BUDGET 2020
PATH TO ECONOMY'S REVIVAL

COMPILED BY :

SANJAY C. SHAH & ASSOCIATES

CHARTERED ACCOUNTANTS

Flat No. 10, 2nd Floor, Madhav Nagar CHS, Above Merwans Cake Shop, S. V. Road,
Andheri West, Mumbai 400 058.

✆ 022-2628-1101/1150 ✉ sanjayshah@scsassociates.in 🌍 www.scsassociates.in

BOOK COMPILED BY:

CA SANJAY C. SHAH

CA DHIRAJ MEHTA

CA KINISHA SHAH

ADV. HARDIK SHAH

MANASVI SHAH

ARBAZ KHAN

RITIKA JAIN

SOHAM SARKER

ISHA RAVANI

CHAITYA SHAH

HETAL PATADIA

PARIKRAMA GOSWAMI

CA UMANG SHAH

CA NIKHIL SONDIGALA

NIDHI KHAKHRIYA

SHRUTI BHANUSHALI

SAIF CHUNAWALA

NAKUL RAWAL

SONI PODDAR

PRIYA SHAH

CHINTAN SHAH

OMKAR KHARADE

HIGHLIGHTS OF UNION BUDGET 2020

- No change in personal Income tax rates under existing tax regime;
- To provide an option to Individuals and HUF to avail a lower rate of tax under New tax regime subject to certain terms and conditions;
- Listing requirement of "Business Trust" on stock exchange has been extended;
- Changes in provision for determining tax residency of an Individual Taxpayer;
- Widen the scope of Business Connection In India in relation to Digital Economy;
- Insertion of new provision for Registration and Approval of Specified Trusts, Institution or Firms;
- Withdrawal of exemption on certain perquisites or allowances provided to UPSE Chairman, members and Chief Election Commissioner;
- Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund;
- Exemption in respect of certain Income of Indian Strategic Petroleum Reserves Ltd. (ISPRL);
- Allowing exemption from taxability of Foreign Portfolio Investors (FPI), on account of indirect transfer of assets;
- Taxation of Income Received by Non Resident for granting film distribution rights;
- Providing a combined upper limit of Rs 7, 50,000/- in respect of employer's contribution in a year to NPS, superannuation fund and recognized provident fund. Any excess contribution is proposed to be taxable in hands of employee as perquisites.
- Cross-Checking of claim of Donation u/s 35 and 80G by donor from statements to be furnished by donees;

- Availing Deduction on Capital Expenditure u/s 35AD is optional for Tax Payers.

- Safe Harbor Limit between the Actual Consideration and the Stamp Duty Value of an Immovable Property has been enhanced from 5% to 10% for Taxation purposes.

- Reduction of Compliance burden on **SMEs** by increasing the threshold limit of Turnover for mandatory applicability of Tax Audit from Rs. 1 Crores to Rs. 5 Crores.

- Due Date for furnishing Return of Income have been postponed from 30th September to 31st October.

- In case of Transfer Pricing, the due date for submission of Form 3CEB is 31st October.

- Cap of Stamp Duty Valuation introduced on Cost of Acquisition of Capital Asset where Fair Market Valuation as on 01/04/2001 is adopted by Assessee;

- Restriction of 20% of Dividend Income on claim of Expenditure against said Income;

- Dividend Distribution Tax (DDT) abolished; Companies are not required to pay DDT; dividend to be taxed in the hands of recipients at applicable rates;

- Removing the restriction of allowability of Interest to Indian branches of Foreign Company engaged in business of Banking;

- To reintroduce deduction on Inter Corporate Dividend;

- To provide an option to Co-Operative Societies to avail a lower rate of tax @22%;

- To amend IT Act to allow faceless scrutinies;

- To end tax harassment, new Taxpayer Charter to be introduced;

- To provide rights and power of various authorities to carry out a survey;

- To allow employees of start-up possessing ESOPs to defer payment of taxes upto five years from the time of exercise till the time they leave the start-up or until they sell their shares, whichever is earlier;

- Reduction in the rate of TDS on fees for technical services (not being a Professional Service);

- Extend the period of concessional rate of TDS **payment of interest to FIIs & QFIs** and also to extend this concessional rate to municipal debt securities;

- Widening the scope of TDS on E-commerce transactions;

- Rationalization of provision relating to Form 26AS;

- Widening the scope of Section 206C to include TCS on Foreign remittance through Liberalized Remittance Scheme (LRS), Selling of overseas tour package & Sale of goods over a limit;

- New scheme for E-Appeal and E-Penalty to eliminate the interface between the appellate authority and the taxpayer;

- Penalty for false entry or omission of any entry in the books of accounts;

- Allowing deduction for amount disallowed u/s 43B, to Insurance Companies on payment basis;

- "Ladakh" is now become part of Union Territory;

- GST Law to be amended to delink the date of issuance of debit note from the date of issuance of the underlying invoice for the purpose of availing input tax credit;

- Allowing option of cancellation of GST Registration obtained Voluntarily by any person;

- TDS certificate (under GST) shall be issued in such form and in such manner as may be prescribed without specifying exact details to be furnished;

- Penalty extended to Beneficiary in case of tax evasion, wrongly claimed ITC or ITC passed on or as the case maybe under GST;

- Composition scheme restricted to taxpayers making the inter-state supply of service, supplies not leviable to GST and supplies through e-commerce operator where TCS is deductible;

- No approval is required from Board to determine Remuneration of Chartered Accountant or Cost Accountant for conducting Special Audits under GST Law, which means he can decide the same on his own;

- The entry in Schedule II to the CGST Act on 'Transfer of Business Assets' will now exclude transactions done without consideration from it;

- There will be no refund on account of inverted duty structure would be admissible on any tobacco products;

- Simplified GST returns with features like SMS based filing for nil return and improved input tax credit flow to be implemented from 1st April, 2020 as a pilot run;

- Dynamic QR-code capturing GST parameters proposed for consumer invoices;

- Electronic Invoice to capture critical information in a centralized system to be implemented under GST Law;

- Customs duty raised on footwear to 35% from 25% and on furniture goods to 25% from 20%;

- Excise duty proposed to be raised on Cigarettes and other tobacco products, no change made in the duty rates of bidis;

- Basic customs duty on imports of news print and light-weight coated paper reduced from 10% to 5%;

- Customs duty rates revised on electric vehicles and parts of mobiles;

- 5% health Cess to be imposed on the imports of medical devices, except those exempt from BCD;

- Lower customs duty on certain inputs and raw materials like fuse, chemicals, and plastics;

- Higher customs duty on certain goods like auto-parts, chemicals, etc. which are also being made domestically.

Rates of Income Tax: -

The table below shows the Income slabs and the corresponding Income Tax rates for Resident Individual/ Hindu Undivided Family, applicable for Assessment Year 2021-22: -

Option A – NORMAL TAX RATES: -

All Resident Assessee and All Non – Resident Assessee (Less than 60 years):-

Income	Existing Slab of Income Tax Rate (AY 2020-21)	Proposed Slab of Income Tax Rate (AY 2021-22)
Up to Rs 2,50,000	NIL	NIL
Rs. 2,50,001 - Rs. 5,00,000	5%	5%
Rs. 5,00,001 – Rs. 10,00,000	20%	20%
Above Rs. 10,00,000	30%	30%

Resident Senior Citizen (60 years or more but less than 80 years):-

Income	Existing Slab of Income Tax Rate (AY 2020-21)	Proposed Slab of Income Tax Rate (AY 2021-22)
Up to Rs. 3,00,000	NIL	NIL
Rs. 3,00,001 – Rs. 5,00,000	5%	5%
Rs. 5,00,001 – Rs. 10,00,000	20%	20%
Above Rs. 10,00,000	30%	30%

Resident Very Senior Citizen (80 years or more): -

Income	Existing Slab of Income Tax Rate (AY 2021-22)	Proposed Slab of Income Tax Rate (AY 2020-21)
Up to Rs. 5,00,000	NIL	NIL
Rs. 5,00,001 – Rs. 10,00,000	20%	20%
Above Rs. 10,00,000	30%	30%

Option B – CONCESSIONAL TAX RATES FOR INDIVIDUAL AND HUF [If option u/s 115BAC is exercised] : -

Income	Proposed Slab of Income Tax Rate * (AY 2021-22)
Up to Rs. 2,50,000	NIL
Rs. 2,50,001 - Rs. 5,00,000	5%
Rs. 5,00,001 - Rs. 7,50,000	10%
Rs. 7,50,001 - Rs. 10,00,000	15%
Rs. 10,00,001 - Rs. 12,50,000	20%
Rs. 2,50,001 - Rs. 15,00,000	25%
Above Rs. 15,00,000	30%

*** Concessional tax rates are subject to certain terms and conditions, which are briefly described in Section 115 BAC of the Act.**

*** AMT shall not apply to Individual/HUF, having business Income Opting for new Regime**

The table below shows the **Surcharge rate** for Individual/ Hindu Undivided Family applicable for Assessment Year 2021-22: -

Income Limit (in Rs.)	Existing Slab of Income Tax Rate (AY 2020-21)	Proposed Surcharge on Income (AY 2021-22)	
		other than Capital Gain covered u/s 111A & 112A	With Capital Gain covered u/s 111A & 112A
Up to 50,00,000	NIL	NIL	NIL
50,00,001 - 1,00,00,000	10%	10%	10%
1,00,00,001 - 2,00,00,000	15%	15%	15%
2,00,00,001 - 5,00,00,000	25%	25%	15%*
5,00,00,001 and above	37%	37%	15%*

*In case the total income exceeds Rs. 2,00,00,000/- on account of Income from capital gain covered u/s 111A and 112A of the Act, then surcharge @ 15% would be applicable on the total income irrespective of quantum of income other than capital gain

Health & Education Cess for all types of assesses: -

Types of Cess	For AY 2020-21	For AY 2021-22
Health & Education Cess	4%	4%

Note: A resident individual is entitled to rebate u/s 87A if his total income does not exceed Rs. 5 lakhs. The amount of rebate shall be 100% of Income Tax or Rs. 12,500/- whichever is less.

For Domestic Company: -

I. The table below shows the Income Tax rates for Assessment Year 2021-22 for Domestic Company: **-**

Turnover Limit	Existing Slab of Income Tax Rate (%) (AY 2020-21)				Proposed Slab of Income Tax Rate (%) (AY 2021-22)			
	Tax	Sur.	H & E Cess	Eff. Rate	Tax	Sur.	H & E Cess	Eff. Rate
A.	**INCOME UP TO Rs. 1 CR.**							
Up to Rs. 50 Cr.	25.00	NIL	4.00	26.00	25.00	NIL	4.00	26.00
Rs. 50 Cr. to Rs. 250 Cr.	25.00	NIL	4.00	26.00	25.00	NIL	4.00	26.00
Rs. 250 Cr. to Rs. 400 Cr.*	25.00	NIL	4.00	26.00	25.00	NIL	4.00	26.00
Above Rs. 400 Cr.*	30.00	NIL	4.00	31.20	30.00	NIL	4.00	31.20
B.	**INCOME ABOVE Rs. 1 CR. BUT LESS THAN Rs. 10 CR.**							
Up to Rs. 50 Cr.	25.00	7.00	4.00	27.82	25.00	7.00	4.00	27.82
Rs. 50 Cr. to Rs. 250 Cr.	25.00	7.00	4.00	27.82	25.00	7.00	4.00	27.82
Rs. 250 Cr. to Rs. 400 Cr.*	25.00	7.00	4.00	27.82	25.00	7.00	4.00	27.82
Above Rs. 400 Cr.*	30.00	7.00	4.00	33.38	30.00	7.00	4.00	33.38
C.	**INCOME ABOVE Rs. 10 CR.**							
Up to Rs. 50 Cr.	25.00	12.00	4.00	29.12	25.00	12.00	4.00	29.12
Rs. 50 Cr. to Rs. 250 Cr.	25.00	12.00	4.00	29.12	25.00	12.00	4.00	29.12
Rs. 250 Cr. to Rs. 400 Cr.*	25.00	12.00	4.00	29.12	25.00	12.00	4.00	29.12
Above Rs. 400 Cr.*	30.00	12.00	4.00	34.94	30.00	12.00	4.00	34.94

*Turnover to be checked that of Financial Year 2018-19.

- **How to Calculate Turnover?**

Calculation of Turnover is not defined in the Statute and hence in our opinion, for the purpose of calculation of turnover of Rs. 400 Crores in Financial Year 2018-19, it will be calculated in the same manner as specified in Guidance note on Tax Audit under Section 44AB of the Income Tax Act, 1961.

II. The table below shows the **MAT** Income Tax rates for Assessment Year 2021-22 (Other than those covered in **option I**): -

Type of Assessee	Existing Slab of Income Tax Rate (%) (AY 2020-21)				Proposed Slab of Income Tax Rate (%) (AY 2021-22)			
	Tax	Sur.	H & E Cess	Eff. Rate	Tax	Sur.	H & E Cess	Eff. Rate
A.	**INCOME UP TO Rs. 1 CR.**							
MAT for Company#	15.00	NIL	4.00	15.60	15.00	NIL	4.00	15.60
MAT for Company$	9.00	NIL	4.00	9.36	9.00	NIL	4.00	9.36
B.	**INCOME ABOVE Rs. 1 CR. BUT LESS THAN Rs. 10 CR.**							
MAT for Company#	15.00	7.00	4.00	16.69	15.00	7.00	4.00	16.69
MAT for Company$	9.00	7.00	4.00	10.02	9.00	7.00	4.00	10.02
C.	**INCOME ABOVE Rs. 10 CR.**							
MAT for Company#	15.00	12.00	4.00	17.47	15.00	12.00	4.00	17.47
MAT for Company$	9.00	12.00	4.00	10.48	9.00	12.00	4.00	10.48

Domestic Company other than Company being a Unit located in IFSC deriving its income wholly in convertible forex;

$ Domestic Company being a Unit located in IFSC deriving its income wholly in convertible forex.

III. However, Tax Laws Amendment Act 2019 enacted on 12th December 2019 and inserted new section 115BAA and 115 BAB of the IT Act, providing Domestics Companies an option to pay taxes at following concessional rates on fulfillment of certain conditions described in section 115BAA & 115BAB of the IT Act. This new Tax Rate is applicable for A.Y. 2020-21 and A.Y. 2021-22 (Other than those covered in **option I**)

Particulars	**Basic Tax Rate**		**Surcharge**	**H & E Cess**
	All Companies	**New Companies***		
Domestic Company • Normal Tax Rate • MAT	 22% NA	 15 NA	10%	4%

*New Manufacturing companies and companies engaged in business of generation of electricity.

For Other Assessee (other than Domestic Company)

The table below shows the Income Tax rates for Assessment Year 2021-22 for Other Assessee (other than Domestic Company): -

Type of Assessee	Existing Slab of Income Tax Rate (%) (AY 2020-21)				Proposed Slab of Income Tax Rate (%) (AY 2021-22)			
	Tax	Sur.	H & E Cess	Eff. Rate	Tax	Sur.	H & E Cess	Eff. Rate
A.	**INCOME UP TO Rs. 1 CR.**							
a) Firm/LLP								
-Regular Tax	30.00	NIL	4.00	31.20	30.00	NIL	4.00	31.20
-AMT	18.50	NIL	4.00	19.24	18.50	NIL	4.00	19.24
b) Foreign Co.								
-Regular Tax	40.00	NIL	4.00	41.60	40.00	NIL	4.00	41.60
B.	**INCOME ABOVE Rs. 1 CR. BUT LESS THAN Rs. 10 CR.**							
a) Firm/LLP								
-Regular Tax	30.00	12	4.00	34.94	30.00	12.00	4.00	34.94
-AMT	18.50	12	4.00	21.55	18.50	12.00	4.00	21.55
b) Foreign Co.								
-Regular Tax	40.00	2	4.00	42.43	40.00	2.00	4.00	42.43
C.	**INCOME ABOVE TO Rs. 10 CR.**							
a) Firm/LLP								
-Regular Tax	30.00	12	4.00	34.94	30.00	12.00	4.00	34.94
-AMT	18.50	12	4.00	21.55	18.50	12.00	4.00	21.55
b) Foreign Co.								
-Regular Tax	40.00	5.00	4.00	43.68	40.00	5.00	4.00	43.68

Modification of the definition of "Business Trust":- [Amendment to Sections 2(13A) of the Act]

As per existing provision of Section 2(13A), "Business Trust" means a trust registered as Infrastructure Investment Trust (Invite) or a Real Estate Investment Trust (REIT) and the units of which are listed with the recognized stock exchange in accordance with the relevant Regulations.

In order to encourage unlisted Invite or REIT, it is now Proposed that requirement of units being listed on recognized stock exchange is eliminated to qualify as "Business Trust" by amending the definition of "Business Trust".

Above amendment shall come into force from AY 2021-22 onwards.

Modification of provisions for determining Tax Residency: - [Amendment to Section 6 of the Act]

As present, the existing provisions of Section 6 provide the conditions under which an Individual is said to be a Resident in India. Present provisions of Residential Status and incidence of tax for different taxpayers are define as under:-

A. Basic Conditions to determine Residential Status in India as tabulated as under:-

In the case of an Indian citizen **who leaves India** during the previous year for **the purpose of employment** or who leaves India **as a member of the Crew of an Indian ship**	In the case of an Indian citizen or a person of Indian origin (who is abroad) **who come to India on a visit** during the previous year	In the case of an Individual [Other than mentioned in column (1) and (2)]
1	2	3
a. His presence in India for at least 182 days during the previous year.	a. His presence in India for at least 182 days or more during the previous year.	a. His presence in India for at least 182 days during the previous year; **Or** b. Presence in India for at least 60 days during the previous year **AND** 365 days or more during 4 years immediately preceding the previous year.

B. Additional Conditions to determine Status as **"Resident but not Ordinarily Resident in India" (RNOR)** is as tabulated as under:-

i	A person should be Non Resident in India in 9 out of 10 years immediately preceding previous year; **OR**
ii	His presence in India is for 729 days **or** less during 7 years immediately preceding previous year.

C. Summary of the Rule of Residence is tabulated as under:-

Residential Status	Conditions
Resident and Ordinarily Resident in India (ROR)	Satisfying at least one of the basic conditions **And** not satisfying both the additional conditions;
Resident but not ordinarily resident in India (RNOR)	Satisfying at least one of the basic conditions **And** one or more of additional conditions;
Non-Resident In India (NRI)	Not satisfying any of the basic conditions.

D. Incidence of the Tax for Different Taxpayers is tabulated as under:-

Individual and Hindu Undivided Family (HUF)			
Nature of Income	**ROR**	**RNOR**	**NRI**
Indian Income	Taxable In India	Taxable In India	Taxable In India
Foreign Income	Taxable In India	Only 2 types of Foreign Income* is taxable in India and any other income is Not Taxable In India	Not Taxable In India

*

a. Business Income and Business is controlled wholly or partly from India;
b. Income from Profession which is set up in India.

Proposed Amendment in conditions to determine Residential Status in India is tabulated as under;-

A. **Basic Conditions to determine Residential Status in India as tabulated as under**:-

In the case of an Indian citizen **who leaves India** during the previous year for **the purpose of employment** or who leaves India **as a member of the Crew of an Indian ship.**	In the case of an Indian citizen or a person of Indian origin (who is abroad) **who come to India on a visit** during the previous year	In the case of an individual [Other than mentioned in column (1) and (2)]
1	2	3
a. His Presence in India for at least 182 days during the previous year.	a. His Presence in India for at least ~~182 days or more~~ **120 days or more** during the previous year.	a. His Presence in India for at least 182 days during the previous year; **Or** b. Presence in India for at least 60 days during the previous year **AND** 365 days or more during 4 years immediately preceding the previous year.

Additional Conditions to determine Status as "Resident but not ordinarily Resident in India" (RNOR) is tabulated as under:-

i	~~A person should be Non Resident In India in 9 out of 10 years immediately preceding previous years; or~~ A person should be Non Resident In India in **7 out of 10** years immediately preceding previous years.
ii	~~His presence in India for 729 days or less out of 7 preceding years~~

Notes:-
a) Erased portion above is existing provisions.
b) Bold portion is Proposed Amendment.

Deemed Resident in India: - [Insertion to Clause (1A) of Section 6 of the Act]

Presently, an Individual, especially High Net Worth Individuals (HNWI) are able to become Non Resident by satisfying basic condition of non-stay in India for 182 days or more during the previous year and avoiding payment of taxes to any country on Income, they earn in any Country. Tax laws should not encourage a situation where a Person is not liable to pay tax in any Country. Such a circumstance is certainly not desirable.

It is now Proposed to amend the Act to provide that an **Indian citizen who is not liable to tax in any other Country or territory by reason of his domicile or any other Criteria shall be deemed to be a Resident in India.**

Above amendment has far reaching impact as it can lead to several Non-Residents who are Indian Citizens, staying in Foreign Countries like Dubai, Mauritius, etc. for decades and not paying tax in either Country. Suddenly they will be asked to pay tax in India as Deemed Resident, as they are holding Indian Passport.

Accordingly, CBDT has clarified on 2nd February, 2020 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.

It is further clarified that new Proposed provision is not intended to include in tax net those Indian Citizens who are bonafide workers in other Countries.

It is also clarified that new Proposed provision is aimed at those who shifted their stay to low tax or no tax countries to avoid paying taxes in India.

Even, after the clarifications issued by CBDT, matter is still not free from doubt. Following anxious queries remain unanswered:-

1. What documents will substantially prove fiscal domicile of a person?

   Possible documents could be:-

   a. Residency Visa;
   b. Tax Certificates;
   c. Bank Statements;
   d. Partnership Deed;
   e. Employment Contracts;
   f. Rental Receipts, etc.

   Will the Income Tax department go beyond these papers to dig deeper?

2. Will such information be shared with the Enforcement Directorate (ED)?

3. Will CBDT clearly spell out the conditions that NRIs have to meet to avoid tax on earnings outside India during the relevant years?

4. Will the rules be left to the interpretation of Tax Assessing Officers?

5. Will department start sending notices to NRIs asking them to establish their fiscal domicile?

More than the tax, the bigger worry for the NRI is the requirement to disclose Global Assets once they are considered as "Resident" in India. Details like Overseas Trusts, Foundations, Bank Accounts, Properties, Stake in Unlisted

Entities, etc. have never been shared with Indian Tax Department. In some cases, source of money is unclear. They do not want to be questioned on these assets and explain how these were created.

It is possible with the Proposed Amendment that a person may become Resident in two countries.

E.g. Mr. X, an Indian Citizen staying in Dubai for more than 182 days and by virtue of his residence in Dubai, he will become Resident of Dubai and at the same time by virtue of his being citizen of India and not paying tax in Dubai, he becomes **Deemed Resident in India**. Therefore, he becomes Resident in both countries in same year.

This could trigger the **Tie-Breaker Test** which arises when a person is considered Resident in two Countries. **Tie- Breaker Test** rules as per "Article of Resident" in Double Taxation Avoidance Agreement (DTAA) signed with Dubai for determining Residential status of Individual are as under in order of priority.

i. He shall be deemed to be a Resident only of the Country in which he has a **permanent home available** to him.

   If he has a permanent home available to him in both Country, he shall be deemed to be a Resident only of the Country with which **his personal and economic relations are closer** (i.e. his relatives and source of Income);

ii. If the Country in which his **personal and economic relations** cannot be determined, or if he does not have a permanent home available to him in either Country, he shall be deemed to be a Resident only of the Country in which **he has an habitual abode**;

iii. If he has an habitual abode in both Country or in neither of them, he shall be deemed to be a Resident only of the Country of which **he is a national**;

iv. If he is a national of both Country or of neither of them, the competent authorities of the Contracting **Country shall settle the question by mutual agreemen**t.

Above amendment shall come into force from AY 2021-22 onwards.

Aligning the scope of "Business Connection" and"Significant Economic Presence:- [Amendment to Section 9(1) of the Act]

At present, all income arising or accruing, whether directly or indirectly through or from **Business Connection** in India is deemed to accrue or arise in India and is taxable in India. **Significant Economic Presence**" **(SEP)** in India shall also constitute as Business Connection in India.

Presently, as per Explanation 2A of Section 9 of the Act, Significant Economic Presence" means: -

- Any transaction in respect of any goods, services or property carried out by a Non-Resident in India including provision of download of data or software in India if aggregate of payment arising from such transaction or transactions during the previous year **exceeds the amount as may be prescribed**; or

- Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

Further activities shall also constitute SEP in India, whether or not the Non-Resident has a residence or place of business in India or renders services in India.

Presently, threshold for application of above SEP provisions are not notified as the issue is still under discussion in G-20 countries, OECD & BEPS Projects. Final Report is expected by end of December 2020.

In view of the above it is now Proposed to defer the above provisions by one more year i.e. upto AY 2022-23.

Expansion of scope of "Business Connection":-[Insertion to Explanation 3A of 9(1) of the Act]

Presently, where a business is carried on in India through a specified person, so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

There are no specific transactions which are classified as arising out of business connection in India. It is always debatable as to which transactions shall constitute as transaction having business connection in India. All E-Commerce Portals such as **Amazon, Flipkart, Snap deal, etc.** have a hidden income from collecting of data of Indian customers and passing it on to foreign players who want to commence/ expand their presence of operations in India.

It is now Proposed that such income should be treated as having business connection in India and shall accordingly be taxable in India. Further there are E-Commerce Portal, which sell advertisement space on their Portal to Foreign Brands/Players to target Indian Customers. In that case also, sale of space for advertisement should be held to be a transaction with business connection in India as it targets the Indian Customer base in India.

It is now Proposed to include both the above type of activities as having business connection in India and accordingly the profit attributable from these activities should be taxed in India.

Above amendment shall come into force from AY 2021-22 onwards.

Aligning Exemption from taxability of Foreign Portfolio Investors (FPI), on account of Indirect Transfer Of Assets:- [Insertion 3rd proviso to Explanation 5 of 9(1)(i) of the Act]

At present, Explanation 5 to Section 9 (1) (i) specifies that if a Foreign Entity holds / derives its substantial value from its shareholding in an Indian Company, then the entire shareholding of the Foreign Company is deemed to have been situated in India and hence the transfer of shares of Foreign Company shall also be liable to tax in India.

In order to keep Investors in Foreign Portfolio Investment (FPI) out of the rigour of Explanation 5, existing Explanation 5(a) provides that the existing Explanation 5 shall not apply to any assets being Investment held by Non-Resident in a FPI deriving its substantial value from its Investment in Companies situated in India.

In other words, Non-Resident holding any assets/shares of any FPI (which derives its substantial value from assets located in India) is free to transfer the said assets/shares to any other Entity without attracting any tax in India.

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 replaced SEBI FPI Regulations 2014.

The difference between these two Regulations relevant to the Present Context is that is that SEBI has done away with the broad based Criteria for the purpose of categorization of Portfolios and has reduced the categories from three to two.

In view of the above amendment in SEBI Regulations, it is necessary to amend the provisions of the Income Tax Act to make them consistent with provisions of SEBI Regulations.

It is Proposed that the existing FPIs who are registered under the erstwhile SEBI Regulations 2014 shall continue to enjoy the benefits granted by Explanation 5 as explained above with no change.

As regards Non-Resident holding any asset of **FPI registered under new regulations 2019, only asset from Category I FPI of said regulation** shall be out of the rigour of Explanation 5 and said assets can be transferred by Non-Resident without attracting any tax in India.

Above amendment shall come into force from AY 2021-22 onwards.

Income received by a Non-Resident/Foreign Company for granting film distribution rights:-[Amendment to Explanation 2 of 9(1)(vi) of the Act]

At present consideration for sale, distribution and exhibition of cinematographic films is not considered as Royalty as per the definition of royalty as contained in the Act.

It is now Proposed by way of amendment in the above definition to include the said income arising out of granting distribution rights of cinematographic film as "Royalty" (hereinafter referred to as "the said income").

Due to the above Amendment, following Income of an assessee shall be taxable In India in respect of Business or Profession carried on by him in India.

1. **E.g.:** M/s. X, an Indian Resident film producer acquires rights of a film, which was produced by "Netflix" (Foreign Company) for its use in Business or Profession carried out in India. Then consideration paid by M/s. X to Netflix shall be taxable in the hands of Netflix in India, as it is used for purpose of Business or Profession carried out in India.

2. **E.g.: "**M/s. X Ltd."(Foreign Company) sells rights of distribution of film, which was produced by them to "M/s. Y Ltd."(Foreign Company) and "M/s. Y Ltd". uses the same in India, then the consideration paid by " M/s. Y Ltd." to "M/s. X Ltd." shall be taxable in the hands of "M/s. X Ltd." in India.

Above amendment shall come into force from AY 2021-22 onwards.

Change in conditions of Eligibility of Investment Fund:- [Amendment to Section 9A of the Act]

At present, Section 9A of the Act Provides that Fund Management activity carried out through an eligible Fund Manager by an Eligible Investment Fund (EIF), fulfilling certain terms and conditions, are not considered as constituting Business Connection in India and accordingly not liable to tax in India.

Certain conditions to qualify as eligible Investment Fund were stringent in nature and hence required certain relaxation.

It is therefore Proposed to relax certain conditions to qualify as Eligible Investment Fund, the present conditions and the Proposed relaxations in the conditions are tabulated below:-

Particulars	Upto AY 2020-21	AY 2021-22 Onwards
Aggregate participation or Investment in the Fund by persons Resident in India	Not exceeding 5% of the Corpus of the Fund	Not exceeding 5% of the Corpus of the Fund **<u>Proposed Amendment</u>**: Contribution by eligible fund manager during first three years up to twenty-five Crore rupees shall not be included in above 5% limit.
Monthly Average of Corpus	Not less than Rs. 100 Crores	Not less than Rs. 100 Crores
Monthly Average Corpus To be checked at what point of time	**In case of Newly Formed Funds or Existing Funds in any previous year** A. At the end of six months from last day of the month in which Fund is established or incorporated OR B. As on last day of previous year Whichever is later	**In case of Newly Formed Funds or Existing Funds in any previous year** A. At the end of Twelve months from last day of the month in which Fund is established or incorporated

Above amendment shall come into force from AY 2020-21 onwards.

Withdrawal of exemption on certain perquisites or allowances provided to Union Pubic Services Commission (UPSC) Chairman:- [Amendment in Section 10(45)]

At present, Section 10 of the Act provides for Exemption in respect of any allowance or perquisite as may be notified by the Central Government, paid to the serving/ retired Chairman or Members of UPSC in computing their total income and hence shall be exempt from income-tax.

However, it is now Proposed to remove these Exemptions. The impact of the aforementioned amendment is tabulated as below:-

Sr No.	Nature of Perquisite	Existing Provision	Proposed Provision
1	Rent Free Accommodation	Exempt	Taxable
2	Conveyance including transport allowance	Exempt	Taxable
3	Sumptuary Allowance	Exempt	Taxable
4	Leave Travel Concession to serving chairman, member of UPSC and members of family.	Exempt	Taxable
5	Allowance of Rs.14,000/ month for services of an orderly	Exempt	Taxable
6	Free of Cost Residential Telephone & Free Calls up to Rs.1,500/ month	Exempt	Taxable

This amendment is Proposed in line with government Policy of not granting too many privileges to Key posts of Government.

This proposal is 'also' likely to affect adversely the conditions of service in terms of remuneration payable to Chief Election Commissioner, Election Commissioner and Supreme Court Judges as well.

Above amendment shall come into force from AY 2021-22 onwards.

Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund: - [Insertion of Section 10 (23FE) of the Act]

Government needs Foreign Investment in Infrastructure facilities and based on negotiations with Abu Dhabi Investment Authority, the said authority appears to have put conditions of Income Exemption before such Foreign Investment can be committed to India.

Hence in order to promote Investment of Sovereign Wealth Fund, including the wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA), it is Proposed to insert a new clause in Section 10, so as to provide Exemption to any income of a Specified Person in the nature of:-

- Dividend;
- Interest or
- Long-term capital gains

arising from an investment made by it in India, whether in the form of debt or equity shall be fully Exempt, if the following conditions are fulfilled.:-

(i) The Investment is required to be made on or before 31st March, 2024;

(ii) The said Investment is held for at least 3 years; and

(iii) The Investment is made in a Company or enterprise carrying on the activity of developing/operating and/or maintaining the following infrastructure facilities:-

(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway, inland port or navigational channel in the sea.

For the purpose of this Exemption, **"specified person"** is Proposed to be defined to mean:-

(i) a wholly owned subsidiary of the ADIA, which is a resident of the United Arab Emirates (UAE) and which makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates;

AND

(ii) a sovereign wealth fund which satisfies the following conditions:

a. It is wholly owned and controlled, directly or indirectly, by Government of a Foreign Country;

b. It is set up and regulated under the law of the Foreign Country;

c. Its earnings are Credited either to the account of the Government of the Foreign Country or to any other account designated by that Government such that no portion of the earnings inures any benefit to any private person;

d. Its asset vest in the Government of the Foreign Country upon dissolution;

e. It does not undertake any commercial activity whether within or outside India; and

f. It is notified by the Central Government in the Official Gazette for this purpose.

Above amendment shall come into force from AY 2021-22 onwards.

Exemption in respect of certain income of Indian Strategic Petroleum Reserves Limited (ISPRL):- [Insertion of Section 10 (48C) of the Act]

It is Proposed to grant exemption to **income earned by Indian Strategic Petroleum Reserves Limited (ISPRL) which is wholly owned subsidiary of Oil Industry Development Board** under the Ministry of Petroleum and Natural Gas, as a **result of an arrangement for replenishment** of Crude oil stored in its storage facility in pursuance to directions of the Central Government in this behalf.

This exemption is applicable only if the following condition is satisfied:-

Crude oil is replenished in the storage facility within three years from the end of the financial year in which the Crude oil was removed from the storage facility for the first time.

Above amendment shall come into force from AY 2021-22 onwards.

Taxability of Contributions made by the Employer on account of Employee Assesse in Provident fund etc. and accretion there on:- [Amendment to Section 17(2)(vii) and Insertion of Section 17(2)(viia)]

At Present, the Employer's contribution to an approved superannuation fund on account of Employee Assessee in excess of Rs. 1, 50,000 is treated as perquisite in the hands of employee. Similarly, Employers Contribution in Provident fund in excess of 12% of salary is also taxable as perquisites

King-size Employees structure their salary in such a manner that, the Employer's contribution to Provident fund (up to 12% of salary) forms a major component of the Salary earned by them.

Investment by way of Provident Fund fetches higher rate of interest as compared to interest on Fixed Deposits and also the interest from Provident Fund is exempt from Income Tax.

In order to prevent king-size Employees to get undue tax incentives, Section

17(2) (vii) is Proposed to be amended, the same is explained below:-

Fund	Existing Provision	Proposed Amendment
Recognized Provident Fund	Employer's contribution exceeding 12% of salary is taxable as perquisite in the hands of employee	Employer's Contribution **in excess of Rs 7,50,000 p.a** (Aggregate in all 3 funds) shall be taxable as perquisite in the hands of Employee.
Approved Superannuation Fund	Employer's Contribution exceeding Rs. 1,50,000 is taxable as perquisite in the hands of employee	
National Pension Scheme	Taxpayer is allowed a deduction for employer's contribution: 1) Up to 14% of salary contribution by the GOI 2) Up to 10% of salary contributed by other employers.	

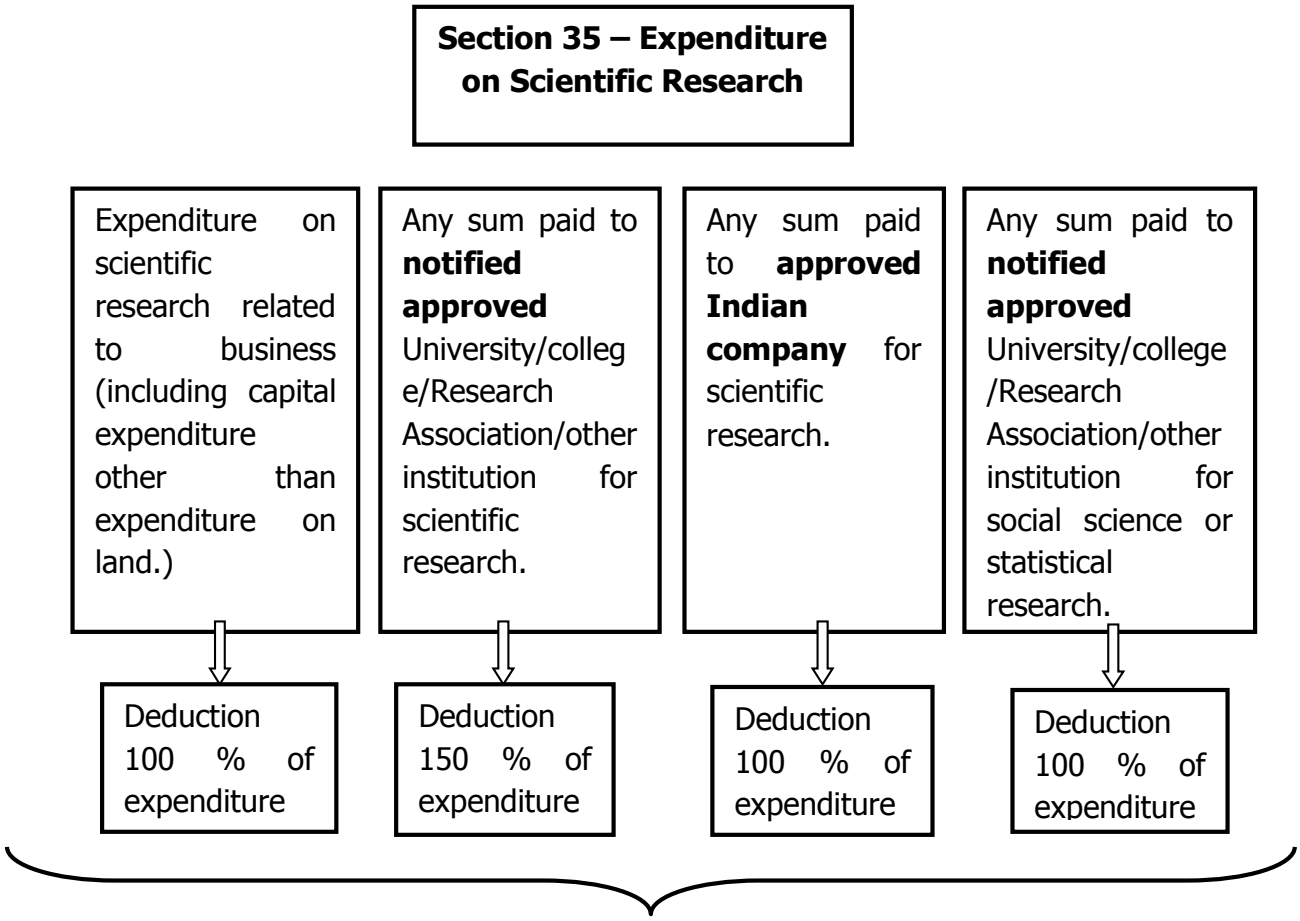
Similarly, the accretion of Income on the balance lying in the above 3 funds is also required to be taxed proportionately. Since some portion of the Principal amount is now Proposed to be taxed as perquisite.

Accordingly, it is now Proposed to insert Section 17(2)(viia) so as to provide for taxability of Accretion of Income on the taxable portion of the Employer's Contribution to above three funds. The same is explained below:-

Sr. No.	Particulars	Section	Amount
1.	Aggregate Employer's Contribution to all 3 Funds	N.A.	10 Lakhs
2.	Taxable Amount out of the above (10 Lakhs – 7.5 Lakhs)	17(2)(vii)	2.5 Lakhs
3.	Total Accretion in form of Income (by way of Dividend, Interest etc.)	N.A.	0.8 Lakhs
4.	Taxable Accretion of Income	17(2)(viia)	To be computed in such a manner which shall be prescribed.

Above amendment shall come into force from AY 2021-22 onwards.

Section 35 – Expenditure on Scientific Research:- [Amendment in Section 35(1)]



Existing Provision:

If in case the **approval** granted through notification to University/college/Research association/ other institution has been **withdrawn after the payment** of such sum by the assessee, the deduction will still be available to the assessee.

Similar benefit is not available in case of donation to an Indian Company. Such exclusion of Indian Company has resulted into undue hardship of Donor Assessee who has given donation to Indian Company.

In order to overcome genuine hardship of the assessee, it is accordingly Proposed to amend the above provision so that if there is any **withdrawal of approval granted to an Indian Company** after the payment by the donor assessee, the **deduction** available in the hands of the assessee **shall not be denied** in the same manner as other Associations or Institutions.

Above amendment shall come into force from 1st day of June, 2020.

Availing deduction under Section 35AD is optional for Tax payers: - [Amendment in Section 35AD of the Act]

At Present, Section 35AD of the Act provides for 100% deduction on capital expenditure (other than expenditure on land, goodwill and financial assets) incurred by the assesse on certain specified businesses.

Presently an assessee **does not have any option** of not availing incentive u/s 35AD of the Act.

However, if the company opts for concessional rate of tax u/s 115BAA (22%) or u/s 115BAB (15%) of the Act, he will not be able to claim deduction u/s 35AD as that is a pre-condition to avail Concessional Rate of Tax.

The combined reading of Section 35AD and 115BAA or 115BAB of the Act it can be interpreted as under:-

- Companies to whom Deduction u/s 35AD is applicable has to mandatorily claim Deduction u/s 35AD.

- Once he has claimed the Deduction u/s 35AD, he will not be able to claim the lower concessional rate of Tax.

This interpretation is unintended and it is necessary to amend Section 35AD so as to make the claim of Deduction u/s 35AD is optional.

Therefore, it is accordingly Proposed to amend Section 35AD (1) to make Deduction thereunder **optional.** The consequential amendment is made in Section 35AD (4) that once the deduction is **opted** and **allowed** to the assessee in respect of expenditure incurred as of the nature specified in Section 35AD (1)

then the assesse shall not be entitled to claim said expenditure under any other Section in any previous year or under this Section in any other previous year.

Above amendment shall come into force from A.Y. 2020-21 onwards.

Allowing deduction for amount disallowed u/s 43B of the Act, to Insurance Companies on payment basis.

At present, Computation of taxable income of insurance business other than life insurance is governed by Rule 5 of First schedule to Income Tax Act, 1961.

As per the said rule, it is provided that any expenditure incurred by the insurance business which is not admissible under the provisions of Section 30 to Section 43B shall be added back to the profits and gains of the business for the purpose of computing tax liability.

Section 43B provides that if any taxes, duties and other sums are not paid by the due date of filling Income Tax Return, then the said amounts will be disallowed. Accordingly, even for insurance business, the disallowance u/s 43B of the act will apply.

However, in Rule 5 of First Schedule, there is no provision to allow such government and other dues, which were disallowed in earlier years, on payment basis.

Therefore, it is Proposed to insert a proviso in First schedule to provide that any sum payable by the Other Insurance Companies which is added back under Section 43B shall be allowed as deduction in computing the income in the previous year in which such sum is actually paid.

Above amendment shall come into force from AY 2020-21 onwards.

Correction of an unintended mistake in Section 43(5) of the Act:- [Amendment in Section 43(5) of the Act]

At present Section 43(5) gives definition of "Speculative Transaction". In the said definition, it is provided that an eligible transaction of trading in commodity derivatives carried out in a recognized association, which is chargeable to commodities transaction tax, is not to be deemed as a Speculative Transaction.

In the above provision there is a bona fide **mistake that** the Legislature has used the term **'recognized association' as against the correct term 'recognized stock exchange'.**

It is now Proposed to substitute the term recognized stock exchange for recognized association. The new term is already defined under the said Section.

Full value of consideration for transfer of land or building or both:- [Amendment to Section 43CA, 50C and 56(2)(x) of the Act]

Presently, in case of transfer of land or building or both, where the Stamp duty value (SDV) is higher than Agreement Value (AV) then, the stamp duty value is considered as Full Value of Consideration for Computing Income of the Assessee.

There were cases where market value is actually lower than SDV due to certain locational disadvantage of a particular property compared to some other property falling in same area for e.g. No Lift facility, Nala adjacent to a property etc.

Thus, amendment was made by the Finance Act, 2018 and variance of 5% was allowed between the Agreement Value and Stamp Duty Value.

To overcome genuine hardships faced by tax payers, **it is now Proposed** to enhance the above safe harbor limit of **5% to 10%** and hence suitable amendments are Proposed to be made in Sections 43CA, 50C and 56(2) (x) of the Act.

Proposed amendments in 43CA, 50C and 56(2) (x) are tabulated as under:-

Section	Type of transaction	Applicable	Full value of consideration to be considered	
			Existing	Proposed
43CA	Where transfer of Land or Building or both held as stock-in-trade where AV < SDV < 105% of AV	Dealer or Builder	AV	AV
	Where transfer of Land or Building or both held as stock-in-trade where a) AV < 105% of AV<SDV and b) 105% of AV<SDV <110% of AV and c) SDV <110% of AV		SDV	AV
	Where transfer of Land or Building or both held as stock-in-trade where, 110% of AV<SDV		SDV	SDV
50C	Where transfer of Land or Building or both held as capital asset where AV < SDV < 105% of AV	Investor or a person other than Dealer or Builder	AV	AV
	Where transfer of Land or Building or both held as capital asset where a) AV < 105% of AV<SDV and b)105% of AV <SDV<110% of AV and c) SDV <110% AV		SDV	AV
	Where transfer of Land or Building or both held as capital asset where 110% AV<SDV		SDV	SDV

Section	Type of transaction	Applicable	Full value of consideration to be considered	
			Existing	**Proposed**
56(2)(x)	**Where SDV – AV is > 50,000/-**			
	AV < SDV < 105% of AV	Any person	NIL	NIL
	a) AV < 105% of AV<SDV and b)105% of AV<SDV <110% AV and c)) SDV <110% AV		SDV – AV	NIL
	110% AV<SDV		SDV – AV	SDV – AV
	Where SDV – AV is ≤ 50,000/-			
	AV < SDV < 105% of AV	Any person	NIL	NIL
	a) AV < 105% of AV<SDV and b)105% of AV<SDV <110% of AV and c) SDV <110% AV		NIL	NIL
	110% AV<SDV		NIL	NIL

Above amendment shall come into force from AY 2021-22 onwards.

Audit of accounts of certain persons carrying on business or profession:- [Amendment in Section 44AB of the Act]

Section 44AB of Income Tax Act, 1961 specifies mandatory obligation to get the books and accounts audited for Assesses having Sales, Turnover or Gross Receipts in excess of the amount specified. In order to reduce compliance burden on small and medium enterprises following amendment is Proposed.

Persons	Turnover Limit for Mandatory Applicability of Tax Audit	
	Existing Provision	**Proposed Amendment**
Carrying on Business	Rs 1 Crores	Rs 5 Crores*
Carrying on Profession	Rs 50 Lakhs	No Change

*However, this enhance limit of turnover is applicable only in cases where, Aggregate Cash Receipts/Payments do not exceed 5% of Total Receipts/Payments respectively during the Previous Year.

Above amendment shall come into force from A.Y. 2020-21 onwards.

Consequential effect on Threshold limit for deducting TDS/TCS in case of Individual and HUF due to Amendment in Section 44AB:-[Amendment in Section 194A, 194J, 194I, 194C, 194H and 206C (herein after referred to as "said TDS Provisions" of the Act]

At present, liability to deduct TDS under said TDS Provisions in case of an Individual and HUF is **linked with** applicability of Tax Audit Provisions under Section 44AB of the Act in the preceding Financial Year.

In other words, if an individual and HUF, carrying on business, is liable to Tax Audit under Section 44AB of the Act, as his turnover has exceeded 1 Crores in preceding Financial Year, then he is liable to deduct TDS under said TDS Provisions in Current Previous Year.

As explained earlier, the Turnover Limit of mandatory applicability of Tax Audit u/s 44AB is enhanced from Rs. 1 Crores to Rs. 5 Crores, the mandatory applicability of Deduction of Tax under said TDS Provisions is Proposed to be **de-linked** from the applicability of Tax Audit to any assessee, as otherwise a person who is an Individual and HUF will not be liable to deduct Tax up to a Turnover of Rs. 5 Crores.

Hence, it is now Proposed that even though threshold limit for getting Books of Accounts Audited U/s 44AB has been enhanced from 1 Crores to 5 Crores, the liability of individual and HUF for deducting TDS under said TDS Provisions remains unaffected.

i.e. An Individual and HUF will continue to be liable to deduct TDS under said TDS Provisions whose **Turnover from Business exceeds the monetary limit of Rs. 1 Crores and Gross Receipts from Profession exceeds 50 Lakhs** during the immediately preceding financial year even though his Tax Audit threshold limit u/s 44AB has been enhanced to Rs. 5 Crores.

In other words, it is **not necessary** for an Individual or HUF to be liable to TDS only if he is liable to Tax Audit in Previous Financial Year.

Above amendment shall come into force from A.Y. 2020-21 onwards.

Due Date to submit various Audit Reports/Certificates and for filing Return of Income:- [Amendment in Section 139(1) and various other Sections]

The due date for filing Return of Income under **Section 139(1)** is Proposed to be extended for following assessee:-

a) A **Company**

b) A **Person** (other than a company) **whose accounts are required to be audited under this act or under any other law**

c) A **Partner of a firm (both working as well as non-working)*** whose accounts are required to be audited under this act or under any other law

The due date for filing Return of Income has been extended to **31st October of the assessment year (as against 30th September)** for the above mentioned assessee.

*****As per the Proposed budget, distinction is removed from working and non-working partner of a firm w.r.t. to due date for filing Return of Income

Further, at present under Section 44AB, the due date for furnishing Audit Report u/s 44AB is same as the due date for furnishing Return of Income u/s 139(1) of the Act.

As Government has decided to provide a pre-filled Return of Income in case of person having Business Income so that he is not required to engage any consultant**, it is necessary that all the Audit Reports should be filed at least one month prior to the due date of furnishing Return of Income** so that data which is reported in the Audit report will be used by Government to provide a pre-filled Return of Income.

Thus, provisions of Section 10, Section 10A, Section 12A, Section 32AB, Section 33AB, Section 33ABA, Section 35D, Section 35E, Section 44AB, Section 44DA, Section 50B, Section 80-IA, Section 80-IB, Section 80JJAA, Section 92F, Section 115JB, Section 115JC and Section 115VW of the Act are Proposed to be amended. So, as to provide that the due date of Audit Report required under these Sections shall be 30th September of relevant Assessment year.

To enable prefilling of tax Returns in case of taxpayers having Income from Business or Profession, it is Proposed to amend the due dates of filing Return of Income as well as furnishing various Audit report (including Tax Audit Report) which are tabulated as under:

Due Date	Existing	Proposed Amendment
For Filing **Return of Income** of taxpayer who are liable to audit under any law(cases not required to furnish Form 3CEB)	**30th September** of the Relevant Assessment Year	**31st October** of the Relevant Assessment Year
For **Furnishing Tax Audit Report, other reports/certificates** in case of all taxpayer	Same as due date of Furnishing of Tax Return, i.e. **30th September** of the Relevant Assessment Year	1 month prior to due date of Furnishing Tax Return i.e**. 30th September** of the Relevant Assessment Year
Income Tax Return (**Working Partner** of a firm)	**30th September** of the Relevant Assessment Year	**31st October** of the Relevant Assessment Year
Income Tax Return (**Non-Working Partner** of a firm)	**31st July** of the Relevant Assessment Year	**31st October** of the Relevant Assessment Year
For Filing **Return of Income** of taxpayer who are liable to furnish Transfer Pricing Audit Report in Form 3CEB	**30th November** of the Relevant Assessment Year	**30th November** of the Relevant Assessment Year
For **Furnishing** Transfer Pricing Audit Report in Form 3CEB	**30th November** of the Relevant Assessment Year	*1 month prior to due date of Furnishing Tax Return i.e. **31st October** of the Relevant Assessment Year

*With regards to Transfer Pricing Study Report:-

For transfer pricing Audit Report to be furnished in Form 3CEB an auditor is required to certify the Arm's Length Price applicable to the assessee and whether the price charged by the assessee is within the prescribed variation of Arm's Length Price. This certificate requires Auditor to carry out comparison of the margins earned by the assessee with margins declared by other comparable

entities.

Due date of filing Balance Sheet by all the Indian Companies with Registrar of Companies is 31st October. In other words, the financial data of all the Indian Company available in Public domain latest by 31st October and the auditor has to make comparison of financial data of other company with that of assessee for the relevant Previous Year.

It is practically not possible for the Auditor to issue form 3CEB on 31st October as he will not be able to make any comparison of financial data of Assessee with other comparable entities, as financial data of other comparable entities will come in public domain only on 31st October as explained above.

Accordingly, it is necessary for Government to postpone the due date filing of Form 3CEB by the Auditor.

Above amendment shall come into force from AY 2020-21 onwards.

Cost of Acquisition and period of holding in case of units in Segregated Portfolio: - [Amendment to Section 49 and consequential amendment to Section 2(42A) of the Act]

In view of present market scenarios, it had become necessary for SEBI to permit Mutual Fund Companies to Create 'Segregated Portfolios' to deal with Credit events such as downgrade of a debt or money market instrument to 'below investment grade' and balance portfolio with remaining investments, that are considered good - to be marked as 'Main Portfolio'.

The Mutual Funds will issue units from above 2 Portfolios in lieu of units from his total Portfolio and unitholders will have an option to sell units from any of these 2 portfolios even though the unitholders had invested into a single scheme of a Mutual Fund originally.

It is now Proposed to determine Cost of Acquisition of units in Segregated Portfolio and Main Portfolio in the ratio of Net Asset Value (NAV) of the total portfolio immediately before segregation of portfolios.

Section 49(2AG) - Cost of acquisition of units in Segregated Portfolio =

$$\text{Cost of acquisition of units in total portfolio} \times \frac{\text{NAV of the assets in segregated portfolio}}{\text{NAV of total portfolio immediately before segregation of portfolio}}$$

Section 49(2AH) - Cost of acquisition of units in Main Portfolio =

Cost of acquisition of units in total portfolio (-) Cost of acquisition of units in segregated portfolio

An illustration for the above is as under:

Type of Portfolio	Cost at the time of acquiring units	NAV as on date immediately before Segregation	Apportionment of Cost of Acquisition u/s 49(2AG) & 49(2AH)
Segregated Portfolio Section 49(2AG)	200	50	200 x (50 ÷ 400) = 25
Main Portfolio Section 49(2AH)		350	200 – 25 = 175 or 200 x (350 ÷ 400) = 175
Total Portfolio	**200**	**400**	**200**

Consequential amendment is Proposed in Section 2(42A) of the Act to provide for period of holding of the units in the segregated portfolio to be reckoned from the period on which the original units were held.

Above amendment shall come into force from AY 2021-22 onwards.

Restriction on Fair Market Value of Capital Asset as on 1st April 2001: - [Amendment to Section 55 of the Act]

As per existing provisions, an assessee is allowed deduction for cost of acquisition of the asset in computing capital gains on sale of capital asset being land or building or both.

Also, for computing capital gains in respect of an asset acquired before 1st April, 2001, the assessee is allowed an option to take either the Fair Market Value of the asset as on 1st April, 2001 or the actual cost of the asset as cost of acquisition whichever is beneficial to him.

FMV of an asset as on 1st April 2001 is to some extent arbitrary in nature as there is no consistency in the methodology of valuation adopted by Registered Valuers. Hence, it is necessary to cap the FMV to Stamp Duty Ready Reckoner Value so that inflated valuation can be prevented.

It is accordingly Proposed to strengthen this provision to provide that the fair market value of such capital asset as 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.

The above is tabulated as under:

Particulars	As per Existing Provisions	As per Proposed Provisions
Sale Consideration	1,00,00,000	1,00,00,000
Fair Market Valuation as on 1st April 2001	25,00,000	25,00,000
Stamp duty Valuation as on 1st April 2001	20,00,000	20,00,000
Cost of Acquisition u/s 49 of the Act	25,00,000	20,00,000

Above amendment shall come into force from AY 2021-22 onwards.

Allowing carry forward of losses or depreciation in certain amalgamations: - [Amendment to Section 72AA]

As per existing provisions of Section 72AA of the Act, accumulated losses and unabsorbed depreciation in the hands of amalgamating banking companies was deemed to be accumulated losses and unabsorbed depreciation of the amalgamated banking company.

Due to current situation of financial turmoil, RBI had to put restriction on banking operations on certain weak banks such as PMC Bank, Sri Gururaghavendra Sahakara Bank Niyamitha etc. RBI shall have to formulate a scheme of revival of such banks u/s 45 of the Banking Regulations Act, 1949. Scheme may involve write off of losses, infusion of capital by Government or any other bank or Financial Institution etc. In pursuant to the said scheme, one or more corresponding new bank shall be brought into force u/s 9 of the Banking Companies (Acquisition and Transfer if Undertakings) Act, 1980.

It is necessary to provide benefit of carry forward of accumulated losses and unabsorbed depreciation in the hands of erstwhile banks to one or more corresponding new banks as explained above on the same line as in the case of amalgamation that of two or more banking companies.

It is now Proposed to extend the facility of accumulated losses and unabsorbed depreciation in the hands of corresponding new banks as explained above.

Further, it is also Proposed to extend the benefit of carry forward of loss or unabsorbed depreciation to the resulting company in case where the Amalgamating Company is any Company (whether a Government Company or Non-Government Company) and Amalgamated Company is a Government Company in the General Insurance Business.

Above amendment shall come into force from AY 2020-21 onwards.

Extension of time limit by one more year for loan taken for Affordable Housing for availing deduction under Section 80EEA of the Act:- [Amendment to Section 80EEA of the Act]

Section 80EEA was introduced in Finance Bill 2019 for first home buyers in Affordable Housing Scheme wherein deduction of interest of maximum of Rs. 1.50 lacs was allowed u/s 80EEA of the Act on loan taken for residential property, value of which is not exceeding Rs. 45 lacs.

As per existing provisions, there is a restriction on year of sanction of loan to be from 1st April 2019 to 31st March 2020.

It is now Proposed to continue this deductions for loans availed upto 31st March 2021.

Above amendment has come into force from AY 2021-22.

Strengthening provisions related to registration/ approval of various entities under Section 12AB, 10(23C), 35(1)(iv) and accepting donations under Section 80G of the Act: - [Insertion of Section 12AB and amendment to Section 10(23C), 35(1)(iv) and 80G of the Act and consequential amendment to Section 234G and 271K of the Act]

For the purpose of these provisions,

Section	Persons	Referred to as
12AB	Trust or Institution	**"such entities"**, for the purpose of brevity
10(23C)	Fund, trust, institution, university, other educational institution, hospital, other medical institution etc.	
35(1)(iv)	Research association, university, college, other institution, company etc.	
80G	Institution or fund	

Background of Section 12A/ 12AA and 10(23C) of the Act:

At present, Section 12A/ 12AA of the Act provides exemptions to such entities from Income from Property held for Charitable or Religious purposes.

Registration u/s 12A/ 12AA is a pre-condition and mandatory requirement for claiming those exemptions and procedure for registration of those entities is defined under Section 12A/ 12AA of the Act.

There is a practical difficulty in obtaining of registration or approval before starting activities as process of registration of such entities under Section 12A/ 12AA or 10(23C), and approval thereof is also very complicated as on date.

Background of Section 35(1)(iv) of the Act:

At present, there are such entities approved under this Section to receive donations for Scientific Research purposes.

The Government has decided to regularize all the existing such entities and it is now Proposed that all the already approved entities will have to file an intimation in such form and manner as may be prescribed to the prescribed authority for renewal of approval.

It is also Proposed that in case any such entities fail to file the intimation within the time prescribed, then the approval granted to them shall be deemed to have been withdrawn.

Background of Section 80G of the Act:

Sections 80G allows deduction of donations made to such entities which are approved by Government.

Presently, there is no requirement of renewal of period of validity of certificate u/s 80G of the Act by those entities. It is now Proposed to reintroduce the period of validity of certificate u/s 80G of the Act by concerned authority.

Also, only Commissioner of Income Tax is given authority to approve the Charitable Trust/ institution for the purpose of allowability of deduction u/s 80G

of the Act for the donors who have made donations to such trust. There is no post of Commissioner of Income Tax in the Income Tax hierarchy of officials and accordingly it is now Proposed to grant authority to approve the trust for the purpose of deduction u/s 80G to Principal Commissioner of Income Tax.

Rationalization of provisions relating to Trust, Institutions and Funds [Insertion of Section 12AB and consequential amendment in Section 10(23C), 11(7), 12A and 12AA, 115TD of the Act]:-

At present, Section 11 and 12 of the Act provides Exemptions to Specified Trusts/Institutions/Funds (hereafter referred to as "said Institutions") from income from property held for charitable or religious purposes.
Registration u/s 12A or 12AA of the Act is a pre-condition and mandatory requirement for claiming those exemptions and procedure for registration of trust is defined under Section 12AA of the Act.

There are several of the said institutions which are existing for a very long period of time and whose activities are not checked/tested for a long period of time and thus it is necessary to regularize their approvals given to them till date.

Further due to cases of misuse of exemptions granted to said Institutions, legislation has decided to completely overhaul the system of approvals of said Institutions and monitor their activities by seeking regular compliances from them.

It is accordingly Proposed to introduce new procedures of approval in the newly inserted Section 12AB of the Act which will replace the existing procedures contained in Section 12AA of the act.

It is also Proposed that even the existing said institutions shall have to be registered under Section 12AB by following the procedures of **One Time** regularization of approval which is explained in the following table:

One time approval/ regularization of new Registration Process:

In order to regularize such entities availing benefit of above mentioned Sections, it is now Proposed to overhaul the entire approval/ regularization process so as to prevent current malpractices carried out by them.

Given below are the salient features of Proposed Amendments legal provisions stated above:

Sr. No.	Trusts who as to make an application for approval	Section	Time limit to apply for approval	Approval Procedure	Validity to be given by Pr. Comm.	Validity to count from	Time limit to pass order of approval
1	Where the trust is already granted approval	12AB, 10(23C), 35(1) and 80G	On or before 31st August 2020	No specific procedure	Extension of existing approval by 5 years	From AY of earlier approval	Within 3 months from date of application*
2	Existing trusts whose registration is due to expire	12AB, 10(23C) and 80G	At least 6 months prior to such expiry	Call for documents/ information and satisfy himself about genuineness of activities and that the trust has fulfilled all the conditions as stated in Section 12A/ 80G	5 years of approval if satisfied or reject application if not satisfied after affording reasonable opportunity of being heard	From the AY in which application is made	Within 6 months from the date of application
3	Where trust has been Provisionally approved	12AB, 10(23C) and 80G	6 months prior to expiry of validity Or Within 6 months of commencement of activities whichever is earlier			From first AY of provisional approval	
4	Where the trust has become inoperative	12AB	Before 1st October of the FY in which registration is sought			From the AY in which application is made	
5	Where the objects of the trust have been modified	12AB	Within 30 days from the date of modification				
6	Applying for 1st time and those applications pending as on 1st June 2020 and trusts older than 5 years as on 1st June 2020	12AB, 10(23C) and 80G	On or before 28th February before FY in which approval is sought	No specific procedure	Provisional approval for 3 years	From the AY in which application is made	Within 1 month from the date of application

*Not applicable for Section 35(1)

It may be noted that the rejection order of approval u/s 80G passed by Principal Commissioner of Income Tax is not yet made appealable before Hon'ble Income Tax Appellate Tribunal by amendment to Section 253 of the Act which means that as per the Proposed legal positions, the Principal Commissioner's order shall be final and the only option with the trust/ institution to challenge such rejection is to file a Writ Petition before Jurisdictional High Court.

Such kind of sweeping powers of approval with Principal Commissioner will have a far reaching impact where no provision for filing appeal against such rejection order is provided in the statute.

It is expected that consequential amendment may also be carried out in Section 253 of the Act on above lines to make rejection order u/s 80G of the Act appealable before Hon'ble ITAT.

It is also Proposed to insert Section 12AB(4) of the Act to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,—

a) the activities of a trust or institution are not genuine, or;

b) the activities are not being carried out in accordance with the objects of the trust or institution

then the Principal Commissioner or the Commissioner may cancel the registration if such trust does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

Therefore, it is now also Proposed to insert Section 12AB(5) of the Act to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,—

(i) its income does not ensure for the benefit of general public;

(ii) it is for benefit of any particular religious community or caste (in case it is

established after commencement of the Act);

(iii) any income or property of the trust is applied for benefit of specified persons like author of trust, trustees etc.;

(iv) its funds are invested in prohibited modes;

then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

Regular Yearly Compliances for trusts u/s 35(1A) and Section 80G of the Act:

At present, there is no reporting obligation by those entities receiving donation. With the advancement in technology, it is now feasible for Government to standardize the process through which they can match what is received by such entities and what is claimed as deduction by the assessee.

It is now Proposed that these entities shall have to carry out the following Statutory Regular Yearly Compliances in respect of donations received by them:

a. To file a statement of donations received and other related particulars before prescribed authority.

b. It may also submit correction statement for rectification of any mistake in the above statement.

c. To submit a donation certificate to the donor mentioning amount of donation and shall contain certain particulars as may be prescribed.

The procedure for allowability of claim u/s 80G of the Act:

a. it will be allowed on the basis of information furnished to the prescribed authority as stated above

b. it will be allowed subject to verification in accordance with the risk management strategy formulated by CBDT from time to time.

What is Risk Management Strategy is not yet defined anywhere in the budget so it is expected that suitable clarification in the form of circular explaining the Risk Management Strategy shall be issued to clarify the issue.

It appears that if the trust does not satisfy the Criteria of Risk Management Strategy then the claim of donation may be denied in the hands of donor.

Above amendments shall come into effect from 1st June 2020 onwards.

Fees and Penalty for default relating to furnishing statement by such entities or issuing Certificate to the donor u/s 35(1A) and 80G of the Act: - [Consequential insertion of Section 234G and 271K]

The time limit for furnishing Statement / Certificate is already prescribed in the rules

Default	Fees u/s 234G	Penalty u/s 271K
The scientific and statistical research conducted as per Section 35 by any institution and Fails to deliver statement and furnish a certificate within the specified time.	Rs. 200 for every day during which the failure continues	Assessing officer may direct to pay penalty minimum Rs. 10,000 maximum Rs. 100,000

Above amendments shall come into effect from 1st June 2020 onwards.

Rationalization of taxation of Income of Trust/Institution/Fund from property held for charitable or religious purpose due to insertion of Section 12AB of the Act:- [Consequential amendment to Section 11(7) of the Act]

At present Section 11(7) of the Act provides that Trusts or Institutions shall not be eligible for multiple exemptions i.e. one under Section 10 and other under Section 12A or 12AA of the Act. In the said existing provision, following Incomes which are claimed as exempt under Section 10 of the Act are allowed to be claimed as such in the computation of Income of the Trusts or Institutions.

a. Agricultural Income (Section 10(1) of the Act);

b. Income of Educational Institutions, Hospitals, Universities, Prime Minister National Relief Fund and Other Funds set up by Government (Section 10 (23C) of the Act).

Rest of the exemptions under Section 10 are not allowed to be claimed by Trust/Institutions/Fund registered under Section 12A or 12AA of the Act.

It is now Proposed to allow Income earned by Trusts/Institutions registered under Section 10(46) of the Act along with 10(1) and 10(23C) as referred above.

It is also Proposed that multiple registrations of same Trust/Institution under Section 12AB, 10(23) or 10(46) at a time shall not be allowed to operate, which means that one Trust/Institution can have only one Registration at a time. Accordingly Proposed Amendment in this regard is explained below:-

If Trust or Institution opts for New Registration under Section:-	Old Registrations which will cease to operate under Section:-	Date from which old Registration will cease to operate:-
10(23C), 10(46)	12A,12AA or 12AB	From the date of Registration u/s 10(23C) or 10(46) **Or** June 1st , 2020 Whichever is later
12AB	10(23C) & 10(46)	From the date of Registration u/s 12AB is operative

The Following illustration will further clarify the above-mentioned amendment:-

Existing Registration		Proposed new Registration		Registration which will cease to operate	
Date	**Section**	**Date**	**Section**	**Date**	**Section**
31.08.2020	12AB	30.09.2020	10(46)	30.09.2020	12AB
31.03.2020	10(46)	31.08.2020	12AB	31.08.2020	10(46)

Surprisingly the reference to Proposed Section 12AB along with existing Section 12AA is left out to be included by way of amendment in following provision.

- Explanation to Sub Section 1 to Section 11,
- Explanation to Sub Section 2 to Section 11,
- Sub Section 3 to Section 11.

Hence it is expected that suitable change will be made in the above mentioned provisions.

Consequential amendment to Section 115TD of the Act :-

At present Section 115TD provides for tax on **Accreted income** (Exit tax) of certain trust and which applies in the following situation:-

- conversion of trust or institution into a form not eligible for registration u/s 12AA or
- on merger into an entity not having similar objects and registered under Section 12AA or
- On non-distribution of assets on dissolution to any charitable institution registered u/s 12AA or approved under Section 10(23C) within a period twelve months from dissolution.

Accordingly to cover those Trust registered under Section 12AB of the Act within scope of Section 115TD of the Act, Proposed Amendment to be made is as under: -

Particulars	Existing Provision	Proposed Provision
Exit tax on accreted income	Apply to Trusts or institutions registered under Section **12AA** of the Act	Also to apply to Trusts or Institutions registered under Section **12AA or 12AB of the Act.**

Above amendment shall come into force from 1st day of June 2020.

Restriction on claim of donation to promote non-cash mode of payment to donees and filing of statement of donation by donee to Cross-check claim of donation made by donor: - [Amendment of Section 80GGA of the Act]

As per existing provisions of Section 80GGA, claim of cash donation made by donor to for scientific research or rural development was restricted to Rs. 10,000/-.

It is now Proposed to further strengthen this restriction by reducing the limit of cash donation to Rs. 2,000/- from present Rs. 10,000/-.

With a view to curb malpractices of fake donations, it is Proposed that the claim of deduction under Section 80GGA to a donor shall be allowed to him on the basis of information furnished by the donee trust or institution in a specified statement in respect of donations received by it.

Above amendment shall come into effect from 1st June 2020 onwards.

Measures to further promote Start-Ups:- [Amendment of Section 80-IAC of the Act]

Existing Provisions of Section 80-IAC of the Income Tax Act provides that deduction of 100% of profits derived from the specific businesses shall be available to an eligible start-up engaged in eligible business incorporated on or after the 1st April 2016 but before the 1st April 2021 for three consecutive assessment years out of seven years at the option of the assessee.

Eligible Business is a one which involves innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth Creation.

With a view to gear up the growth of startups in India, Government has Proposed to extend the scope of this Section details of which are tabulated as under:-

Conditions for Allowing deduction under Section 80-IAC	Existing Provisions (upto AY 2020-21)	Proposed Amendments (w.e.f. AY 2021-22)
Period of Deduction	3 consecutive assessment years out of 7 years beginning from the year in which the eligible start-up is incorporated.	3 consecutive assessment years out of 10 years beginning from the year in which the eligible start-up is incorporated.
Maximum limit to be applied in the year of claim	Rs. 25 Crore	Rs. 100 Crore

Above amendment shall come into force from AY 2021-22 onwards.

Deductions in respect of profits and gains from housing projects: - [Amendment to Section 80-IBA of the Act]

With a view to further promote affordable housing schemes, it is now Proposed to amend Section 80-IBA of the Act so as to extend the period of project approval.

Comparison vis-à-vis certain existing conditions and Proposed amendments is as follows:

Conditions	Existing Provisions	Proposed Amendment
Period of project approval	01-06-2016 to 31-03-2020 [amended through Interim Budget]	01-06-2016 to 31-03-2021
Completion of Project	5 years from date of approval by competent authority	Not Changed
Carpet Area of Shop and other Commercial Establishment	Upto 3% of Aggregate carpet area	Not Changed
Measure of Plot of Land	Metropolitan Cities- 1000 Sq. Mtr. Any other Place- 2000 Sq. Mtr.	Not Changed
No. of Housing Project on the Plot of Land	One	One
Carpet area of residential units	Metropolitan Cities- 60 Sq. Mtr. Any other Place- 90 Sq. Mtr.	Not Changed
Stamp Duty Value of Residential Unit	Maximum Rs.45 Lacs	Not Changed
Restriction on no. of units that can be purchased by a buyer in the same project	If allotted a unit to an individual then no allotment to spouse or minor children of individual in the same project	Not Changed
GTI Floor area ratio in respect of plot of land	Metropolitan Cities-Minimum 90% Any other Cities-Minimum 80%	Not Changed

Conditions	Existing Provisions	Proposed Amendment
Maintenance of Books of Accounts	Separate in respect of housing projects	Not Changed
Metropolitan Cities	Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan region)	Not Changed

Above amendment shall come into force from AY 2021-22 onwards.

Aligning purpose of entering into Double Taxation Avoidance Agreements (DTAA) with Multilateral Instrument (MLI):- [Amendment of Section 90 and 90A of the Act]

The objective of entering into the treaty is to avoid double taxation of income and not for double non - taxation of income and hence government will have to ensure that they will not sign any treaty may result into double non-taxation of income.

For e.g. Dubai and Mauritius are tax heaven countries and if India entered into Double Taxation Avoidance Agreements with these two countries, and if as per the specific article contained in those treaties, a particular income is not taxable only in those countries, then there may be a situation that by virtue of the treaty, it is taxable in the source country and it is not taxable in India. And further, in those countries, as there is no Income Tax applicable, there could be situation where the same assessee in not liable to tax in Dubai or Mauritius and also not liable to tax in India.

Above amendment shall come into force from AY 2021-22 onwards.

Attribution of profit to Permanent Establishment in Safe Harbour Rules and in Advance Pricing Agreement: - [Amendment of Section 92C and 92CC of the Act]

Presently, Safe Harbour Rules are rules which provide for circumstances in which the Income-tax Authority accepts the transfer price declared by the assessee and it has resulted into tax certainty for relatively smaller cases for future years on general terms.

And Advance Pricing Agreement (APA) with any person provides tax certainty for determining Arm's Length Price (ALP) in relation to International Transaction on case to case basis not only for 5 future years but also for 4 earlier years.

In present scenario, to further reduce disputes and litigations and to provide certainty, it has now been Proposed to include **the attribution of profits to the Permanent Establishment of a non-resident for all income accruing or arising from any business connection, property, any asset or source of income in India or through transfer of a capital asset situated in India** into Safe Harbour Rules and Advance Pricing Agreement.

It is expected that the new Safe Harbour Rules will be notified which will cover many types of income which are not covered in the existing Safe Harbour Rules.

In view of the above, Section 92CB and Section 92CC of the Act are Proposed to be amended to cover determination of attribution to PE within the scope of SHR and APA.

Above amendment shall come into force from AY 2020-21 onwards.

Non applicability of restriction of allowability of interest to the Indian branch of a Foreign Company who is carrying on the business of banking: - [Amendment of Section 94B]

As per the existing provisions of the Act there is a cap on allowability of Interest (exceeding Rupees One Crore) on loans or borrowings by an Indian Company from Non-Resident Associated Enterprise and the cap is lower of:

1. 30% of EBITDA **or**

2. Interest paid or payable to AE

There are no exclusions for borrowings made by Indian Company from the Indian Branch of a Foreign Company. In other words, Interest paid to said Indian Branch is also subject to above disallowance.

The existing provision is acting as a deterrent for the foreign banks who open their branches in India wherein the amount lent by them to Indian Companies would be subject to certain disallowances as per the existing provision of Section 94B of the Act. With the result, it is discouraging the foreign banks to open branches in India.

Thus, to overcome the practical difficulty, it is now **Proposed** that the rigor of **Section 94B** governing the disallowance of Interest on debts issued by a lender **will not apply** if the following conditions are satisfied:

a) Debt is issued by an Indian Branch (Permanent Establishment) of a Foreign Company **and**

b) The Indian Branch of a Foreign Company is engaged in the **business of Banking**.

Above amendment shall come into force from AY 2021-22 onwards.

Shifting of Incidence of Tax on Dividend from Company to Recipient Share Holders and from Mutual Fund to Unit Holders:- [Amendment to Section 115-O and 115-R of the Act]

As per existing provisions of **Section 115-O**, an Indian Company is required to pay tax (in the form of Dividend Distribution Tax) on Dividend declared to the shareholders and it is exempt from tax in the hands of the recipient shareholders under **Section 10(34)** of the Act

Similarly, as per existing provisions of **Section 115-R**, a Mutual Fund is required to pay tax (in the form of Dividend Distribution Tax) on any income distributed by it to its unit holders as it is exempt from tax in the hands of the Unit holders under **Section 10(35)** of the Act.

However, as Proposed in Budget 2020, dividend income is Proposed to be taxed in the hands of recipient shareholders, and hence, the exemption of dividend income from shares and income from MF as contained in section 10(34) and 10(35) respectively shall be allowed only till 31st March 2020

Due to such shifting of incidence tax, **consequential amendments are** Proposed on the same lines in the following Sections:

Restriction on claim of expenses to be claimed u/s 57 of the Act against dividend income earned: - [Amendment to Section 57 of the Act]

At present, Section 57 deals with the allowability of expenditure incurred for the purpose of earning income chargeable under the head 'Income from Other Sources'. The said Section allows expenditure incurred on actual basis for the purpose of earning income which is chargeable under head 'Income from Other Sources'.

With the change in the incidence of tax in case of dividend declared by Indian companies, wherein the tax liability will now be shifted from Indian companies to shareholders, the dividend income shall be chargeable to tax under the head Income from Other Sources in the hands of shareholders.

Before deciding to change the incidence of tax as mentioned as above, based on past experience, Government has already thought about excessive and unreasonable claim of expenditure against such dividend income thereby preventing the tax on the dividend income to be fully recovered.

It is accordingly Proposed to restrict the allowance of expenditure u/s 57 incurred for the purpose of earning dividend income. The same is explained below:

a. Qualifying expenditure - Only interest on amount borrowed for the purpose of investing into shares or units of mutual funds will qualify for claim under Section 57 of Act. No other expenditure is allowable under Section 57 of the Act.

   Only borrowing which has direct nexus with the acquisition of shares or units

of a mutual funds will qualify for deduction u/s 57 of the Act.

b. Maximum amount of interest expenditure that can be allowed under Section 57 of the Act is 20% of the dividend income from shares/ income of units from Mutual Funds.

Above amendment shall come into force from AY 2021-22 onwards.

Section 115A- Tax on Dividend Earned By A Non - Resident or Foreign Company from Indian Companies:-[Amendment to Section- 115A]

At present, Section 115A prescribes the rate of income tax applicable to a Non Resident or Foreign Company (hereinafter referred to as **"the said assessee"**) who are in receipt of:

1. Income by way of Dividend (other than distributed by an Indian Company),

2. Different types of Interest income, etc.

Due to shifting of incidence of tax from Indian Company declaring Dividend to the Recipient Shareholders as Proposed in Budget 2020, it is accordingly Proposed that the said **Exclusion of Dividend earned by the said assessee from Indian Company is now removed**.

In other words, all types of Dividend received by the said assessee shall now be taxable in the hands of the said assessee at the rates prescribed in Section 115A of the Act.

Further as per existing provisions of Section 115A(5), the said assessee is **not required to file Return of Income** if following conditions are satisfied:

1) His or It's total income includes only income by way of Dividend, Interest income of any nature specified in clause (a) of Section 115A of the Act **and**

2) TDS is deducted on the said income as per provisions of Part B of Chapter XVII of the Act.

In the existing provision, it is **only** if the said assessee earns income from **interest or dividend income** he is not required to file Return of Income subject to fulfillment of above conditions.

However, if the said assessee has earned **Royalty** or **Fees from Technical Services**, he / she is still required to file Return of Income even if TDS is deducted as per provisions of Part B of Chapter XVII of the Act.

This has resulted into all types of Foreign Companies or Non Resident who are in receipt of Royalty or Fees from Technical Services in India to file Return of Income mandatorily.

Further, there have been practical situations where rate of Income Tax may be equal to or higher than rate of TDS prescribed and in that situation, if the said assessee does not file Return of Income as per provisions of Section 115A, Government shall be deprived of the differential tax from the said assessee.

Accordingly, it is now Proposed to amend Section 115A in order to provide that the said assessee shall also **not be required to file Return** of Income under **Section 139(1)** of the Act if:

1. His income consists of Dividend income, Interest income, **Royalty income or Fees from Technical Services** as specified in clause (a) and clause (b) of Section 115A(1) of the Act

2. If TDS on such income has been deducted at a rate **not lower than** the prescribed rates of Income Tax under Section 115A(1) of the Act.

Other consequential amendments:-

Similarly, all types of Dividend income are Proposed to be taxed in the hands of recipient Non Resident shareholder on different types of securities as specified in **Sections 115AC, 115ACA, 115AD and 115C** of the Act.

Deletion of provision of tax on dividend in the hands of recipient shareholder at special rate of tax @10% in excess of Rs. 10 lakhs:- [Deletion of Section 115BBDA]

At Present, Dividend received by Resident Shareholders in **excess of Rupees 10 Lakhs** from Indian Companies are liable to tax @10%. This provision was actually resulting into **double taxation** of the same income. Once, the Companies were paying Dividend Distribution Tax (DDT) before distribution of dividend and shareholders were paying tax on the said income at special rate of 10%.

With a view to overcome the double taxation, it is now Proposed to delete Section 115BBDA of the Act so that the Recipient Shareholders will not be required to pay tax on dividend income @ 10% in excess of Rs. 10 Lakhs.

It is also Proposed to **amend Section 115BBDA(1)** of the Act so as to provide rationalization of taxation of dividend income received from domestic companies by trust or institution and the same is tabulated as under:-

Particulars	Existing Provision	Proposed Provision
As per Section **115BBDA** income by way of dividend in **excess of Rs. 10 lakh** is chargeable to tax at the rate of 10% on gross basis.	Applies to **all resident assessee except** : (i) Domestic Company (ii)Certain funds, trusts, institutions, etc. registered u/s 10 (23C) or 12A or 12AA of the Act	Applies **to all resident assessee except :** (a) Domestic Company (b) Certain funds, trusts, institutions, etc. registered. u/s 10 (23C) or 12A or 12AA or **12AB** of the Act

Section 115BBDA amendment is redundant as the provision of the charging 10% tax on Dividend in excess of Rs. 10 lakhs in Section 115BBDA is Proposed to be deleted from the AY 2021-2022, so question of providing exclusion category from applicability of Section 115BBDA to Trust registered under Section 12AB of the Act is of no consequence.

Classical System: Charging Tax on Dividend in the Hands of Recipient Shareholder

Present provisions and Proposed amendments with respect to TDS required to be deducted by Business Trust, Mutual Funds and Indian Company on income distributed are tabulated below:-

Nature of income distributed	Distributed by	Recipient Unit holder	Section	Existing provision	Proposed amendment
Rental income	Business Trust	Resident	194LBA	10%	10%
Rental income	Business Trust	Non Resident		10%#	10%#
Interest	Business Trust	Resident		10%	10%
Interest	Business Trust	Non Resident		5%#	5%#
Dividend	Business Trust	Resident		NIL	10%
Dividend	Business Trust	Non Resident		NIL	10%#
Income distributed	Mutual Fund	Resident	194K	NIL	10%*
Dividend	Indian Company	Non Resident	195	NIL	20%#
Dividend	Indian Company##	Resident**	194	NA	10%
Interest from bonds or GDR as per Section 115AC	Indian Company	Non Resident	196C	10%#	10%#

Nature of income distributed	Distributed by	Recipient Unit holder	Section	Existing provision	Proposed amendment
Dividend (As per Section 115-O)	Indian Company	Non Resident		NIL	10%#
Any income from securities	Any person	Foreign Institutional Investor	196D	20%	20%#
Dividend as per Section 115- O	Any person	Foreign Institutional Investor		NIL	20%#

*** -** TDS is to be deducted on income distributed to unit holders only if such income **exceeds Rs. 5,000/-**

#- The above rates are **excluding** surcharge and education cess as applicable in case of **NON RESIDENT**.

******- There is basic exemption limit applicable only for the recipient being **INDIVIDUAL**, **and not for any other type of person.** This limit has **increased** from existing 2,500/- to **5,000/-**

- Mode of payment of dividend as per existing provisions is in cash or cheque or warrant however after amendment mode of payment is **Any Mode**.

Note: The Central Board of Direct Taxes (CBDT) has clarified that the proposal of deducting TDS on the income distributed by Mutual Funds will be levied **only** on **Dividend income** and **no tax** shall be required to be **deducted** by the Mutual Funds on income which is in the nature of **Capital Gains**.

Above amendment shall come into force from AY 2021-22 onwards.

Amendment in Provisions relating to income distributed by Business Trust Are Summarized Below: - [Amendment in Section 10(23FC) And Section 115UA]

Tax Payable by Business Trust and Unit Holders of Business Trust On different types of Income distributed:-

Nature of income	Present Provision		Proposed Amendment	
	In hands of Business Trust	**In hands of unit holders of Business Trust**	**In hands of Business Trust**	**In hands of unit holders of Business Trust**
Interest income received from SPV by Business Trust which is distributed to **Resident/ Non Resident unit holders**	Exempt	Taxable	Exempt	Taxable
Dividend from SPV	Exempt	N.A.	Exempt	Taxable**

** **-**Earlier, DDT is paid by SPV, but due to shifting of incidence of tax as Proposed in BUDGET 2020, it is now Proposed to be taxable in hands of unit holders

Above amendment shall come into force from A.Y. 2020-21 onwards.

Reintroduction of Deduction on Inter Corporate Dividend: - [Insertion of Section 80M of the Act]

As the dividends are now taxed in the hands of recipient shareholders, it is possible that if the recipient shareholder is a Company, and the said Company may receive dividend from another Company and the same recipient shareholder may also declare dividend to its own shareholders.

In other words, there is a possibility that the same Dividend income is taxed in the hands of recipient shareholder Company and also its shareholders. Thus, in order **to remove the cascading effect**, it is now Proposed to provide **deduction** under **Section 80M** on Inter Corporate dividend received by a recipient shareholder Company.

Providing Deduction On Inter Corporate Dividend Received By Companies Who Have Opted For Lower Tax Regime u/s 80M [Amendment To Section 115BAA And 115BAB] And Introduction Of An Alternative Scheme Of Taxation As Applicable To Co-Operative Societies [Insertion Of Section 115BAD of the Act]:-

Section 115BAA, **(which was introduced by the Taxation Laws (Amendment) Act, 2019, w.e.f. 01-04-2020),** provides an option to existing Domestic Companies for lower rates of tax **(22%)** subject to fulfillment of certain conditions specified in Section 115BAA of the Act.

Similarly, **Section 115BAB** (introduced by the same Act) provides an option to New Manufacturing Units of Domestic Companies for lower rates of tax **(15%)** subject to fulfillment of certain conditions specified in Section 115BAB of the Act.

It is now Proposed to **introduce Section 115BAD** of the Act for the first time to provide an option to **Co-Operative Societies** to avail a Lower Rate of Tax **(22%)** on the fulfillment of certain conditions specified in Section 115BAD of the Act.

Salient features of the new scheme of lower Rate of tax applicable to Section 115BAA, Section 115BAB and Section 115BAD are explained below:-

a) Deductions that can be claimed/cannot be claimed by the entities availing option of lower rates of tax under Section 115BAA and under Section 115BAD of the Act are as follows:-

Sr. No	Section	Description	Existing Provisions	Proposed Amendments
			(Whether deduction can be claimed)	
1	10AA	Exemption for SEZ unit	No	No
2	32(1)(iia)	Additional deprecation	No	No
3	32AD	Investment in new plant or machinery in notified backward areas in certain States	No	No
4	33AB	Tea development account, coffee development account and rubber development account	No	No
5	33ABA	Site Restoration Fund	No	No
6	35(1)(i)	Expenditure on scientific research.	No	No
7	35(1)(ii)		No	No
8	35(1)(iia)		No	No
9	35(1)(iii)		No	No
10	35(2AA)		No	No
11	35AD	Deduction in respect of expenditure on specified business	No	No
12	35CCC	Rural development allowance	No	No
13	Chapter VI-A	All deductions except 80JJAA , 80LA (Only in case of Unit in IFSC) and 80M	No	No

Sr. No	Section	Description	Existing Provisions	Proposed Amendments
			(Whether deduction can be claimed)	
14	80JJAA	Deduction in respect of employment of new employees	Yes	Yes
15	80LA (Only in case of Unit in IFSC)	Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre	Yes	Yes
16	80M	Inter corporate Dividends	NA	Yes

b) Any carried forward loss or depreciation from an earlier assessment year if such loss or depreciation is attributable to any of the deductions which are not allowable as mentioned above.

c) Additional Depreciation u/s 32(1)(iia) would not be allowable if this option is exercised.

d) All carried forward losses and depreciation will be deemed to have given full effect and no further deduction for any such loss or depreciation shall be allowed for any subsequent year.

e) Also where the depreciation in respect of a block of assets has not been given full effect prior to A.Y. 2021-22 a corresponding adjustment shall be made to the WDV of such block of assets in a prescribed manner if this option is exercised for the A.Y. 2021-22.

f) The Option Once Exercised **cannot be subsequently withdrawn** for the same or any other year.

g) Once an Assessee chooses an option of Lower Tax rates u/s 115BAC OR 115BAD the provisions of **Section 115JC** (provisions relating to Alternate

Minimum Tax) and **Section 115JD** (carry forward and set off of Alternate Minimum Tax Credit, if any) will also not be applicable to that assessee.

h) Once, an assessee chooses an option of lower rate of tax under Section 115BAA or Section 115BAB, he shall not be liable to Minimum Alternate Tax (MAT) of Section 115JB of the Act.

i) Similarly, **no MAT Credit** shall be **allowed** to be carried forward in the case of Companies who have opted for lower rate of tax under Section 115BAA of the Act.

Above amendment shall come into force from AY 2020-21 onwards.

Introduction of an Alternative Scheme of Taxation as Applicable To Individuals and HUF [Insertion of Section 115BAC]:-

Section 115BAC of the Act is Proposed to be introduced for the first time to provide an option to Individuals or HUFs to avail a lower rate of Tax on the fulfillment of certain conditions.

Salient features of the new scheme are as explained below:

1. Tax rate applicable if option under Section 115BAC is exercised:-

Sr. No.	Total Income	Rate of Tax
1	Upto Rs. 2,50,000	Nil
2	From Rs. 2,50,001 to Rs. 5,00,000	5%
3	From Rs. 5,00,001 to Rs. 7,50,000	10%
4	From Rs. 7,50,001 to Rs. 10,00,000	15%
5	From Rs. 10,00,001 to Rs. 12,50,000	20%
6	From Rs. 12,50,001 to Rs. 15,00,000	25%
7	Above Rs. 15,00,000	30%

2. Conditions to be fulfilled for exercising this option:-

a) List of Exemptions or Deductions which cannot be claimed if option is exercised

Sr. No	Section	Description
1	10(5)	Leave Travel Concession
2	10(13A)	House Rent Allowance
3	10(14)	Prescribed allowances or benefits (eg. Children Education Allowance
4	10(17)	Allowances to MPs/MLAs
5	10(32)	Exemption in case of Clubbing of Income of Minor Child

Sr. No	Section	Description
6	10AA	Exemption for SEZ unit
7	16	Standard deduction, deduction for entertainment allowance and employment/professional tax
8	24(b)	Interest in respect of House property
9	32(1)(iia)	Additional deprecation
10	32AD	Investment in new plant or machinery in notified backward areas in certain States
11	33AB	Tea development account, coffee development account and rubber development account
12	33ABA	Site Restoration Fund
13	35(1)(i)	Expenditure on scientific research.
14	35(1)(ii)	
15	35(1)(iia)	
16	35(1)(iii)	
17	35(2AA)	
18	35AD	Deduction in respect of expenditure on specified business
19	35CCC	Rural development allowance
20	57(iia)	Deduction in respect of Family Pension
21	Chapter VI-A	All deductions except 80JJAA , 80LA (Only in case of Unit in IFSC) and 80M

b) List of Exemptions or Deductions which can be claimed

Sr. No	Section	Description
1	80CCD	Deduction in respect of contribution to pension scheme of Central Government
2	80JJAA	Deduction in respect of employment of new employees
3	80LA (Only in case of Unit in IFSC)	Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre

c) Losses will not be allowed to be set off in the following cases:-

- Any carried forward loss or depreciation from an earlier assessment year, if such loss or depreciation is attributable to any of the deductions which are not allowable as mentioned above.

- Losses under the head "Income from House property" of the current year with any other head of Income.

d) Additional Depreciation u/s 32(1)(iia) would not be allowable if this option is exercised.

e) Any exemption or deduction for allowances or perquisites which are provided by any other law at the time being in force would not be allowable.

3. All carried forward losses and depreciation will be deemed to have given full effect and no further deduction for any such loss or depreciation shall be allowed for any subsequent year.

   Also where the depreciation in respect of a block of asset has not been given full effect prior to AY 2021-22 a corresponding adjustment shall be made to the opening WDV of such block of assets in a prescribed manner if this option is exercised for the AY 2021-22.

4. Procedure for exercising the option:-

Type of Assessee	Due Date for exercising option	Whether One Time or Each year
Having No Business income	Along with Income Tax Return filed u/s 139(1)	Every Year
Having Business Income	Subsisting business in A.Y. 2021-22 => On or before Due date of filing ITR u/s 139(1) for said year	One Time
	Commenced Business after 31/03/2021=>On or before due date of filing 139(1) of the relevant A.Y. in which the business has commenced	

5. Revocation of the Option once Exercised:-

Sr. No.	Assessee	Remarks
a)	Any Individual / HUF not having Business Income	Revocation of the option can be done in any Subsequent Assessment Year and can be re opted at any time in years after
b)	Any Individual / HUF having Business Income	Revocation of the option can be done only once after it is exercised. In that case he will never be eligible to exercise this option again
c)	Any Individual / HUF having Business Income at the time of exercising but ceases to have business income afterwards	Revocation of the option can be done in any Subsequent Assessment Year from the year in which the business income ceases. Assessee can also re opt in any year afterwards

Note: - It is to be taken note that no clarification is given whether an individual having income from Profession will be covered in category a) or b) in table 5 (procedure for exercising this option) or table 6 (Revocation of option once exercised)

Above amendment shall come into force from A.Y. 2020-21 onwards.

Insertion of Taxpayer's Charter in the Act: - [Insertion of Section 119]

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.

As per the current Tax Payer's Charter

You have the **right**:

1. to be treated with fairness and impartiality
2. to be treated as honest and tax compliant unless there is evidence
3. to the contrary
4. for certainty
5. for assistance and information from the Tax Departments
6. to pay no more than the correct amount of tax
7. not to be subject to retrospective taxation
8. to minimize compliance costs
9. to be advised and represented by any person on taxation matters
10. to appeal
11. to privacy and confidentiality of information we hold about you
12. to know what information we hold about you
13. for the licit arrangement of your tax affairs that minimize the tax
14. liability
15. to request a payment plan
16. to complain about our service, behavior and actions.

- You are **expected**:

1. to be honest
2. to be compliant, and cooperate when you deal with the Tax Departments
3. to keep proper records in accordance with the law
4. to file proper and complete tax documents and effect payments by the statutory due dates

5. to inform the Tax Departments about changes in circumstances
6. to know your tax responsibilities and the consequences for noncompliance

Above amendment shall come into force from AY 2020-21 onwards.

Approval /Rights to Carry Out A Survey: - [**Amendment to Section 133A]**

Situation	Survey requires approval of	Survey to be carried out by
Survey is carried out on the basis of the Information received from a prescribed authority	Joint Director or Joint Commissioner	Assistant Director , Deputy Director, Assessing Officer, Tax Recovery Officer, Inspector of Income Tax
Any Other Case	Director or Commissioner	Joint Director, Joint Commissioner Assistant Director , Deputy Director, Assessing Officer, Tax Recovery Officer, Inspector of Income Tax

The rationale behind this provision is that because the information comes from a prescribed authentic source, the Credibility of the information is higher and in that case the survey cannot be said to be without any concrete information .Hence approval of a lower authority will be enough. In all the other cases since survey will be conducted without any concrete information, the authority which can conduct and approve the survey action is higher as compared to the earlier case. This **prevent the possible misuse of power** by authorities.

Above amendment shall come into force from AY 2020-21 onwards.

Amendment to Provisions of Act Relating to Verification of Return of Income and Appearance of Authorized Representative: - [Amendment to Section 140 and Section 288]

As per existing provisions of **Section 140(c)** and **Section 140(cd)**, the following persons are required to verify the Return of Income:

a) **Managing Director (MD)**, in case of a company
b) **Designated partner**, in case of a Limited Liability Partnership (LLP)

In case, where a Managing Director is not able to verify the Return of Income for any unavoidable reason **[Section 140(c)]**, **any director of the company** shall verify the Return of Income.

Further, where a designated partner is not able to verify the Return of Income for any unavoidable reason **[Section 140(cd)], any partner of the firm** shall verify the Return of Income.

At present, apart from Director in case of a Company, there are three more persons who can verify the Return of Income:-

1) **Liquidator**, in case where company is under liquidation
2) **Principal Officer**, where management of company is taken over by Central Government or State Government
3) **Insolvency Professional,** where an application is made for corporate insolvency process

It is now Proposed to amend Section 140(c) and Section 140(cd) to allow **"any other person, as may be prescribed for this purpose"** in case of a Company and a Limited Liability Partnership to verify the Return of Income.

Further, **Section 288** of the Act provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee, as its **"Authorized Representative"**, in connection with any proceedings under that Act.

While the IBC empowers the Insolvency Professional or the Administrator to exercise the powers of the Board of Directors or corporate debtor, it has been reported that lack of explicit reference in Section 288 of the Act for an **Insolvency Professional** to act as an authorized representative of the corporate debtor has been raising certain practical difficulties.

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

Above amendment shall come into force from AY 2020-21 onwards.

Modification of Faceless Scrutiny Scheme: - [Amendments in 143]

As per the existing provisions of Section 143 (3A) of the Act, **faceless Scrutinies** are permitted only if the order for such Scrutinies is passed only u/s 143(3) of the Act. With this provision any assessee can argue that no order passed u/s 144 of the Act can be covered within the ambit of faceless scrutiny.

It is now Proposed in Budget 2020 to amend Section 143 (3A) to **include** any order passed u/s **144** along with order passed u/s 143 (3) within the ambit of faceless scrutiny.

As scheme of faceless scrutiny is new, it requires some modifications in assessment procedure to make faceless scrutiny successful. Hence the **Central Government** was given **power** to issue **notifications and directions** relating to Assessment procedures upto 31st March, 2020 as per the existing provisions of Section 143 (3B).

It is now Proposed to **enhance** the time limit to issue such notifications and directions from **31st March 2020 to 31st March 2022**.

This amendment is Proposed so that the Central Government can take into consideration various practical difficulties which may arise in two years which can be rectified and translated into the certain instructions by issue of Notification.

Above amendment shall come into force from AY 2020-21 onwards.

Reference to Dispute Resolution Panel: - [Amendments in 144C of the Act]

As per the the existing provisions of Section 144C(1) any variation **in the income or loss returned** can be referred to a Dispute Resolution Panel (DRP) in case the "Eligible Assessee" has any objections to the draft order of the Assessing Officer.

It is possible for the either the assesse or any department to argue that following types of variations are **not covered by income or loss returned**; in order to qualify for referral to DRP:-

a) Change in the rate of tax
b) Change in head of income
c) Income which is not declared in the Return of Income
d) Return of income which is not filed, etc.

One can argue that for the above mentioned variations, reference cannot be made to the DRP u/s144C of the Act.

Hence with a view to avoid such interpretation it is now Proposed that **all types of variations** shall be included in place of "any variation **in the income or loss returned**" in the scope of Section 144C and reference for the same can also be made to the DRP without any restriction.

Also "**Eligible assessee**" for the purpose of Section 144C is Proposed to be redefined. Currently eligible assesse includes:-

a) any person in whose case the variation referred to in sub-Section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-Section (3) of Section 92CA; and
b) Any foreign company.

It is now been Proposed that:

In the above list of eligible assessee **Non-resident not being a company** is also included.

Above amendment shall come into force from A.Y. 2020-21 onwards.

Deferring TDS or Tax Payment In Respect Of Income Pertaining To Employee Stock Option Plan (ESOP) Of Start- Ups: - [Insertion in Section 192, 140A, 191 And 156 of the Act]

At present ESOP offered in the form of stock are liable to tax on two occasions. Once when the employee exercises the option to buy shares at the concessional rate at which they were offered and second time when they actually sell the shares.

On first occasion they had to pay tax without any corresponding cash flow. This resulted in burden of payment of tax without any actual cash flow and because of this reason they were forced to sell the shares immediately to generate cash flow to pay tax on first occasion

In any start up entity it is very necessary to retain key employees for a long time for the startup to be successful .Also the employees should not sell the shares till a long time. In order to reduce this burden on such key employees of such start up entities it has been Proposed to postpone the due date for discharging liability of tax and interest.

Salient features of new scheme of postponement of tax liability in the case of key employee of the startup company are explained below:-

The Assessee in receipt of ESOP from a startup referred to in Section 80IAC of the Act will be taxed for the same in the year of Exercise of ESOP.

However the liability of the Tax and Interest will have to be discharged within **Fourteen Days**

a) After the expiry of **Forty eight months** from the end of the Assessment year in which the Exercise date falls (In our Example the Forty eight months would end on 31st March,2024)

b) From the **date of Sale of shares** received by way of ESOP (1ST July,2023 in our case)

c) From the **date of the cessation of employment**.

Whichever is the **earliest.**

TDS on the same will have to be deducted by the Employer **u/s 192** of the Act. Due date for the same will also be as mentioned above.

In case the Employer fails to deduct TDS the employee can also make direct payment of Tax **u/s 191(2)** of the Act as mentioned above.

Timeline for Interest:-

Journey number	Description
J1	Date of Exercise of ESOP
J2	Date of filing Income Tax Return
J3	Date of Receipt of Notice of Demand u/s 143(1) or 156
J4	Due Date of payment of Tax and Interest
J5	Actual date of payment of Tax and Interest

Applicability of Interest for the same is tabulated below:-

Journey	Description	Whether interest applicable
J1 to J2	Date of exercise of ESOP to Date of filing of Income Tax Return	Yes (u/s 234B & 234C)
J2 to J3	Date of filing Income Tax Return to Date of Receipt of Notice of Demand u/s 143(1) or 156	No
J3 TO J4	Date of Receipt of Notice of Demand u/s 143(1) or 156 to Due Date of payment of Tax and Interest	No
J4 to J5	Due Date of payment of Tax and Interest to Actual date of payment of Tax and Interest	Yes (u/s 220(2))

It appears that charging of Interest u/s 234B and 234C is unintended and suitable amendment may be made in section 209 so that, no interest is applicable under said sections.

Enlarging the Scope for Tax Deduction on Interest Income by a Co-operative Society: - [Amendment to Section 194A]

Currently tax is **not required** to be deducted on:

1. Interest income Credited or paid by a co-operative society to its member or to any other Co-operative Society,

2. Interest on deposits with primary agricultural Credit society or primary Credit society or co-operative land mortgage bank or co-operative land development bank or co-operative bank engaged in carrying on business of banking

It is now Proposed that TDS **should be deducted** by Co-operative Society if:

1. Total sales/ Gross receipts/ Turnover of Co-operative Society during the financial year immediately preceding the financial year in which interest is Credited or paid **exceeds Rs. 50 Crores and**

2. Aggregate amount of interest Credited or paid as well as likely to be Credited or paid to a payee during the year **exceeds Rs. 50,000** in case of payee being senior citizen and **Rs. 40,000** in other cases.

Above amendment shall come into force from A.Y. 2020-21 onwards.

Amending Definition of "Work" In Section 194C of the Act

Existing Provisions and Proposed amendments are explained below:

Example:-

1. M/s. X is an end customer.
2. M/s. Y is relative of M/s. X within the meaning of Section 40A (2) (b) of the Act.
3. M/s. Z is unrelated Party.
4. M/s. A is a contractor who has to carry work on some Raw material and supply finished goods to M/s. X.

Contractor	End customer to whom finished goods are delivered	Contractor buying raw Material from	TDS applicable	
			Existing provision	Proposed amendment
M/s. A	M/s. X	M/s. Y	No	Yes
M/s. A	M/s. X	M/s. Z	No	No

Reduction in the rate of TDS on fees for technical services (other than professional services):- [Amendment to Section 194J of the Act]

Existing provisions of Section 194J provides for TDS on payments of Fees for professional services, fees for technical services and royalty @ 10%.

It is noticed that there are large number of litigations on the issue of short deduction of TDS treating assessee in default where the assessee deducts TDS @ 2% u/s 194C, in respect of payment of Fees for Technical Services (not in the nature of Professional Fees), whereas the tax officers claim that TDS should have been deducted @ 10% u/s 194J of the Act on such payments.

Therefore to reduce litigation, it is Proposed to prescribe separate rate of TDS for both types of Fees for Technical Services which is tabulated as under:

Section	Particulars	Existing		Proposed	
		Threshold	Rate	Threshold	Rate
194J	Fees for Technical Services (being a Professional Service)	30,000	10%	No change	
194J	Fees for Technical Services (not being a Professional Service)	30,000	10%	30,000	2%

Above amendment shall come into force from AY 2020-21 onwards.

TDS on payment of Interest on Foreign currency loan and Rupee denominated bonds: - [Amendment to Section 194LC of the Act]

Existing provision of Section 194LC provides for Concessional Rate of TDS @ 5% by an Indian Company or a Business Trust, on Interest paid to Non Residents on borrowings, in foreign currency, made by them in the form of foreign currency loan and Rupee denominated bonds from Source outside India and that the borrowings are made on or after 1st July 2012 but before 1st July 2020.

In order to attract fresh investment and stimulate the economy, it is now Proposed to extend this benefit of lower rate of tax deduction on borrowings made as well as on rupee denominated bonds issued, up to 1st July 2023 instead of existing time frame of 1st July 2020.

It is also Proposed to provide Concessional rate of TDS @ 4% on Interest paid to Non Residents, in respect of borrowings from source outside India by way of issue of any long term bond or rupee denominated bond listed on a Recognized Stock Exchange located in any International Financial Services Centre**.**

Above amendment shall come into force from AY 2020-21 onwards.

TDS on payment of interest to FIIs & QFIs:- [Amendment to Section 194LD of the Act] :-

Existing provisions of Section 194LD provides for lower rate of tax deduction @ 5% on interest payable to Foreign Institutional Investors and Qualified Foreign Investors on government securities and rupee denominated corporate bonds (approved by CG) on or after 1st June, 2013 but before 1st July, 2020.

It is now Proposed to extend the benefit of lower rate of tax deduction on interest payable before 1st July 2023.

It is also Proposed to Extend the benefit of this Section in respect of Investment made in Municipal Debt Securities specified in Regulation 2(1)(m) of the Securities and Exchange board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015 made under the SEBI Act, 1992.

Above amendment shall come into force from AY 2020-21 onwards.

Widening the scope of TDS on E-commerce transactions: - [Insertion of Section 194-O and Consequential amendment in Section 197, Section 204 & Section 206AA of the Act]

In order to bring participants of e-commerce within tax net, it is Proposed that TDS @1% shall be deducted by E-commerce Operator on Resident E-commerce Participants.

Key points of the new Section 194-O are as below:-

1) E-commerce operator who owns operates or manages digital or electronic facility for electronic commerce is required to deduct TDS @ 1% on Sale Consideration.

2) TDS to be deducted from consideration payable to e-commerce participants who sells goods, including digital products or provides technical services or professional services as defined in Section 194J, or both to the end customers.

E-commerce participants	If an Individual or HUF		If Other than an Individual or HUF	
	If Pan/ Aadhaar available	If Pan/ Aadhaar Not available	If Pan furnished	If Pan Not furnished
TDS Rate	1%	1%	1%	5%*
Threshold amount upto which no tax is required to be deducted	Only if Sale Value exceeds Rs. 5,00,000/- in a year	No such limit	No such limit	No such limit

* Same is Proposed through consequential amendment in Section 206AA

At present Section 197 provides for obtaining Lower Deduction Certificate under Various Provision of TDS. It is now Proposed to include 194-O in eligibility for obtaining Certificate of Lower Deduction of tax.

Notes:-

1) Once the relationship is established as that of E-commerce participants and E-commerce operator, TDS provision of Section 194-O will only apply and other Sections relating to TDS such as 194J and 194C will not apply.

2) It is also provided that the Advertisement displayed by E-commerce participants on the portal of E-commerce operator, the TDS provision contained in Section 194C will apply & 194-O will not apply.

3) Whenever e-commerce operator is a non-resident the person responsible for deduction and payment of TDS shall be the person himself, any person Authorized by such person or the agent of such person. It is proposed by way of amendment in Section 204 of the Act. The per

Above amendment shall come into force from AY 2020-21 onwards.

Rationalization of provision relating to Form 26AS:- [Insertion of Section 285BB and Omission of Section 203AA of the Act]

Section 203AA deals with furnishing of Form 26AS by the income-tax department. Current format of Form 26AS contains the information about TDS, Advance Tax and S.A. tax and TCS.

As the mandate of Form 26AS would be required to be extended beyond the information mentioned above, it is Proposed to delete the existing Section 203AA and to introduce a new Section 285BB in the Act regarding annual financial statement.

With the advancement in technology and enhancement in the capacity of system, various information such as sale/ purchase of immovable property, share transactions, Donations, Dividend Income, Other income liable to TDS etc. will be captured in the Annual Financial Statement.

These additional information will be provided to the assessee in Form 26AS so that the same can be used by the assessee for filing of the Return of Income and calculating his correct tax liability.

Above amendment shall come into force from 1st day of June, 2020 onwards.

Widening the scope of Section 206C to include TCS on: - i) Foreign remittance through Liberalized Remittance Scheme (LRS), ii) Selling of overseas tour package iii) Sale of goods over a limit:-[Insertion of 206C(1G)(a), 206C(1G)(b) and 206C(1H)]

At Present, Section 206C provides for the collection of tax at source (TCS) on following transactions:-

a) Business of trading in alcohol, liquor, forest produce, scrap, Minerals, etc.

b) Grant of Lease/ License of Parking Lot, Toll Plaza and Mining & Quarrying of goods other than Mineral oil, Petroleum and Natural Gas

c) Sale of Motor Vehicles

As can be seen from various amendments, Government wants to increase the tax revenue by widening the tax base and by bringing more and more transactions within TDS / TCS net.

So in order to widen and deepen the tax net, it is Proposed to amend Section 206 so as to levy TCS on Overseas Remittance, Sale of Overseas Tour Packages and Sale of Goods.

The Proposed amendments, in this regard, are explained below:-

Sec	Category of Transaction	TCS to be collected by	TCS to be collected from	TCS to be collected on	Threshold Limit upto which no TCS is require to be collected	Rate of TCS	
						if PAN / Aadhaar Available	if PAN / Aadhaar not Available
206C(1G)(a)	Overseas remittance under LRS ***[Note 1]***	Banker or Other Foreign Currency Dealers	Any person making remittance (Buyer)	Amount of Remittance to be done out of India	Rs. 7 Lakhs p.a. per authorized dealer per buyer	5%	10%
206C(1G)(b)	Sale of overseas tour package ***[Note 2]***	Seller of the such Package	Buyer of such Package	Sale Consideration	No Limit	5%	10%
206C(1H)	All goods other than mentioned above in existing provision ***[Note 3]***	Seller of Goods	Buyer of Goods	Sale Consideration	Applicable to Seller Turnover exceeding Rs. 10 Crores in immediately preceding previous Year Applicable to Buyer Goods value Rs. 50 Lakhs p.a.	0.1% of Sale Value	1%

Note 1:-

a) LRS is a scheme by which a Resident Indians can make foreign remittance for any bonafide purpose upto $250000 p.a.

   Examples of such foreign remittance which are commonly made are transferring money to their children staying abroad for maintenance, overseas investment in equity shares, Purchase of property, Gift to be given to a relative etc.

b) The provisions of TCS are applicable even if the foreign remittance is not in the nature of Income taxable under the Act.

c) In case of foreign remittance through an authorized dealer, it is impossible for a buyer not to have a PAN because without PAN, bank account would not be operational and bank will not make a remittance.

d) TCS which is Proposed to be recovered by a banker from the buyer can become an additional burden to the buyer to absorb the additional TCS without any corresponding income and it is possible that all his income is already subject to TDS and there is no further scope to absorb such TCS on foreign remittance which will result in to Refund to be claimed by the buyer in the Return of Income to be filed.

e) As the threshold limit is applicable per authorized dealer, the individual making remittance will have to designate a branch of an Authorized Dealer through which all the remittances will be made. It means that one cannot make remittance through different Authorized Dealers in a year. This is also clarified by RBI through FAQ with regard to LRS.

f) Provisions of this Section will not apply to foreign remittance in the nature of import of Goods as such transactions are not covered by LRS.

g) This provision will enable Income Tax Department to obtain all the information of foreign remittance made by any resident individuals under LRS.

Note 2:-

a) TCS provision is Proposed to be introduced first time on Sale of Foreign Tour Package as many of the Resident individuals and their family conducts foreign tour from unaccounted money at their disposal.

b) To prevent such malpractices, it is now Proposed that the tour operator will not be able to accommodate such resident individuals for a foreign tour.

c) The TCS so collected by Tour operator will be an additional burden to a tour package buyer as he may not have enough income on which no TDS is deducted so that he can absorb the TCS collected by the tour operator.

d) In case the tour package is directly purchased from a foreign tour operator such as Trafalgar or Star tours in Europe then the TCS Provisions will not apply.

   It may discourage buyer to book Tour Packages through Indian Tour Operator and instead he may opt for booking Tour Package directly through foreign Tour Operator.

   In that case, if the remittance is less than Rs. 7,00,000/- to the overseas tour operator then the buyer will not be liable to TCS under any of the provisions.

e) This provision will enable income tax department to obtain information about foreign travel of all individuals which are moved through Indian tour operators.

Note 3:-

a) Rigour of Section 206C (1H) with regard to TCS on Sale of Goods is applicable only if the threshold limit applicable to both seller and buyer are satisfied.

b) It is expected that if the buyer is exporter then the provisions of TCS as contained in Section 206C (1H) may not apply and suitable amendment in the Law shall be made before the budget is enacted.

c) It is also Proposed that when the goods are sold to following parties then the rigour of TCS u/s 206C (1H) will not apply.

- The Central Govt., a State Govt., an Embassy, a high commission, legation, commission, consulate, the trade representation of a foreign State.
- A local authority as defined in the explanation of Section 10(20).
- Any other person which may be, subject to certain conditions, notified by the Central Govt. by issuing notification in the Official Gazette.

d) It is also Proposed that the Central Govt. may, subject to certain conditions, exempt the Categories of Seller by issuing notification in the Official Gazette.

Common Notes:-

a) Provision of TCS will not apply in case the buyer is liable to deduct Tax at Source under any provisions of this act and has already deducted such amount.

   This would mean if the remittance is in the nature of income to an overseas person which is liable to TDS in India and if the buyer deducts TDS on the said remittance then he will not be subject to the provisions of TCS as contained in Section 206C of the Act.

b) The time limit for payment of TCS and filing of TCS Collection Statements shall be notified by amending the Income Tax Rules.

c) Late filing fee for default in furnishing statement is already covered by existing Section 234E of the Act. The same will continue to apply even for the new Returns to be filed in pursuant to Section 206C (1G) & 206(1H).

Above amendment shall come into force from AY 2020-21 onwards.

New scheme for E-Appeal and E-Penalty [Amendment to Section 250 & Section 274 of the Act]:-

Section 250 provides for procedures in filing appeal before the first appellate authority and Section 274 provides for the procedure for imposing penalty under Chapter XXI of the IT Act.

In order to make the appeal processes more efficient, transparent and accountable, it is Proposed to insert Section 250(6B) which would empower GOI to notify a new E-scheme for disposal of appeal on the lines of E-Assessment Scheme 2019.

Aim of the scheme is to eliminate the interface between the appellate authority and the taxpayer in the course of appellate proceedings, optimum utilization of government resources through economies of scale, functional specialization and introducing an appellate system with dynamic jurisdiction.

Similar provisions are Proposed to be introduced for E-Penalty on the same line as that of E-Appeal by proposing to insert Section 274(2A) in the Act.

Accordingly, even Penalty proceedings are Proposed to be made faceless in continuation of Government's drive eliminating the interface between Income tax authorities and tax payers.

Needless to say that e-appeal and e-penalty proceedings may result into more litigation as personal hearing is very much necessary in any judicial proceedings and appeal proceedings and penalty proceedings are judicial in nature.

Above amendment shall come into force from AY 2020-21 onwards.

Stay by the Income Tax Appellate Tribunal (ITAT) [Amendment to Section 254 of the Act]:-

Existing provision of Section 254 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 Commissioner of Income-tax (Appeal).

It is now Proposed that:-

1) ITAT may grant a stay upto 180 days on payment of 20% of the amount of tax dues or on furnishing security of equivalent amount.

2) In case of non-disposal of appeal within 180 days ITAT shall grant a further stay upto maximum of 365 days which includes 180 days only if following conditions are satisfied:

    a) Assessee has to make an application for further stay

    b) Assessee has already paid 20% of the amount of tax dues as mentioned above or furnished security of an equivalent amount.

    c) ITAT shall pass an order within the period so extended or allowed.

Above amendment shall come into force from AY 2020-21 onwards.

Penalty for false entry or omission of any entry in the books of accounts [Insertion of new Section 271AAD of the Act]:-

At times, the expenditure is inflated by certain assesses to reduce the incidence of tax by making payments to any suppliers who has actually not delivered goods or services to the assessee.

In such cases, fake invoices are obtained by registered suppliers to fraudulently claim ITC and reduce their GST liability or reduce the incidence of income tax.

In order to harshly deal with the fraudulent arrangements of claiming ITC under GST law on the basis of fake invoices or claiming bogus expenditure to reduce

income tax, it is Proposed to insert a new Penal provision in Section 271AAD for levy of penalty to cover such fraudulent tax avoidance measures.

The Proposed penalty shall be applicable if it is found that:-

a) A false entry has been recorded in the books of accounts maintained by any person **(FIRST PERSON)** or;

b) An entry is omitted to be passed in the books of accounts which is relevant for the computation of total income to evade tax liability.

The quantum of penalty that can be levied by the assessing officer is 100% of the aggregate amount of such false entry or omitted entry.

Said penal provision shall also apply to any **OTHER PERSON** who causes the **FIRST PERSON** to make false entry or causes to omit any entry as referred above.

Quantum of Penalty applicable to **OTHER PERSON** is same as the Quantum of Penalty applicable to the **FIRST PERSON**.

The "false entry" is defined in the said Section to include, use or intention to use:

- Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

- Invoice in respect of supply/ receipt of goods/ services issued by the person or any other person without actual supply/ receipt of such goods/ services; or

- Invoice in respect of supply/ receipt of goods/services to or from a person who do not exist.

Above amendment shall come into force from AY 2020-21 onwards.

Power to make rules [**Amendment to Section 295 of the Act]: -**

As per the existing provisions of Section 295, Central Govt. has given power to Board to make the Income Tax rules for following categories of Income.

(i) Income derived in part from agriculture and in part from business;

(ii) Income of Persons residing outside India;

(iii) Income of an individual who is liable to be assessed under the provisions of Section 64(2) of the Act.

It is now Proposed to amend Section 295 so as to empower the Board for making rules for following categories:-

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

(ii) Transaction or activities of a non-resident (anywhere in the World).

Above amendment at clause (i) shall come into force from AY 2021-22 onwards.

Above amendment at clause (ii) shall come into force from AY 2022-23 onwards.

VIVAD SE VISHWAS SCHEME, 2020

Sabka Vishwas Scheme" was brought in Budget 2019-20 to reduce litigation in **Indirect Taxes** which resulted into settlement of more than 1, 89,000 cases.

It is now proposed to bring a similar scheme, namely '**Vivad Se Vishwas scheme** in **Direct Taxes** for reducing the pending litigations. The Scheme will assist in increasing the revenue collection for the Government and thereby also controlling the fiscal deficit.

Who is Eligible to opt for the Scheme?

- Appeals which are pending before the Commissioner (Appeals), Income Tax Appellate Tribunal, High Court or Supreme Court, as on January 31, 2020 and includes writs and arbitration/ mediation proceedings.

- Such appeal may have been filed by the taxpayer or Revenue.

- The pending appeals may be against disputed tax, interest, penalty or fees.

- Tax determined in respect of tax deducted at source (i.e. Withholding Tax) or tax collected at source.

In order to avail this Scheme, the Taxpayer will be required to file a declaration before the CIT or higher authority, as maybe prescribed.

Who is not eligible to opt for this Scheme?

1. The following Tax Arrears would **not be Eligible** to opt for the Scheme:

- Arising from Assessment made u/s 153 A and 153 C of the Act

- Where Prosecution has been initiated before filing Declaration;

- Arising from undisclosed foreign asset or undisclosed foreign income;

- Assessment/Reassessment made consequent to exchange of information u/s 90 or 90 A of the Act;

- Where notice for enhancement has been received from CIT (A) on or before 31 01 2020.

2. Where order of detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 has been made on or before filing of declaration

3. Where prosecution under the Indian Penal Code, the Unlawful Activities (Act, 1967 the Narcotic Drugs and Psychotropic Substances Act, 1985 the Prevention of Corruption Act, 1988 the Prevention of Money Laundering Act, 2002 the Prohibition of Benami Property Transactions Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted under said laws

4. Persons notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration.

What is the Meaning of Disputed Tax Amount?

Disputed Tax Amount = (A - B) +(C - D)

A = Tax on Income Assessed
B = Tax on (Income Assessed - Income challenged in appeal)
C = MAT on Book Profits Assessed
D = MAT on (Book Profits Assessed - Addition to Book Profits challenged in appeal)

Where an addition/disallowance is made to normal income as well as book profits, the said amount of addition/disallowance shall be reduced from D above
(C & D) shall be ignored where the provisions of 115 JB are not applicable.

Quantum of Tax Payable and Benefits availed by Eligible Tax Persons who opt for the Scheme.

The amount payable by a taxpayer opting for resolution under this Scheme shall be as follows:-

Sr. No.	Nature of Disputed Liability	When is the Scheme availed	Benefits to opt for the Scheme
a	O/s Income Tax Liability and any of the following:- (i) Interest (ii) Penalty (iii)Fees	On or Before 31st March 2020	Pay only **100%** Income Tax under dispute with **Complete Waiver** of Interest and Penalty & Fees.
		After 31st March 2020 but on or before the last date to be notified.	a. **100%** of Income Tax in Dispute **And** b. **10%** of Income Tax in Dispute Or O/s Interest, Penalty or Fees whichever is **Lower**.
b	Interest and/or Penalty and/or Fees (**No O/s Income Tax Liability**)	On or Before 31st March 2020)	Pay **25%** of O/s Interest/Penalty
		On or before the last date to be notified.	Pay **30%** of O/s Interest/Penalty

Procedure for Availing this Scheme

- A Taxpayer (Resident or Non-Resident) desiring to opt for resolution under this Scheme shall file a declaration on or before the last date (to be notified);

- Such declaration should be filed before the designated authority (not below

the rank of Commissioner and such authority would be notified).

- The taxpayer shall furnish an undertaking waiving his right to seek any remedy or claim in relation to tax arrears.

- The designated authority **shall within 15 days** from date of receipt of declaration determine amount payable by the taxpayer and **grant a certificate** containing particulars of tax arrears and amount payable.

- The taxpayer is required to pay the amount determined **within 15 days** from date of receipt of such certificate and intimate the same to the designated authority.

- Amount paid in pursuance of a declaration shall not be refundable.

- The designated authority shall pass an order stating the tax paid.

What are the Consequences if Taxpayer opts for this Scheme?

- If the Taxpayer opts for this Scheme, the appeal pending before any appellate authority shall be deemed to be withdrawn.

- The Taxpayer will be also be required to furnish proof of withdrawal of the appeal along with the Declaration.

- Any arbitration, mediation conciliation under any law or with any other country for protection of investment or otherwise shall be withdrawn and proof of withdrawal is to be furnished with the Declaration.

- Any arbitration, mediation conciliation or any claim or remedy available under any law or with any other country for protection of investment or otherwise shall be withdrawn and proof of withdrawal is to be furnished with the Declaration.

- If the material particulars are false or declarant violates any condition or declarant acts otherwise than as required under this Scheme, it shall be presumed that Declaration was never made and all the withdrawn proceedings shall stand revived

GOODS AND SERVICE TAX

CENTRAL GOODS AND SERVICES TAX ACT, 2017

Definition of Union Territory:- [Amendment in Section 2(114) of the Act]

Existing	At present, "**Union Territory**" means any authority, the territory of- (a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli; (d) Daman and Diu; (e) Chandigarh; and (f) other territory.
Proposed	It is now proposed to include "Union territory of "Ladakh" under the definition of Union Territory. It is also now proposed to merge Union Territories of Dadra and Nagar Haveli and Daman and Diu into one.

Definition of Union Territory :-[Amendment of Section 1(2) & Section 2(8) of Union Territory Goods and Services Tax]

Particulars	Existing Provision	Proposed Amendment
Sec 1(2)	"Dadra and Nagar Haveli, Daman and Diu"	"Dadra and Nagar Haveli and Daman and Diu, **Ladakh"**
Sec 2 (8)	(iii) "Dadra and Nagar Haveli, Daman and Diu"	(iii) "Dadra and Nagar Haveli, Daman and Diu" (iv) **"Ladakh"**

Persons Eligible to Opt for Composition Scheme: - [Amendment in Section 10(2) of the Act]

Existing	At present, **Person Eligible to opt for Composition Scheme if he is not engaged in:-** (a) the supply of services except Works Contract Services and services for supply of Food and other articles(except alcoholic or liquor) for human consumption ; (b) Making any **supply of goods** which are not leviable to tax under this Act; (c) Making any inter-State S**upply of goods**; (d) Making any **supply of goods** through an E- commerce operator who is required to collect tax at source; and (e) Manufacturer of such goods as may be notified.
Proposed	It is now proposed to amend **"clause (b), (c) & (d)" above** to now include **Supply of Services along with Goods**. This Amendment is done to harmonize the conditions for eligibility for opting to pay tax under Compensation Scheme.

Eligibility and Conditions for taking Input Tax credit in case Debit Notes: - [Amendment in Section 16(4) of the Act]

Law is proposed to be amended to delink the date of issuance of debit note from the date of issuance of the underlying invoice for the purpose of availing input tax credit.

The Amended provisions are explained by following Example:

Particulars	Existing Provision	Proposed Amendment
Date of Invoice	31/03/2019	31/03/2020
Date of Debit Note pertaining to above Invoice	31/10/2019	31/10/2020
Whether Recipient is entitled to claim ITC for above	No ✕	Yes ✓
Maximum Time Limit for Claiming ITC	NA	30th September 2021

Rationale behind this proposed amendment: In Reality the issue of Debit Note in Business doesn't always happen latest by 30th September of the following Financial Year due to various complex situations subsisting in Business. Thus such artificial time limit of raising a debit note latest by 30th September of the following financial year was unrealistic and arbitrary in nature.

Accordingly law is proposed to be amended to delink the raising of debit note from Date of raising Invoice to overcome the genuine hardship to the registered person**.**

Surprisingly, there is no corresponding amendment of Delinking Credit Note with the date of Invoice in section 34(2) on the same line as that of Debit Note.

Cancellation of Registration:- [Amendment in Section 29(1) of the Act]

Existing	At present, There is no Provision for Cancellation of Registration taken by a person **Voluntarily**.
Proposed	It is now proposed to amend Clause (c) of sub-section (1) of section 29 so as to provide for Cancellation of Registration obtained **Voluntarily** by any person.

Revocation of Cancellation of Registration :- [Amendment in Sub-section (1) of section 30 of CGST Act]

It is very common nowadays that the Registration of any person is cancelled by the Proper Officer if the taxes are not paid for say 2 – 3 months or Returns are not filed for a certain period. The measure of cancellation of the registration is only to force the registered person to pay all the outstanding taxes and file the Return promptly so that Government gets the revenue form such person which is due.

However after the taxes are paid it is necessary to revoke the cancellation and allow the registered person to continue the business and accordingly the procedure is made for revocation of cancellation of registration in section 30 of CGST Act 2017 which presently provides that any person whose registration is cancelled, has to apply for revocation of cancellation of registration within 30 days from the date of cancellation and once the proper officer is satisfied that all the taxes are paid he shall revoke the cancellation of registration.

However the time limit of 30 days appears to be too small for any Registered Person because he may have to arrange funds form external sources to regularize his GST payments and for the same purpose the period 30 days may not be enough for him to do so and accordingly there is a need to extend the period of 30 days to regularize the GST payments.

Accordingly, it is now proposed that the period of 30 days can be extended by another period of 60 days which is explained in the following table:

Provisions	No. of days to apply for Revocation of Cancellation of Registration			Aggregate Days
	Proper Officer	By A.C*. or J.C.*	By Commissioner	
Existing	30 Days	-	-	30 Days
Proposed	30 Days	Additional 30 days	Further additional 30 days	90 Days

*A.C. refers to Additional Commissioner and,
*J.C. refers to Joint Commissioner.

Tax invoice: - [Amendment in Sub-section (2) of section 31 of CGST Act]

Presently a registered person supplying taxable services shall, before or after the provision of service but within the period of 30 days from the date of rendering of service, issue a tax invoice:

Existing	At present no provision is made to specify the following: - a) Categories of services or supplies in respect of which – (i) Tax invoice is required to be issued; (ii) Time limit within which invoice shall be issued; (iii) Manner in which such tax invoices shall be issued. b) Categories of services or supplies in respect of which – (i) Any other document issued in relation to the supply shall be deemed to be a tax invoice. (ii) Tax invoice may not be issued.
Proposed	It is proposed the Government is now empowered to prescribe any of the above, by issuing notification.

Certificate of Tax deducted at source :-[Amendment in Sub-section (3) of Section 51 of CGST Act]

Existing	At present, the Deductor shall furnish to the Deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.
Proposed	It is now proposed that TDS certificate shall be issued in such form and in such manner as may be prescribed without specifying exact details to be furnished.

Late fees for delay in issuance of TDS Certificate :-[Amendment in Sub-section (4) of Section 51 of CGST Act]

At present, Deductor is liable to issue TDS certificate within 5 days from the date of credit of the said amount to the Government.

In case the Deductor fails to furnish the TDS Certificate to Deductee within prescribed 5 days then he shall be liable to pay late fees of sum of Rs. 100/- per day subject to a maximum of Rs. 5,000/-

It is now proposed to omit section 51(4) with regard to the late fees applicable and time limit for issue of TDS Certificate.

For the first time in this Budget 2020, there is a late fees in the existing provision which is proposed to be deleted in amended provision otherwise all the provision of the budget 2020 has only added to the penal provisions.

Constitution of Appellate Tribunal and Benches thereof [Amendment in Sub-Section (6) of Section 109 of CGST Act]

Section 109 of the CGST Act is being amended to bring the provision for Appellate Tribunal under the CGST Act in the Union territory of Jammu and Kashmir and Ladakh.

Provisions with regard to Penalty extended to Beneficiaries as well:- [Insertion of Section 122(A) of CGST Act, 2017]

Particulars of Offence	Penalty applicable	
	Existing Provision	**Proposed Provision**
(i) Incorrect Invoice or False Invoice Or No Invoice	**Sub section 1**: Penalty of Rs.**10,000/-** or Amount equivalent to Tax evasion or Tax not deducted or Short deducted or ITC wrongly claimed or Refund Fraudulently claimed.	**Sub Section 1A:** Penalty Amount of Tax evasion or Amount wrongly claimed as ITC or Amount of ITC passed on as the case maybe
(ii) Invoice without supply of G/S		
(vii) ITC claimed without receipt of goods or service		
(ix) ITC claimed in contravention of Section 20, ITC claimed more than 10% reflected in GSTR-2A		
Person Liable	Penalty only to person who commits Offence	Penalty extended to **Beneficiary** of such transaction in the nature of offence
Relevant Section	122 (1)	122 (1A)

Notes:

1. Existing provision u/s 122 (1) continues post amendment also.

2. Penalty will not be applicable to any Beneficiary in case, beneficiary proves that such transaction is conducted, not at his instance.

Above Amendment shall come into force w.e.f date of enactment of Finance Bill, 2020

Amendments to Punishment for certain offences: -Section 132(1)

Existing Provision	Any person (First Person) who **commits any offence** prescribed in Section 132 are **punishable with penalties** and imprisonment as specified. In other words it is possible to interpret that **Other(s) Person** who causes the First Person to commit such offence (abatement of an offence) or beneficiary are not liable to such penal provision.
Proposed Provision	**Now, Other Person(s) are also proposed to be made liable** to penalties and prosecution in the same manner as that of First Person committing offence.

Above Amendment shall come into force w.e.f date of enactment of Finance Bill, 2020.

Amendment to Transitional (CENVAT Credit) arrangements for claiming Input Tax Credit: From earlier Regime to GST Regime :-[Amendment in Section 140 of CGST Act]

Words as per existing provision and words changed in Amended provisions are mentioned below:

Particulars	Existing Provision	Amended Provision
Section 140 (1)	"existing law"	"existing law **within such time**"
Section 140 (2)	"appointed day"	"appointed day within such time"
Section 140 (3)	"goods held in stock on the appointed day subject to"	"goods held in stock on the appointed day, **within such time and in such manner as may be prescribed**, subject to"
Section 140 (5)	"existing law"	"existing law, **within such time and in such manner as may be prescribed"**

Particulars	Existing Provision	Amended Provision
Section 140 (6)	"goods held in stock on the appointed day subject to"	"goods held in stock on the appointed day, **within such time and in such manner as may be prescribed,** subject to"
Section 140 (7)	"credit under this Act even if"	"credit under this Act, **within such time and in such manner as may be prescribed,** even if"
Section 140 (8)	"in such manner"	"within **such time and in such manner"**
Section 140 (9)	"credit can be reclaimed subject to"	"credit can be reclaimed **within such time and in such manner as may be prescribed,** subject to"

Notes:

1. All above amendments were necessitated as High Courts of various states namely, Delhi, Gujarat, Odisha, Andhra Pradesh, etc. in writ petitions filed, have directed GST Council that it ought to consider request of Filing Form TRANS-1 (Form to transfer credit from VAT, Service tax, Custom Duty into GST Regime) so that Credit under erstwhile law can be transferred to GST Regime even if the last date of filing TRANS-1 has expired.

2. If the said Judgments are to be given full effect then there will be plethora of such TRANS-1 that will be filed on massive scale which result into huge loss of revenue to Government as Government will have to allow to claim all the old ITC.

3. It is therefore **proposed to amend** above relevant provisions of the Act retrospectively so as **to deny such transfer of credits** to any person if relevant form **TRANS-1 is not filed by 31.12.18**.

4. This Amendment will nullify the relief granted by various High Courts as referred above.

Needless to say that, above Amendments shall come into force retrospectively i.e. from 1st July, 2017.

Amendment in Powers to Issue instructions or directions to Commissioner: - [Section 168(2) of CGST Act, 2017]

At present, Commissioners are given certain powers to exercise certain authorities regarding certain Tax related issues and procedures to be followed.

E.g. :- Commissioner u/s 66(3), is entrusted to determine, the remuneration of Chartered Accountant or Cost Accountant who is appointed to conduct Special Audit, after obtaining the approval of Board.

It is impractical for Commissioner to seek approval of Board for determination of remuneration to Auditors conducting Special Audit in every case.

It is **accordingly proposed** that **no approval** is required from Board to determine Remuneration of Chartered Accountant or Cost Accountant for conducting Special Audits which means he can decide the same on his own.

Amendment to Removal of difficulties: Section 172 of CGST & Section 26 of UTGST Act, Section 14 of GST (Compensation Act) & Section 25 of IGST Act 2017

Particulars	Necessity to amend law by special order	
	Existing Law	Proposed Amendment
CGST/UTGST & Compensation Act	Up to 30/06/2020	Up to 30/06/2022
IGST Act	Up to 30/06/2019	Up to 30/06/2022

Notes:

1. Government while inducting GST Law had envisaged the need to amend law from time to time on account of any difficulties arising from implementing current provision of Law. Accordingly Government had introduced provisions in various GST law granting powers to amend the law by special order from time to time without getting Parliament Nod.

2. **As difficulties are never ending in implementation of GST law and hence there is a need to enhance the time limit for General or Special Order to be passed by Government to amend law without obtaining Parliament Nod.**

Accordingly said time limit is extended as explained above.

Above Amendment shall come into force retrospectively w.e.f from 1st July, 2017. The reason why above provision is proposed to be amended retrospectively is due to the fact that the time limit for amending IGST Act has already expired on 30/06/2019 and accordingly Government could not have amended IGST Act after 30/06/2019 without the Nod of Parliament. Hence to ratify the amendment to IGST Act during the period from 01/07/2019 till date, extended period of amending law is proposed to be made applicable retrospectively from 01/07/2017.

Amendment to Schedule II of CGST Act- Activities to be treated as deemed supply goods or supply of services: -

At present, transfer of goods out of the business of Registered is treated as deemed supply of goods/services under Schedule II of CGST Act

Existing provisions and proposed amendments w.r.t such transfer are explained below:-

Situation 1 {clause (a) of Schedule II}: **Goods are transferred or disposed out of business of registered person**		
Particulars	**Existing Law**	**Proposed Amendment**
a) with consideration	Deemed Supply of Goods	Deemed Supply of Goods
b) without consideration	Deemed Supply of Goods	No Supply
Situation 2 {clause (b) of Schedule II}: **Goods put to use or made available for private use or any purpose other than business**		
Particulars	**Existing Law**	**Proposed Amendment**
a) with consideration	Deemed Supply of Service	Deemed Supply of Service
b) without consideration	Deemed Supply of Service	No Supply

Above Amendment shall come into force w.e.f date of enactment of Finance Bill, 2020

Retrospective Amendments of GST rate notifications:

Description of Goods	HSN Code	Existing Provision	Proposed Amendment	Period of retrospective applicability
Fishmeal	2301	5%	Nil	01.07.2017 to 30.09.2019
Pulley, wheels and other parts if used for Agricultural Machinery	8483	28%	12%	01.07.2017 to 31.12.2018

Notes:

1. Post the period of retrospective effect the rates are already changed for respective goods vide notifications issued.

2. **This reduction/exemption is permissible only subject to the condition that if GST is already paid at higher rate, then no refund shall be allowed.**

Proposed Amendment with regards to Refund arising on account of inverted duty structure in compensation Cess applicable to tobacco products:

Existing Provision & Proposed Amendments in relation to the above are explained below**:**

1. The refund of accumulated credit of Compensation Cess on tobacco products arising out of inverted duty structure in Compensation Cess is disallowed w.e.f 01/10/2019 vide Notification No.3/2019- Compensation Cess (Rate) dated 30/9/2019.

2. It is now proposed that effect of this Notification is being given retrospective effect from 01/07/2017 onwards. Accordingly, **no refund on account of inverted duty structure would be admissible on any tobacco products.**

Other Miscellaneous Announcements with regard to GST Procedures: -

1. Simplified return system (currently under process) is proposed to be introduced from 1st April, 2020 with following features:

   - SMS-based filing of NIL returns
   - Pre-filled returns
   - Improved input tax credit flow

2. Fully automated GST refund process with no human interface.

3. Aadhaar based verification of taxpayers for weeding out dummy and non-existent units. It appears that this announcement will require Aadhar based verification even for existing Registered Person.

4. Implementation of e-invoicing system in phased manner, starting optionally from February, 2020.

5. Dynamic QR-code for consumer invoices and capturing of GST parameters while making payment through the QR-code.

6. A system of cash rewards is envisaged to incentivise customers to seek invoices.

   - Cash rewards will be ranging from Rs. 10 lakhs to Rs. 1 crore.

   - Each bill will be termed as a lottery ticket in the hands of the buyer who will take bills and pay GST while making purchases.

   - The prize money will be funded by government's consumer welfare fund, where the proceeds of anti-profiteering are transferred.

7. NIRVIK Scheme for higher export credit disbursement launched which provides for higher insurance coverage, reduction in premium for small exporters and simplified procedure for claim settlements.

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

The Customs Act, 1962

Electronic Duty Credit Ledger

A new Section 51B is being inserted so as to provide for creating of an Electronic Duty Credit Ledger in the customs system. This will enable duty credit in lieu of duty remission to be given in respect of exports or other such benefit in electronic form for its usage, transfer etc.

The provision for recovery of duties provided under Section 28AAA of Customs Act, 1962 are also being expanded to include such electronic credit of duties.

Preferential Tax Treatment

A new Chapter VAA (a new Section 28DA) is being incorporated in the Customs Act to provide enabling provision for administering the Preferential Tax Treatment regime under Trade Agreements.

The proposed new section seeks to specifically provide for certain obligation on importer and prescribe for time bound verification from exporting country in case of doubt. Pending verification preferential benefit shall be suspended and goods shall be cleared only on furnishing security equal to differential duty. In certain cases, the preferential rate of tax may be denied without further verification.

Anti-Dumping Duty

Anti-Dumping Rules provides for manner and procedure for investigation into dumping of goods that cause injury to domestic industry. These rules also provide for investigation into cases of circumvention of antidumping duty by the exporters of subject goods to India.

Changes are being made in the Rules to strengthen the anti-circumvention measures by making them more comprehensive and wider in scope to take care of all types of circumventions of antidumping duty in line with best international practice. Certain other changes are being made in these Rules for bringing clarity in the scope of these rules.

Countervailing Duty

The Countervailing Duty Rules provide for manner and procedure for causing investigation into the cases of imports of subsidized goods that cause injury to domestic industry. Currently, the Countervailing Duty Rules do not have any mechanism for imposition of countervailing duty in case of circumvention of these measures.

A provision is being incorporated in the countervailing Duty Rules to enable investigation into the case of circumvention of countervailing duty for enabling imposition of such duty. Certain other changes are being made for bringing clarity in the Rules.

Uncontrolled Import & Export

Section 11(2)(f) empowers the Central Government to prevent injury to the economy of the country by the uncontrolled import or export of gold or silver. This clause is being amended to include 'any other goods (in addition to gold and silver) in its ambit.

Health Cess introduced on imported medical devices [w.e.f. 02-02-2020]

Health Cess @ **5%** proposed to be imposed on imported medical devices [except on parts/inputs or where BCD on said goods is exempt] with an objective to boost the domestic medical devices sector.

This cess would be collected over and above the other duties of customs. Also, any export promotion scrips would not be used for payment of said Cess. The proceeds of Health Cess shall be used by the Central Government for funding of health infrastructure in the Country.

The Customs Tariff Act, 1975

Changes in Rates of Customs & Cess collected on Imports [w.e.f. 02-02-2020]

Basic Customs Duty (BCD):

- Customs duty increased on footwear from 25% to 35%.
- Customs duty increased on furniture from 20% to 25%.
- Customs duty increased on household appliances and household items from 10% to 20%.

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