IN ADVANCE PRICING AGREEMENT UNDER SECTION 92CC [CLAUSE 43 & 44]

■ **Existing:**

- **Section 92CB** empowers the Central Board of Direct Taxes (Board) for making safe harbour rules (SHR) to which the determination of the arm's length price (ALP) under section 92C or section 92CA of the Act shall be subject to.
- Further, **section 92CC** of the Act empowers the Board to enter into an advance pricing agreement (APA) with any person, determining the ALP or specifying the manner in which the ALP is to be determined, in relation to an international transaction to be entered into by that person.

■ **Proposed:**

Now it is proposed to amend above **sections 92CB and 92CC to cover determination of attribution to PE.**

w.e.f. 1st April, 2021

ALLOWING DEDUCTION FOR AMOUNT DISALLOWED UNDER SECTION 43B, TO INSURANCE COMPANIES ON PAYMENT BASIS. [CLAUSE 104]

■ **Existing:**

There is no specific provision, in the case of other insurance companies, to allow deduction for any payment of certain expenses specified in section 43B if they are paid in subsequent previous year.

Therefore in the current scenerio there is a possibility that such sum may not be allowed as deduction in the previous year in which the payment is made.

■ **Proposed:**

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

w.e.f. 1st April, 2020 and apply from AY 2020-21

REDUCING THE RATE OF TDS ON FEES FOR TECHNICAL SERVICES (OTHER THAN PROFESSIONAL SERVICES). [CLAUSE 79]

■ Existing:

Currently u/s 194J the **rate of TDS is @ 10%** and the following will be covered under this section:

- Fee for professional services
- Fee for technical services
- Royalty or any sum referred in section 28(va)
- Remuneration or commission to director (not covered in sec. 192)

■ Proposed:

Now it is proposed to **reduce rate for TDS in section 194J in case of fees for technical services (other than professional services) to 2%** from existing 10%.

Whereas the TDS rate in other cases under section 194J would remain same at 10%.

w.e.f. 1st April, 2020

TDS ON E-COMMERCE TRANSACTIONS [CLAUSE 84]

Proposed:

A new section **194-O, TDS at the rate of 1%** is to be deducted on the gross amount, considering the following points:

- TDS is to be paid by e-commerce operator for sale of goods or provision of service or both to the account of e-commerce participant
- E-commerce operator should deduct the tax at the time of credit of amount of sale or service or both to the account of e-commerce participant or at the time of participant
- If the e-commerce participant is an Individual or HUF and if the gross 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 PAN or Aadhaar number to the operator then the sum credited or paid to the e-commerce participant **shall not be subjected** to this provision.
- With effect from 1st April, 2020

TCS PROVISIONS [CLAUSE 93]

Existing:

Tax is collected at source on of trading in alcohol, liquor, forest produce, scrap etc..

Proposed:

Foreign remittances and tour packages:

In addition to the existing provision, it is proposed to levy TCS on overseas remittance and for sale of overseas tour package, as under:

- Aggregate amount received is **Rs. 7,00,000 or more in a FY for remittance out of India** under the LRS of RBI, **TCS at the rate of 5% and 10 %** for non PAN/Aadhaar cases.
- Seller of an overseas tour program package shall be liable to collect **TCS at the rate of 5 % and 10 %** for non PAN/Aadhaar cases.

TCS on Sale of Goods above specified limit:

- Seller of goods is liable to **collect TCS at the rate of 0.1 per cent, if the consideration is more than fifty lakh rupees** and
- The total sales/ Gross Receipts/ Turnover from the business carried on by the **seller exceeds ten crore rupees during the FY immediately preceding the FY.**
- With effect from 1st April, 2020

TAX TREATMENT OF EMPLOYER'S CONTRIBUTION TO PF, NPS [CLAUSE 13]

▪ **Existing Provisions**

- Employer contribution to RPF in excess of 12% is taxable in the hands of employee.
- Employer contribution to approved Superannuation fund in excess of 1,50,000 is taxable as perquisite.
- Similarly, the assessee is allowed a deduction under National Pension Scheme (NPS) for the 14% of the salary contributed by the Central Government and 10% of the salary contributed by the employer.
- **However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer.**

▪ **Proposed Amendment**

- It is proposed to provide **a combined upper limit of 7,50,000/- in respect of employer's contribution in a year to NPS, superannuation fund and RPF** 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.

- **With effect from 1st April, 2021**

MODIFICATION OF E ASSESSMENT SCHEME [CLAUSE 69]

Existing

- E-assessment Scheme, 2019 was notified under sub-section (3A) of Section 143 of the Act.

Proposed

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

w.e.f. 1st April, 2020

AMENDMENT IN DISPUTE RESOLUTION PANEL (DRP). [CLAUSE 70]

- **Existing**

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

- **Proposed**

- To amend section 144C of the act
- (A) include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee – Words “**income or loss returned**” omitted.
- (B) expand the scope of the said section by defining eligible assessee as a **non-resident not being a company, or a foreign company.**
- **w.e.f. 1st April, 2020**

PROVISION FOR E APPEAL [CLAUSE 95]

- **Proposed**

- To insert sub-section (6A) in section 250 of the Act to provide for introducing an **appellate system with dynamic jurisdiction** in which appeal shall be disposed of by one or more Commissioner (Appeals).
- Directions are to be issued on or before 31st March 2022.

- **w.e.f. 1st April, 2020**

CLARITY ON STAY BY THE INCOME TAX APPELLATE TRIBUNAL (ITAT)

[CLAUSE 97]

■ Existing

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

■ Proposed amendment

- To amend section 254(2A) of the Act, to provide that ITAT may grant stay subject to the condition that the **assessee deposits not less than 20% of the amount of tax or furnish security of equal amount** in respect thereof.

PROVISION FOR E PENALTY [CLAUSE 100]

- **Existing**

- Section 274 of the Act provides for the procedure for imposing penalty under Chapter XXI of the Act.

- **Proposed**

- To insert new sub-section (2A) in the section 274 so as to provide that the **Central Government may notify an e-scheme** for the purposes of imposing penalty

- **w.e.f. 1st April, 2020**

TAXPAYER'S CHARTER [CLAUSE 64]

- **Proposed**

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

- **w.e.f. 1st April, 2020**

MODIFICATION OF RESIDENCY PROVISIONS [CLAUSE 4]

- **Existing**

- As per clause (b) of Explanation 1 of sub-section (1) to section 6 of the Act, an Indian citizen or a person of Indian origin shall be Indian resident only if he is in India for 182 days instead of 60 days in that year.
- As per section 6(6) of the Act, a person being an Individual or HUF is said to be “not ordinarily resident” if individual /the manager of such HUF is a non-resident in 9 out of the 10 previous years preceding that year or stays in India for a period of 729 days or less in 7 previous years preceding that previous year.
- Stateless Individuals – Not taxable in any country

MODIFICATION OF RESIDENCY PROVISIONS [CLAUSE 4]

- **Proposed**

- (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** – Person of Indian Citizen to become Resident upon stay in India for 120 days or more.
- (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**.

w.e.f. 1st April, 2021

DOUBLE TAXATION AVOIDANCE AGREEMENTS (DTAA) WITH MULTILATERAL INSTRUMENT (MLI) [CLAUSE 41 & 42]

■ Existing:

- Section 90 of the Act empowers the Central Government to enter into agreement with foreign countries or specified territories (commonly known as DTAA's) for,-
 - (a) granting relief in respect of —
 - (i) income on which tax has been paid both, in India and that foreign country or territory, or
 - (ii) income-tax chargeable under the laws of both, India and that foreign country or territory, to promote mutual economic relations, trade and investment.
 - (b) avoidance of double taxation of income under the laws of both, India and that foreign country or territory,
 - (c) exchange of information for prevention of evasion or avoidance of income-tax chargeable under the laws of both India and that foreign country or territory, or investigation of cases of such evasion or avoidance, or
 - (d) recovery of income-tax under the laws of both India and that foreign country or territory.
- Article 6 of MLI provides for modification of the Covered Tax Agreement to include the following preamble text:

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

DOUBLE TAXATION AVOIDANCE AGREEMENTS (DTAA) WITH MULTILATERAL INSTRUMENT (MLI) [CLAUSE 41 & 42]

- **Proposed:**

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

With effect from 1st April, 2021

DEFERRING SIGNIFICANT ECONOMIC PRESENCE (SEP) PROPOSAL, EXTENDING SOURCE RULE,

- SEP applicability deferred to 1 April 2022 in light of ongoing discussion in G20-OECD BEPS project
- Source based taxation on income from:
 - advertisements which targets customer residing in India or a customer who accesses the advertisement through internet protocol address located in India;
 - sale of data collected from person residing in India or from a person who uses internet protocol address located in India; and
 - sale of goods or services using data collected from person residing in India or from a person who uses internet protocol address located in India
- India has amended the preamble of the tax treaties to align with the Multilateral Instrument to reiterate that tax treaties are not to be applied to create opportunities of non-taxation or reduction of tax through evasion/avoidance

DIVIDEND DISTRIBUTION TAX (DDT) AND MOVING TO CLASSICAL SYSTEM OF TAXING DIVIDEND IN THE HANDS OF SHAREHOLDERS/UNIT HOLDERS

- On account of the change to the dividend distribution tax (“DDT”) regime, **additional tax of 10%** on individual shareholders **abolished**.
- Incidence of dividend taxation **shifted to the shareholder** at applicable rates (as against the domestic company declaring dividends)
- TDS at 10% if dividend exceeds INR 5,000 for resident shareholders
- TDS at 20% (plus applicable surcharge or cess) or lower treaty rate for NR shareholders
- Interest expense deductible to the extent of 20% of such dividend income

RATIONALIZATION OF PROVISIONS RELATING TO TAX AUDIT IN CERTAIN CASES [CLAUSE 7,8,10,14,15,16,19,20,23,24,26,35,37,39,45,56,57,63,66,75,76,77,78,79 & 93]

■ **Existing:**

- Section 44AB of the act, provides that, every person carrying on business is required to get his accounts audited, if
 - TO or Gross Receipts > one crore rupees in any previous year. (In case of business)
 - Gross Receipts > fifty lakh rupees (In case of Professionals)
- Due date of filing Tax Audit report is September 30

■ **Proposed:**

- To amend Section 44AB of the act, provides that, it is proposed **to increase the threshold limit** for a person carrying on business **from one crore rupees to five crore rupees** in cases where,-
 - (i) aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt; and
 - (ii) aggregate of all payments in cash during the previous year does not exceed 5% of such payment.
- To amend due date of filing of tax audit report - tax audit report may be furnished by the said assesseees at least **one month prior to the due date of filing of return of income.**

With effect from 1st April, 2020

RATIONALIZATION OF PROVISIONS RELATING TO TAX AUDIT IN CERTAIN CASES

[CLAUSE 7,8,10,14,15,16,19,20,23,24,26,35,37,39,45,56,57,63,66,75,76,77,78,79 & 93]

- **Proposed:**

- To amend due date for filing return of income under sub-section (1) of section 139 :-
- (A) providing 31st October of the assessment year (as against 30th September) as the due date for an assessee referred to in clause (a) of Explanation 2 of sub-section (1) of Section 139 of the Act;

- Due Dates

- For TP cases :
 - Income tax return – 30th November
 - Form 3CEB – 31st October
 - Tax audit report – 31st October
- For Non-TP cases :
 - Income tax return form – 31st October
 - Form 3CEB – Not applicable
 - Tax audit report – 30th September

- **With effect from 1st April, 2020**

AMENDMENT IN THE PROVISIONS OF ACT RELATING TO VERIFICATION OF THE RETURN OF INCOME AND APPEARANCE OF AUTHORIZED REPRESENTATIVE [CLAUSE 67 & 102]

- **Existing:**

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

- **Proposed:**

- To amend clause (c) and (cd) of section 140 of the act so as to enable any other person, as may be prescribed by the Board to verify the return of income in the cases of a company and a limited liability partnership.
- Explicit reference in **section 288 of the Act for an Insolvency Professional to act as an authorised representative** of the corporate debtor has been raising certain practical difficulties

- **With effect from 1st June, 2020**

VIVAD SE VISHWAS - DIRECT TAX DISPUTE RESOLUTION SCHEME 2020

Objective:

- To provide resolution mechanism for **pending** direct tax **disputes** across various appellate forums
 - Commissioner of Income-tax (Appeals), CIT(A)
 - Income Tax Appellate Tribunal, ITAT
 - The High Court and
 - The Supreme Court of India.
- The Scheme also seems to include writ petitions under its ambit.
- **Salient Features of the scheme**
 - Direct tax appeals (i.e. related to disputed tax, interest, penalty or fee) pending as on 31 January 2020 are eligible for this scheme.
 - taxpayer will have to give up its right of litigation in respect of all the issues under dispute in respect of that appeal
 - If appeal is related to disputed Tax- 100% waiver of interest, penalty and prosecution upon payment of 100% of disputed tax by 31st March 2020.
 - If appeal is related to disputed Interest- upon payment of 25% of disputed interest, penalty and fee by 31st March 2020 rest 75% will be waived.

VIVAD SE VISHWAS - DIRECT TAX DISPUTE RESOLUTION SCHEME 2020

Summary of the scheme:

Type of disputes	Amount payable on or before 31 March 2020	Amount payable on or after 1 April 2020 but before the last date [last date to be notified]
Where the 'tax arrears' is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax or penalty leviable or levied on such disputed tax	100% of the disputed tax	110% of the disputed tax [If 10% of disputed tax exceeds total disputed interest and penalty, such excess to be ignored]
Where the tax arrears are related to disputed interest or disputed penalty or disputed fee	25% of the disputed penalty/interest/ fees	30% of the disputed penalty/interest/ fees

Thank You