Union Budget 2020

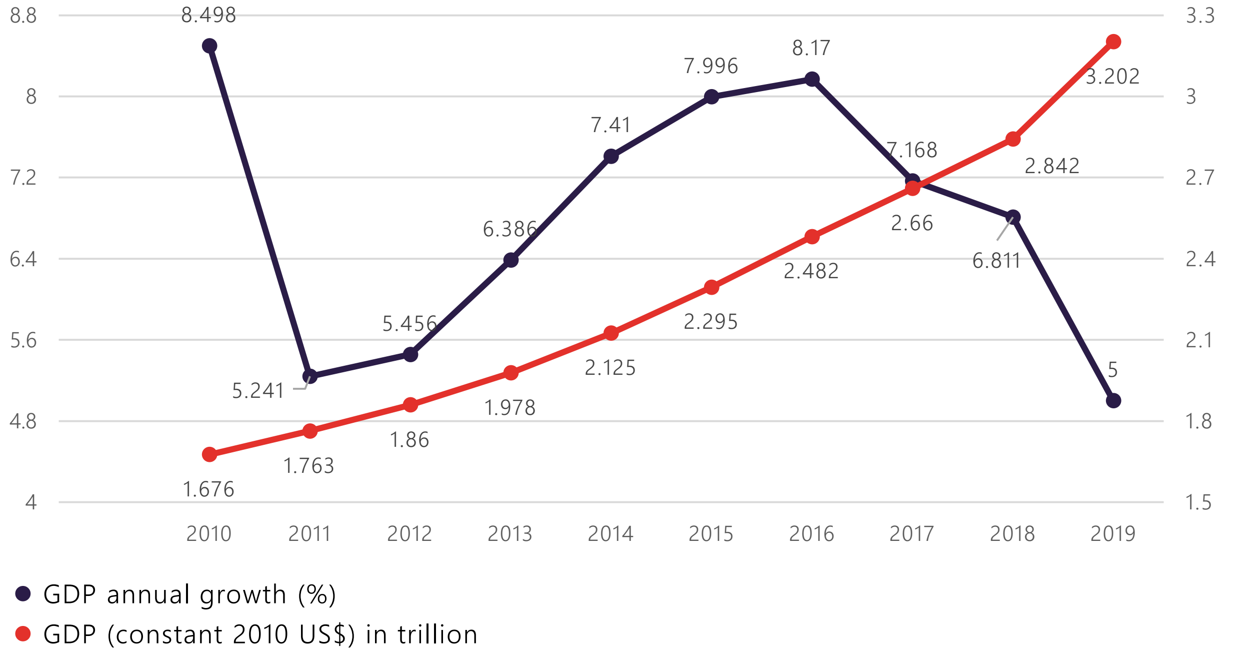
Union Budget 2020

The provisions contained in the Finance Bill, 2020 ('The Bill') are proposals and are likely to undergo amendments while passing through Houses of Parliament before being enacted.

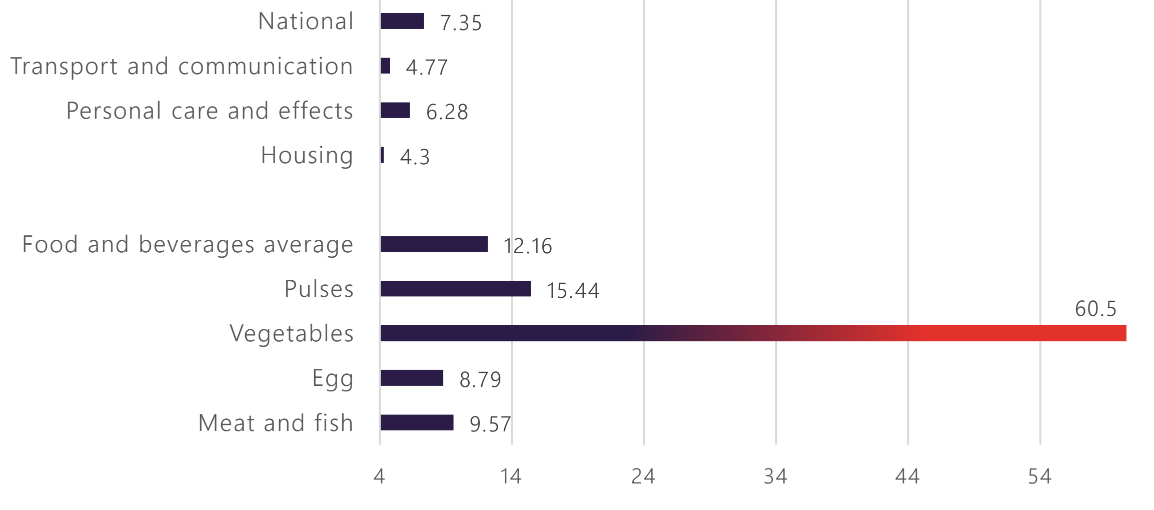
Content

Indian Economy

GDP (constant 2010 US$ trillion) and GDP annual growth (%)



All India annual inflation rates (provisional) for December 2019 (Base: 2012=100) on Consumer Price Index

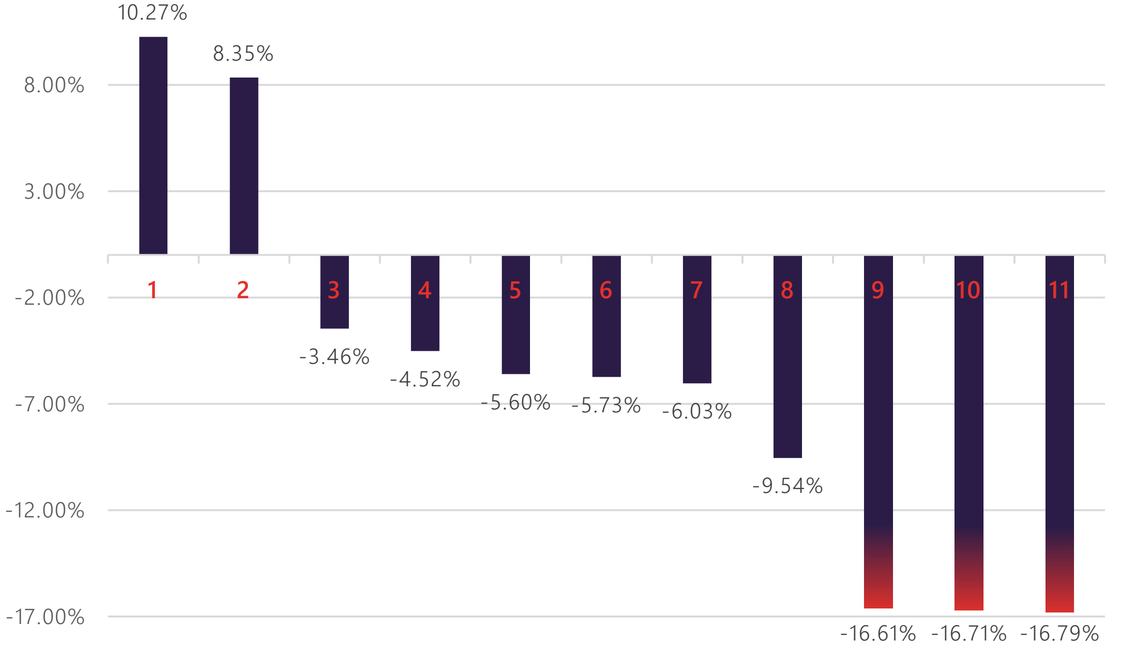


Industrial Production

Index of Industrial Production (base year 2011-2012)

- The all India Index of Industrial Production ('IIP') is a composite indicator that measures the short-term changes in the volume of production of a basket of industrial products during a given period with respect to that in a chosen base period.
- The level of the IIP is an abstract number, the magnitude of which represents the status of production in the industrial sector for a given period as compared to a reference period.
- Total number of ongoing Central Sector Projects costing more than INR 150 crores – 1,635
- Cumulative expenditure till now – INR 996,614 crores

Performance index as on September 2019



1 – Highway upgradation

2 – Power generation

3 – Goods traffic by railways

4 – Crude oil production

5 – Export handled at airports

6 – Passenger traffic handled: At international terminals

7 – Natural gas production

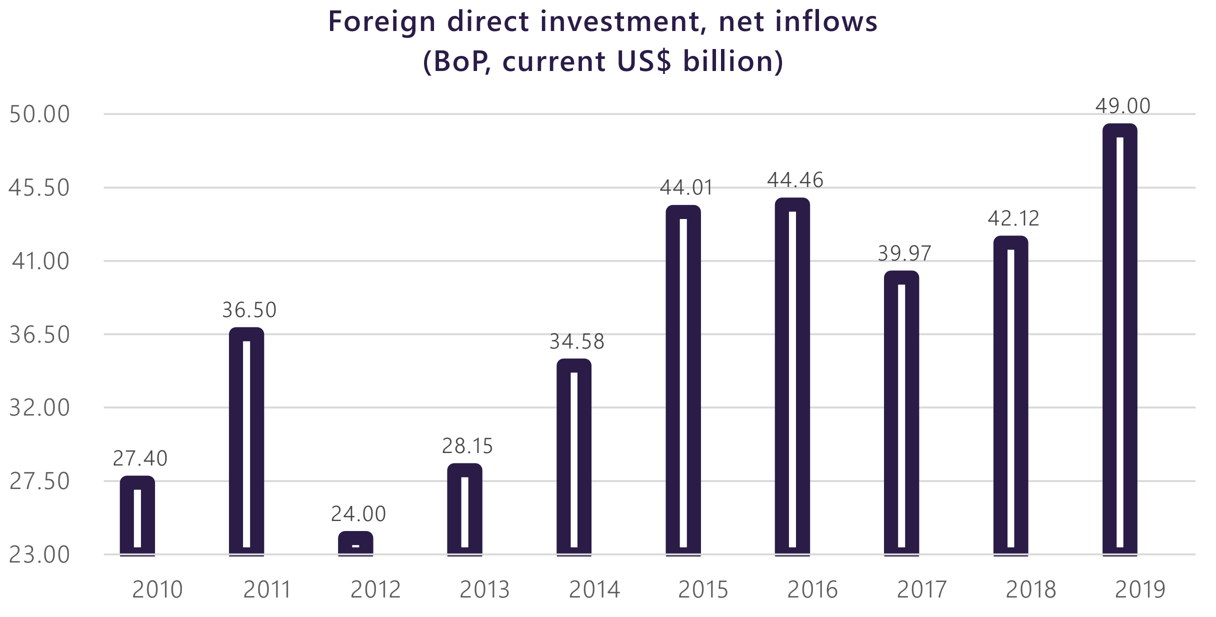
8 – Passenger traffic handled: At domestic terminals

9 – Import handled at airports

10 – Fertilizer production

11 – Coal production

Foreign Direct Investment



Tax Rates

Personal income tax

- No changes have been proposed in the rates of tax.
- Accordingly, the rates of tax (including cess and surcharge) as applicable for Assessment Year 2021-2022 are as under:

Income (in INR lakh)	Individuals*
0 - 2.5	0%
2.5 – 3	5.20%
3 – 5	5.20%#
5 – 10	20.80%
10 – 50	31.20%
50 – 100	34.32%
100 – 200	35.88%
200 – 500	39.00%
500+	42.74%

** Rates of tax including Cess @4% and surcharges*

 # Not applicable to Super Senior Citizens

Optional simplified tax computation – Option for taxpayer

- An individual / HUF taxpayer may opt for simplified computation with lower tax rates. The

Income (in INR lakh)	Individuals*
0 – 2.5	0%
2.5 – 5	5.20%
5 – 7.5	10.40%
7.5 – 10	15.60%
10 – 12.5	20.80%
12.5 – 15	26.00%
15 – 50	31.20%
50 – 100	34.32%
100 – 200	35.88%
200 – 500	39.00%
500+	42.74%

** Rates of tax including Cess @4% and surcharges*

Tax Rates

- However, if the taxpayer has opted for this simplified tax computation, he will not be eligible for specified deductions / exemptions such as:
  - Chapter VI-A (other than employers' contribution to NPS under Section 80CCD(2) and deduction for employment of new employees under Section 80JJAA).
  - Section 10 such as LTA, HRA, income of minor child, and exemptions provided under Section 10(14), etc.
  - Standard deduction, professional tax.
  - Interest paid on housing loan on self-occupied house property.
  - Standard deductions for family pension under Section 57(iia).
  - Set-off of loss from house property with any other heads of income.
  - Certain eligible deduction.

Particulars	Scenario 1		Scenario 2		Scenario 3	
	Existing	Proposed	Existing	Proposed	Existing	Proposed
Annual salary (INR)	*500,000*	*500,000*	*1,000,000*	*1,000,000*	*1,500,000*	*1,500,000*
Less: Standard Deduction (Medical and Travel Allowance)	50,000		50,000		50,000	
Less: Deduction u/s 80C	80,000		1,50,000		1,50,000	
Less: HRA as per Section 10(13A)	92,000		1,00,000		1,50,000	
Gross taxable income	**278,000**	**500,000**	**700,000**	**1,000,000**	**1,150,000**	**1,500,000**
Tax calculation						
Up to 250,000	-		-		-	
250,001 – 500,000	1,400	12,500	12,500	12,500	12,500	12,500
500,001 – 750,000	-		40,000	25,000	50,000	25,000
750,000 – 1,000,000	-		-	37,500	50,000	37,500
1,000,001 – 1,250,000					45,000	50,000
1,250,001 – 1,500,000						62,500
Total tax (A)	**1,400**	**12,500**	**52,500**	**75,000**	**157,500**	**187,500**
Less: Rebate u/s 87A (B)	1,400		-		-	
Add: Health and Education Cess @4% on (A-B = C)	-	500	2,100	3,000	6,300	7,500
Tax payable (A-B+C)	**-**	**13,000**	**54,600**	**78,000**	**163,800**	**195,000**

Tax Rates

Corporate tax

Description	Net income INR 0 – 1 crore*	Net income INR 1 – 10 crores*	Net income above INR 10 crores*
Domestic companies			
With turnover under INR 400 crores	26%	27.82%	29.12%
Not claiming tax exemption/incentives 115BAA *	25.17%	25.17%	25.17%
With turnover in excess of INR 400 crores /other domestic companies	31.20%	33.35%	35.94%
Set up / registered on or after 1 October 2019 engaged solely in manufacturing	17.16%	17.16%	17.16%
Marginal Attributable Tax (MAT)	15.6%	16.69%	17.47%
Foreign companies			
Foreign companies	41.60%	42.43%	43.68%
Firms and LLP			
Firms and LLP	31.20%	34.94%	34.94%
Alternate Marginal Tax (AMT)	19.24%	21.55%	21.55%

Tax Incentives

Taxation for co-operative societies

- It has been proposed to insert Section 115BAD under the Income-tax Act to provide for an option to co-operative societies on similar lines as provided to domestic companies. The key elements of the optional tax regime is as under:
  - Such regime is applicable only to resident co-operative societies.
  - Co-operative societies availing such option to be taxed @22%.
- Such option will be available subject to fulfilment of the following conditions:
  - Such co-operative societies will not be eligible to avail deductions.
  - Such co-operative societies will not be eligible to set off of any loss carried forward or depreciation from any earlier Assessment Year, if such loss or depreciation is attributable to any of the aforesaid deductions.
  - Such co-operative societies will be eligible to claim depreciation.
  - If the person has a Unit in the International Financial Services Centre (IFSC), as referred to in Section 80LA(1A) of, the deduction under Section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that Section and
  - The option so exercised cannot be withdrawn.
- The surcharge applicable to such co-operative societies will be 10%, irrespective of the amount of total income;
- It is further proposed to amend Section 115JC of the Income-tax Act to provide that the provisions relating to Alternate Minimum Tax (AMT) shall not apply to such co-operative society.
- It is also proposed to amend Section 115JD of the Income-tax Act to provide that the provisions relating to carry forward and set off of AMT credit, if any, shall not apply to such co-operative society.
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

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

- Section 10 of the Income-tax Act provides for exemption in respect of certain incomes and activities under specific circumstances.
- In order to promote investment of sovereign wealth fund, including the wholly owned subsidiary of ADIA, it is proposed to insert a new clause in the said Section 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, in a company or enterprise carrying on the business of developing, or operating and maintaining, or developing, operating or maintaining any infrastructure facility as defined in Explanation to Section 80-IA(4)(i) or other notified business in this behalf.

Tax Incentives

- In order to be eligible for exemption, the investment is required to be made on or before 31 March 2024 and is required to be held for at least three years.
- For the purpose of this exemption, 'specified person' is proposed to be defined to mean:
  - A wholly owned subsidiary of the ADIASWF, which is a resident of the United Arab Emirates and which makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates; and
  - A sovereign wealth fund which satisfies the following conditions:
    - It is wholly owned and controlled, directly or indirectly, by Government of a foreign country;
    - It is set up and regulated under the law of the foreign country;
    - 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;
    - Its asset vest in the Government of the foreign country upon dissolution;
    - It does not undertake any commercial activity whether within or outside India; and
    - It is notified by the Central Government in the Official Gazette for this purpose.
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Vedya analysis

Tax exemption to interest, dividend and capital gains income of ADIA will boost the investments in the infrastructure sector in India.

Abolishing Dividend Distribution Tax ('DDT')

- Section 115-O provides that, in addition to the income-tax chargeable in respect of the total income of a domestic company, any amount declared, distributed or paid by way of dividends shall be charged to additional income-tax @15 %. The tax so paid by the company (called DDT) is treated as the final payment of tax in respect of the amount declared, distributed or paid by way of dividend. Such dividend referred to in Section 115-O is exempt in the hands of shareholders under Section 10(34).
- Similarly, under Section 115R, specified companies and Mutual Funds are liable to pay additional income-tax at the specified rate on any amount of income distributed by them to its unit holders. Such income is then exempt in the hands of unit holders under Section 10(35).
- The incidence of tax is, thus, on the payer company / mutual fund and not on the recipient, where it should normally be. The dividend is income in the hands of the shareholders and not in the hands of the company.

Tax Incentives

- The present system of taxation of dividend in the hands of company / mutual funds was re-introduced by the Finance Act, 2003 (with effect from the assessment year 2004-2005) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself.
- In view of above, it is proposed to carry out amendments so that dividend or income from units are taxable in the hands of shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds are not required to pay any DDT.
- Section 80M has been introduced to remove the cascading effect of taxes on inter-corporate dividend. The Section will allow set off only for dividend distributed by the company up to one month before the due date of filing of return.
- Section 57 has been amended to provide that other than deduction for interest expenses, no other deduction shall be allowed from dividend income or income in respect of units of mutual fund. Also, the deduction shall not exceed 20% of the dividend income.
- Consequential amendments are made for withholding tax on distribution of such dividends and in other related provisions.
- The above changes shall be applicable on dividends declared, distributed, or paid on or after 1 April 2020.

Vedya analysis

The abolition of DDT is with an objective to lower tax burden on small taxpayers as well as allow credit to foreign investors, who were unable to get credit of DDT paid by the company when dividend income was taxable in the foreign shareholders place of residence. Although, the proposed amendments are likely to benefit the dividend received by foreign shareholders as it would be eligible to get credit under the relevant DTAA benefits.

However, for individual taxpayers the dividend income will now be taxable at the individual slabs that may be as high 42.74% for some individuals. There have been arguments that taxing Dividend Income Leads to Double Taxation of the same income in two hands (i.e. the Company and Shareholders).

The proposed abolition of DDT may lead to many High Net worth Individuals (HNI) and Promoters of High Dividend Paying Companies restructuring their holdings in order to save on taxes, and may also lead to treaty shopping to more dividend income friendly nations /territories.

It may however be noted that prior to the proposed amendments India was one of the High Tax Countries for foreign investments wherein taxes in excess of 50% for income of companies (corporate tax plus DDT plus dividend tax). Now with abolition of DDT, and lowering of corporate taxes, the global perception of Indian tax laws would be more favourable, attracting higher foreign investments in India.

Tax Incentives

Amendment of Section 194LC of the Income-tax Act to extend the period of concessional rate of withholding tax and to provide for the concessional rate to bonds listed in stock exchanges in IFSC

- Section 194LC of the Income-tax Act, provided for a concessional rate of Tax Deductible at Source (TDS) at 5% by a specified company or a business trust, on interest paid to non-residents on the following forms of borrowings (approved by the Central Government) made in foreign currency from sources outside India:
  - Monies borrowed under a loan agreement at any time on or after 1 July 2012 and before 1 July 2020.
  - Borrowings by way of issue of any long-term infrastructure bond at any time on or after 1 July 2012 and before 1 July 2014.
  - Borrowings by way of issue of long-term bond including long-term infrastructure bonds at any time on or after 1 October 2014 and before 1 July 2020.
- The concessional rate of TDS of 5% is also applicable in respect of monies borrowed by a specified company or a business trust from a source outside India by way of issue of Rupee Denominated Bond (RDB) before 1 July 2020, to the extent such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf.
- In order to attract fresh investment, create jobs and stimulate the economy, it is proposed to:
  - Extend the period of said concessional rate of TDS of 5% to 1 July 2023 from 1 July 2020;
  - Provide that the rate of TDS shall be 4% on the interest payable to a non-resident, in respect of monies borrowed in foreign currency from a source outside India, by way of issue of any long term bond or RDB on or after 1 April 2020 but before 1 July 2023 and which is listed only on a recognised stock exchange located in any IFSC.
- This amendment will take effect from 1 April 2020.

Amendment of Section 194LD of the Income-tax Act to extend the period of concessional rate of withholding tax and to extend this concessional rate to municipal debt securities

- Section 194LD of the Income-tax Act provides for lower TDS of 5% in case of interest payments to Foreign Institutional Investors (FII) and Qualified Foreign Investors (QFIs) on their investment in Government securities and RDB of an Indian company subject to the condition that the rate of interest does not exceed the rate notified by the Central Government in this regard. The Section further provides that the interest should be payable at any time on or after 1 June 2013 but before 1 July 2020.
- Securities and Exchange Board of India (SEBI) and the Reserve Bank of India (RBI) under the limits available for Foreign Portfolio Investors (FPIs) investments in State Development Loans (SDL) have now been permitted to invest in municipal bonds, it is proposed to extend the time limit for concessional rate of TDS on interest payment on investment in municipal bonds.

Tax Incentives

- In order to attract fresh investment, create jobs and stimulate the economy, it has been proposed to amend Section 194LD to:
  - Extend the period of rate of TDS of 5% under the said Section to 1 July 2023 from the existing 1 July 2020;
  - Provide that the concessional rate of TDS of 5% under the said Section shall also apply on the interest payable, on or after 1 April 2020 but before 1 July 2023, to a FII or QFI in respect of the investment made in municipal debt security.
- This amendment will take effect from 1 April 2020.

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Tax Incentives

Extending time limit for sanctioning of loan for affordable housing for availing deduction under Section 80EEA of the Income-tax Act

- The existing provisions of Section 80EEA of the Income-tax Act provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. The deduction allowed is up to INR 150,000 and is subject to specified conditions. One of the conditions is that loan has been sanctioned by the financial institution during the period from 1 April 2019 to 31 March 2020.
- The said deduction is aimed to incentivise first time buyers to invest in residential house property whose stamp duty does not exceed INR 4,500,000. In order to continue promoting purchase of affordable housing, the period of sanctioning of loan by the financial institution is proposed to be extended to 31 March 2021.
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Vedya analysis

The aim to promote home ownership and incentivize first time home buyers purchasing affordable residential house property. In order to continue promoting purchase of affordable housing, it is proposed to extend the period of loan sanctioned to 31 March 2021.

Extending time limit for approval of affordable housing project for availing deduction under Section 80-IBA of the Income-tax Act

- The existing provisions of Section 80-IBA of the Income-tax Act inter alia provide that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building affordable housing projects, there shall, subject to specified conditions specified therein, be allowed a deduction of an amount equal to 100% of the profits and gains derived from such business. The conditions contained in the Section inter alia prescribe that the project is approved by the competent authority during the period from 1 June 2016 to 31 March 2020.
- In order to incentivise building affordable housing to boost the supply of such houses, the period of approval of the project by the competent authority is proposed to be extended to 31 March 2021.
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Vedya analysis

In order to boost the supply of affordable housing in the country, a tax holiday is provided on the profits earned by developers of affordable housing project will provide relief to the affordable housing market which is also a large-scale employment generator.

Tax Incentives

Increase in safe harbour limit of 5% under Sections 43CA, 50C and 56 to 10%

- Section 43CA of the Income-tax Act inter alia provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The said Section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.
- Section 50C of the Income-tax Act provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration and capital gains shall be computed on the basis of such consideration under Section 48 of the Income-tax Act. The said Section also provides that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of Section 48, be deemed to be the full value of the consideration.
- Section 56(2)(x) of the Income-tax Act *inter alia* provides that where any person receives, in any previous year, from any person or persons on or after 1 April 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding INR 50,000 the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head 'income from other sources'. It also provide that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds 5% of the consideration or INR 50,000, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head 'Income from other sources'.
- Thus, the present provisions of Section 43CA, 50C and 56 of the Income-tax Act provide for safe harbour of 5%.
- It is, Now, proposed to increase the limit to 10%
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Tax Incentives

Deferment of tax on stock benefits / ESOP of start-ups

- To ease the tax burden of employees of 'eligible start-ups', it is proposed to defer the taxation of this perquisite to the within 14 days of the earliest of the following:
  - Expiry of 48 months from the end of the relevant assessment year; or
  - Sale of such specified security or sweat equity shares by the assessee; or
  - Date on which the assessee ceases to be the employee of the employer.
- Rates in force in the financial year in which the said specified security or sweat equity shares are allotted or transferred shall be applicable.
- These amendments are proposed to come into effect from 1 April 2020 and accordingly would apply in relation to assessment year 2020-2021 and thereafter.

Vedya analysis

ESOPs form a significant component of the compensation for employees of start-ups. Requirement to pay tax on perquisites at the time allotment, leads to unnecessary burden on the Employees as the benefit accrues only in kind. at that stage. The proposed amendments will ease this burden as the liability to pay tax will be postponed.

Rationalization of provisions of start-ups

- The existing provisions of Section 80-IAC of the Income-tax Act provide for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of seven years, at the option of the assessee, subject to the condition that the eligible start-up is incorporated on or after 1 April 2016 but before 1 April 2021 and the total turnover of its business does not exceed INR 25 crores.
- In order to further rationalise the provisions relating to start-ups, it is proposed to amend Section 80-IAC of the Income-tax Act to provide that-
  - The deduction under the said Section 80-IAC shall be available to an eligible start-up for a period of three consecutive assessment years out of ten years beginning from the year in which it is incorporated;
  - The deduction under the said Section shall be available to an eligible start-up, if the total turnover of its business does not exceed INR 100 crores in any of the previous years beginning from the year in which it is incorporated.
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Vedya analysis

The extend benefit of tax holiday to larger start-ups and further to addressing the of start-ups which may not have adequate profit in initial years for availing this holiday is a great initiative to promote Start-up India.

Tax Incentives

Allowing carry forward of losses or depreciation in specified amalgamations

- Section 72AA of the Income-tax Act provides for carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under Section 45(7) of the Banking Regulation Act, 1949. This Section operates notwithstanding anything contained in sub-clause (i) to (iii) of Section 2(1B) or Section 72A of the Income-tax Act.
- In order to address the issue faced by the amalgamated public sector banks and public sector General Insurance Companies, it is proposed to extend the benefit of this Section to amalgamation of:
  - One or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or both, as the case may be, or
  - One or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government under Section 16 of the General Insurance Business (Nationalisation) Act, 1972.
- 'Corresponding new bank' is proposed to be given the meaning as assigned to it in Section 2(d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or Section 2(b) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.
- 'Government company' is proposed to be given the meaning assigned to it in Section 2(45) of the Companies Act, 2013. In addition, it is to be engaged in the general insurance business and has come into existence by operation of Section 4 or Section 5 or Section 16 of the General Insurance Business (Nationalisation) Act, 1972.
- 'General insurance business' is proposed to be given the meaning assigned to it in Section 3(g) of the General Insurance Business (Nationalisation) Act, 1972.
- This amendment will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Modification of the definition of 'business trust'

- Section 115UA of the Act provides for a taxation regime applicable to business trusts. Under the said regime, the total income of the trust, excluding capital gains income is charged at the maximum marginal rate.
- Further, the income by way of interest and rent, received by the business trust from a Special Purpose Vehicle is accorded pass through treatment i.e. there is no taxation of such interest or rental income in the hands of the trust and no withholding tax at the level of SPV. The business trusts are also required to furnish return of income and adhere to other reporting requirements.

Tax Incentives

- The definition of 'business trust' has been provided in Section 2(13A) of the Act, to mean a trust registered as an Infrastructure Investment Trust ('InvIT') or a Real Estate Investment Trust (REIT) under the relevant regulations made under the Securities and Exchange Board of India (SEBI) Act, 1992 and the units of which are required to be listed on a recognised stock exchange in accordance with the relevant regulations.
- Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 has, inter-alia, done away with the mandatory listing requirement for InvITs, bring private unlisted InvITs at par with public listed InvITs. Considering this, the definition of business trusts under the Act is required to be aligned with the amended SEBI Regulations.
- Therefore, it is proposed to amend Section 2(13A) of the Act to modify the definition of 'business trust' to do away with the requirement of the units of business trust to be listed on a recognised stock exchange.
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

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

- Section 10 of the Income-tax Act provides for exemption in respect of specified incomes and activities under specific circumstances.
- Clause (48A) thereof, inserted by the Finance Act, 2016, provides that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in the total income, if such storage and sale by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; and having regard to the national interest, the foreign company and the agreement or arrangement are notified.
- Clause (48B) of said Section, inserted by the Finance Act, 2017 and amended by the Finance Act, 2018, provides for exemption in respect of any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from the facility in India after the expiry of the agreement or the arrangement referred to in clause (48A) or on termination of the said agreement or the arrangement, in accordance with the terms mentioned therein, as the case may be, subject to such conditions as may be notified by the Central Government in this behalf.
- It is now proposed to provide exemption, by inserting a new clause (48C) in Section 10, to any income accruing or arising to Indian Strategic Petroleum Reserves Limited, being a wholly owned subsidiary of Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of an arrangement for replenishment of crude oil stored in its storage facility in pursuance to directions of the Central Government in this behalf.

Tax Incentives

- This exemption shall be subject to the condition that the 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.
- This amendment will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

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

- The Taxation Law Amendment Act, 2019, inter-alia, inserted Section 115BAB in the Act. The newly inserted Section provides that new manufacturing domestic companies set up on or after 1 October 2019, which commence manufacturing or production by 31 March 2023 and do not avail of any specified incentives or deductions, may opt to pay tax at a concessional rate of 15%. Further, Explanation to clause (b) of sub-Section (2) thereof provides that for the purposes of the said Section, businesses engaged in development of computer software, mining, conversion of marble blocks or similar items into slabs, bottling of gas into cylinder, printing of books or production of cinematograph film or any other business as may be notified by the Central Government will not be considered as manufacturing or production.
- It, is now proposed that the benefit of the concessional rate under Section 115BAB of the Income-tax Act may also be extended to business of generation of electricity, which otherwise may not amount to manufacturing or production of an article or thing. Accordingly, it is proposed to make necessary amendments that, for the purposes of this Section, manufacturing or production of an article or thing shall include generation of electricity.
- This amendment will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Measures to Provide Tax Certainty

Attribution of profit to Permanent Establishment in Safe Harbour Rules under Section 92CB and in Advance Pricing Agreement under Section 92CC

- Section 92CB of the Income-tax Act empowers the Central Board of Direct Taxes (Board) for making safe harbour rules (SHR) to which the determination of the arm's length price (ALP) under Section 92C or Section 92CA of the Income-tax Act shall be subject to. The term 'safe harbour' means circumstances in which the Income-tax Authority shall accept the transfer price declared by the assessee.
- Section 92CC of the Income-tax Act empowers the Central Board of Direct Taxes to enter into an advance pricing agreement (APA) with any person, determining the arm's length pricing or specifying the manner in which the arm's length pricing is to be determined, in relation to an international transaction to be entered into by that person. Advance Pricing Agreement provides tax certainty in determination of arm's length pricing.
- SHR provides tax certainty for relatively smaller cases for future years on general terms, while APA provides tax certainty on case to case basis not only for future years but also Rollback years. Both SHR and the APA have been successful in reducing litigation in determination of the ALP.
- It is proposed to amend Section 92CB and Section 92CC of the Income-tax Act to cover determination of attribution of profits to the PE of a non-resident under Section 9(1)(i) of the Income-tax Act (i.e. all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India) results in avoidable disputes in a number of cases. In order to provide certainty, the attribution of income in case of a non-resident person to the PE be clearly covered under the provisions of the SHR and the APA.
- This amendment is proposed to come into effect from 1 April 2020, and accordingly would apply in relation to assessment year 2020-2021 and thereafter.

Vedya analysis

Widening the scope of Safe Harbour Rules and Advance Pricing Agreement, In order to provide tax certainty to taxpayers is a welcome amendment as it gives the taxpayers an option to determine the income attributable to India, thereby ensuring certainty and reduction in future litigation.

Allowing deduction for amount disallowed under Section 43B, to insurance companies on payment basis

- Section 44 of the Income-tax Act provides that computation of profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or a co-operative society shall be computed in accordance with the rules contained in the First Schedule to the Income-tax Act.

Measures to Provide Tax Certainty

- Section 43B of the Income-tax Act provides for allowance of specified deductions, irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by the assessee, only in the previous year in which such sum is actually paid.
- Rule 5 of the said Schedule provides for computation of profits and gains of other insurance business. It states that profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 or the rule made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 or the regulations made thereunder, subject to the condition that any expenditure debited to the profit and loss account which is not admissible under the provisions of Sections 30 to 43B shall be added back; any gain or loss on realisation of investment shall be added or deducted, as the case may be, if the same is not credited or debited to the profit and loss account; any provision for diminution in the value of investment debited to the profit and loss account shall be added back.
- Thus, there is no specific provision, in this rule, in the case of other insurance companies, to allow deduction for any payment of specified expenses specified in Section 43B if they are paid in subsequent previous year. There is a possibility that such sum may not be allowed as deduction in the previous year in which the payment is made.
- Therefore, it is proposed to insert a proviso after clause (c) of the said rule 5 to provide that any sum payable by the assessee which is added back under Section 43B in accordance with clause (a) of the said rule shall be allowed as deduction in computing the income under the rule in the previous year in which such sum is actually paid.
- This amendment will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

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

- Section 194J of the Income-tax Act provides that any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of fees for professional services, or fees for technical services, or any remuneration or fees or commission by whatever name called (other than those on which tax is deductible under Section 192 of the Income-tax Act, to a director), or royalty or any sum referred to in Section 28(va), shall, at the time of payment or credit of such sum to the account of the payee, deduct an amount equal to 10% as income-tax.
- Section 194C of the Income-tax Act provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of payment or credit of such sum deduct an amount equal to 1% in case payment is made to an individual or a HUF and 2% in other cases.

Measures to Provide Tax Certainty

- Large number of litigations on the issue of short deduction of tax treating assessee in default where the assessee deducts tax under Section 194C, while the tax officers claim that tax should have been deducted under Section 194J of the Income-tax Act.
- Therefore, to reduce litigation, it is proposed to reduce rate for TDS in Section 194J in case of fees for technical services (other than professional services) to 2% from existing 10%. The TDS rate in other cases under Section 194J would remain same at 10%.
- This amendment will take effect from 1 April 2020.

Vedya analysis

This conflict between 194J and 194C has been point of litigation for several years and affects the cash flow of several industries specially the IT industry. The proposed amendment seeks to reduce litigation on the issue by treating the payment as being made for carrying out work in pursuance of a contract at the same slab as fee for technical services.

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

- A 'Vivad Se Vishwas' scheme is proposed allowing taxpayers to achieve a fast track closure of pending appeals and reducing litigations with respect to Income Tax cases. Currently, there are in excess of 4.83 lakh Income Tax cases pending in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court.
- Under the proposed 'Vivad Se Vishwas' scheme, an assessee would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided that the an assessee pays by 31 March 2020. Those assessee who avail this scheme after 31 March 2020 will have to pay some additional amount. The scheme will remain open till 30 June 2020.
- Assessee in whose cases appeals are pending at any level can benefit from this scheme.

Vedya analysis

Normally amnesty schemes introduced are to do with disclosures and declaration. However, a dispute resolution scheme was the need for the hour considering the high pendency rate of Income tax cases.

However, the time required by an assessee to consider and decide for the amnesty scheme seems too less considering the complexities involved. However, the details of scheme are not in public domain, clarity and details of the scheme shall be available in due course.

Widening & Deepening of Tax Base

Widening the scope of TDS on e-commerce transactions

- In order to widen and deepen the tax net by bringing participants of e-commerce within tax net, it is proposed to insert a new Section 194-O in the Income-tax Act to provide for a new levy of TDS @1%.
- TDS will be deducted in following manner:
  - The TDS is to be paid by e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;
  - E-commerce operator is required to deduct tax at the time of credit of amount of sale or service or both to the account of e-commerce participant or at the time of payment thereof to such participant by any mode, whichever is earlier.
  - The tax at 1% is required to be deducted on the gross amount of such sales or service or both.
  - Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant shall be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sales or services for the purpose of deduction of income-tax.
  - The sum credited or paid to an e-commerce participant (being an individual or HUF) by the e-commerce operator shall not be subjected to provision of this Section, if the gross amount of sales or services or both of such individual or HUF, through e-commerce operator, during the previous year does not exceed INR 500,000 and such e-commerce participant has furnished his Permanent Account Number (PAN) or Aadhaar number to the e-commerce operator.
  - A transaction in respect of which tax has been deducted by the e-commerce operator under this Section, there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Income-tax Act.
  - However, it has been clarified that this exemption will not apply to any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in sub-Section (1) of the proposed Section.
- The following definitions have been added to provide better clarity:
  - 'e-commerce operator' is defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is a person responsible for paying to e-commerce participant.
  - 'e-commerce participant' is defined to mean a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.
  - 'electronic commerce' is defined to mean the supply of goods or services or both, including digital products, over digital or electronic network.
  - 'services' is defined to include fees for technical services and fees for professional services, as defined in Section 194J.

Widening & Deepening of Tax Base

- Consequential amendments are being proposed in Section 197 (for lower TDS), in Section 204 (to define person responsible for paying any sum) and in Section 206AA (to provide for tax deduction at 5% in non-PAN / Aadhaar cases).
- This amendment will take effect from 1 April 2020.

Enlarging the scope for tax deduction on interest income under Section 194A of the Income-tax Act

- Section 194A of the Income-tax Act governs interest other than interest on securities. Sub-Section (1) thereof provides that any person not being individual or HUF who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall deduct income-tax at the rates in force.
- In order to extend the scope of this Section to interest paid by large co-operative society, it is proposed to amend Section 194A to cover interest paid by large co-operative societies with:
  - Total sales, gross receipts or turnover exceeding INR 50 crores in the financial year immediately prior to interest being credited or paid; and
  - Aggregate of the amount of such interest credited or paid or is likely to be credited or paid during the financial year is more than INR 50,000 in case of payee being a senior citizen and INR 40,000 in any other case.
- These amendments are proposed to come into effect from 1 April 2020.

Widening the scope of Section 206C to include TCS on foreign remittance through Liberalised Remittance Scheme (LRS) and on selling of overseas tour package as well as TCS on sale of goods over a limit

- Section 206C of the Income-tax Act provides for the collection of tax at source (TCS) on business of trading in alcohol, liquor, forest produce, scrap etc. Sub-Section (1) of the said Section, inter-alia, provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of specified goods a sum equal to specified percentage, of such amount as income-tax.
- In order to widen and deepen the tax net, it is proposed to amend Section 206C to levy TCS on overseas remittance and for sale of overseas tour package, as under:
  - An authorised dealer receiving an amount or an aggregate of amounts of INR 700,000 or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, @5%. In non-PAN or non-Aadhaar cases the rate shall be 10%.

Widening & Deepening of Tax Base

- A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS @5%. In non-PAN/ Aadhaar cases the rate shall be 10%.
- The above TCS provision shall not apply if the buyer is:
  - Liable to deduct tax at source under any other provision of the Income-tax Act and he has deducted such amount.
  - The Central Government, a State Government , an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of Section 10 or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified in that notification.

- Further, in order to widen and deepen the tax net, it is proposed to amend Section 206C to levy TCS on sale of goods above specified limit, as under:
  - A seller of goods is liable to collect TCS @0.1 %. on consideration received from a buyer in a previous year in excess of INR 50 lakhs. In non-PAN / Aadhaar cases the rate shall be 1%.
  - Only those sellers whose total sales, gross receipts or turnover from the business carried on by it exceed INR 10 crores during the financial year immediately preceding the financial year, shall be liable to collect such TCS.
  - Central Government may notify person, subject to conditions contained in such notification, who shall not be liable to collect such TCS.
- The Following Definitions have been added for clarity
  - 'authorised dealer' is proposed to be defined to mean a person authorised by the Reserve Bank of India under sub-Section (1) of Section 10 of Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security.
  - 'Overseas tour program package' is proposed to be defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.
- These amendments will take effect from 1 April 2020.

Vedya analysis

The imposition on TCS on foreign remittance, selling overseas tour packages and sale of goods in excess of INR 50 lakhs will only further increase compliance. A simpler disclosure of PAN and reporting of the same would have promoted Ease of Doing Business. Furthermore, the rate seems to be very high when it comes to some foreign remittances.

Widening & Deepening of Tax Base

Employer contributions to Retirement Schemes in excess of specified limits now liable to tax

- Currently, employer contribution to following schemes are taxable only if:
  - Provident Fund contribution is in excess of 12% of salary
  - NPS contribution is in excess of 14% of salary for the Central Government employees and 10% of salary in any other case
  - Superannuation Fund contribution is in excess of INR 150,000
- Also, the proceeds from maturity are also exempt from tax.
- It is proposed to insert clause (vii) under Section 17(2) of Income-tax Act to provide an to introduce an aggregate monetary limit of INR 750,000 in respect of employer contribution to retirement schemes. Any contribution in excess of such monetary limit would be taxable as perquisite as a perquisite under Section 17(2) of the Income-tax Act.
- This amendment is proposed to come into effect from 1 April 2021 and accordingly would apply in relation to assessment year 2021-2022 and thereafter.

Consideration for sale, distribution, or exhibition of cinematographic films proposed to be taxed as royalty

- Section 9(1)(vi) deems specified income by way of royalty to accrue or arise in India. Explanation 2 of said clause defines the term 'royalty' to inter alia mean the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films.
- Due to exclusion of consideration for the sale, distribution or exhibition of cinematographic films from the definition of royalty, such royalty is not taxable in India even if the DTAA gives India the right to tax such royalty. Such a situation is discriminatory against Indian residents, since India is foregoing its right to tax royalty in case of a non-resident from another country without that other country offering similar concession to Indian resident. Hence, it is proposed to amend the definition of royalty to include consideration for the sale, distribution or exhibition of cinematographic films from its meaning.
- These amendments will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Improving Effectiveness of Tax Administration

Provision for e-appeal

- The new e-assessment scheme has already been introduced wherein, most of the functions/ processes under the Income-tax Act, including of filing of return, processing of returns, issuance of refunds or demand notices and assessment, are now in the electronic mode.
- The filing of appeals before Commissioner (Appeals) has already been enabled in an electronic mode. However, the first appeal process under the Commissioner (Appeals), which is one of the major functions / processes that is not yet in full electronic mode. A taxpayer can file appeal through his registered account on the e-filing portal.
- The process that follows after filing of appeal is neither electronic nor faceless. In order to ensure that the reforms initiated by the Department to eliminate human interface from the system reach the next level, it is imperative that an e-appeal scheme be launched on the lines of e-assessment scheme.
- Accordingly, it is proposed to insert sub-Section (6A) in Section 250 of the Income-tax Act to provide for the following:
  - Empowering Central Government to notify an e-appeal scheme for disposal of appeal to impart greater efficiency, transparency and accountability.
  - Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.
  - Optimizing utilization of the resources through economies of scale and functional specialisation.
  - Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).
- It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-Section, by notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31 March 2022. It is further proposed that every notification issued shall be required to be laid before each House of Parliament.

Amendment in Dispute Resolution Panel (DRP)

- Section 144C of the Income-tax Act provides that in case of specified eligible assessees, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under Section 92CA(3) of the Income-tax Act, the Assessing Officer (AO) is required to forward a draft assessment order to the eligible assessee, if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee.
- Such eligible assessee with respect to such variation may file his objection to the DRP, a collegium of three Principal Commissioners or Commissioners of Income-tax. DRP has nine months to pass directions which are binding on the AO.

Improving Effectiveness of Tax Administration

- It is proposed that the provisions of Section 144C of the Income-tax Act may be suitably amended to:
  - Include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of Section 144C;
  - Expand the scope of the said Section by defining eligible assessee as a non-resident not being a company, or a foreign company.
- This amendment will take effect from 1 April 2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable.

Vedya analysis

The above proposals now enable a reference to the DRP even in cases where Income tax return has not been filed. Furthermore, even non-resident persons can take benefit of the aforesaid proposals.

Taxpayer's Charter

- It is proposed to insert a new Section 119A in the Income-tax 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. This amendment will take effect from 1 April 2020.

Vedya analysis

Though a Citizen's Charter had no legal enforceability per se, the proposed amendment would perhaps result in the Income Tax Department accountable for delivery of services and timelines. However, the exact contents of the Taxpayer's Charter will be declared in due course and the extent of the accountability will only be known then.

Modification of E-assessment Scheme

- Section 143 of the Income-tax Act provides the manner for processing and assessment of return of income (ITR) where a return has been made under Section 139, or in response to a notice under Section 142(1) of the Income-tax Act.
- Sub-Section (3A) of Section 143 provides that the Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under Section 143(3) to impart greater efficiency, transparency and accountability by specified means specified therein. Accordingly, E-assessment Scheme, 2019 was notified under Section 143(3A).
- It is proposed to amend sub-Section (3A) of Section 143 of the Income-tax Act to:
  - expand the scope to include the reference of Section 144 of the Income-tax Act relating to best judgement assessment in the said sub-Section;
  - provide that Central Government may issue any direction under sub-Section (3B) of the said Section up to 31 March 2022.
- This amendment will take effect from 1 April 2020.

Ease of Compliance

Rationalisation of provisions relating to tax audit in certain cases

- Under Section 44AB of the Income-tax Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed INR 1 crore in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, INR 50 lakhs in any previous year.
- In order to reduce compliance burden on small and medium enterprises, it is proposed to increase the threshold limit for a person carrying on business from INR 1 crore to INR 5 crore in cases where:
  - Aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt, and
  - Aggregate of all payments in cash during the previous year does not exceed 5% of such payment.
- Further, to enable pre-filling of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assessees at least one month prior to the due date of filing of return of income.
- These amendments will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.
- Corresponding amendments are also proposed relating to extending threshold for getting books of accounts audited will have consequential effect on TDS / TCS provisions contained in Sections 194A, 194C, 194H, 194I, 194J and 206C as these provisions fasten liability of TDS / TCS on specified categories of person, if the gross receipt or turnover from the business or profession carried on by them exceed the monetary limit specified in clause (a) or clause (b) of Section 44AB.
- These amendments will take effect from 1 April 2020.

Vedya analysis

Raising of limit for tax audit will help small and medium enterprises and reduce the compliance cost.

However, the limit for professions seem to have been ignored.

Extension of due date to file return of income

- Keeping in lines with the amendment of Section 44AB (requirement of audit) it is proposed to amend Section 139.
- Clause (a) of Explanation(2) of sub-Section (1) of Section 139 which provides for the due date for filing of return of income for specified persons (including a company and a person whose accounts are required to be audited) as 30 September of the assessment year, is proposed to be changed to 31 October of the assessment year.

Ease of Compliance

- Further, the said due date is at present applicable to a 'working partner" of a firm whose accounts are required to be audited. The word 'working" is proposed to be omitted.
- These amendments are proposed to come into effect from 1 April 2020 and accordingly would apply in relation to assessment year 2020-2021 and thereafter.

Exemption to non-residents from filing return of income

- Section 115A of the Income-tax Act provides special rates of taxation for income in the nature of dividend, interest, royalty, and FTS earned by a Non-Resident (including foreign companies). Under sub-Section (5), such a Non-Resident is exempted from the requirement to file a return of income in India if its total income consists only of specified interest or dividend income and appropriate taxes have been withheld at source on such income.
- It is proposed that the exemption from the requirement to file a return of income in India will be applicable to income in the nature of specified royalty and fees for technical services, besides interest and dividend income as noted above.
- The additional condition proposed to be imposed in applicability of this exemption is that the taxes on such income (i.e. specified interest, dividend, royalty, and FTS) have been deducted under the provisions of Chapter XVII-B of the Income-tax Act at rates, which are not lower than the rates prescribed under Section 115A(1) of the Income-tax Act.
- The amendment will take effect from assessment year 2020-2021.

Rationalization of Provisions

Widening the scope of Commodity Transaction Tax (CTT)

- The Finance Act, 2013 had introduced Commodities Transaction Tax (CTT) on the sale of commodity derivatives based on non-agricultural commodities traded in recognised associations. The intention behind introducing CTT was to bring parity between the derivative trading in the securities market and the commodity market. The CTT was levied @0.01 %, which was also the rate of Securities Transaction Tax (STT) levied on the sale of 'futures' (a contract, which derives its value from an underlying asset and is settled by physical delivery) in securities. Subsequently, the scope of CTT was expanded vide the Finance Act, 2018 to also include the sale of options on commodity derivatives as taxable commodity transactions.
- Presently, as per Securities Contract (Regulation) Act, 1956 (SCRA), regulations, derivatives trading in commodities is limited only to commodity 'futures' and 'option on commodity futures. This means that upon expiry of the 'option' is exercised, the option holder gets a right to buy or sell a 'commodity future' and not the right to buy or sell the Commodity directly. However, vide notification dated 18 October 2019, 'option in goods' has also been included in the definition of 'derivatives' in clause (ac) of Section 2 of the SCRA. This has paved the way for new derivative product 'options in goods. Moreover, 'commodity futures' based on prices or indices of prices of 'commodity futures' is also likely to be introduced as a new product in the commodity derivative market.
- Necessary changes are, therefore, proposed in Chapter VII of the Finance Act, 2013, to align the provisions of CTT with the changes in the commodity derivative market. Moreover, in order to encourage the commodity transactions, settled by the physical or actual delivery of goods, it is proposed to charge CTT on the new commodity derivative products at the following rates: –
  - Sale of a commodity derivative based on prices or indices of prices of commodity derivatives @0.01 % payable by the seller, which is the same rate at which CTT is currently charged on a transaction of sale of a commodity derivative;
  - Sale of an option in goods, where the option is exercised resulting in the actual delivery of goods @0.0001 % payable by the purchaser;
  - Sale of an option in goods, where option is exercised resulting in a settlement otherwise than by the actual delivery of goods @0.125 % payable by purchaser, which is also the rate at which securities transaction tax is levied on a transaction of sale of an option in securities, where the option is exercised.
- Further, the following changes are also proposed in the Finance Act, 2013–
  - The definition of taxable commodities transaction in clause (7) of Section 116 is proposed to be amended to –
    - include the transactions of 'sale of an option in goods' and 'sale of commodity derivatives based on prices or indices of prices of commodity derivatives' and
    - substitute 'recognised stock exchange' in place of 'recognised association'.

Rationalization of Provisions

  - The reference to FCRA in Section 116(8) is proposed to be changed to SCRA.
  - The table in Section 117 to be amended to incorporate the taxable commodities transactions referred to in (a) above, specify the rate of CTT and specify the person by whom CTT is payable.
  - The value of taxable commodities transactions defined in Section 118 is proposed to be amended to incorporate the taxable commodities transaction referred to in para above.
- This amendment will take effect from 1 April 2020

E-penalty Scheme

- Section 274 of the Income-tax Act provides for the procedure for imposing penalty the Income-tax Act, in response to a Show cause notice issued by the Assessing Officer which would require an appearance before the Assessing Officer.
- Therefore, it is proposed to insert a new sub-Section (2A) in the said Section so as to provide that the Central Government may notify an e-scheme for the purposes of imposing penalty so as to impart greater efficiency, transparency and accountability by eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible
- The proposed amendment shall be effective from 1 April 2020.

Providing check on survey operations under Section 133A of the Income-tax Act

- Under the existing provisions of Section 133A of the Income-tax Act, an income-tax authority as defined therein is empowered to conduct a survey at the business premises of the assessee under his jurisdiction. To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso to sub-Section (6) in the said Section was inserted to provide that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said Section without prior approval of the Joint Director or the Joint Commissioner, as the case may be.
- It is proposed to substitute the proviso to Section 133A(6) to provide that:
  - In a case where the information has been received from the prescribed authority, no income-tax authority below the rank of Joint Director or Joint Commissioner shall conduct any survey under the said Section without prior approval of the Joint Director or the Joint Commissioner, as the case may be; and
  - In any other case, no income-tax authority below the rank of Commissioner or Director shall conduct any survey under the said Section without prior approval of the Commissioner or the Director, as the case may be.
- This amendment will take effect from 1 April 2020.

Rationalization of Provisions

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

- The existing provisions of the first proviso to Section 254(2A) of the Income-tax Act, inter-alia, provides that the ITAT may, after considering the merits of the application made by the assessee pass an order of stay for a maximum period of 180 days in any proceedings against the order of the Commissioner of Income-tax (Appeal).
- Second proviso to the said sub-Section prescribes that where the appeal is not so disposed of, the ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the periods originally allowed and the period so extended shall not, in any case, exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.
- The third proviso of the said sub-Section also provides that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.
- It is proposed to provide that ITAT may grant stay under the first proviso subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.
- It is also proposed to substitute the second proviso to provide that no extension of stay shall be granted by ITAT, where such appeal is not so disposed of which the said period of stay as specified in the order of stay. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. The total stay granted by ITAT cannot exceed 365 days.
- This amendment will take effect from 1 April 2020.

Vedya analysis

Based on Office Memorandum and some judicial pronouncements held that it will be open for the tax authorities to grant deposit orders of an amount lesser than 20% of the disputed demand and stay of balance amount on the basis of the facts of the individual cases.

However, the proposed amendment seeks to make pre-deposit of 20% of the disputed demand a pre-requisite to granting a stay of the balance demand in all appeals pending before the ITAT without any exceptions. This would cause an unnecessary burden on taxpayers in genuine cases.

Rationalization of Provisions

Change in residency rules

- Presently, as per Section 6(1) of the Income-tax Act, an individual is treated as resident in India if one of the following conditions are satisfied
  - Period of stay in India is 182 days or more in a financial year; OR
  - Period of stay in India is 60 days or more during a financial year AND 365 days or more during four previous financial year immediately preceding the financial year.
- Explanation 1 to Section 6(1) of the Income-tax Act provides that if such individual is an Indian citizen or person of Indian origin, the period of stay for satisfying the residency condition would be 182 days instead of 60 days.
- The aforesaid condition of 182 days is proposed to be reduced to 120 days.
- A new non-obstante clause (1A) is proposed to be inserted under Section 6 of the Income-tax Act to provide that an individual, being a citizen of India, shall be deemed to be resident in India in any financial year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other similar criterion.
- These amendments are proposed to come into effect from 1 April 2021 and accordingly would apply in relation to assessment year 2021-2022 and thereafter.
- Presently, as per Section 6(6) of the Income-tax Act, individuals and HUF are treated as Resident but Not Ordinarily Resident in India if such individual / manager of HUF:
  - Are non-resident in India in nine financial years out of 10 financial years preceding the financial year; OR
  - Has been in India for less than or equal to 729 days during seven financial years preceding the financial year.
- The above conditions are proposed to be replaced with a singular test of whether the individual / manager of HUF is non-resident in India in 7 out of 10 financial years preceding that financial year.
- This amendment is proposed to come into effect from 1 April 2021 and accordingly would apply in relation to assessment year 2021-2022 and thereafter.

Vedya analysis

The amendment shall curb the practices adopted by citizens who due to various loopholes are not liable to tax in any country or jurisdiction during a year leading to revenue loss. However, not liable to tax does not necessarily imply that person should actually be paying tax in some territory. As long as an Indian citizen is within the tax net (even though no tax is payable) is enough to satisfy the condition of liable to pay tax. Even in such a scenario, such Indian citizen will not be deemed to be resident in India.

Clarification by the Finance Ministry subsequent to the Budget Announcement '*In order to avoid any misinterpretation, it is clarified that in case of an Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession*', the Ministry said. It was also said that necessary clarification if required, will be incorporated in the law.

Rationalization of Provisions

Penalty for fake invoice, false entry, etc.

- In the recent past after the launch of Goods and Services Tax (GST), several cases of fraudulent input tax credit claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim input tax credit and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Income-tax Act.
- Therefore, it is proposed to introduce Section 271AAD of the Income-tax Act so as to empower the assessing officer to impose a penalty on a person, if it is found during any proceeding under the Income-tax Act that in the books of accounts maintained by him there is a:
  - False entry, or
  - Any entry relevant for computation of total income of such person has been omitted to evade tax liability.
- The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It is also proposed to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry.
- The false entries are proposed 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 or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both, or
  - Invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.
- This amendment will take effect from 1 April 2020.

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

- Section 90 of the Income-tax Act empowers the Central Government to enter into an agreement with foreign countries or specified territories (commonly known as DTAAs) for:
  - Granting relief in respect of:
    - Income on which tax has been paid both, in India and that foreign country or territory, or
    - Income-tax chargeable under the laws of both, India and that foreign country or territory, to promote mutual economic relations, trade and investment.

Rationalization of Provisions

- Avoidance of double taxation of income under the laws of both, India and that foreign country of territory,
- Exchange of information for the prevention of evasion or avoidance of income-tax chargeable under the laws of both India and that foreign country or territory, or investigation of cases of such evasion or avoidance, or
- Recovery of income-tax under the laws of both India and that foreign country or territory.

- Section 90A of the Income-tax Act contains provision similar to Section 90 of the Income-tax Act so as to empower the Central Government to adopt and implement an agreement between a specified association in India and any specified association in specified territory outside India for granting relief, avoidance of double taxation, exchange of information and recovery of income-tax.
- India has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (commonly referred to as MLI) along with representatives of many countries, which has since been ratified. India has since deposited the Instrument of Ratification to Organisation for Economic Co-operation and Development (OECD), Paris along with its Final Position in terms of Covered Tax Agreements (CTAs), Reservations, Options and Notifications under the MLI, as a result of which MLI has entered into force for India on 1 October 2019 and its provisions will be applicable on India's DTAAs from financial year 2020-2021 onwards.
- The MLI is an outcome of the G20-OECD project to tackle Base Erosion and Profit Shifting (the BEPS Project), i.e. tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid.
- The MLI will modify India's DTAAs to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out. The MLI will be applied alongside existing DTAAs, modifying their application in order to implement the BEPS measures.
- Article 6 of MLI provides for modification of the Covered Tax Agreement to include the following preamble text:

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

Rationalization of Provisions

- Therefore, it is proposed to amend Section 90(1)(b) of Income-tax Act so as to provide that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India for *inter alia* the avoidance of double taxation of income under the Income-tax Act and under the corresponding law in force in that country or specified territory, as the case may be, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of any other country or territory).
- It is also proposed to make a similar amendment in Section 90(1)(b) of Income-tax Act.
- These amendments will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Vedya analysis

The MLI seeks to tackle tax planning strategies that exploit gaps and mismatch in tax rules to artificially shift profits to low or no tax jurisdictions. The above amendment seeks to incorporate the language of Article 6 of the MLI into Section 90 and 90A to align the purpose of entering into DTAAs with the purpose of MLI.

Deferring Significant Economic Presence (SEP) proposal

- Section 9 of the Income-tax Act contains provisions in respect of income which are deemed to accrue or arise in India. Sub-Section (1) thereof creates a legal fiction that certain incomes shall be deemed to accrue or arise in India.
- Clause (i) of sub-Section (1) deems the following income to accrue or arise in India:
- 'all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.'
- Finance Act, 2018 *inter alia* inserted Explanation 2A to said clause so as to clarify that the 'Significant Economic Presence' (SEP) of a non-resident in India shall constitute 'Business Connection' in India and SEP for this purpose, shall mean:
  - Transaction in respect of any goods, services or property carried out by a non-resident in India including the provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed, or
  - Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

Rationalization of Provisions

- Said Explanation further provided that the transactions or activities shall constitute significant economic presence in India, whether or not, the agreement for such transactions or activities is entered in India; or the non-resident has a residence or place of business in India, or the non-resident renders services in India. It was also provided that only so much of income as is attributable to the transactions or activities mentioned at para (i) and (ii) shall be deemed to accrue or arise in India.
- The current SEP provisions shall be omitted from the assessment year 2021-2022 and the new provisions will take effect from 1 April 2022 and will, accordingly, apply in relation to the assessment year 2022-2023 and subsequent assessment years.

Vedya analysis

On account of discussion on this issue is still going on in G20-OECD BEPS project, these numbers have not been notified yet. Hence there is no option to defer the applicability of SEP to starting from the assessment year 2022-2023.

Extension of source rule in respect of income from advertisement and use of data of Indian consumers / users

- In order to tax the income from an advertisement that targets Indian customers or income from the sale of data collected from India or income from the sale of goods and services using such data collected from India, needs to be accounted for in Indian revenue. Hence, it is proposed to amend the source rule to clarify this position.
- It is proposed to extend the source rule for non-resident taxpayers by adding a new Explanation 3A to Section 9(1)(i) to provide that income attributable to the operations carried out in India will include income from:
- Such advertisement that targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India,
- Sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India, and
- Sale of goods or services using data collected from a person who resides in India or uses internet protocol address located in India.
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.
- However, for attribution of income related to SEP transaction or activities the amendment will take effect from 1 April 2022 and will, accordingly, apply in relation to the assessment year 2022-2023 and subsequent assessment years.

Rationalization of Provisions

Exemption from indirect transfer provisions to Non-Resident investors in FPIs

- The Finance Act, 2012, inter alia, had inserted Explanation 5 to said clause to clarify that an asset or capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. Second proviso to said Explanation, inserted through the Finance Act, 2017, provides that the Explanation shall not apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 [SEBI (FPI) Regulations, 2014].
- SEBI has notified the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 [SEBI (FPI) Regulations, 2019] and repealed the SEBI (FPI) Regulations, 2014. The difference between these two regulations pertinent in the present context is that the SEBI has done away with the broad-based criteria for the purposes of categorization of portfolios and has reduced the categories from three to two. In view of the same, necessary modification needs to be made in the proviso so inserted.
- Hence, it is proposed that the exception from said Explanation 5 provided to an asset or a capital asset, held by a non-resident by way of investment in erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014 may be grandfathered. Further, a similar exception may be provided in respect of investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.
- These amendments will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Consideration for sale, distribution, or exhibition of cinematographic films proposed to be taxed as royalty

- Section 9(1)(vi) deems certain income by way of royalty to accrue or arise in India. Explanation 2 of said clause defines the term ‘royalty’ to, inter alia, mean the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or videotapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films.
- Due to exclusion of consideration for the sale, distribution or exhibition of cinematographic films from the definition of royalty, such royalty is not taxable in India even if the DTAA gives India the right to tax such royalty. Such a situation is discriminatory against Indian residents since India is foregoing its right to tax royalty in case of a non-resident from another country without that other country offering a similar concession to an Indian resident. Hence, it is proposed to amend the definition of royalty so as to include consideration for the sale, distribution or exhibition of cinematographic films from its meaning.

Rationalization of Provisions

- These amendments will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

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

- Section 9A of the Income-tax Act provides for a special regime in respect of offshore funds by providing them exemption from creating a 'business connection' in India on fulfilment of certain conditions. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf are located in India. The benefit under Section 9A is available subject to fulfilment of certain conditions
- One of the conditions for eligibility of the fund provided under clause (c) of said sub-Section (3) requires that the aggregate participation or investment in the fund, directly or indirectly, by a person resident in India does not exceed 5% of the corpus of the fund.
- One other condition for eligibility of the fund requires that the monthly average of the corpus of the fund shall not be less than INR 100 crores except where the fund has been established or incorporated in the previous year in which case, the corpus of fund shall not be less than INR 100 crores at the end of a period of six months from the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later.
- Accordingly, it is proposed to amend Section 9A of the Income-tax Act to relax these two conditions so as to provide that:
  - For the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, the contribution of the eligible fund manager during first three years up to INR 25 crores shall not be accounted for; and
  - If the fund has been established or incorporated in the previous year, the condition of the monthly average of the corpus of the fund to be at INR 100 crores shall be fulfilled within twelve months from the last day of the month of its establishment or incorporation.
- This amendment will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Vedya analysis

The above amendments remove the anomaly as certain funds get undue advantage on account of the date of establishment and incorporation and others get discriminated against. Furthermore, fund manager, who is resident in India, invest money to establish skin in the game to create a reputation to attract investment.

Rationalization of Provisions

Providing an option to the assessee for not availing deduction on capital expenditure under Section 35AD

- Section 35AD of the Income-tax Act, relating to deduction in respect of expenditure on specified business, provides for 100% deduction on capital expenditure (other than expenditure on land, goodwill and financial assets) incurred by the assessee on certain specified businesses. At present, an assessee does not have any option of not availing the incentive under the said section.
- Therefore, it is proposed to amend this Section to make the deduction thereunder optional. This amendment will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Vedya analysis

Since the deduction as provided hereinabove are mandatory in nature, Due to this, the concessional tax rate under Section 115BAA or Section 115BAB of the Income-tax Act, which does not allow the claim of any deduction would not be available. This amendment would bring clarity to such a provision.

Rationalization of provisions of Section 55 of the Income-tax Act to compute the cost of acquisition

- The existing provisions of Section 55 of the Income-tax Act provide that for computation of capital gains, an assessee shall be allowed a deduction for the cost of acquisition of the asset and cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 1 April 2001, the assessee has been allowed an option of either to take the fair market value of the asset as on 1 April 2001 or the actual cost of the asset as cost of acquisition.
- It is proposed to rationalise the provision and to insert a proviso below sub-clause (ii) of clause (b) of Explanation under clause (ac) of sub-Section (2) of the said Section to provide that in case of a capital asset, being land or building or both, the fair market value of such an asset on 1 April 2001 shall not exceed the stamp duty value of such asset as on 1 April 2001 where such stamp duty value is available. It is also proposed to insert an Explanation so as to provide that for the purposes of sub-clause (i) and (ii), 'stamp duty value' shall mean the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.
- These amendments will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Rationalization of Provisions

Rationalising the process of registration of trusts, institutions, funds, university, hospital, etc. and approval in the case of an association, university, college, institution or company, etc.

- The present process of registration of trusts, institutions, funds, university, hospital etc under Section 12AA or under sub-clause (iv), (v), (vi) or (via) of clause (23C) of Section 10, and approval of association, university, college, institution or company etc, is a complex and opaque process.
- The following amendments are proposed for rationalisation of registration and approval process of the exempt entities under the provisions of the Income-tax Act:
  - Like exemptions under clauses (1) and (23C), the exemption under Section 10(46) shall be allowed to an entity even if it is registered under Section 12AA subject to the condition that the registration shall become inoperative. If the entity wishes to make it operative in the future, it will have to file an application and then it would not be entitled to deduction under clause (46) from the date on which the registration becomes operative.
  - The registration under Section 12AA would also become inoperative in case of an entity exempt under Section 10(23C) as well, to have uniformity. The condition about making it operative again would also be like what is proposed for Section 10(46).
  - An entity approved, registered or notified under Section 10(23C), Section 12AA or Section 35 of the Income-tax Act, as the case may be, shall be required to apply for approval or registration or intimate regarding it being approved, as the case may be, and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1 April 2020.
  - An entity already approved under Section 80G shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the entity shall be valid for a period not exceeding five years at one time.
  - Application for approval under Section 80G shall be made to Principal Commissioner or Commissioner.
  - An entity making fresh application for approval under Section 10(23C), for registration under Section 12AA, for approval under Section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to the expiry of provisional registration or within six months of the start of activities, whichever is earlier.
  - The application pending for approval, registration shall be treated as an application in accordance with the new provisions, wherever they are being provided for.
- These amendments are proposed to come into effect from 1 June 2020.

Rationalization of Provisions

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

- Some exempt entities may accept donations or certain sum for utilisation towards their objects or activities in respect of which the payer, being the donor, gets deduction in the computation of his income. At present, there is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum.
- It is proposed to standardise the process through which one-to-one matching between what is received by the exempt entity and what is claimed as a deduction by the assessee. Therefore, the entities receiving donation/ sum may be made to furnish a statement in respect thereof, and to issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer may be allowed on that basis only. In order to ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is a failure to furnish the statement.
- Hence, it is proposed to amend relevant provisions of the Income-tax Act to provide that:
  - Deduction under Section 80G / 80GGA to a donor shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received and in the event of failure to do so, fee and penalty shall be levied.
  - Similar to Section 80G of the Income-tax Act, deduction of cash donation under Section 80GGA shall be restricted to INR 2,000 only.
- These amendments will take effect from 1 June 2020.

Rationalization of provision for Form 26AS – Furnishing Annual Financial Statement

- Section 203AA of the Income-tax Act, inter-alia, requires the prescribed income-tax authority or the person authorised by such authority referred to in sub-Section (3) of Section 200, to prepare and deliver a statement in Form 26AS to every person from whose income, the tax has been deducted or in respect of whose income the tax has been paid specifying the amount of tax deducted or paid.
- The Form 26AS as prescribed in the Rules, inter-alia, contains the information about tax collected or deducted at source. However, with the advancement in technology and enhancement in the capacity of the system, multiple information in respect of a person such as a sale / purchase of immovable property, share transactions etc. are being captured or proposed to be captured. In future, it is envisaged that in order to facilitate compliance, this information will be provided to the assessee by uploading the same in the registered account of the assessee on the designated Income-tax portal, so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability.
- As the mandate of Form 26AS would be required to be extended beyond the information about tax deducted, it is proposed to introduce a new Section 285BB in the Income-tax Act regarding the annual financial statement.

Rationalization of Provisions

- This Section proposes to mandate the prescribed income-tax authority or the person authorised by such authority to upload in the registered account of the assessee a statement in such form and manner and setting forth such information, which is in the possession of an income-tax authority, and within such time, as may be prescribed.
- Consequently, Section 203AA is proposed to be deleted.
- These amendments will take effect from 1 June 2020.

Penalty for failure to furnish statements, etc.

- Section 271K of the Income-tax Act is proposed to be inserted so as to prescribe a penalty ranging from INR 10,000 to INR 100,000 on the specified institutions, companies, funds, research associations, etc., for failure to deliver or cause to be delivered a statement or furnish a donor certificate within the stipulated time in terms of the proposed amendment to Section 35 and Section 80G.
- This amendment is proposed to be effective from 1 June 2020.

Rationalisation of the provisions of Section 49 and Section 2(42A) of the Income-tax Act in respect of segregated portfolios

- Section 49 of the Income-tax Act provides for the cost of acquisition for the capital asset which became the property of the assessee under certain situations. Further, Section 2(42A) of Income-tax Act provides the definition of the term 'short-term capital asset'. It also provides for determination of the period of holding of the capital asset held by the assessee.
- SEBI has permitted the creation of a segregated portfolio of debt and money market instruments by Mutual Fund schemes. As per the SEBI circular, all the existing unitholders in the affected scheme as on the day of the credit event shall be allotted an equal number of units in the segregated portfolio as held in the main portfolio. On segregation, the unit holders come to hold the same number of units in two schemes –the main scheme and segregated scheme.
- In view of the above, it is proposed to amend Section 2(42A)of the Income-tax Act to provide that in the case of a capital asset, being a unit or units in a segregated portfolio, referred to in Section 49(2AG), there shall be included the period for which the original unit or units in the main portfolio were held by the assessee.
- Further, a new sub-Section (2AG) is proposed to be inserted in Section 49 of the Income-tax Act to provide that the cost of acquisition of a unit or units in the segregated portfolio shall be the amount which bears to the cost of acquisition of a unit or units held by the assessee in the total portfolio, the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios.

Rationalization of Provisions

- It is also proposed to insert another sub-Section (2AH) in the said Section to provide that the cost of the acquisition of the original units held by the unit holder in the main portfolio shall be deemed to have been reduced by the amount as so arrived at under the proposed sub-Section (2AG).
- The Explanation below these two new sub-sections, as proposed to be inserted, provide that for the purposes of sub-sections (2AG) and (2AH), the expressions 'main portfolio', 'segregated portfolio' and 'total portfolio' shall have the meaning respectively assigned to them in the said circular dated 28.12.2018 issued by SEBI.
- These amendments will take effect from 1 April 2020 and will, accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Vedya analysis

The proposed amendment seeks to rationalize and deal with capital gains in respect of segregated portfolios.

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

- The existing provisions of Section 9 of the PBPT Act, inter-alia, provides that, a member of the Indian Revenue Service who has held the post of Commissioner of Income-tax or equivalent post in that Service; or a member of the Indian Legal Service who has held the post of Joint Secretary or equivalent post in that Service is qualified for appointment as a Member of the Adjudicating Authority.
- It is proposed to amend the said Section so as to provide that a person who is qualified for appointment as District Judge shall also be eligible for the appointment as a Member of the Adjudicating Authority.
- This amendment will take effect from 1 April 2020.

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

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

Rationalization of Provisions

- Therefore, it is proposed to amend clause (c) and (cd) of Section 140 of the Income-tax Act so as to enable any other person, as may be prescribed by the Board to verify the return of income in the cases of a company and an LLP.
- Further, Section 288 of the Income-tax Act provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee, as its 'authorised representative', in connection with any proceedings under that Act. While the IBC empowers the Insolvency Professional or the Administrator to exercise the powers of the Board of Directors or corporate debtor, it has been reported that lack of explicit reference in Section 288 of the Income-tax Act for an Insolvency Professional to act as an authorised representative of the corporate debtor has been raising certain practical difficulties.
- Therefore, it is proposed to amend Section 288(2) to enable any other person, as may be prescribed by the Board, to appear as an authorised representative.
- These amendments will take effect from 1 April 2020.

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

- Section 94B of the Income-tax Act, inter alia, provides that deductible interest or similar expenses exceeding INR 1 crore of an Indian company, or a permanent establishment (PE) of a foreign company, paid to the associated enterprises (AE) shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortisation (EBITDA) or interest paid or payable to AE, whichever is less. Further, a loan is deemed to be from an AE, if an AE provides an implicit or explicit guarantee in respect of that loan.
- Thus, the interest paid or payable in respect of loan from the branch of a foreign bank may attract provisions of interest limitation provided for under this section.
- It is, therefore, proposed to amend Section 94B of the Income-tax Act so as to provide that provisions of interest limitation would not apply to interest paid in respect of a debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking, in India.
- This amendment will take effect from 1 April 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Vedya analysis

This amendment eases out the deduction of interest paid by a non-resident carrying out banking business, in India, to its head office without any limitation.

Customs

Customs Act, 1962

Electronic duty credit ledger (Section 51B inserted)

- Government may issue duty credits:
  - In lieu of duty, tax or levy on materials used in manufacture / processing of goods meant for export
  - In lieu of specified financial benefits subject to conditions
- Amount in the electronic duty credit ledger may be used for payment of Customs duties or transferred.
- This may be akin to creation of a e-wallet for exporters who are required to pay duty, tax or levy on inputs and claim refund of the same after exports.
- Authorities will have the powers to form regulations for carrying out the provisions of Section 51B under Section 157.

Administration of Rules or Origin under Trade Agreements (Section 28DA inserted)

- Exporters would be required to make declarations regarding qualification of goods as 'originating goods' for preferential rates.
- Authorities would have the power to request relevant information to determine whether such goods fulfill the conditions to qualify as originating goods.
  - Request for verification may be sent within five years from the date of claim by the importer, unless specified otherwise under the trade agreement.
- Importers shall have additional responsibility to exercise care that conditions of certificate or origin have been met.
- Failure to provide information may result in temporary suspension of preferential rates for the importer.
  - Importer may release the goods by furnishing a security of the difference between provisionally assessed rate and preferential rate.
  - Alternatively, authorities may direct the importer to deposit the amount in the electronic duty credit ledger.
  - Officers would also inform the Issuing Authority (person issuing the certificate of origin) or exporter to provide relevant information.
- Imported under preferential rates and contravening such provisions may be confiscated under Section 111.
- Where incomplete information is provided, authorities would disallow the claim for preferential rates.
- In case of rejection of claims, the officer may also reject preferential treatment for identical goods procured from the same exporter, unless there if information to substantiate that the conditions for rules of origin have been met.
- Authorities will have the powers to form rules for carrying out the provisions of Section 28DA under Section 156.

Customs

Increase in scope for recoveries

- By amending Explanation 4. to Section 28, all notices issued prior to 29 March 2018, should be governed by the provisions as they stood immediately prior to said date. Earlier, such explanation was limited to notices issued between 14 May 2015 and 29 March 2018.
- Recovery proceedings may be initiated against assessees who fraudulently obtain financial instruments or duty credit for the purpose of any law or scheme. Earlier, scope of provisions was limited to the Customs Act, 1962 and Foreign Trade (Development and Regulation) Act, 1992.
- Amendment in Section 11(2)(f) provides wider power to the authorities to restrict / prohibit import or export of any goods for prevention of injury to economy.

Customs Tariff Act, 1975 and key rate changes

Safeguard measures

- Though Section 8B of the said Act has been substituted, additional measures prescribed are as follows:
  - In case of tariff-rate quota ('TRQ'), such quota should not be lower than average level of imports in the last three years – unless a lower rate is deemed necessary.
  - The TRQ may be allocated to countries having interest in supplying the product.
  - Such provisions shall not apply to imports by a 100% Export Oriented Unit or a Special Economic Zone unit, unless it is specifically made applicable or such article is imported into the Domestic Tariff Area.
  - Power to make rules for the way TRQ is allocated country-wise, manner of implementing TRQ as a safeguard measure, and any other measure and its application.
  - Notifications issued would be presented in both the Houses of Parliament for a period of 30 days. If both the Houses agree in making modifications or rescinding the notification, the notification shall have effect in modified form or be rescinded.

Tariff rate hike

Products	From (%)	To (%)
Footwear	25	35
Parts of footwear	15	20
Household articles – tableware, glassware, articles of iron, steel, copper, aluminium, locks, brooms, brushes and vacuum flasks	10	20
Machinery – industrial fans, air circulators, cooling compressors, commercial freezers, , ice making machines, water cooler, vending machines, cooling equipment for leather and ice cream industry, heat pumps, welding and plasma cutting machines	7.5	10
Populated or loaded PCBs	10	20

Customs

Products	From (%)	To (%)
Seats and parts, mattresses, lamps and lighting	20	25
Automobile catalytic convertor	10	15
Select toys	20	60
Filing cabinets, stationery of base metals, sign plates	10	20

Tariff entries added

Products	Tariff rate (%)	Effective rate (%)
8414 51 50 – Wall fans	20	20
8529 90 30 – Open cell for television	15	0
8541 40 11 – Solar cells, not assembled	20	0
8541 40 11 – Solar cells, assembled in modules or made up in panels	20	0

Effective rate changes

Products	Increase / decrease (%)
Very low Sulphur fuel oil	-10
Butyl acrylate, colloidal precious metals	+2.5
Calcined petroleum coke	-2.5
Newsprint and uncoated paper for specified importers, lightweight coated paper for printing magazines	-5
Precious stone	+0.5
Gold for semiconductor devices or LEDs	+12.5
Palladium and platinum for specified uses	-5
Specified goods for use in high voltage power transmission project	+2.5
PCBA, display panel and touch assembly, and vibrator / ringer for mobile phones	+10
Fingerprint scanner for mobile phones	+15
Specified parts of microphone	-10
CBU for commercial non-electric vehicles, SKD of electric vehicles	+10
CKD of electric vehicles	+5
CBU for commercial electric vehicles, SKD of electric passenger vehicles	+15

Customs

Customs duty exemption removed (68 exemption in total)

- Various food products and food oils
- Margarine, glycerol, various processed foods, molasses
- Electricity, propane and butane
- Various petrochemical products
- Equipment procured for Delhi Metro Rail Corporation
- Sprinklers and drip irrigation system, color television picture tubes for cathode ray televisions
- Some parts for manufacture of printers

Health Cess

- Health Cess @5% on imports of products under heading 9018, 9019, 9020, 9021 and 9022 (instruments and appliances used in the medical field).
- The Health Cess is in addition to any other Customs duty being charged on the specified products.
- The Health Cess should be charged on the import value of goods.
- The Health Cess has been imposed with immediate effect.

- *National Calamity Contingent duty* ('NCCD') rates have been revised for various tobacco products and petroleum crude (INR 50 / ton). The revised rates have been imposed with immediate effect. This would be applicable for Central Excise duty also.

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Goods and Services Tax ('GST')

- Assessees would not be eligible to avail transitional input credit if relevant forms were not filed within the prescribed due date. This provision is inserted retrospectively to avoid any further litigation on availing transitional input credit.
- Persons availing input credit on incorrect documentation would be liable to a penalty of the amount of tax evaded or credit availed. Such person would now also be liable for punishment under Section 132.
- Assessees would now be eligible to avail input credit basis the date of debit notes issued and not the date of invoice in respect of which the debit notes were issued.
- Ladakh added under the definition of Union Territory under the CGST Act and UTGST Act.
- Retrospective restriction from 1 July 2017, on refund of Compensation cess due to inverted duty structure for tobacco and manufactured tobacco substitutes.
- Power to remove inconsistencies within the CGST Act with the recommendations of the GST Council has been extended from three years to five years (from the inception of the CGST Act). Similar amendment is proposed under the UTGST Act and GST (Compensation to States) Act.
- Service providers making interstate supplies, e-commerce or supplies not taxable under GST would not be eligible for the composition scheme.
- Period for application for revocation of cancellation of registration may be extended beyond 30 days, if sufficient cause is provided.
- Late fee for failure to furnish TDS certificate, under Section 51, removed.
- The Government shall now have the power to create the J&K bench of the GST Appellate Tribunal. Earlier the power was vested with the State GST authorities.

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About Us

We have a robust team specializing in litigation and advisory aspects of telecom and media related laws. We have been advising and representing several clients in the technology, telecom, broadcasting sector.

Corporate law

We specialize in all aspects of Dispute Resolution and offer clients advisory services to avoid Disputes. Our firm adopts bests practices and three of our partners are litigators. Our litigation team has a cumulative experience of about 40 years. We take pride in defending our clients and try to achieve the same in the best possible time frame.

Dispute resolution

We have deep knowledge of the Direct tax laws and have also assisted in corporate restructuring, transaction planning, diligence, contract reviews to name a few.
We also engage substantially without clients on the Indirect tax front on matters of GST, Customs, Foreign Trade Policy and erstwhile laws. We have also been engaged for advisory and advocacy services.

Tax

Sector expertise

- Infrastructure
- Consumer goods
- Technology
- Pharmaceutical
- Intellectual property
- PSUs
- Broadcasting
- Real estate
- Telecom

About Us

Team and structure

1

Partners
- Combined experience of over 50 years in legal matters
- Experienced in varied legal and tax matters
- Presently working across multiple business sectors

2

Legal team
- Diligent team of experienced and fresher lawyers
- Regularly appear and argue in courts
- Aware of and fast developing court craft skills

3

Court and compliance team
- Capable team to handle day-to-day filings
- Aware of court nuances and efficient
- Adept in monthly tax compliances

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Thank you

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