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## UNION BUDGET HIGHLIGHTS



# Budget 2020: A case of mismatch in expectations?

With ever mounting (unrealistic) expectations from the business, industry and other constituents who were desperately looking for an opportunity to get back to their earlier growth path, the Finance Minister (“FM”) presented the budget on February 1, for 2020-21. While delivering one of the longest ever budget speech, the FM has tried to pacify multiple constituents with a hope to achieve widely expected growth impetus and unrealistic expectations. Despite the many measures announced, spread across an array of activities, the immediate reaction of the markets has been a bit negative since they looked for some big announcements of fiscal stimulus to give big boost to the economy in their view. There have been several announcements spread across many sectors which are inspiring, e.g. some very far reaching projects in agriculture sector, education sector, development of 5 smart cities in collaboration with States in PPP mode, monetizing of twelve lots of highway bundles over 6,000 kms, proposing significant divestments such as in Life Insurance Corporation of India and further divestment in Infrastructure and Development Bank of India; setting up single window Investment Clearance cell for easier setting up of new businesses and acquisition of land and other approvals required, supporting electronic product manufacturing on a big scale, new export NIRVIK Scheme for reversion of duties and taxes for export products et al, they all would work when there is good execution on the ground. Going by the ability of this government to have executed some of the welfare schemes such as building houses for the poor, providing electricity, building toilets et al, one hopes that even in these projects, the implementation would not lag far behind to achieve the desired results.

While there have been a few positive spots, at a macro level, the budget seems to have missed to instigate widespread cheer.

The best possible outcomes that can be attributed to the budget are: (i) there have not been any increase in the tax rates; (ii) there has been no introduction of estate duty; and (iii) there has been no reintroduction of wealth tax.

Among the positives one could include: (i) benefits provided to start-ups; (ii) reversing the liability to pay tax on dividends back to the shareholders; (iii) continuing and extending the lower taxation of interest on foreign bonds and similar instruments; (iv) total tax exemption to sovereign funds from their investment in infrastructure sector where conditions are satisfied; (v) incentives to housing schemes and real estate sector; (vi) introduction of faceless appeal system;

(vii) proposal to defer the enactment of Significant Economic Presence (“SEP”) to Financial Year (“FY”) 2021-22 in anticipation of OECD report on taxation of digital economy; (viii) raising the minimum threshold required to undertake audit of books of accounts; (ix) introduction of taxpayer charter to foster trust based relationship with tax department; and (x) proposal to have stringent measures to prevent abuse of preferential trade agreements as well as dumping.

Among the negatives, one would include: (i) unnecessary tampering of income tax slabs and making it more complex while claiming to simplify them; (ii) enhancing the scope of business connection; (iii) increasing the ambit of taxation for non-resident Indians and deemed residency for Indian citizens not paying taxes anywhere in the world; (iv) tax deduction at source (“TDS”) obligations on e-commerce transactions; (v) enlarging the scope of TDS on interest and tightening of the present tax collection at source (“TCS”) regime such as levy of TCS on payments made under the liberalized remittance scheme beyond INR 0.7 Million; and (vi) lack of a roadmap for overhaul of the Goods and Service Tax (“GST”) regime.

We present highlights of some major tax provisions proposed in the Finance Bill, 2020 (“Bill”).



## Tax Rates

A. Similar to the option provided to the domestic companies under the Taxation Laws (Amendment) Act, 2018 to pay corporate tax at a lower rate if no special deductions are claimed, the Bill proposes to provide a similar option to individuals, Hindu Undivided Families (“HUFs”) and co-operative societies. The Bill proposes:

- (i) to vest individuals and HUFs with the option to avail reduced slab rates of income tax provided such taxpayer does not avail certain specified exemptions or deductions and fulfills certain other conditions. These slab rates are as follows :

Total Income	Rate*
INR 250,000	Nil
From INR 250,001 to INR 500,000	5%
From INR 500,001 to INR 750,000	10%
From INR 750,001 to INR 1,000,000	15%
From INR 1,000,001 to INR 1,250,000	20%
From INR 1,250,000 to INR 1,500,000	25%
Above INR 1,500,000	30%

\*applicable surcharge and cess will be added to these rates

The taxpayer claiming this new regime will not be eligible to claim a host of deductions available under the current regime; such as housing rental allowance, leave travel allowance, interest on house property, certain deductions in relation to salary etc. If the taxpayer fails to satisfy the conditions specified in this provision in the year in which he/she opts for this regime, the taxpayer will not be eligible to claim this benefit in that year and in all subsequent years.

Further, this regime provides the flexibility to an individual/HUF taxpayer to choose between the current regime and the proposed regime of taxation on a yearly basis, provided the taxpayer does not have any 'business income'. A taxpayer who has business income and has opted for this regime can only go back to the current regime once. Thereafter, he/she cannot re-opt for this proposed regime.

- (ii) to offer co-operative societies the option to pay tax at a concessional rate of 22%, as compared to the tax rate of 30% imposed on co-operative societies under the current provisions, provided such taxpayers do not avail certain specified exemptions/deductions.

Further, the Bill proposes to exempt the co-operative societies and individuals opting for the

aforementioned lower tax rates, from the Alternate Minimum Tax (“AMT”).

- B. The Bill also proposes to change the due date of return filing for taxpayers, being a company or any other person subject to audit under the IT Act or any other law, to October 31 as against September 30 under the current provision.

*The amendments are proposed to be effective from April 1, 2020.*

There are no proposed changes in the rates of income tax, surcharge, as well as health education cess in other case.

### **Empowering the power sector**

In October 2019, the Taxation Laws (Amendment) Act, 2019 amended the Income Tax Act, 1961 (“IT Act”) to give an option to the newly set-up manufacturing companies to pay corporate tax at a lower rate 15%, provided such companies do not avail any tax benefits.

To provide impetus to the power sector, the Bill proposes to extend the lower corporate tax rate of 15% to newly set-up companies engaged in the business of generation of electricity.

*This amendment is proposed to be effective from April 1, 2020.*

### **Abolition of ‘Dividend Distribution Tax’– Potential savings for non-resident investors**

Currently, distribution of dividends by a domestic company is subject to an additional income tax, called Dividend Distribution Tax (“DDT”), on the distributing company at an effective rate of 20.56% (including surcharge and cess). Such tax is treated as the final tax on dividends and such dividends are exempt from taxation in the hands of the investors. Similar, regime also exists for taxing distributions made by mutual funds to its unit holders.

In order to change the incidence of taxation from the company/mutual fund to the shareholders/unit holders, the Bill proposes to abolish the DDT regime and re-introduce the classical method of taxing dividends. Under this proposal, dividends will be directly taxed in the hands of the shareholders/unit holders and the company/mutual fund would be required to withhold applicable tax on the same, proposed at 10% for residents and 20% for non-residents. The Bill also proposes to exempt dividends received from special purpose vehicles in the hands of business trust and tax the same in the hands of the investors in such business trusts. Further, the Bill proposes to allow a corporate shareholder to claim deduction for dividends received from other domestic



companies, to the extent of the dividends declared by such shareholder company prior to the prescribed date.

A shareholder would be allowed deduction for expenses in relation to dividend income to the extent of 20% of the dividend received. There are several consequential changes which are proposed in the IT Act to bring into effect the procedural aspects of this change such as withholding tax, etc.

This proposal is a major positive for foreign taxpayers as it will allow them to take advantage of the lower tax rates specified in the Double Taxation Avoidance Agreements (“DTAAs”) and claim credit for the tax paid in India, against the tax payable in the country of their residence. Indian taxpayers are also likely to benefit from this change.

*These amendments are proposed to be effective from April 1, 2020.*

## Yet another shout out to the Funds Industry

The IT Act contains a beneficial regime to promote offshore funds being managed from India, subject to certain eligibility criteria. The Finance Act, 2019 had made certain changes to the eligibility criteria in trying to make this proposition more viable. The Bill proposes to make two further changes in the eligibility criteria in response to the representations made by the Funds Industry.

Currently, one of the conditions is that the corpus of the fund should be at least INR 1 Billion by the later of six months from the end of the month in which it is established or at the end of such FY. To avoid any potential discrimination based on the date of establishment of the Fund, the Bill proposes to amend this condition, to provide a uniform period of 12 months from the end of the month in which the fund is established to meet the condition of having a monthly average corpus of INR 1 Billion.

Another condition to avail the above beneficial regime is that the participation or investment in the fund, directly or indirectly, by persons resident in India should not exceed 5% of the corpus of the fund. The industry represented that this condition is difficult to comply within the initial years as eligible fund manager is also required to invest his money to create confidence amongst investors for attracting investments. To cater to this, the Bill proposes to exclude the contribution of up to INR 250 Million made by the eligible fund manager during first three years while calculating the aggregate participation or investment of persons resident in India, in the Fund.

*This amendment is proposed to be effective retrospectively from April 1, 2019.*

### ***‘Pass through’ benefit extended to unlisted business trusts***

Real Estate Investment Trusts (“REITs”) and Infrastructure Investment Trusts (“InvITs”) are accorded a 'pass through' status under the IT Act for certain income streams. Therefore, incomes such as interest and rental income (in case of REITs) were subject to tax directly in the hands of the investors. These trusts are collectively defined as 'business trusts' under the IT Act. One of the conditions for claiming this pass through status is that the units of these trusts should be listed on the stock exchange in accordance with the relevant regulations of the SEBI.

SEBI (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 have done away with the mandatory listing requirement for InvITs. In order to align the IT Act with the SEBI Regulations, the Bill proposes to allow the benefit of 'tax pass through' status also to those business trusts whose units are not listed. This change should have positive impact for generating investment interest in business trusts.

*This amendment is proposed to be effective from April 1, 2020.*

### ***Exemptions for investments made by the Government of foreign countries towards Indian infrastructure***

The Bill proposes to encourage investments from sovereign wealth funds, especially the wholly owned subsidiary of Abu Dhabi Investment Authority towards Indian infrastructure facilities.

The Bill defines the terms 'sovereign wealth funds' to include a fund which is wholly owned and controlled by the government of a foreign country, setup and regulated under the laws of foreign country, assets vest in the Government of the foreign country upon dissolution, etc.

In this regard, it proposes to exempt the income in the nature of dividend, interest or long-term capital gains in the hands of such sovereign funds so long as the same is invested in an

Indian company which is in the business of developing or operating and maintaining any infrastructure facility as defined in section 80-IA(4) of the IT Act on or before March 31, 2024 and the investment is locked in for 3 years. This should generate much needed good long term funding required for huge infrastructure projects in the country.

*The amendment is proposed to be applicable from April 1, 2020.*



## Booster pack for start-ups

### *Extended holiday!!*

Currently, start-ups which fulfil some conditions, including the condition that their total business turnover does not exceed INR 250 Million, enjoy a tax holiday (i.e. 100% exemption from income-tax) for 3 out of the initial 7 years from the date of incorporation.

In order to include a wider array of start-ups, the Bill proposes to extend this benefit to start-ups with turnover not exceeding INR 1 Billion. Further, recognising that start-ups may have a longer gestation period, the 3 year tax holiday would now be available out of first 10 years. Therefore, now start-ups can claim the tax holiday for a period of 3 consecutive years out of the 10 years from the year in which they are incorporated.

*This amendment is proposed to be effective from April 1, 2020.*

### *Stock options (actually) incentivised*

Currently, employee stock options (“ESOP”) are taxed as perquisites in the hands of employees. The taxation of ESOPs is split into two components:

- i. Tax on perquisite as income from salary at the time of exercise of options by the employees.

- ii. Tax on income from capital gains when the shares are sold by the employees.

The tax on perquisite is the difference between the fair market value of shares (to be determined by a merchant banker) and exercise price. This can lead to significant cash flow problem for employees exercising options. Recognizing this problem faced by employees, the Bill proposes to amend the taxing provision relating to ESOP in case of start-ups. Tax will now be payable within 14 (fourteen) days of the earlier of the following:

- (i) 48 months from the end of the financial year in which options are exercised; or
- (ii) the date of the sale of such shares by the employee; or
- (iii) the date on which the employee ceases to be the employee of the company.

Tax on the above will be payable on the basis of applicable rate of tax in force during the financial year in which the option was exercised and shares allotted or transferred to the employee.

While the issue of timing of payment of tax has been resolved with respect to employees of start-ups, it was widely expected that a similar benefit would be extended in case of ESOP for all unlisted companies.

*This amendment is proposed to be effective from April 1, 2020.*

## HNIs under the scanner – Residency rules revamped

Currently, an individual’s residential status is determined based on his / her physical presence in India. An individual who is present in India for a period exceeding 60 days in the relevant FY or for a period of 365 days or more in the 4 years preceding that year is treated as a resident.

For Indian citizens and persons of Indian origin (“PIOs”), the period of 60 days currently stands at 182 days, allowing such persons to visit India for longer duration without being subject to the burden of tax as a tax resident of India. The Bill proposes to decrease the period of 182 days to 120 days with an intention to curb the practice of misusing the higher threshold.

Further, noting that high net worth individuals could be managing their affairs such that they are not liable to tax in any jurisdiction, the Bill proposes that an Indian citizen who is not liable to tax in any other country by reason of domicile or residency or any other criterion of similar nature, would be deemed to be resident in India and taxed on their income in India and out of Indian business or profession.

The IT Act has a provision in respect of an individual and Hindu Undivided Family (“HUF”) such that if an individual or a manager of a HUF has been non-resident in 9 (nine) out of the 10 (ten) FYs preceding the relevant FY, or has not been in India for an overall period of 729 days during the seven FYs preceding that FY; such individual or HUF is treated as a 'not ordinarily resident' of India in the relevant FY. When a person is not ordinarily resident in India, his/her/its worldwide income would not be taxable in India. This provision provided a major relief to returning Indians who need the flexibility to take a decision of staying in or returning outside India. In a bid to provide greater flexibility, the Bill proposes to relax the threshold of 9 out of the 10 FYs to 7 out of the 10 FYs years, preceding the relevant year. The second condition of not exceeding presence in India of 729 days in the previous seven FYs has been removed.

*These amendments are proposed to be effective from April 1, 2020.*

### **No 'Thin-capitalization Rules' for the debts issued by a Permanent Establishment (“PE”) of a Non-Resident Bank**

The Finance Act, 2017 introduced thin-capitalization rules into the IT Act as per the recommendations made by BEPS Action Plan 4. It restricted the allowable interest expenditure in the hands of borrower Indian company/PE of a foreign company in India to 30% of its EBITDA (i.e Earnings before interest, tax, depreciation and amortization), if the lender is a non-resident and a related party i.e. an associated enterprises under the IT Act.

Under the provisions of the IT Act, a branch of the foreign company in India is a non-resident in India. Therefore, as per the existing provisions, the loans issued by a branch of foreign bank in India were also subject to thin capitalization rules.

The Bill proposes to carve out the loans issued by the branches of foreign banks in India from the purview of thin-capitalization rules, thereby enabling the branches of foreign banks in India to issue loans to its related party entities in India. It may be noted that the interest income in the hands of such branches are anyways taxable in India on a net basis at the rates applicable to non-residents. Therefore, this is being done to rationalize the provisions.

*The amendment is proposed to be applicable from April 1, 2020.*



### **Safe harbour rules and Advance Pricing Agreement (“APA”) to be made applicable to attribution of profits to PEs**

Currently, the IT Act provides certainty to the taxpayers from transfer pricing adjustments who opt for safe harbor rules or an APA. Under the safe harbour provisions, the tax authorities accept the transfer pricing declared by the taxpayers if it is in accordance with the safe harbour rules notified by the Central Board of Direct Taxes (“CBDT”). Under the APA regime, the CBDT enters into an agreement with any person determining the ALP or specifying the manner in which the Arms Length Price (“ALP”) would be determined.

The Bill proposes to expand the scope and ambit of safe harbour rules and APA to the attribution of profits or income to the business connection in India and/or a PE of the non-resident in India. It is expected that this would provide certainty to the taxpayers with respect to methods for profit attribution to PE and reduce litigation on this account. It may be noted that the CBDT had also earlier issued a consultation paper on April 18, 2019 wherein certain methodologies were proposed for determination of profits attributable to the PE.

*The amendment is proposed to be applicable from April 1, 2020.*

### **Significant Economic Presence: Deferred to FY 2021-22**

Currently, the provisions of the IT Act provide that if a non-resident has significant economic presence (“SEP”) in India then this will constitute its 'business connection' in India. SEP for this purpose is defined to mean: (i) transaction in respect of goods or services, or property carried by a non-resident in

India if the aggregate payments arising therefrom exceeds prescribed threshold or (ii) systematic and continuous soliciting of business activities or interaction with prescribed number of users digitally. However the thresholds for this purpose have not yet been notified and thus this provision has not been operationalised.

Given that the OECD Report in this respect is due in December, 2020, the Bill proposes to postpone the applicability of this provision to April 1, 2021 and also amend the provisions for SEP from April 1, 2020 by replacing them with the amended provisions. As per the amended provisions which are along similar lines as the existing ones, SEP will be triggered due to any 'systematic and continuous soliciting of business activities or engaging in interaction with users in India'. The requirement to have solicited customers through 'digital means' has been removed thus, widening the applicability of these provisions.

Further, the Bill proposes to introduce rules for attribution of income to SEP. It proposes to provide that income from advertisements that target Indian customers or income from sale of data collected from India or income from sale of goods or services using such data collected from India, would be regarded as being 'sourced' in India i.e. attributable to the activities carried out in India for the purpose of the SEP.

*This amendment is proposed to be effective from April 1, 2021.*



## Saving the FPIs from the Vodafone Tax Saga

Currently, investments made directly or indirectly by investors in Category-I and Category-II FPIs under the SEBI (FPI) Regulations, 2014 (“**2014 Regulations**”) are exempted

from the indirect transfer tax (i.e. Vodafone Tax). The 2014 Regulations have been repealed and replaced by SEBI (FPI) Regulations, 2019 (“**2019 Regulations**”) whereby Category I and Category II FPIs as per the 2014 Regulations have been merged into a single category (i.e. Category I). The Bill proposes to make consequential changes to the IT Act and extend the benefit of exemption from the indirect transfer tax to investors in the Category I FPIs under the 2019 Regulations. The Bill also proposes to clarify that the exemption from indirect transfer tax provided to investors in FPIs under the erstwhile 2014 Regulations would continue to be available.

*This amendment is proposed to be effective from April 1, 2020.*

## Royalty: Tit for tat – we will tax since you do !

Currently, the definition of 'royalty' under the IT Act excludes consideration received for sale, distribution or exhibition of cinematographic films. In view of the IT Act being more favorable than the provision in a DTAA in this regard, such royalty is not taxed in India even if the applicable DTAA allocates the right to tax such royalty, to India. However, the DTAA partners do not provide such reciprocity to Indian players receiving royalty in respect of cinematographic films. Therefore this results in discriminatory treatment against Indian residents by other countries.

The Bill proposes to amend the definition of royalty to include the consideration for the sale, distribution or exhibition of cinematographic films within the meaning of ‘royalty’ under the IT Act. The amendment would result in payments to any one including a non-resident, towards sale, distribution or exhibition of cinematographic films being taxed in India unless not taxable under the provisions of the applicable DTAA.

*This amendment is proposed to be effective from April 1, 2020.*

## Tax Collection Procedures

### Extension of certain concessional TDS rates

The IT Act provides for a concessional rate of TDS of 5% on the interest payments made to non-residents by an Indian company in respect of the loans obtained in foreign currency, including funds raised through rupee denominated bonds i.e. masala bonds. However, under the existing provisions, such concessions were restricted to the loans obtained till July 01, 2020.

With an intention to provide a boost to foreign investment in India and stimulate the economy, the Bill proposes to extend

the period of such borrowings to July 1, 2023. Further, the Bill proposes to levy a concessional rate of TDS only at 4% in respect of such loans obtained through long-term bonds or masala bonds within such period, if it is listed on a recognized stock exchange located in any International Financial Services Centre.

Similarly, in order to draw further investments from Foreign Institutional Investors (“**FIIs**”) and Qualified Foreign Investors (“**QFIs**”), the Bill proposes to extend the applicability of concessional rate of TDS on the interest paid to them till July 1, 2023 from July 1, 2020.

It may be noted that under the existing provisions, FIIs and QFIs are eligible for concessional rate of TDS only in respect of (a) masala bonds; and (b) government security. On account of demands from industry, the Bill proposes to extend this concession to municipal debt securities as well. Municipal debt securities refers to non-convertible debt securities which create or acknowledge indebtedness, and include debenture, bonds and such other securities.

*These amendments are proposed to be effective from April 01, 2019.*

#### **TDS on e-commerce transactions**

The Bill proposes to charge TDS at 1% of the gross amount of sales and / or services fees where a resident seller sells goods or provides services through a digital or electronic facility or platform provided by an e-commerce operator.

The Bill also clarifies that the gross amount of such sale of goods/services would include payments made by the purchaser of goods/services directly to the resident seller for sale of goods / services facilitated by the e-commerce operator. However, no tax is deductible in cases where the resident seller is an individual/HUF and the gross amount of such sales does not exceed INR 0.5 Million, and such individual/HUF furnishes Permanent Account Number (“**PAN**”) or Aadhaar number to the e-commerce operator. Further, where the resident seller could not furnish his PAN tax could be deducted at 5%.

The new provision would significantly increase the compliance burden and associated costs on the e-commerce operators. This would mandate the sellers who want to claim tax refunds, to file income tax returns. Given the wide definition of e-commerce operators, impact on e-commerce business giants such as Flipkart, Amazon, Zomato, Swiggy, Uber, Ola etc. needs to be evaluated carefully.

*These amendments are proposed to be effective from April 01, 2020.*

#### **Expanding scope of Tax Collection at Source (“TCS”)**

The existing provisions of IT Act provide for a mechanism of collection of tax at source on certain specified businesses only such as those of trading in alcohol, forest produce, scrap etc.

The Bill proposes to implement and expand the scope of TCS provisions on certain other transactions such as foreign remittance under Liberalised Remittance Scheme (“**LRS**”), sale of overseas tour packages as well as sale of goods subject to certain threshold. It proposes that an authorised dealer receiving an amount aggregating to INR 0.7 Million or more in FY for remittance out of India under the LRS, shall be required to collect TCS at the rate of 5%. Similarly, any seller of overseas tour program packages receiving any amount from any buyer shall be required to collect TCS at 5%. In the absence of PAN/ Aadhar, TCS would be collected at a higher rate of 10%.

In case of sale of goods where seller receives a consideration in excess of INR 5 Million from a buyer in a particular FY TCS will be levied at the rate of 0.1%, however, where PAN/Aadhar is unavailable, levy shall be at a higher rate of 1%. This is only applicable on sellers whose total sales, gross receipts, or turnover from business exceed INR 100 Million.

This provision also applies on exports and it would seem not only onerous and extra territorial, also somewhat retrograde in boosting exports and may negatively impact ‘make in India’ programme.

*The amendment is proposed to be effective from 1 April, 2020.*

#### **Upper-limit of INR 0.75 Million prescribed for employer's contribution**

As per the existing provisions of IT Act, the employees are eligible to claim deductions on account of the following contributions made by the employers viz. (a) upto 12% of employee's salary in a recognized provident fund; (b) upto INR 150,000 in the superannuation funds; and (c) upto 10% of salary towards national pension scheme.

The Bill proposes to provide combined upper limit of INR 0.75 Million in respect of such employer contributions. This being done to bring a parity between the low-salary earning employees vis-à-vis the high-salary earning employees, as the total deductions availed by a high-salary earning employee on account of these contributions would be significantly higher than low-salary earning counterpart.

*This amendment is proposed to be effective from April 1, 2020.*



## Ushering in taxpayer friendly regimes

### *Providing channels for introduction of e-assessment scheme*

In consonance with its objective of easing the assessment process and promoting faceless assessments, the Finance Act, 2019 had introduced E-assessment Scheme, 2019 which gave power to Central Government to notify schemes for assessing total income or total loss.

The FM has proposed to expand the scope of faceless assessment and introduce appeal mechanisms under the IT Act.

The Bill proposes to expand the scope of e-assessment to best judgement assessments, appeals with CIT(A) and penalty proceedings. Further, for implementation of these schemes, appropriate provisions have been added to grant power to the Government to pass required directions upto March 31, 2022

### *Rationalization of proceedings before DRP*

Section 144C of the IT Act provides for filing of objections before the dispute resolution panels (“DRP”) against the draft assessment orders of the AO. In line with the intention of creating a simplified and taxpayer friendly regime of assessments, section 144C of the IT Act, would be suitably amended to give power to the AO to make any variations, which are prejudicial to the interests of taxpayers. Further, the scope of applicability of section 144C is also proposed to be expanded from *inter alia* foreign companies to also include non-resident non corporate assesses..

### *Stringent approvals for undertaking Survey operations*

Survey operations of income tax authorities creates significant anxiety in the minds of taxpayers. Under its agenda to establish a taxpayer friendly regime, the Bill proposes certain inherent checks and balances on the power of tax authorities who carry out such survey operations. Under the provisions of section 133A(6) of the IT Act, no survey could be carried out without obtaining the approval of the Joint Director or Joint Commissioner.

The Bill proposes to make the approval process more stringent by requisition of approval from Joint Director or Joint Commissioner only when information is received from a prescribed authority. In all other cases, the approval shall have to be compulsorily taken from Director/ Commissioner.

### *Introduction of Taxpayer's Charter*

Lastly, to enable and foster trust between taxpayers and tax administration, the FM proposed a clear enumeration of the rights of taxpayers. With this object and with the motive of enhancing efficiency of the delivery system of IT department, the Bill proposes introduction of a Taxpayer's Charter and

accordingly issue orders, instructions, directions or guidelines to other income-tax authorities for the administration of Charter. As per the FM the Charter will be notified soon.

*All of the aforesaid amendments are proposed to be effective from 1 April 2020.*

### *ITAT shall grant stay only when the tax payer deposits 20% of tax liability*

As per the instructions issued by the CBDT, the tax payer can avail stay from collection of taxes upon deposit of 20% at the first appellate level i.e. at the CIT(A) level. However, there is no such threshold limit prescribed at the second appellate level i.e. at the ITAT level. The ITAT is currently empowered to grant stay based on the facts and circumstances of a particular case.

It may be noted that courts have earlier ruled that instructions issued by the CBDT are not binding in nature but only have guidance value. The Bill now proposes to amend the provisions of the IT Act itself to make the 20% threshold limit mandatorily applicable at the ITAT level.

*This amendment is proposed to be effective from April 1, 2020.*

## Incentive to affordable housing

In furtherance to the objective to achieve ‘Housing for All’, the Government of India vide Finance Act, 2016 provided 100% deduction to taxpayers with respect to profits and gains derived from the business of developing and building affordable housing projects. The deduction was available on satisfaction of certain specified conditions, including, *inter alia*, a condition that such housing projects should be approved by the competent authority between June 1, 2016 and March 31, 2019 (extended to March 31, 2020 vide Finance Act, 2019). In line with this objective and to provide a further boost to affordable housing, the Bill proposes to extend the period of approval of such housing projects by competent authority till March 31, 2021.

Currently, the IT Act provides deduction of up to INR 0.15 Million with respect to interest on loan taken for acquisition of a residential house property from any financial institution subject to the conditions that: (i) loan is sanctioned between April 1, 2019 and March 31, 2020; (ii) stamp duty value of the house property does not exceed INR 4.5 Million; and (iii) the taxpayer does not own any residential property on the date of sanctioning of loan. To further augment the purchasing power for affordable housing, the Bill proposes to extend the benefit of this deduction to the loans sanctioned by financial institutions till March 31, 2021.

*These amendments are proposed to be effective from April 01, 2020.*



## **Real estate transactions given a longer rope**

Currently, various sections under the IT Act provide that for the purpose of computing business income, capital gains or income from other sources arising pursuant to the transfer of an immovable property, the value prescribed by the relevant authority for the purpose of stamp duty (“**Stamp Duty Value**”) should be deemed to be the sale consideration if the actual consideration received for the transfer of immovable property is less than the Stamp Duty Value. These provisions are relaxed and made inapplicable where the difference between the Stamp Duty Value and the sale consideration is not more than 5%. In line with representations received from various stakeholders, the Bill proposes to amend these sections to provide for a safe harbor of 10% instead of the current 5%.

*The amendments are proposed to be effective from April 1, 2020.*

## **Not for profit sector**

### ***Charitable institutions can no longer avail exemptions until revocation***

The Bill proposes a provisional registration of 3 years for new charitable institutions applying for approval under section 10(23C) or section 12A of IT Act and such entities need to apply again for approval within the prescribed timelines, which subsequent approval if granted will then be valid for five years. Further, entities already approved under section 10(23C) or section 12A or section 12AA shall also be required to intimate the tax authorities regarding their registration in which case their approval will be valid for five years starting from April 1, 2020. The FM in her speech has proposed to make the process for registration for new and existing charitable institutions electronic in order to make the process simpler and transparent.

It may be noted that under the existing provisions of the IT Act, registrations under section 10(23C) as well as under section 12AA would be valid until it is revoked by the tax authorities. Henceforth, such registrations will have to be renewed every 5 years, which would in turn lead to scrutiny of transactions at every such renewal. In addition to making it mandatory to provide for these renewals, this step is expected to create a significant amount of administrative inconvenience to the said organisations.

*The amendment is proposed to be applicable from June 1, 2020.*

### ***Educational Institutions cannot avail dual benefit under section 10(23C) as well as section 12AA***

Under the existing provisions of section 11(7) of the IT Act, a trust or institution registered as charitable institution under section 12A or section 12AA of IT Act cannot avail exemptions provided under section 10, other than section 10(23C).

Therefore, the institutions enjoying exemption under section 10(23C) of the IT Act were also enjoying exemptions on account of section 12AA registration. However, similar dual registration was prohibited in case of institutions/trusts which are eligible for exemption under section 12AA of the IT Act as well as exemptions under section 10(46) of the IT Act, since section 11(7) of the IT Act had made concession only for section 10(23C) but not for section 10(46) of the IT Act.

The Bill now proposes to remove this anomaly by amending section 11(7) of IT Act to provide for exemption to 10(46) as well and clarifies that the said organization can avail registration under either section 12AA or section 10(23C) or 10(46).

It may be noted that several educational institutions have registrations under both section 10(23C) as well as under section 12AA of the IT Act and were trying to claim one of the said registrations if the other was revoked. The Bill proposes to expressly prohibit such shelter.

*The amendment is proposed to be effective from June 1, 2020.*

### ***Stricter compliances for donor and donee for availing benefit of provisions of section 80G***

The Bill proposes that an institution to which section 80G applies needs to furnish a statement in respect of the donations received, along-with donee details, to the tax authorities within prescribed timelines and also required to issue a certificate to the donor. The Bill also proposes that deduction for donation under section 80G shall be allowed to the donor only upon furnishing of such statement. Failure on the same would also result in levy of a fee and penalty. The FM in her

speech has said that the endeavour is to prefill the donor's information in its return for hassle free claim of deduction for donation. However, considering that donations of very low value and from multiple donors are received frequently by many of these donee institutions, filing of such details within prescribed timelines might become an uphill task for them.

*The amendment is proposed to be applicable from June 1, 2020.*

### **Cost of acquisition of the properties acquired before 2001 shall either be the fair market value or the actual cost**

Under the existing provisions of the IT Act, the cost of acquisition of land and buildings which are acquired before April 01, 2001 is either the actual costs or the fair market value, whichever is higher.

The Bill now proposes that fair market value referred therein shall not exceed the circle rate (i.e. stamp duty value). It is worthwhile to note that certain taxpayers had earlier inflated the cost of acquisition by adopting the value determined by the valuation officer as a fair market value. To plug this loophole, the Bill provides that fair market value shall not exceed the circle rate as on April 01, 2001.

*This amendment is proposed to be effective from April 1, 2020.*

### **Aligning the purpose of entering into DTAA's provided under IT Act with the MLI**

The Multilateral Instrument (“MLI”) seeks to modify existing provisions of bilateral tax treaties. The MLI *inter alia* contains provisions to enable modification of the preamble to notified DTAA's. The preamble under the MLI provides the purpose of entering into DTAA's as intending to eliminate double taxation and aggressive tax planning resulting in non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping. This modification lays overarching emphasis on substance / commercial justifications in structuring transactions going forward.

The Bill proposes to amend the IT Act to authorize the government to include the modified preamble in the DTAA as provided under the MLI.

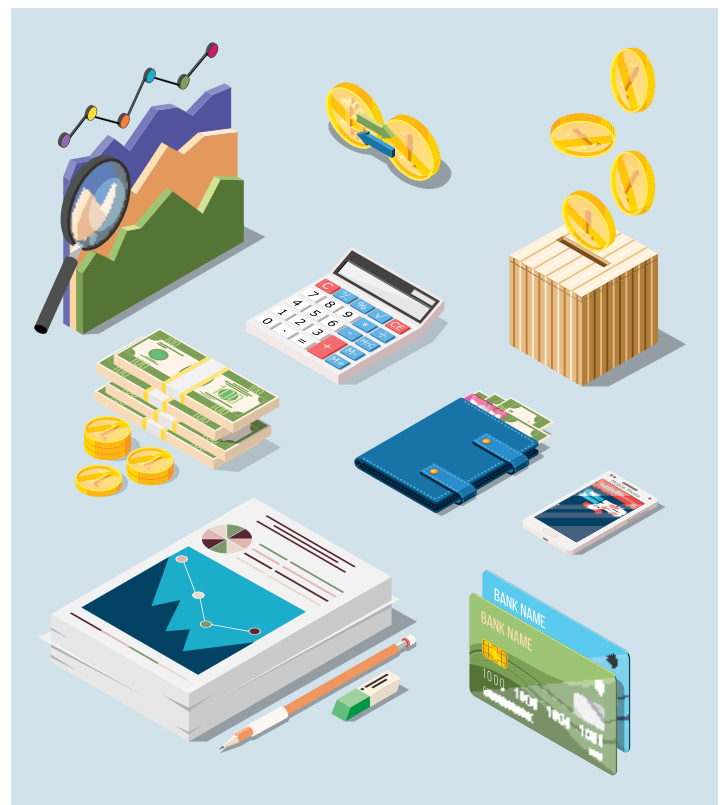
*This amendment is proposed to be effective from April 1, 2020.* This means that the new DTAA's entered into post April 1, 2020 would contain this provision in the preamble. As a result, going forward even the non-covered DTAA's will incorporate this minimum standard prescribed in the MLI.

### **FM tries to bring back “Acche din” for taxpayers, announces tax amnesty scheme for direct taxes**

To give a breather to taxpayers from their tax disputes, the FM in her speech has announced a 'Vivad Se Vishwas' Scheme hoping for settlement of legacy matters. Under the proposed scheme a taxpayer has a limited time opportunity to pay the disputed tax amount, latest by March 31, 2020 and get waiver of interest and penalty. This could be a valuable opportunity for taxpayers to clear the baggage of their disputes pending at various levels i.e. CIT(A), ITAT, HC and SC. This is a step ahead from last year's budget where an amnesty scheme was announced for indirect taxes.

While further details are awaited, the FM in her speech has announced that the scheme can also be availed after March 31, 2020 on payment of additional amount but not beyond June 30, 2020. This step is much needed in view of the 4,83,000 tax disputes currently clogging the appellate authorities and the government not being able to meet its tax collection targets.

This scheme would not only reduce the blocked tax amount for the tax department and enhance tax collections, it would also release a lot of stress and strain on resources of tax payers, especially where they are looking to enter into mergers and acquisitions activities where pending tax demand can cause the transaction to be void unless a no objection certificate is received from the tax department.



## Customs

### Tariffs

- (i) The central theme continues way of providing an impetus to the domestic market, particularly MSMEs by revisions of rates and review of existing exemptions. Major sectors impacted are:
  - a. household items and appliances;
  - b. electronics;
  - c. machinery;
  - d. furniture;
  - e. automobiles;
  - f. precious stones; and
  - g. defense.
- (ii) The Bill has also introduced a levy of Health Cess at the rate 5% on the import of specified medical devices w.e.f. February 01, 2020. The Health Cess would be used for promoting and financing the health infrastructure and services in India.

### Tighter Control Mechanisms

To ensure that the domestic industry is not unduly prejudiced on account of imports, the following changes are proposed:

- (i) Introduction of an administrative mechanism for preferential trade agreements: The proposals contemplate the grant of power to seek information, verify information, temporarily suspend / permanently disallow preferential treatment and confiscate goods to the customs officers. The burden of proof that goods qualify as originating goods for preferential rate of duty would rest on the importer and submission of certificate of origin would not absolve an importer from his responsibilities.
- (ii) Anti-circumvention measure: The rules regarding antidumping and countervailing duty are amended to extend the power of the Central Government to investigate in the cases of circumvention of duties w.e.f. February 02, 2020. Such changes would make the measures comprehensive and align them with best international practice.
- (iii) Additional safeguard measures: The Bill seeks to empower the Central Government to impose additional safeguard measures including tariff rate quota in addition to the safeguard duties to curb the increased quantity of imports which cause serious injury to domestic industry.
- (iv) Widened power to restrict import/export: The Bill proposes to empower the Central Government to prohibit import/export of notified goods to prevent the injury to the economy of country by the uncontrolled import/export. This provision was earlier applicable only to imports/exports of gold and silver.

- (v) Electronic Duty Credit Ledger: The Bill proposes to introduce a compliance measure for digitalization of remissions and other financial benefits granted to a tax payer in form of electronic duty credits. The manner of usage/transfer electronic duty credits are yet to be notified.

## GST

Working towards the Government's continuing goal of easing the doing of business in India and prevention of tax evasion, the Bill proposes for the following:

- (i) Delinking the availing input tax credit pertaining to a debit note issued pursuant to an invoice: The date of issue of debit note is now proposed to be delinked from the date of issuance of the underlying invoice in order to ensure that the suppliers can avail input tax credit for payments made against debit notes, even where the corresponding invoices were issued during the past financial years.
- (ii) Transitional Credits: The Bill proposes to amend Section 140 of the CGST Act to specify the time limit for availing transitional credits.
- (iii) Transfer of business assets: The Bill proposes to tax only those transfers of business assets which are made for a consideration.
- (iv) Amendments on penal provisions: The Bill proposes to amend the penal provisions to affix liability on a person at whose instance specified transaction are conducted. Prosecution, however, can be initiated only where a person who commits or causes to commit the offence and retains the benefits arising out of such offence. The Bill also proposes to make, fraudulently availing input tax credit without invoice or a bill, a cognizable and non-bailable offence. Similarly, a corresponding amendment for fake invoices has also been proposed in the IT Act.

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