THE UNION BUDGET 2020

Select Direct Tax Proposals along with the Amendments in the Provisions of GST

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The Union Budget 2020

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1. Preface

This note highlights select budget proposals related to direct taxes put forth by the Finance Minister Mrs Nirmala Sitharaman while presenting Budget 2020 on 1st February, 2020. This note summarizes only issues considered of importance to our clients and associates.

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This note contains proposals which may be modified before they are enacted. The provisions are applicable for A.Y. 2021-2022 unless otherwise stated.

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Mumbai
5th February, 2020

2. Proposals Relating To Direct Tax

I. Rates of Tax

(A) Individuals, HUFs, Association of persons, Body of Individuals and Artificial Juridical Person

I. The rates of income tax in the case every individual (other than those mentioned in (II) and (III) or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not or every artificial juridical person :-

Income Slab	Rate of Tax
Up to Rs.2,50,000	Nil
Rs.2,50,001 to Rs.5,00,000	5%
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

II. In the case of every individual, being resident in India , who is of the age of sixty years or more but less than eighty years at any time during the previous year:-

Income Slab	Rate of Tax
Up to Rs.3,00,000	Nil
Rs.3,00,001 to Rs.5,00,000	5%
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

III. In the case of every individual, being resident in India , who is of the age of eighty years or more at any time during the previous year:-

Income Slab	Rate of Tax
Up to Rs.5,00,000	Nil
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

The surcharge rates have been amended which are stated below for I, II & III above:-

Total Income	Rate
50 Lakhs to 1 Crore	10%
1 Crore to 2 Crore	15%
2 Crore to 5 Crore	20%
Above 5 Crore	37%

IV. Health & Education cess

'Health & Education cess' shall be charged @ 4% on income tax & surcharge payable.

V. Relief from Tax liability

A relief up to Rs. 12,500/- from Tax up to Net Taxable income of Rs. 5,00,000 /- is proposed

Thus no tax payer in the categories mentioned herein above, shall pay tax for Taxable income up to Rs 5,00,000/-.

Optional Tax rate available to Individual and HUF under section 115BAC

On satisfaction of certain conditions, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

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

*Surcharge and cess as per the existing regime.

The individual or HUF can opt for either the existing regime or the new regime of taxation.

The option for new tax regime can be exercised on year to year basis by individual or the HUF, not having business income. In other cases, option once exercised cannot be withdrawn.

The option to be exercised by individual or HUF in the form and manner as may be prescribed:

- Where such individual or HUF has no business income, along with return of income to be furnished;
- In any other case, on or before the due date of furnishing of return of income.

The individual or HUF opting for taxation under the new tax regime shall not be eligible to claim certain exemptions/ deductions. Few of them are as under:

Section	Particulars
10(5)	Leave Travel Concession
10(13A)	House Rent Allowance
10(14)	Allowance other than Transport Allowance granted to a divyang employee, Conveyance Allowance, travel on tour or transfer allowance and daily allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty
10(17)	Allowances to MPs/MLAs
10(32)	Deduction of income of minor child up to Rs 1,500 per child for maximum 2 children
10AA	Special provisions in respect of newly established Units in Special Economic Zones
16	Standard deduction of Rs 50,000, deduction for entertainment allowance for government employees of Rs 5,000 and professional tax Rs 2,500;
24(b)	Interest on house property in respect of self-occupied or vacant property (Loss from rented house property shall not be allowed to be set off under any other head and would be allowed to be carried forward);
32(1)(iia)	Additional deprecation at 20%
57(iia)	Deduction from family pension
Chapter VI-A-Part C	Certain specified deductions in respect of investment made. (Other than section 80CCD(2) employer contribution on account of employee in notified pension scheme; section 80LA i.e. person having unit in IFSC subject to certain conditions and section 80JJAA i.e. deduction in respect of employment of new employees)

- without set-off of any loss under the head house property with any other head of income.
- by claiming the depreciation, other than additional depreciation, determined in such manner as may be prescribed.
- without any exemption or deduction for allowance of perquisite provided under any other law for the time being in force.

The option shall become invalid in respect of the assessment year where the person fails to comply with the aforesaid conditions and other provisions of the Act shall apply as if option is not exercised.

(B) Corporate Tax Rates

i) Tax rate for Domestic Companies:-

Total income/ Turnover	**Tax Rate**
Gross turnover up to 400 Cr. in the FY 2018-19	25%
Gross turnover exceeding 400 Cr. in the FY 2018-19	30%
Where the company opted for Section 115BAA	22%
Where the company opted for Section 115BAB	15%

In case of Companies opting the provisions of section 115BAA and section 115BAB, such companies shall not be allowed deduction under any provisions of Chapter VI-A other than section 80JJAA or section 80M.

Surcharge on above:-

Total Income	**Rate**
Upto 1,00,00,000	-
Above 1,00,00,000 up to 10,00,00,000	7%
Above 10,00,00,000	12%

ii) Tax rate for Foreign Companies:-

Total Income	**Up to 1 Crore**	**1 Cr to 10 Crore**	**Above 10 Crore**
Rate of Tax	40%	40%	40%
Surcharge	-	2%	5%
Health & Education Cess	4%	4%	4%
Effective rate	**41.6%**	**42.432%**	**43.68%**

iii) Minimum Alternate Tax (MAT) on companies

Type of Company	Domestic Companies			Foreign Companies		
Total Income	**Up to 1 Crore**	**1 Crore to 10 Crore**	**Above 10 Crore**	**Up to 1 Crore**	**1 Cr to 10 Crore**	**Above 10 Crore**
Rate of Tax	15%	15%	15%	15%	15%	15%
Surcharge	-	7%	12%	-	2%	5%
Health & Education Cess	4%	4%	4%	4%	4%	4%
Effective Rate	15.60%	16.69%	17.47%	15.60%	15.91%	16.38%

iv) Tax on Firms or local authority

Particulars	Up to 1 Crore	Above 1 Crore
Rate of Tax	30%	30%
Surcharge charge	-	12%
Health & Education Cess	4%	4%
Effective Rate of Tax	**31.20%**	**34.944%**

v) Alternate Minimum Tax (AMT) on entities other than Companies

Type of Entity	Other than Firm, Local Authority and Co-operative Society				
Total Income	**Less than 50 Lakhs**	**50 Lakhs to 1 Crore**	**1 Crore to 2 Crore**	**2 Crore to 5 Crore**	**Above 5 Crore**
Rate of Tax	18.5%	18.5%	18.5%	18.5%	18.5%
Surcharge	-	10%	15%	25%	37%
Health & Education Cess	4%	4%	4%	4%	4%
Effective Rate of Tax	**19.24%**	**21.164%**	**22.126%**	**24.05%**	**26.3588%**

II. Income from Salary

(A) Rationalization of tax treatment of employer's contribution to recognized provident funds, superannuation funds and national pension scheme

Under the existing provisions of the Act, the contribution by the employer to the account of an employee in a recognized provident fund exceeding 12% of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding Rs.1,50,000/- is treated as perquisite in the hands of the employee. Similarly, the assessee is allowed a deduction under National Pension Scheme (NPS) for the 14% of the salary contributed by the Central Government and 10% of the salary contributed by any other employer. However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer.

Therefore, it is proposed to provide a combined upper limit of Rs.7,50,000/- in respect of employer's contribution in a year to recognized provident fund, superannuation fund and national pension scheme and any excess contribution is proposed to be treated as taxable perquisite.

Further, it is also proposed that any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme may be treated as perquisite to the extent it relates to the employer's contribution which is included in total income. Rules for the same are expected to be notified later.

III. Profits & Gains from Business & Profession

(A) Rationalization of provisions relating to tax audit in certain cases

Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceeds Rs.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 receipts in profession exceed, Rs.50 Lakhs in any previous year.

This threshold limit for getting accounts audited is proposed to be increased from Rs.1 crore to **Rs.5 crore** in case of a person carrying on business provided cash receipt/s or cash payment/s do/es not exceed 5% of total receipt/s or total payment/s, as the case may be. The threshold limit for person carrying on profession remains unchanged.

(B) Change in Due dates of Audit and Income Tax Return Filing:

Sr. No.	Situation	Due date of furnishing Audit Report	Due Date of Filing Return of Income
(i)	Where assessee does not have to file any audit report	N.A.	31st July
(ii)	Where assessee is a company, a person(other than a company) to whom audit under any law is applicable and a partner(Whether working or non working) of a firm liable to furnish tax audit report	30th September	31st October
(iii)	Where assessee is liable to furnish transfer pricing audit report	31st October	30th November

It is accordingly provided that certain certificates and reports required to be certified by Chartered Accountants will have be filed one month prior to the respective return filing date.

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

An assessee, who is engaged in specified business, is allowed to claim deduction of capital expenditure under section 35AD to the extent of 100%. If the assessee takes the benefit of this section, then he is not eligible to claim any other deduction under any other section in respect of such expenditure. At present, an assessee does not have any option of not availing the incentive under said section. The Finance Bill has proposed to make deduction under section 35AD optional.

(D) Amendment in section 43CA of the Act

Section 43CA of the Act provides that where the consideration received or accruing as a result of the transfer of an asset (other than a capital asset), being land or building or both, is less than the stamp duty value in respect of such transfer, then the stamp duty value in respect of such transfer shall be deemed to be the full value of consideration for the purpose of computing profits and gains from transfer of such asset.

The said section is proposed to be amended to provide that where the stamp duty value does not exceed 110% of the consideration received or accruing as a result of such transfer, the consideration so received or accrued shall be

deemed to be the full value of consideration for the purpose of computing profits and gains from transfer of such asset.

IV. Income from Capital Gain

(A) Rationalization of provisions of section 55 of the act to computation cost of acquisition

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

In order to rationalize the provision, in case of a capital asset, being land or building or both, it is now provided that the fair market value of such an asset on 1st April, 2001 shall not exceed the stamp duty value of such asset as on 1st April, 2001 where such stamp duty value is available.

(B) Amendment in Section 50C of the Act

Section 50C of the Act provides that where consideration received or accruing as a result of the transfer of land or building or both, is less than the stamp duty value in respect of such transfer, the stamp duty value in respect of such transfer shall be deemed to be the full value of consideration for the purpose of computation of capital gains.

The said section is amended to provide that where the stamp duty value does not exceed 110% of the consideration received or accruing as a result of such transfer, the consideration so received shall be deemed to be the full value of consideration for the purpose of computation of capital gains.

V. Income from Other Sources

(A) Amendment in Section 56 of the Act

Section 56(2) (x) of the Act provides that any person, who receives, any immovable property on or after 1st April, 2017, for a consideration which is less than the stamp duty value of the property by Rs.50,000/- or more, the stamp duty value of such property exceeding such consideration shall be taxable under the head "Income from Other Sources".

It is also provided that where the assessee receives any immovable property for a consideration where the stamp duty value of such property exceeds 10% of the consideration or Rs.50,000/-, whichever is higher, the stamp duty value of such property exceeding such consideration shall be taxable under the head "Income from other sources".

(B) Amendment in section 57

Since it is proposed to tax dividend from domestic company and income from units of a mutual fund in the hands of shareholders or unit holders at the applicable rate, it is also proposed to provide that the deduction for expense under section 57 of the Act shall be maximum 20% of the dividend or income from units.

VI. Deductions

(A) Rationalization of taxation of start-ups

Section 80IAC has been proposed to be amended to provide that a deduction to an eligible start-up shall be available for a period of 3 consecutive assessment years out of 10 years beginning from the year in which it is incorporated. Earlier, this deduction was available for 3 consecutive financial years out of first 7 years. Further, the deduction under the said section shall be available to an eligible start-up, if the total turnover of its business does not exceed Rs.100 crore in any of the previous years beginning from the year in which it is incorporated.

(B) Extension under section 80IBA

Finance bill has proposed to extend the time limit for approval of affordable housing project for availing deduction under section 80IBA. The period of approval of the project by the competent authority is proposed to be extended from 31-03-2020 to **31-03-2021**.

VII. Tax Deducted at Source

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

Currently ESOPs are taxed as perquisites under section 17(2) of the Act. The tax on perquisite is required to be paid at the time of exercising of option which may lead to cash flow problem as this benefit of ESOP is in kind. Therefore, in order to ease the burden of payment of taxes by the employees of the eligible start-ups or TDS by the start-up employer, it is proposed to amend the section 192 to provide that deduction or payment of tax from perquisites arising on the allotment of shares, under ESOP to an employee of a start-up, shall be made within **14** days-

- after the expiry of 48 months from the end of the relevant assessment year; or
- from the date of the sale of such specified security or sweat equity share by the assessee; or
- from the date of which the assessee ceases to be the employee of the person;

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

Similar amendments have been carried out in

1) Section 191: Which provides that in case no TDS is deducted on such income then, assessee has to pay the tax directly

2) Section 156: Notice of demand issued under section 156 provides for payment of sum specified in the said notice within 30 days from the receipt of such notice but where such demand is arising out of abovementioned income then 30 days becomes 14 days after the expiry of relevant event taking place.

3) Section 140A: Tax paid directly on account of abovementioned income shall also be taken into consideration for calculating self-assessment.

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

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%.

(C) Widening the scope of TDS on E-commerce transactions through insertion of a new section

In order to widen and deepen the tax net by bringing participants of e-commerce within tax net, it is proposed to insert a new section 194-O in the Act so as to provide for a new levy of TDS at the rate of 1% from sale done or services provided by the participants through their platforms.
Consequential amendment has been made in section 206AA to provide for tax deduction at 5% in Non-PAN/Aadhaar cases.

(D) Amending definition of "work" in section 194C of the Act

Section 194C of the Act provides for the deduction of tax on payments made to contractors. Tax under this section is to be deducted if the payment is made to a resident person for carrying out any "work". The definition of "work" has been proposed to be amended to provide that in a contract manufacturing, the raw materials provided by the assessee or its associate shall fall within the purview of the 'work' under section 194C. Associate is proposed to be defined to mean a person who is placed similarly in relation to the customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A of the Act.

(E) Relaxation in section 194LC

Section 194LC of the act provides for a concessional deduction of tax at five percent by a specified company or a business trust, on interest paid to non-residents. The said concessional deduction has been proposed to be extended to 1st July, 2023 from 1st July, 2020. Further, the rate of TDS has been reduced to 4% on interest payment in respect of monies borrowed in foreign currency from a source outside India, by way of issue of any long term bond or RDB which are listed only on a recognized stock exchange located in any IFSC.

VIII. Tax Collected at Source

(A) Scope of TCS widened

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 authorized dealer receiving an amount or an aggregate of amounts of Rs.7,00,000 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, at the rate of 5%. In non-PAN/Aadhaar cases the rate shall be 10%.

- A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS at the rate of 5%. In non-PAN/ Aadhaar cases the rate shall be 10%.

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 at the rate of 0.1% on consideration received from a buyer in a previous year in excess of fifty lakh rupees. In non-PAN/ Aadhaar cases the rate shall be 1%.

- Only those seller whose total sales, gross receipts or turnover from the business carried on by it exceed ten crore rupees 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.

- No TCS is to be collected from the Central Government, a State Government and 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 as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification.

- No such TCS is to be collected, if the seller is liable to collect TCS under other provision of section 206C or the buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.

IX. Returns

(A) Relaxation on Non Resident from filing return of income in case of income covered under section 115A

Section 115A (1) provides that where the total income of a non resident (not being a company) or a foreign company:

(a) includes income by way of dividend on which dividend distribution tax applied, interest as mentioned under clause (a) of section 115A(1)

and

(b) tax is deducted at source from such income mentioned in (a) above, then it will not be necessary for such an assessee to furnish his return of income under section 139(1).

Similar relaxation has now been extended to non-residents whose total income consists of income by way of royalty or fees for technical services (FTS) and tax is deducted at source on such income at applicable rates.

The above provision will be effective from 1st April, 2020 i.e. AY 2020-2021.

X. Assessment

(B) Modification of e-Assessment scheme

The scope of e-Assessment as specified under section 143(3A) is proposed to be extended, to the proceedings under section 144 of the act relating to best judgment assessment.

(C) Reference to Dispute Resolution Panel(DRP)

Section 144C of the Act provides that eligible assessee can make reference to DRP. Such eligible assessee to now include Non Resident along with foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the Act. It is proposed that any variation is done by the Assessing Officer in his draft order which is prejudicial to the interest of the assessee can be referred to DRP.

(D) Faceless Appeal is proposed up to CIT(Appeals)

In order to achieve the motto of faceless assessment up to CIT(A) level, section 250 of the act has been amended to empower the Central Government to notify an e-appeal scheme for the disposal of appeal. Further, it is proposed to introduce an appellate system with dynamic jurisdiction, in which appeal be disposed of by one or more Commissioner (Appeals).

(E) Approval of Director or Commissioner is required to conduct Survey

Under the existing provisions of section 133A of the Act, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction. To prevent the possible misuse of such powers, it has been proposed that:

- Where some 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.

(F) No stay by ITAT unless 20% of the disputed tax is deposited

It is proposed to provide that stay under the first proviso to section 254(2A) shouldn't be provided by ITAT unless assessee deposits or furnish security for at least 20% of the amount of tax, interest, fee, penalty or any other sum payable under the provisions of the act.

Further, stay under second proviso to section 254(2A) can only be granted on an application made by the assessee, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited 20% of the amount of tax, interest, fee, penalty or any other sum payable under the provisions of the act. The total stay granted cannot exceed 365 days.

(G) Provision for e-Penalty

The Central Government may notify an e-scheme for the purposes of imposing penalty so as to impart greater efficiency, transparency and accountability. In this scheme, the interface between the Assessing Officer and the assessee in the course of proceedings shall be eliminated to the extent technologically feasible.

(H) Insolvency Professionals can act a "Authorized Representative"

Section 288 is proposed to be amended to provide that Insolvency Professionals can appear before any Income-tax authority or the Appellate Tribunal on behalf of an assessee as its "authorized representative". This will facilitate companies which are under IBC.

(I) Amendment in the provisions of Act relating to verification of the return of income

As per amended section 140 of the act, any other person, as may be prescribed by the Board can now verify the return of income apart from managing director or any director or designated partner or any partner as the case may be, in the cases of a company and a limited liability partnership.

(J) Penalty for fake invoices

In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. Therefore, to curb the practice of obtaining GST invoices so as to claim the false input tax credit, a new section 271AAD has been proposed to be inserted to levy a penalty of an amount equal to the aggregate amount of such fake invoices.

XI. Miscellaneous

(A) Trust related amendments

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

ii) 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.

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

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

v) 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.

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

These amendments will take effect from 1st June, 2020 and thus shall apply from AY 2021-22.

(B) Rationalization of provision relating to Form 26AS

Section 203AA of the Act, inter-alia, requires the prescribed income-tax authority or the person authorized 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 system, multiple information in respect of a person such as 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 portal of the Income-tax Department, so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability.

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 Act regarding annual financial statement. This section proposes to

mandate the prescribed income-tax authority or the person authorized 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 to be deleted.

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

(C) Abolition of Dividend Distribution Tax (DDT)

Dividend from the domestic company or income from units of mutual funds are no more exempt under section 10(34) and section 10(35) respectively. Hence, chargeable 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. Corresponding sun set clause is provided for in Section 115BBDA.

(D) Insertion of Taxpayer's Charter in the Act

It is proposed to insert a new section 119A in the Act to empower the Board to adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of Charter. This amendment will take effect from 1st April, 2020.

(E) No Dispute but Trust Scheme – '*Vivad Se Vishwas* 'Scheme

Finance Minister has announced a scheme for dispute resolution titled Vivad se Vishwas Scheme. While presenting the Budget, Finance Minister said

"Sir, in the past our Government has taken several measures to reduce tax litigations. In the last budget, *Sabka Vishwas Scheme* was brought in to reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are 4,83,000 direct tax cases pending in various appellate forums i.e. Commissioner (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax *Sabka Vishwas* for reducing litigations even in the direct taxes."

Further announcements on the scheme are awaited.

XII. International Taxation

(A) Modification in residential status of Individual

I. Currently, section 6(1) (c) of the Income Tax Act, 1961 which is the second limb of the provision provides that an Individual shall be resident of India in previous year if he:

i. has been in India for a period of 365 days or more within four years preceding that year

and

ii. is in India for a period or periods totaling upto 60 days or more in that year.

Further, the condition mentioned in (ii) above, namely 60 days is to be considered as 182 days for individuals of Indian origin outside India who come on a visit to India in any previous year. It is now provided that the relaxation of 182 days will only be 120 days in that year.

This condition has remained unchanged in respect of Indian citizen who leaves India in a previous year as a member of Crew of an Indian ship or for the purpose of employment outside India.

Sub-section (1A) is inserted to provide that notwithstanding anything contained in sub-section (1), an individual citizen of India shall be deemed to be resident in India in any previous year, if he is not liable to tax in any other country or territory due to his domicile or residence or such other nature.

The Finance Ministry has issued a press release dated 2nd February, 2020 where it has clarified that subject to further clarification which will be incorporated in the act itself later. The press release further clarifies that in case of an Indian citizen who becomes a deemed resident of India the income earned outside India shall not be taxed in India unless it is derived from an Indian business or profession.

II. Section 6(6) provides that a person is said to be "non ordinarily resident" in India in any previous year if such person as Individual or manager of HUF has:

i. been a non resident in India in **9 out 10 previous years** preceding that year

or

ii. during the 7 previous years preceding that year been in India for a period or periods amounting in all to 729 days or less.

The amendment now provides that at point (i) above will be **7 out of 10 previous years.**

(B) Income deemed to accrue and arise in India

The following provisions related to Significant Economic Presence (SEP) as provided in Section 9(1)(i) Explanation 2A of the Income Tax Act, 1961 have been omitted from AY 2021-2022:

"Significant economic presence" (SEP) of a non-resident in India shall constitute "business connection" in India and SEP for this purpose.

These provisions then shall apply with effect from AY 2022-2023 and onward.

(C) Limitations on interest deduction on borrowings from branch of foreign bank

In case of a loan received by permanent establishment (PE) of a foreign company or Indian company from its associate enterprise (AE) as defined under section 92A will be considered as deemed loan in case the AE provides implicit or explicit guarantee in respect of that loan.

Section 94B of the Act, inter alia, provides that deductible interest or similar expenses exceeding one crore rupees of an Indian company, or a permanent establishment (PE) of a foreign company, paid to the associated enterprises (AE) shall be restricted to 30 per cent. of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to AE, whichever is less.

Now, such provisions of such interest limitation would not apply to interest paid in respect of debt issued by a lender which is a PE of a non-resident, being a person engaged in the banking business in India.

(D) Definition of Royalty amended

The Finance Bill, 2020 has now included the consideration for the sale, distribution or exhibition of cinematographic films under Section 9(1)(vi) as one of the meanings of Royalty. This in order to establish the right of India to tax income of non – residents from another country. Such other countries were not offering concessions to Indian residents due to such exception mentioned in the erstwhile section 9(1) (vi).

(E) Power to make rules

Section 295 empowers the Central Board of Direct taxes to make rules for the whole or any part of India for carrying out the purposes of this Act.

Section 295 of the Act is amended so as to empower the Board for making rules to provide for the manner in which and the procedure by which the income shall be arrived at in the case of,-

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

and

(ii) transactions or activities of a non-resident.

(F) Alignment of Double Tax Avoidance Agreements (DTAA) with Multilateral Instruments (MLI)

The main purpose of the DTAA is to prevent double taxation of income. Section 90A (1) empowers any specified association in India to enter into DTAA with any specified association in the specified territory outside India.

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 have since been ratified. India has since deposited the Instrument of Ratification to OECD, Paris along with its Final Position in terms of Covered Tax Agreements (CTAs), Reservations, Options and Notifications under the MLI, as a result of which MLI has entered into force for India on 1st October, 2019 and its provisions will be applicable on India's DTAAs from FY 2020-21 onwards.

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 BEPS 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),"

In order to achieve this, clause (b) of sub-section (1) of section 90 of the Act which provides for providing relief in respect of avoidance of double taxation of income under the laws of both country or territory (India and the other foreign country of territory) is required to contain the text provided for in MLI. In case of section 90A of the Act also, similar amendment would be required to be carried out.

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

(G) Safe Harbour Rules will now apply to Business Income deemed to accrue or arise in India

Safe Harbour Rules means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

Section 92CB provides that the Board may make rules for the purpose of determining arm's length price for the purpose of transfer pricing for international and specified domestic transactions.

This section now covers even income covered by Section 9(1) (i). Section 9(1) (i) provides all incomes whether directly or indirectly, though or from 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 though the transfer of a capital asset situated in India shall be deemed to accrue or arise in India.

The above provision will be effective from 1st April, 2020 i.e. AY 2020-2021.

(H) Advance Pricing Agreement (APA)

Section 92CC of the Act empowers the Board to enter into an advance pricing agreement (APA) with any person, determining the ALP or specifying the manner in which the ALP is to be determined, in relation to an international transaction to be entered into by that person. APA provides tax certainty in determination of ALP for five future years as well as for four earlier years (rollback). Section 92CC will now also cover the incomes as determined under section 9(1) (i).

3. GOODS AND SERVICES TAX:

The Hon'ble Finance Minister highlighted Key benefits of GST which are as under:

1. 20% reduction in turnaround time for trucks.
2. Benefit to MSMEs through enhanced threshold and composition limits
3. Savings of about 4% of monthly spending for an average household
4. In last 2 years, Rs.60 lakh new taxpayers added and Rs.105 crore e-way bills generated

Finance Minister also highlighted future steps in GST some of which are as under:

1. Simplified GST return shall be implemented from 1st April 2020.
2. Implementation of e-invoicing in phased manner
3. Aadhaar based verification of taxpayers
4. Refund process to be fully automated

KEY CHANGES UNDER CGST ACT:

(A) Composition Scheme:

Registered person is not eligible to opt for composition scheme if he is -

a) engaged in making any supply of services which are not leviable to GST;
b) engaged in making any inter-State outward supplies of services;
c) engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52;

Above conditions are in addition to existing conditions. (Amendment in section 10)

(B) Input Tax Credit:

Earlier Debit note was to be linked to its original invoice in order to claim Input Tax Credit. It is no more required to be linked to date of its original invoice for claiming Input Tax Credit. In other words, Input Tax Credit can now be claimed with reference to date of such debit note. (Amendment in Section 16 (4).

(C) Cancellation of GST Registration:

Provisions made for cancellation of registration obtained voluntarily under section 25 (3)(Amendment in Section 29 (1) (c)).

(D) Revocation of Cancellation of GST Registration:

Time limit for revocation of Cancellation of GST Registration was thirty days from the date of service of the cancellation order. Now it is provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended -
(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days; (b)by the Commissioner, for a further period not exceeding 30 days

(E) Tax Invoice:

Enabling provision has been inserted to specify the categories of services or supplies in respect of which a tax invoice shall be issued. It will also enable to provide time and manner of issuance of such tax invoice. (Amendment in Section 31)

(F) TDS Certificate:

Form and manner of issuance of TDS Certificate will be prescribed. Late Fee for non-issuance of TDS certificate which was Rs. 100 per day subject to maximum of Rs. 5000 has been deleted. (Amendment in section 51)

(G) Removal of Difficulty:

Time limit for issuance of Removal of Difficulty Order has been increased from 3 years to 5 years from the commencement of the Act. (Amendment in Section 172)

(H) Offences and Penalties:

Provisions are made more rigorous. Now beneficiary of the transactions of specified offences and at whose instance such transactions are conducted shall be liable to a penalty of an amount equivalent to the tax evaded or input tax Credit availed of or passed on which is similar to person who commits such offence. (Amendment in Section 122).

(I) Punishment for certain offences:

Fraudulent availment of input tax Credit without an invoice or bill is now cognizable and non-bailable offence. (Amendment in Section 132)

(J) Transitional Credit:

Provisions governing Timelines for availment of transitional credit has been inserted with retrospective effect from 1st July 2017. (Amendment in Section 140)