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# UNION BUDGET



UNION  
BUDGET  
2020  
AN ANALYSIS



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## PREFACE

Dear Reader

ELP is pleased to present its budget analysis for the annual union budget presented by the Finance Minister Nirmala Sitharaman on February 1, 2020.

This was the third Union Budget within the last twelve months (technically the first was a 'vote on account' as India was headed into a general election and hence there was less flexibility available to the Government of the day).

Leaving aside these technicalities, in a period of slow growth (GDP growth rate for 2019-20 estimated at 5% against 6.8% in FY19), sluggish investment, sharp deceleration in consumer demand and declining tax revenues, did the third budget do enough to galvanize the economy?

First, unstated in so many words, this is a budget for India's defence and security – with INR 3,370,000 million allotted to defence procurement and INR 1,050,000 million to the home ministry.

Beyond this, almost every cause finds a mention and some money allocated to it – agriculture, roads, environment, airport infrastructure are now recurring themes. The government has stated that it seeks to double farmer income by 2022 and expects the number of aircrafts in India to double from 600 to 1200 which will require several more airports. In many ways, the above goals seem on-brand for an economy of contradictions like India.

With an objective of putting more money in the hands of the taxpayer, income-tax for individuals has been reduced and rationalized. At the lowest level, income tax is 15%, assuming the assessee does not claim any deductions. This is most welcome, to the extent that it will reduce complexity. However, it remains to be seen whether it effectively translates into more disposable income and a commensurate increase in consumption and spending. Abolishing dividend distribution tax was also a welcome step.

On the other hand, the budget has not done much to address concerns of the depressed automobile, real estate and manufacturing sectors – sectors which are crucial to boosting employment concerns.

The budget also featured a recognition of wealth creators, who have the 'respect' of the Government and assurances to reduce the aggression of the tax collector. Truth be told, this is a long-standing assurance that has often faced roadblocks in the form of various pending litigations. This time, the assurance comes coupled with a direct tax litigation settlement scheme, where, if the dispute is settled by March 2020, the interest and penalty will be waived. Steps are also underway to de-criminalize offences under the Companies Act 2013.

Customs duty on several items have increased to enable Indian domestic manufacturers to compete – very much in line with the tariff route that has gained in popularity the world over. Ironically, however, the move may prove to be counter-productive to the domestic industry for downstream products.

With the Corona virus rampaging in China and estimates of a consequent impact on Chinese GDP, is this budget bold enough to position India to fill the global void? On the face of it, perhaps not – but the extra money in the hands of the aspiring consumer could revive consumption and drive local industrial activity. Moreover, has the government made inroads in responding to corporate India's woes, given its own set of fiscal limitations? The answer can, perhaps, be a cautious yes.

The ensuing analysis will analyze the provisions in detail, highlight the nuances and de-mystify the small print.

We hope you enjoy reading this, and as always, we welcome your feedback!

Thank you.

Suhail Nathani



Managing Partner

On behalf of Team ELP



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## BUDGET HIGHLIGHTS

### CUSTOMS

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- Various tariff and non-tariff changes to promote Make in India and reduce the impact of global trade war
- Scheme for administering the verification of the country of origin of imported goods;
- New system of “Electronic Duty Credit Ledger” proposed;
- Introduction of “Tariff rate quota” as a safeguard measure;
- Introduction of Health cess on import of specified medical equipment.
- New incentive scheme for exporters to be implemented in current year

### GST

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- Provisions prescribing time limit for availing credit based on debit note proposed to be amended
- Extension of time limit for issuance of removal of difficulty order
- Proposal to levy penalty on specified offences on the person who retains the benefit and at whose instance the transaction is conducted;
- Fraudulent availment of input tax credit made cognizable and non-bailable

### DIRECT TAXES

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- Abolition of DDT and implementation of normal scheme of taxation for dividend;
- Concessional tax rate of 15% extended to new electricity generation companies;
- Indian citizens deemed to be treated as resident in specified scenario to avoid double non-taxation
- Optional personal tax slab rates proposed, devoid of any deductions/exemptions;
- Direct tax Amnesty scheme announced - “Vivad se Vishwas Scheme”, details to follow;
- Extension of approval for affordable housing projects by one year i.e. March 31, 2021;
- Incidence of tax payments on ESOP of eligible start-up employees deferred;
- Deduction on income of start-ups in parity with the DPIIT amendment;
- TDS proposed on e-commerce transactions with exceptions;
- Controversy between Section 194C and 194J removed by reducing the TDS rate on FTS to 2%;
- Taxpayer charter proposed to be part of the enactment;
- Tax audit limit increased to INR 5 crores;
- Scope of APA extended to include income arising from business connection/permanent establishment;

## INDIRECT TAX

### CENTRAL GOODS AND SERVICES TAX ACT, 2017

#### Effect to the revision in administrative division of the Country

- Section 2(114) of the CGST Act is proposed to be amended to include the newly formed Union Territory of Ladakh in the definition of “Union territory”. Further, consequential amendments pursuant to merger of the Union Territories of Dadra and Nagar Haveli and Daman and Diu have been proposed. Similar amendments are proposed to be made in Section 1(2) and Section 2(8) of the UTGST Act.
- Section 109(6) of the CGST Act is proposed to be amended in order to enable the Central Government to notify bench of Appellate Tribunal for the State of Jammu and Kashmir as well. As per the existing provisions, the right to notify the bench of Appellate Tribunal for Jammu and Kashmir is with the State Government.

#### Amendment in Schedule II read with Section 7 of the CGST Act

- Entry 4(a) and 4(b) in Schedule II is proposed to be amended to omit the term “whether or not for a consideration” to align the entry with the amendment carried out in Section 7 of the CGST Act in 2018. This amendment is supposed to be made retrospective from July 1, 2017.

#### Amendment in the composition scheme

- Section 10(2) of the CGST Act is proposed to be amended to extend the scope of ineligibility to opt for composition scheme as per Section 10(1) of the CGST Act to the following persons:
  - The person engaged in making supply of services which are not leviable to tax;
  - The person engaged in making inter-state supply of services;
  - The person engaged in making any supply of services through electronic commerce operator, liable to collect tax at source under Section 52 of the CGST Act.

#### ELP COMMENTS:

Composition scheme was extended to service provider with aggregate turnover not exceeding INR 50 Lakhs *vide* Notification No. 2/2019 Central Tax (Rate) dated March 7, 2019. The aforesaid amendment is proposed to be made to bring parity between the provisions of composition schemes in the context of services and goods.

#### Delinking the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing ITC

- The phrase ‘invoice relating to such’ is proposed to be omitted from Section 16(4) of the CGST Act. The amended Section 16(4) post implementation of this proposal would read as under:

*“(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier :*
- By way of the proposed amendment, time limit for availing ITC based on debit note shall be considered from the date of issuance of debit note instead of the date of issuance of corresponding invoice to which such debit note pertains.

#### ELP COMMENTS:

The aforesaid amendment is a welcome move as the registered taxpayer is no longer required to keep the track of the date of corresponding invoice to evaluate time limit for ITC availability in respect of a debit note. The amendment is not proposed to be retrospective. Therefore, the position regarding availing the credit based on the debit note since the implementation of GST will still remain an interpretation issue

### Cancellation of registration

- Section 29 of the CGST Act is proposed to be amended to allow cancellation of registration for the registered taxpayers who have voluntarily obtained registration as per Section 25(3) of the CGST Act.

### Revocation of cancellation of registration

- Section 30 of the CGST Act is proposed to be amended to grant the power to the Additional Commissioner/Joint Commissioner to extend the time limit by further 30 days to file an application for revocation of cancellation of registration subject to sufficient cause being shown. A further extension of 30 days, after extension granted by the Additional Commissioner/Joint Commissioner may be granted by the Commissioner.

### Powers to specify categories of service recipients for issuance of tax invoice

- Proviso to Section 31(2) is proposed to be amended to grant the power to the Central Government to specify the categories of services or supplies in respect of which a tax invoice shall be issued along with time and manner for issuance of such invoice.

### Amendment to TDS provisions

- Section 51(3) of the CGST Act is proposed to be amended to provide that a certificate of TDS issued by the deductor of tax shall be issued in such form as may be prescribed.
- Section 51(4) of the CGST Act which prescribed late fee for delayed furnishing of the tax deduction certificate to the deductee is proposed to be omitted.

### Expansion in the scope of penalty

- A new sub-section 1A is proposed to be inserted in Section 122 of the CGST Act to levy penalty equal to the amount of tax evaded or ITC availed or passed on by any person who retains the benefit of the below specified transactions and at whose instance such transaction is conducted in respect of the above stated offences.
  - Supplies of goods or services or both without issue of any invoice or issuance of incorrect or false invoice;
  - Issues invoice or bill without supply of goods or services or both in violation of the provisions of the CGST Act or the rules made thereunder;
  - Takes or utilizes ITC without actual receipt of goods or services or both either with fully or partially, in contravention of the provisions of the CGST Act or the rules made thereunder;
  - Takes or distributes ITC in contravention of Section 20 of the CGST Act or the rules made thereunder i.e. manner of distribution of credit by an ISD.

### Expansion in the scope of person committing an offence

- Section 132 of the CGST Act i.e. punishment for certain offences, is proposed to be amended to include the persons who causes to commit and retain the benefits on specified offences.
- Section 132(1)(c) and (e) of the CGST Act are proposed to be amended to extend the punishment for the cases where ITC is availed fraudulently without any invoice or bill.

#### ELP COMMENTS:

The Government has witnessed spurt in fraudulent activities like incorrect invoicing, incorrect availment of ITC, etc. in the GST regime. In order to mitigate the same, the Government is contemplating to make offences like fraudulent availment of ITC without invoice cognizable and non-bailable to provide necessary deterrent to impostors.

The said penal provisions will be applicable to all the persons who commit or cause to commit and retain the benefits.

### Regularisation of Central Government's power to notify limitation for transitional provisions

- Section 140 of the CGST Act containing transitional provisions for Input tax credit is proposed to be amended with retrospective effect from July 1, 2017 to provide that such credit under various sub-sections of this provision shall be availed within such time and in such manner as may be prescribed by the Central Government.

**ELP COMMENTS:**

Transitional provisions under the CGST Act enabled an assessee to carry forward or avail credit of the taxes paid during erstwhile regime. However, the said section was silent with respect to limitation of time applicable for such carry forward or availment, which was notified by Central Government under CGST Rules.

As the power to notify time-limitation was not supported by corresponding enabling provision under the Act, validity of such limitation was rendered litigious. To plug this anomaly, the transitional provisions are proposed to be amended to retrospectively empower Central Government to notify such limitation.

**Extension of time for issuance of removal of difficulty order**

- Section 172 of the CGST Act is proposed to be amended to increase the tenure of the Central Government's power to make provisions for removing any difficulty in giving effect to the provisions of CGST Act. This tenure is increased from 3 years to 5 years. Similar amendments are also proposed in the IGST Act and the UTGST Act.

**ELP COMMENTS:**

Amendment in the CGST Act to address any difficulty in implementation of any provision thereof would necessitate due process in the parliament, resulting in possible delay in redressal of such difficulty. In order to circumvent such delay, the Central Government is empowered to issue an Order to make provisions to remove such difficulty, subject to the condition that such provisions are not inconsistent with the CGST Act itself.

The power was originally entrusted for a period of 3 years which is now proposed to be extended to 5 years.

**Restriction on inverted duty structure refund for tobacco products**

- The refund of accumulated credit of compensation cess on tobacco products arising out of inverted duty structure in Compensation Cess is disallowed w.e.f. October 01, 2019 vide Notification No. 3/2019-Compensation Cess (Rate) dated September 30, 2019. This Notification is being given retrospective effect from July 01, 2017 onwards. Accordingly, no refund of inverted duty structure shall be admissible on tobacco products even for the period July 1, 2017 even for the period July 01, 2017 to September 30, 2019.

**Retrospective exemption/reduction in applicable rate of GST**

- Rate of GST to retrospectively change on the following goods notwithstanding the rate as notified vide Notification G.S.R. 673(E), dated June 28, 2017 (as applicable for the CGST Act) and the corresponding Notifications as applicable for the IGST Act and the UTGST Act:
  - Exemption to supply of fishmeal (tariff heading 2301) during July 01, 2017 to September 30, 2019;
  - Levy at 12% (Central and State tax combined) for supply of pulley, wheels, other parts (tariff heading 8483) used as parts of agricultural machinery (tariff headings 8432, 8433 and 8436) during July 01, 2017 to December 31, 2018.
- The rate change referred above would not allow the assessee to claim refund of the tax paid already, which would not otherwise have been paid if above referred rate changes were effective during relevant period.

**EXCISE TARIFF CHANGES**

Chapter -wise changes in the NCCD rates are applicable w.e.f. February 02, 2020

Sr. No.	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1	2402 20 10	Other than filter cigarettes, of length not exceeding 65 millimetres	Rs. 90 per thousand	Rs. 200 per thousand
2	2402 20 20	Other than filter cigarettes, of length exceeding 65 millimetres but not exceeding 70 millimetres	Rs. 145 per thousand	Rs. 250 per thousand
3	2402 20 30	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimetres or its actual length, whichever is more) not exceeding 65 millimetres	Rs. 90 per thousand	Rs. 440 per thousand



4	2402 20 40	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimetres or its actual length, whichever is more) exceeding 65 millimetres but not exceeding 70 millimetres	Rs. 90 per thousand	Rs. 440 per thousand
5	2402 20 50	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimetres or its actual length, whichever is more) exceeding 70 millimetres but not exceeding 75 millimetres	Rs. 145 per thousand	Rs. 545 per thousand
6	2402 20 90	Other	Rs. 235 per thousand	Rs. 735 per thousand
7	2402 90 10	Cigarettes of tobacco substitutes	Rs. 150 per thousand	Rs. 600 per thousand
8	2403 11 10	Hookah or gudaku tobacco	10%	25%
9	2403 19 10	Smoking mixtures for pipes and cigarettes	45%	60%
10	2403 19 90	Other	10%	25%
11	2403 91 00	“Homogenised” or “reconstituted” tobacco	10%	25%
12	2403 99 10	Chewing tobacco	10%	25%
13	2403 99 20	Preparations containing chewing tobacco	10%	25%
14	2403 99 30	Jarda scented tobacco	10%	25%
15	2403 99 40	Snuff	10%	25%
16	2403 99 50	Preparations containing snuff	10%	25%
17	2403 99 60	Tobacco extracts and essence	10%	25%
18	2403 99 90	Other	10%	25%

## CUSTOMS & INTERNATIONAL TRADE

### LEGISLATIVE CHANGES

#### Insertion of Chapter VAA

- The Bill proposes to introduce Chapter VAA of the Customs Act stipulating a scheme for administering the verification of the country of origin of the goods imported under preferential tariff FTAs with different countries.
- The new Chapter empowers the proper officer to go beyond the mere acceptance of the origin certificate produced by the Importer and undertake verification of such certificate in case the same is found to be insufficient or non-satisfactory, by requiring additional information and documents consistent with the Trade agreement.
- Under the new scheme proposed under Section 28DA, for claiming the preferential duty rate under the trade agreement, the importer must:
  - Make a declaration that the goods qualify for the preferential duty treatment by virtue of their origin;
  - Possess sufficient information to fulfill determination criteria, viz., regional value content, product specific criteria, etc. stipulated in specified Trade agreement;

- Furnish such further information, as may be prescribed in the rules.
- Exercise reasonable care as to the accuracy and truthfulness of the information
- Where the proper officer has reasons to believe that the country of origin criteria prescribed in the Trade agreement has not been met, he may require the importer to furnish further information consistent with the Trade agreement in support of its claim.

### ***Suspension of preferential treatment***

- In case where the importer fails to provide the requisite information, the proper officer, for any reasons to be recorded in writing, may carry out his own verification. Pending such verification, the officer may temporarily suspend the preferential tariff treatment to such goods. The Principal Commissioner of Customs or the Commissioner of Customs has been empowered to disallow the preferential rate even without further verification.
- During the suspension period, the goods may be released on the request of the importer on submission of security equivalent to the differential amount of duty under provisional assessment and the preferential duty claimed.
- While the preferential duty claim is under suspension, the officer shall inform the Issuing Authority of the reasons for such suspension and shall seek necessary information with a view to determine the origin of goods within prescribed time.
- Depending upon the provision of information by the issuing authority or its satisfactory nature, the proper officer shall restore or, as the case may be, disallow the preferential treatment giving reasons in writing.
- Such verification may be sought within five years from the date of claim of such preferential duty treatment by the Importer.
- Interestingly, where the verification establishes non-compliance of country of origin criteria, the officer has been entrusted with the powers to reject the preferential tariff treatment to the imports of the identical goods from the same producer or exporter, unless proved otherwise.
- While the new Chapter grants power to the proper officer to reject the preferential treatment to imported goods after due verification, in certain cases the officer may right away refuse such preferential treatment where:
  - The tariff entry itself is not eligible for preferential treatment under the trade agreement
  - The certificate of origin contains in-complete description;
  - The certificate of origin is altered in any way without any authentication by issuing authority, or
  - The certificate of origin is expired.
- Section 111 and Section 156 of the Customs Act has also been proposed to be amended to respectively authorize the Custom Authorities to confiscate the goods in case of contravention of the provision of this chapter, and to delegate the power to prescribe rules in relation to the specified timelines, circumstances, etc. for the administration of ROO under the Trade agreement to the Government.

#### **ELP COMMENTS:**

The implementation of ROO in India has been a matter of concern for GOI for quite some time. Pursuant to many red flags raised by the intelligence agencies, in the past, (i) adverse impact of FTAs on the revenue, (ii) deteriorating manufacturing activities in India, and (iii) misuse of treaty benefits on imports from non-FTA countries, the Government has initiated a review of various FTAs and the procedures laid down thereunder. The violation of ROO and value addition norms has been under the scanner of the Government despite some existing regulations prescribed in this context.

While there have been country specific regulations [as stipulated in Notification No. 55/2011-Cus. (N.T.), dated August 1, 2011 and Notification No. 29/2015-Cus. (N.T.), dated March 10, 2015 etc.] which empowers the customs authority to make a request to the certificate issuing authority, for a verification of origin, there appears to be lack of enforcement. With the objective to ensure desired administration of preferential tariff treatment under FTAs, the proposed amendment seeks to pose stringent obligations on the importers to adhere to the ROO.

The proposed amendments also confer wide powers on the Customs Authorities. While it remains to be seen how these provisions are implemented, claiming preferential treatment is going to be quite cumbersome. Further, while

the Government of India has power to regulate import process for claiming preferential duty rate, India's trading partners may raise concerns on the additional rules proposed in the Bill.

### Amendment to Section

- Section 11(2)(f)
  - Customs Act is proposed to be amended to expand the powers of the Government to impose prohibition (either absolutely or subject to such conditions) on import or export of any goods in order to prevent injury to the economy being caused by uncontrolled import or export of such goods. Currently, such prohibition exists only on import and export of gold and silver.

#### ELP COMMENTS:

This step appears to be in continuation of the efforts by the Government to safeguard interest of the domestic industry and to take corrective steps to control sudden surges that harm the domestic industry.

- Section 28
  - Section 28 of the Customs Act, as amended by the Finance Act, 2018 inter alia provided for a definite time frame for adjudication of demand notices ranging from six months to one year depending upon charges of collusion, suppression ,etc., failure of which would lead to the lapse of assessment proceedings. The existing Explanation 4 to Section 28 of the Customs Act provided that such amendment would apply only with respect to notices issued on/after March 29,2018.
  - Now, the above Explanation 4 is proposed to be substituted in order to explicitly clarify that all cases where notice has been issued before March 29, 2018, shall continue to be governed by the provisions of the Section 28 which existed before enactment of Finance Act 2018, notwithstanding, any judgement, decree, order of an any Court, Appellant Tribunal, or provision of any law, to the contrary.
  - This amendment is proposed to come into effect, retrospectively, from March 29, 2018.

#### ELP COMMENTS:

This amendment appears to be brought into overrule the judgment of the Punjab and Haryana High Court in the case of Harkaran Dass Vedpal v. Union of India [2019(368) ELT 546 (P&H)] wherein it held that amendment to Section 28 is retroactive and time limitation of adjudication would apply to past notices as well treating such notices issued on March 29,2018.

- Section 28AAA
  - Section 28AAA of the Customs Act is proposed to be amended to widen its scope so as to provide for recovery of duty from a person against utilization of instruments issued under any other law, or under any scheme of the Central Government, in addition to the Foreign Trade (Development and Regulation) Act, 1992.

### New System of “Electronic Duty Credit Ledger” under Customs

- Section 51B is proposed to be inserted in Chapter VIIA of the Customs Act to provide for creation of an “Electronic Duty Credit Ledger” in the customs automated system.
  - The duty credit will be given in lieu of duty remission of duties / taxes on inputs used in the manufacturing of exported goods or such other benefit as may be prescribed;
  - This duty credit may be used by the person to whom it is issued or may also be transferred to another person in the prescribed matter;
  - Separate notification will be issued to specify the manner of issuance and use of duty credit including time-limit of usage;
  - To correspond to this change, amendment has also been proposed under Section 28AAA, whereby duty credit if obtained by misstatement or suppression can be recovered in the manner prescribed therein.

## Introduction of “tariff rate quota” as a safeguard measure

- Section 8B of the CTA relates to imposition of “Safeguard Duty” in cases when an article is imported into India in increased quantities to cause serious injury to the domestic industry. It is proposed to substitute Section 8B of the CTA to expand the scope of safeguard measures by including TRQ and “other safeguard measures” (such as other non-tariff barriers);
- In a TRQ system, the imports within the quota are charged at a lower (in-quota) tariff rate, while a higher (out-of-quota) tariff rate is used for imports above the concessionary level. The following key factors will be taken into account by the Government where a TRQ is used as a safeguard measure:
  - It shall generally not fix such quota lower than the average level of imports in the last three representative years unless otherwise deemed necessary to prevent or remedy serious injury;
  - The Government may allocate such TRQ to supplying countries having substantial interest;
- Sub-section 10 of the proposed Section 8B of the CTA also empowers the Government to provide for rules relating to manner in which TRQ may be allocated among the supplying countries, manner of implementing TRQ and other safeguard measures and manner of their application.

### ELP COMMENTS:

The proposed Section empowers the Government to apply additional safeguard measures. Prior to this proposed substitution, India could impose safeguard measure only in the form of safeguard duty and not in the form of quantitative restrictions or other non-tariff barriers. TRQ has already been permitted as a safeguard measure in the WTO Agreement on Safeguards, in which India is a member country. The use of this measure is globally quite prevalent by the WTO members, including the EU, Japan, Canada and the US. The proposed provisions shall enable regulating surge in imports in a systematic way. While on one side the TRQ system protect domestic producers to face competition from large quantities of imports, on the other side, it allows consumers and producers in the importing country to enjoy benefits, of lower priced products at-least for a limited “in-quota” period as against a system of single safeguard duty rate.

## Strengthening the laws against circumvention of Anti-Dumping and Countervailing duties

- To tighten the circumvention of Anti-Dumping and the Countervailing duties, the Anti-Dumping Duty Rules [i.e. Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury, 1995], and the Countervailing Duty Rules [i.e. Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury), Rules 1995] have been amended vide Notification 09/2020 Customs (N.T.) dated February 2, 2020 and Notification 10/2020 Customs (N.T.) dated February 2, 2020, respectively.
- The Anti-Dumping Duty Rules are amended to strengthen the anti-circumvention measures by making them more comprehensive and wider in scope. As per the substituted Rule 25, “circumvention” shall be considered where (a) a change in the trading patterns between any country and India (or between individual companies in any country and India) as a result of practice, process or work that cannot be adequately explained by legitimate reasons or economic justifications other than the circumvention of Anti-Dumping Duties, and (b) where there is evidence of injury / dumping in comparison with the past normal prices for the like product. This enhances the scope which was previously limited to three specified circumvention practices, viz. (i) importation of subject goods in unassembled, unfinished or incomplete form (ii) by way of minor alteration in appearance and form and (iii) goods routed through any other exporter or country which was earlier not notified for Anti-Dumping Duty. Also, as per sub-rule 2(d) of the new Rule 25, any scenario which renders the imposition of Anti-Dumping Duty as ineffective shall be considered as circumvention.
- The Countervailing Duty Rules have been amended to enable investigation and imposition of duties into situations of circumvention of the said duty. Under the current Countervailing Duty Rules there is no provision for initiating an anti-circumvention investigation. However, the Rules have been amended to introduce such investigation powers

similar to as available under the Anti-Dumping Duty Rules. Certain other changes have been made to bring clarity in the provisions including insertion of definition of “like article” and “period of investigation”.

#### ELP COMMENTS:

The issues relating to situations in which anti-circumvention investigations could be initiated have been a matter of debate and under judicial scanner of various High Courts. The amendment seeks to adopt the provisions similar EC Regulations / ASCM respectively and attempts to widen the powers of the authorities to initiate such anti-circumvention investigation. Since the AD agreement contains no equivalent circumvention provisions there is no WTO contravention as such. We can, at best hope that authorities do not reach out too far in order to enforce these powers.

### Product Specific Notifications

- Notification No. 01/2020-Customs (SG): This notification provides definitive clarity on the products subject to safeguard duty under Notification No. 1/2018-Customs (SG).

#### ELP COMMENTS:

This appears to be intended to clear up certain confusion in previous imports (particularly in 2018) wherein many items, other than the subject product (solar cells and modules), that are classified under heading 8541 in the CTA, were being assessed for levy of safeguard duty. The notification clearly identifies only the subject products upon which the duty will be levied.

- Notification No. 03/2020-Customs (ADD): This notification rescinds the relevant customs notifications from 2016 and 2019 which levied AD duty levied on Purified Terephthalic Acid.

#### ELP COMMENTS:

The AD duties on PTA have been abolished in the interest of larger public interest and to bolster the potential of the textile sector, as PTA is a key raw material for this industry. Another key input for the textile sector, mono ethylene glycol, is also subject to an anti-dumping investigation currently.

### Introduction of ‘Health cess’

- With a view to give impetus to the domestic industry, as also to generate resource for health infrastructure and services, the Bill proposes to introduce a duty of customs, known as Health cess, on the import of medical equipment (falling under headings 9018 to 9022) at the rate of 5% *ad valorem* on the import value of such goods.
- However, the cess is not proposed to be imposed on medical devices which are exempt from BCD and inputs/ parts used in the manufacture of medical devices. Further, Export Promotion scrips shall not be used for payment of the said cess.

## TARIFF CHANGES

- Union Budget 2020 continued thematic changes to Customs Tariff with an aim to enhance India’s image as that of an attractive investment destination (rather than merely a market/ place of consumption) and overall to promote the government’s premier program “Make in India”.
- DGFT Trade Notice 37, 46 & 47/ 2019-20 dated October 22, 2019 had raised apprehensions regarding importers not doing due diligence in mentioning correct 8-digit HS Codes. More specifically, the administration has been unconvinced about importers using residual ‘others’ category under various headings/ sub-headings. In this regard, it was widely anticipated that the FM in its speech would give some roadmap towards either resolving these present disputes and/ or would indicate that India may soon move a 10-digit classification code (as has been the global flavor in recent past). The 10-digit classification code could certainly aid overcoming some of the current classification disputes.

- Unless otherwise stated, all changes in rates of duties take effect from the midnight of February 1, 2020 / February 2, 2020

CTH	Description of Goods	Erstwhile Rate (%)	Revised Rate (%)
0101 21 00	Pure-bred breeding animals	30	Nil
0303	Tuna Bait	Nil	30
0402 10 or 0402 21 00	Goods upto an aggregate of ten thousand metric tonnes of total imports of such goods in a financial year*	15	60
0404 10 10	Whey, concentrated, evaporated or condensed, liquid or semi-liquid	30	40
0404 90 00	Other Whey	30	40
0405	Butter, ghee and butter oil	30	40
0406 90 00	Other Cheese	30	40
5	Pancreas falling under Chapter 5 [Products of animal origin, not elsewhere specified or included]	5	30
0508 00	Conch Shell	5	30
0601 or 0602	Bulbs, Tubers, etc. or other live plants	5	10
0802 32 00	Walnuts, shelled	30	100
0802 61 00	Macadamia nuts in shell	30	100
0802 62 00	Macadamia nuts shelled	30	100
0802 70 00	Kola nuts (Cola Spp.)	30	100
1001 99 20	Meslin	Nil	100
1001 11 00	Durum wheat seeds	Nil	100
1001 91 00	Seeds of wheat (other than durum wheat)	Nil	100
1005 90	Maize, upto an aggregate of five lakh metric tonnes *	Nil	60
1209 10 00	Sugar Beet seeds	5	30
1401 10 00	Bamboo for use in the manufacture of Agarbatti**	10	10
15	Edible oils falling under headings 1508, 1512, 1513, 1514,1515 or subheading 1511 10	85	100
15	Refined vegetable oils of edible grade, in loose or bulk form (other than those falling under heading 1511)	85	100
1512 11	Crude Sunflower seed or safflower oil upto an aggregate of one lakh and fifty thousand metric tonnes of total imports of such goods in a financial year*	50	100
1512 11	All goods other than crude Sunflower seed or safflower oil upto an aggregate of one lakh and fifty thousand metric tonnes of total imports of such goods in a financial year	75	100
1514 19 or 1514 99	Refined rape oil, colza oil or mustard oil upto an aggregate of one lakh and fifty thousand metric tonnes of total imports of such goods in a financial year*	45	75
1517 or 1518	Margarine, animal or vegetable fats and oils	80	100
1520 00 00	Curde glycerol waters and glycerol lyes (other than crude glycerin)	20	30
1701	Raw Sugar upto an aggregate of three lakh metric tonnes of total imports of such goods.	25	100
1702	Dextrose Monohydrate	20	30
2004 10 00	Preserved potatoes	30	35
2008 11 00	Peanut Butter	7.5	30
22	Wine**	30	150

<b>2208</b>	Angostura bitters	5	150
<b>2301 20, 2309 90 32, 2309 90 39</b>	Fin Fish Feed	Nil	30
<b>2304</b>	Dietary Soya Fiber	15	30
<b>27</b>	Very Low Sulphur Fuel Oil (ISO 8217:2017 RMG 380 Viscosity in 220-400 CST standards / Marine Fuel 0.5 (FO)	10	Nil
<b>2710</b>	Naphtha, when imported by Ratnagiri Gas and Power Private Limited (RGPPL), for use in generation of electricity in the power plants of Ratnagiri Gas and Power Private Limited (RGPPL) at Dabhol, District Ratnagiri, Maharashtra	Nil	5
<b>2710</b>	Naphtha, when imported for generation of electrical energy by a generating company as defined in section 2(28) of the Electricity Act, 2003 (36 of 2003) to supply electrical energy or to engage in the business of supplying electrical energy	Nil	5
<b>2713 12 10, 2713 12 90</b>	Calcined Petroleum Coke	10	7.5
<b>2716 00 00</b>	Electrical Energy  <i>[Entry No 160 omitted [Notification No 50/2017 dated June 30, 2017 (as amended)]</i>	Nil	Rs 2000 per 1000 kwh
<b>2801, 2802, 2803, 2804, 2805 and 2814</b>	All goods	7.5	5
<b>2843</b>	Noble Metal Compounds and Nobel Metal Solutions**	7.5	10
<b>2916 12 10</b>	Butyl Acrylate	5	7.5
<b>30</b>	Japanese Encephalitis vaccine, imported by the Andhra Pradesh Government through UNICEF	Nil	5
<b>31</b>	Kyanite salts	5	10
<b>3504</b>	Isolated soya protein	10	30
<b>37</b>	Colour positive unexposed cinematographic film in jumbo rolls and colour negative unexposed cinematographic film in rolls of 400 feet and 1000 feet	5	10
<b>3701 20 00 or 3702</b>	Instant print film	5	10
<b>3704</b>	Cinematographic films, exposed but not developed	Nil	10
<b>3907 99 90</b>	Poly Ester Liquid Crystal Polymers **	10	Nil
<b>3913 90 90</b>	Compostable polymer or bio-plastic used in the manufacture of bio-degradable agro mulching films, nursery plantation pots and flower pots	Nil	7.5
<b>3919 90 90</b>	Water blocking tape for use in the manufacture of insulated wires and cables falling under heading 8544	7.5	15
<b>3920 10 99</b>	Calendared plastic sheet for use in manufacturing of Smart Card falling under heading 8523**	10	5
<b>3920</b>	Subbed polyester base, imported by M/s Hindustan Photo Films manufacturing Company Limited, Udhagamandalam for the manufacture of medical or industrial X-ray films and graphic art films	Nil	Applicable BCD as per tariff

Any Chapter	Promotional material (like Trailers, making of film etc.) imported in the form of electronic promotion kits / beta cams	Nil	Applicable BCD as per tariff
4114 20 10	Patent Leather	Nil	10
4301	Raw furskins (other than those falling under tariff item 4301 3000)	Nil	15
4302	Tanned or dressed furskins (other than those falling under tariff item 4301 3000)	Nil	10
48	<p>Newsprint – In strips or rolls of width exceeding 28 cm; or In rectangular (including square) sheets with one side exceeding 28 cm</p> <p><b>[ELP Comment:</b> <i>The Finance Minister has considered the request of the print media industry and has reduced the Basic Customs duty. However, the domestic manufacturing industry has initiated an anti-dumping investigation which is ongoing and thus if the duty is recommended and imposed the consuming industry will be impacted.]</i></p>	10	5
48	<p>Uncoated paper of a kind used for printing newspapers, of which not less than 50 by weight of the total fibre content consists of wood fibres obtained by mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness Parker Print Surf (1 Mpa) on each side exceeding 2.5 micro meters (microns), weighing not less than 40 g/m<sup>2</sup> and not more than 65 g/m<sup>2</sup></p> <p><b>[ELP Comment:</b> <i>The Finance Minister has considered the request of the print media industry and has reduced the Basic Customs duty. However, there is already an additional burden of anti-dumping duty which is currently being borne by the consuming industry when imported from Indonesia, Thailand and Singapore]</i></p>	10	5
4810	Lightweight coated paper weighing up to 70 g/m <sup>2</sup> , imported by actual users for printing of magazines	10	5
64 or Any other Chapter	Goods used in leather industry	15 / 25	10
6401 to 6405	Footwear	25	35
6406	Parts of Footwear	15	20
6702	Artificial flowers, foliage and fruit and parts thereof	10	20
6911 [except 6911 90 10]	Tableware, kitchenware, other household articles, of porcelain or china	10	20
6912 [except 6912 00 30]	Ceramic tableware, kitchenware, other household articles, other than of porcelain or china	10	20
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)	10	20
7018 10 20	Beads	10	20



<b>7103</b>	Rubies, emerald and sapphires, unset and imported uncut, Roughed coloured gemstones, Pre-forms of precious and semi-precious stones	Nil	0.50
<b>7104</b>	Rough synthetic gemstones, Rough cubic zirconia	Nil	0.50
<b>7104</b>	Polished cubic zirconia	5	7.50
<b>71</b>	Gold in the form of wire, ribbon, pre-form of purity 99.99 and above used for semi-conductor devices and light emitting diodes	Nil	12.5
<b>7110</b>	Platinum or palladium for use in the manufacture of all goods falling under heading 2843 and sub-heading 3815 12.**	12.50	7.50
<b>7112</b>	Spent catalyst or ash containing precious metals**	12.50	11.85
<b>7118</b>	Coin	10	12.50
<b>7323</b>	Table, kitchen or other household articles and part thereof, of iron or steel; iron or steel wool	10	20
<b>74</b>	Copper and articles thereof used in manufacture of specified electronic items covered under Chapter 34, 84, 85 and 90	Nil	Applicable BCD as per tariff
<b>7418</b>	Table, kitchen or other household articles and parts thereof, of copper	10	20
<b>7615 10</b>	Table, kitchen or other household articles and parts thereof, of aluminium	10	20
<b>7806</b>	Lead bars, rods, profiles and wire	5	10
<b>7907</b>	Zinc tubes, pipes and tube or pipe fittings	7.5	10
<b>8007</b>	Tin plates, sheets and strip, of thickness exceeding 0.2mm; tin foil of thickness not exceeding 0.2mm and tin powders and flakes	5	10
<b>8301 (except tariff item 8301 20 00)</b>	Padlocks and Locks (Key, Combination or Electrically Operated), Of Base Metal; Clasps and Frames with Clasps, Incorporating Locks, Of Base Metal; Keys for any of the foregoing articles, Of Base Metal	10	20
<b>8304</b>	Filing, Cabinets, Card- Index Cabinets, Paper Trays, Paper Rests, Pen Trays, Office Stamp Stands and Similar Office or Desk Equipment, of Base Metal, Other than office Furniture of heading 9403	10	20
<b>8305</b>	Fittings for Loose-Leaf Binders or Files, Letter Clips, Letter Corners, Paper Clips, Indexing Tags and similar office articles, of base metal; Staples in strips (for example for Offices, Upholstery, Packaging) of Base Metal	10	20
<b>8306</b>	Bells, Gongs and the like, Non-Electric, of Base Metal; Statuettes and other Ornaments of Base Metal, Photograph, Picture or similar frames of Base Metal, Mirrors of Base Metal	10	20
<b>8310</b>	Sign Plates, Name Plates, Address-Plates and similar plates, Numbers, Letters and other Symbols of Base Metal, excluding those of heading 9405	10	20
<b>84 or any other Chapter</b>	Goods specified in List 10 required for use in high voltage power transmission project	5	7.5
<b>Any Chapter</b>	Parts and components of the goods specified in List 10 required for use in high voltage power transmission project	5	Applicable BCD as per tariff

<b>Any Chapter</b>	All items of equipment including machinery and rolling stock, procured by or on behalf of Delhi Metro Rail Corporation Ltd.	5	Applicable BCD as per tariff
<b>84 or any other Chapter</b>	Goods specified in List 14 required for construction of roads	5	Applicable BCD as per tariff
<b>84 or any other Chapter</b>	Goods specified in List 15 required for construction of roads	5	Applicable BCD as per tariff
<b>8414 30 00 and 8414 80 11</b>	Compressors of refrigerator and air conditioner	10	12.5
<b>8421 39 20 and 8421 39 90</b>	Catalytic converters falling under "Air Purifier or cleaners" and "Other" category	10	15
<b>84 or any other Chapter</b>	Parts of catalytic convertor and Raw Substrate (Ceramic and Metal), Wash-coated Substrate (Ceramic and Metal), Stainless Steel wire cloth stripe and wash coated used in manufacture of catalytic convertors and its parts subject to actual user condition	5	7.5
<b>84 or any other Chapter</b>	Platinum, Palladium, Nobel Metal Compounds and Solution used for manufacture of catalytic convertors and its parts subject to actual user condition	5	Applicable BCD as per tariff
<b>84 or any other Chapter</b>	Specified goods required for manufacture of Optical Disk Drives	Nil	Applicable BCD as per tariff
<b>8432 80 20</b>	Rotary tiller / weeder	2.5	7.5
<b>8419 89 10</b>	Pressure Vessel	7.5	10
<b>8424</b>	Sprinklers and Drip Irrigation system for agriculture and horticulture purposes and Micro Irrigation equipment	5	7.5
<b>8436 21 00</b>	Poultry incubators and brooders	5	7.5
<b>8418</b>	Refrigerating equipment (falling under 8418 10 10, 8418 30 10, 8418 40 10, 8418 40 90, 8418 50 00, 8418 61 00, 8418 69 10 to 8418 69 50 and 8418 69 90)	7.5 / 10	15
<b>8414 51 and 8414 51 90</b>	Fans (except railway carriage fans)	7.5 / 10	20
<b>8414 51 40</b>	Railway carriage fan	7.5	10
<b>8414 51 50</b>	Wall fan	7.5	10
<b>8414 59</b>	Fans falling under other category (except blower, portable)	7.5	10
<b>8414 59 20</b>	Blowers, portable	10	20
<b>85</b>	MP3 or MP4 or MPEG 4 player with or without radio or video reception facility	5	10
<b>85</b>	One set of pre-recorded cassettes accompanying books for learning languages and essential complement to such books	Nil	10
<b>85</b>	Audio cassettes, if recorded with material from books, newspaper or magazines, for the blind	Nil	10
<b>8501 (except 8501 64 70, 8501 64 80)</b>	All goods	7.5	10
<b>8504 40</b>	Charger or power adapter (except those covered in Information Technology Agreement-I)	10 / 15	20
<b>8509 (except tariff item 8509 90 00)</b>	All goods	10	20

<b>8510 (except item tariff 8510 90 00)</b>	All goods	10	20
<b>8515 (except tariff item 8515 90 00)</b>	All goods	7.5	10
<b>8516 (except tariff items 8516 50 00 and 8516 90 00)</b>	All goods	10	20
<b>8517 70 90</b>	Fingerprint reader/ scanner for use in manufacturing of cellular mobile phones	Nil	15
<b>8517 70 10</b>	Printed Circuit Board Assembly (PCBA) of Cellular mobile phones <i>[Effective date: April 01, 2020]</i>	10	20
<b>8517 70 90</b>	Vibrator Motor / Ringer for use in manufacture of cellular mobile phones <i>[Effective date: April 01, 2020]</i>	Nil	10
<b>8517 70 90</b>	Display Assembly for use in manufacture of cellular mobile phones <i>[Effective date: April 01, 2020]</i>	Nil	10
<b>8517 70 90</b>	Touch Panel/ Cover Glass Assembly for use in manufacture of cellular mobile phones <i>[Effective date: April 01, 2020]</i>	Nil	10
<b>8518</b>	The following goods for use in the manufacturing of Microphones falling under tariff item 8518 10 00, namely; ** (i) Microphone Cartridge; (ii) Microphone Holder; (iii) Microphone Grill; (iv) Microphone Body.	10	Nil
<b>8518 30 00</b>	All headsets and earphones (including for cellular mobile phones)	10	15
<b>8529 90 30</b>	Open cell of television sets	-	Nil
<b>8538</b>	Micro Fuse Base, Sub-Miniature Fuse Base, Micro Fuse Cover, Sub-Miniature Fuse Cover for use in manufacturing of micro fuse and sub-miniature fuse **	7.5	Nil
<b>8540 11</b>	Colour television picture tubes for use in the manufacture of cathode ray televisions	Nil	10
<b>8541 40 11</b>	Solar cells, not assembled	Nil	20
<b>8541 40 12</b>	Solar cells assembled in modules or made up into panels	Nil	20
<b>8702/ 8704</b>	Electrically operated vehicles, if imported, - (1) As a Knocked Down kit containing all the necessary components, parts or subassemblies, for assembling a complete vehicle with:-		

	(a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;	10	15
	(b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric Compressor not mounted on a chassis or a body assembly	15	25
	(2) in a form other than (1) above	25	40
<b>8702, 8704</b>	Completely Built Units (CBUs) of commercial vehicles (other than electric vehicles)	30	40
<b>8703</b>	Electrically operated Motor cars and other motor vehicles, principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars, if imported,-  (1) As a Knocked Down kit containing all the necessary components, parts or subassemblies, for assembling a complete vehicle, with:-  (a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;  (b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly.	10          15	15          30
<b>8711</b>	Electrically operated motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported:-  (1) As a knocked down kit containing all the necessary components, parts or subassemblies, for assembling a complete vehicle, with:- (a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;  (b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly.	10          15	15          25
<b>9401</b>	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof	20	25
<b>9403</b>	Other furniture and parts thereof	20	25

9404	Mattress supports, articles of bedding and similar furnishing fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered	20	25
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included, illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included	20	25
9503	Tricycles, scooters, pedal cars and similar wheeled toys, dolls carriages, dolls, other toys, reduced-size ("scale") models and similar recreational models, working or not, puzzles of all kinds	20	60
9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters, prepared knots and tufts for broom or brush making, paint pads and rollers, squeegees (other than rollers squeegees)	10	20
9615	Combs, hair-slides and the like, hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof	10	20
9617	Vacuum flasks and other vacuum vessels, complete with cases, parts thereof other than glass inners	10	20

\* Conditions Removed; \*\* Conditions Introduced

**Social Welfare Surcharge (Exempted for the following entries):**

CTH	Description of Goods
0404 10 10	Whey, concentrated, evaporated or condensed, liquid or semi-liquid
0406 90 00	Other Cheese
0601	Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant, in growth or in flower; chicory plants and roots other than roots of heading 1212
0602	Other live plants (including their roots), cuttings and slips; mushroom spawn
0802 31 00	Walnuts, in-shell
0802 32 00	Walnuts, shelled
0802 12 00	Almonds, shelled
1001 99 20	Meslin
1001 11 00	Durum wheat, seed
1001 91 00	Wheat, other seed
1005 90	Maize
1704 10 00	Chewing gum, whether or not sugar coated
1901 10	Preparations suitable for infants or young Children, put up for retail sale
2204	Wine of fresh grapes, including fortified wine; grape must other than that of heading 2009
2205	Vermouth and other wine of fresh grapes flavored with plants or aromatic substances
2206 00 00	Other fermented beverages; mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included
2515 12 20	Slabs
6802 10 00	Tiles, cubes and similar articles, whether or not rectangular (including square), the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm; artificially coloured granules, chippings and powder, other monumental or building stone

	and articles thereof, simply cut sawn with a flat even surface
<b>6802 21 10</b>	Marble blocks/tiles
<b>6802 21 20</b>	Marble monumental stone
<b>6802 21 90</b>	Other tiles, cubes and similar articles
<b>6802 91 00</b>	Marble, travertine and alabaster
<b>6802 92 00</b>	Other calcareous stone

**Social Welfare Surcharge introduced for the following entries:**

CTH	Description of Goods
Chapter 90	Optical, photographic, cinematographic, measuring, checking, precision, medical, or surgical instruments and apparatus, clocks and watches, musical instruments, parts and accessories thereof
<b>Chapter 84</b>	8443, 8443 31 00 (including parts and accessories), 8443 32 (including parts and accessories), 8472 90 91, 8470, 8471, 8473 21 00, 8473 29 00, 8473 50 00, 8473 30 00, 8472 90 30 (ATM), 8473 40 (printed circuit assemblies for ATM),
<b>Chapter 85</b>	8517, 8519 50 00, 8523, recorded media for reproducing phenomena other than sound or image of heading 8523, 8531 20, 8532, 8533, 8534 00 00, 8541, parts of electronic integrated circuits and micro-assemblies of tariff item 8523 52 or 8542 90 00, 8543 59 10, 8543 70 11, 8517 69 50, 8517 69 60, 8517 69 70, 8517 69 90, 8517 70 10, 8517 62 (units of automatic data processing machine), 8528 42 00, 8528 52 00 or 8528 62 00, Parts and accessories (heading 8529) of goods falling under tariff items 8528 42 00, 8528 52 00 or 8528 62 00, 8504 40 (Static converters for automatic data processing machine), 8504 50 (other inductors for power supply to automatic data processing, printed circuit assemblies for 8518 90, 8522 90, 8538 90 (for goods of heading 8536), 8543 90 00, Electric conductor 8544 42, 8517 12 10 and 8517 12 90

**Following notifications have been rescinded:**

Sr. No.	Notification No.	Particulars
1	Notification 205/92- Cus dated May 19, 1992	Import against an advance customs clearance permit
2	Notification 73/99-Cus dated June 8, 1999	Exemption to Power Grid Corporation of India Limited on import of specified equipment's, required for setting up the Rihand-Sasaram-Biharshariff HVDC Link Back to Back Station Project
3	Notification 105/99-Cus dated August 10, 1999	Concessional rate of duties on goods when imported from SAARC Countries under SAARC Preferential Trade Agreement, 1995
4	Notification 22/2003-Cus dated February 4, 2003	Exemption to paper money, woollen apparels etc. received as gift by Indian Red Cross
5	Notification 14/2004-Cus dated January 8, 2004	Exempt water supply projects for agricultural and industrial use
6	Notification 56/2006-Cus dated June 7, 2006	Exemption to primary products imported from Nepal from additional duty of Customs
7	Notification 22/2007-Cus dated March 1, 2007	Peak rates for preferential rates for Custom Duty
8	Notification 13/2010-Cus dated February 19, 2010	Exemption of Customs Duty on specified goods when imported into India for the purpose of organising the Common Wealth Games, 2010



## DIRECT TAX

### INCOME TAX RATES

#### For individuals, HUF, AOP, BOI

No changes proposed in the slabs of personal tax rate. Accordingly, the rate of tax as applicable for AY 2021-22 is as under:

Income (INR)	Existing and Proposed Rates (%)		
	Individuals (Age < 60 years) and HUF, BOI, AOP	Individual senior citizens (Age > 60 years < 80 years)	Individual super senior citizens (Age > 80 years)
0 – 2,50,000	NIL	NIL	NIL
250,001 – 300,000	5	NIL	NIL
300,001 – 500,000	5	5	NIL
500,001 – 1,000,000	20	20	20
1,000,001 and above	30	30	30

An alternative conditional personal income-tax regime has been proposed. This would be available as an option to the above existing tax regime. The rate of tax applicable under the proposed regime are as under:

Income (INR)	Proposed Rates (%)
	Individuals and HUF
0 - 250,000	NIL
250,001 - 500,000	5
500,001 - 750,000	10
750,001 - 1,000,000	15
1,000,001 - 1,250,000	20
1,250,001 – 1,500,000	25
1,500,001 and above	30

#### Rebate, Surcharge & Cess

Sr. No.	Particulars	Existing & Proposed
1	Rebate	<ul style="list-style-type: none"> <li>INR 12,500 – If total income does not exceed INR 500,000</li> </ul>
2	Surcharge (for income other than Capital Gains)	<ul style="list-style-type: none"> <li>10% - If total income &gt; INR 5 million but ≤ INR 10 million</li> <li>15% - If total income &gt; INR 10 million, but ≤ INR 20 million</li> <li>25% - If total income &gt; INR 20 million, but ≤ INR 50 million</li> <li>37% - If total income &gt; INR 50 million</li> </ul>
3	Surcharge (for Capital Gains – i.e. Section 111A & 112A of the IT Act)	<ul style="list-style-type: none"> <li>10% - If total income &gt; INR 5 million but ≤ INR 10 million</li> <li>15% - If total income &gt; INR 10 million</li> </ul>
4	Cess - Health and Education cess	<ul style="list-style-type: none"> <li>4%</li> </ul>



5	AMT (including surcharge and cess)	<ul style="list-style-type: none"> <li>▪ 19.24% - If adjusted total income &gt; INR 2 million, but ≤ INR 5 million</li> <li>▪ 21.16% - If adjusted total income &gt; INR 5 million, but ≤ INR 10 million</li> <li>▪ 22.13% - If adjusted total income &gt; INR 10 million, but ≤ INR 20 million</li> <li>▪ 24.05% - If adjusted total income &gt; INR 20 million, but ≤ INR 50 million</li> <li>▪ 26.36% - If adjusted total income &gt; INR 50 million</li> </ul>
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Below is a comparative analysis of these alternative regimes:

Particulars	Existing	Proposed	Existing	Proposed
	Total Income > INR 1 million	Total Income > INR 1 million	Total Income > INR 1.5 million	Total Income > INR 1.5 million
Total Income (assumed)	1,000,000	1,000,000	2,500,000	2,500,000
Deduction under Section 80C	(1,50,000)	-	(1,50,000)	-
Net total Income	8,50,000	1,000,000	23,50,000	2,500,000
Total Tax payable (as per slab rates)	82,500	75,000	5,17,500	4,87,500
Add: Health & Education Cess (@4%)	3,300	3,000	20,700	19,500
<b>Total tax payable</b>	<b>85,800</b>	<b>78,000</b>	<b>5,38,200</b>	<b>5,07,000</b>
<b>Effective tax rate (i.e. total tax payable/ total income)</b>	<b>8.58%</b>	<b>7.80%</b>	<b>21.53%</b>	<b>20.28%</b>

#### For Companies, Firms, LLP

Sr. No.	Description	Existing rates (%) (Including surcharge & Cess)			Proposed rates (%) (Including surcharge & Cess)		
		Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore
(A)	Domestic Companies						
1	Turnover or gross receipts in previous year 2017-18 ≤ INR 400 crore (base rate – 30%)	26.00	27.82	29.12	26.00	27.82	29.12

2	Covered under Section 115BA (base rate – 25%)	26.00	27.82	29.12	26.00	27.82	29.12
3	Covered under Section 115BAA (base rate – 22%)	25.17			25.17		
4	Covered under Section 115BAB (base rate – 15%)	17.16			17.16		
5	Any other Company having turnover or gross receipts in previous year 2017-18 > INR 400 crore	31.20	33.38	34.94	31.20	33.38	34.94
6	MAT under Section 115JB for companies other than that covered under Section 115BAA and 115BAB (Rate to be applied on book profits – base rate 15%)	15.60	16.69	17.47	15.60	16.69	17.47
7	BBT under Section 115QA (base rate - 20%)	23.30			23.30		
8	DDT under Section 115-O (without grossing up; base rate – 15%)	17.47			Nil		

(B)	Foreign Companies	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore
1	Regular tax (base rate – 40%)	41.60	42.43	43.68	41.60	42.43	43.68
(C)	Firms and LLP	Net income ≤ INR 1 crore	Net income > INR 1 crore	Net income ≤ INR 1 crore	Net income > INR 1 crore	Net income > INR 1 crore	Net income > INR 1 crore
1	Regular tax (base rate – 30%)	31.2	34.94	31.2	34.94	34.94	34.94
		Adjusted total income ≤ INR 1 crore	Adjusted total income > INR 1 crore	Adjusted total income ≤ INR 1 crore	Adjusted total income > INR 1 crore	Adjusted total income > INR 1 crore	Adjusted total income > INR 1 crore
2	AMT (base rate – 18.5%)	19.24	21.55	19.24	21.55	21.55	21.55

### Surcharge and Cess

Particulars	Existing & Proposed
Other domestic companies	<ul style="list-style-type: none"> <li>▪ NIL - If total income ≤ INR 1 crore</li> <li>▪ 7% - If total income &gt; INR 1 crore, but ≤ INR 10 crore</li> <li>▪ 12% - If total income &gt; INR 10 crore</li> </ul>
For Domestic companies covered under Section 115BAA and Section 115BAB of the IT Act	<ul style="list-style-type: none"> <li>▪ 10% - Irrespective of the amount of total income</li> </ul>
For Foreign companies	<ul style="list-style-type: none"> <li>▪ NIL - If total income ≤ INR 1 crore</li> <li>▪ 2% - If total income &gt; INR 1 crore, but ≤ INR 10 crore</li> <li>▪ 5% - If total income &gt; INR 10 crore</li> </ul>
For Firms and LLP	<ul style="list-style-type: none"> <li>▪ 12% - If total income &gt; INR 1 crore</li> </ul>
Cess - Health and Education cess	<ul style="list-style-type: none"> <li>▪ 4%</li> </ul>

### BASIS OF CHARGE

#### Amendment to Section 2(13A) – Definition of ‘business trust’ amended

- The definition of ‘business trust’ under Section 2(13A) is proposed to be amended to include trusts registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations and units of which are not listed on a recognised stock exchange.

- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

- 'Business trust' is presently defined to include trusts registered as InvITs or REITs whose units are listed on a recognised stock exchange. Vide recent amendments to the SEBI (Infrastructure Investment Trusts) Regulations, the mandatory listing requirement for InvITs was done away with.
- The proposed amendment is with a view to align the IT Act with the amended SEBI Regulations.

### Amendment to Section 6 of the IT Act

- Presently, as per Section 6(1) of the IT 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 FY; **OR**
  - Period of stay in India is 60 days or more during a FY **AND** 365 days or more during 4 previous FY immediately preceding the FY.
- Explanation 1 to Section 6(1) of the IT Act provides that if such individual is an Indian citizen or person of Indian origin, 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 IT Act to provide that an individual, being a citizen of India, shall be deemed to be resident in India in any FY, 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 April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

The amendment to Explanation 1 to Section 6(1) of the IT Act and insertion of clause (1A) in Section 6 of the IT Act shall curb the practices adopted by certain Indian citizens who arrange their affairs in such a manner that they are not liable to tax in any country or jurisdiction during a year leading to double non-taxation and revenue leakage.

One of the key conditions for Section 6(1A) to be attracted is that the Individual is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature. The Mumbai ITAT in the case of Bhagwan T. Shivlani (20 taxmann.com 821) has held that the expression "liable to tax" does not necessarily imply that person to be resident of contracting State should actually be liable to tax in that contracting State; it is enough if other contracting State has right to tax such person, whether or not such a right is exercised.

Therefore, even though no tax is payable in the other country or territory by such individual, it may still be possible to take a position that such Indian citizen will not be deemed to be resident in India.

- Presently, as per Section 6(6) of the IT Act, individuals and HUF are treated as R-NOR in India if such individual/manager of HUF -
  - Are non-resident in India in 9 FYs out of 10 FYs preceding the FY; **OR**
  - Has been in India for less than or equal to 729 days during 7 FYs preceding the FY.
- The above conditions are proposed to be replaced with a singular test of whether the individual/manager of HUF are non-resident in India in 7 out of 10 FYs preceding that FY.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

## Amendments to Section 9 for deferring SEP proposal

- Clause (a) of Explanation 1 to Section 9 provides that in case where a business connection is constituted in India, the income deemed to accrue or arise in India will be only such part of the income as is reasonably attributable to such business connection. Within this provision, a specific carve-out is proposed to be made for businesses having business connection in India on account of SEP.
- This amendment is proposed will take effect from the April 1, 2022 and will, accordingly, apply in relation to the assessment year 2022-2023 and subsequent assessment years.
- Explanation 2A, which stipulates the meaning of SEP is proposed to omit the said Explanation with effect from the April 1, 2021 and will, accordingly, be omitted from the assessment year 2021-2022 and subsequent assessment years.
- A new Explanation 2A is proposed to replace the present Explanation 2A, while making the following changes to the thresholds prescribed therein:

Thresholds	Present position	Proposed amendment
Based on local revenue	This threshold covered transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds prescribed amounts.	The language of this threshold is proposed to be amended to include transaction in respect of any goods, services or property carried out by a non-resident <b>with any person</b> in India including 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 prescribed amounts.
Based on number of users	The solicitation of user threshold is at present limited to interactions with the prescribed numbers of users in India through digital means.	This threshold is proposed to be extended, by omitting the words “digital means”, to include all interactions with users in India, either through digital means or otherwise.

### ELP COMMENTS:

The discussions on the provisions relating to SEP are still ongoing in G20-OECD BEPS project and it is expected that a global consensus would be reached by December, 2020. Accordingly, it has been proposed that the applicability of the SEP provisions under the IT Act be deferred to assessment year 2022-23. Thus, the current SEP provisions is proposed to be omitted from assessment year 2021-22 and the new provisions are proposed to take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

## Amendment to Section 9A

- Presently, Section 9A of IT Act provides that in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager shall not constitute business connection in India of the said fund.
- Further, some of the condition for eligibility of the fund are as under:
  - The aggregate participation or investment in the fund by the persons resident in India does not exceed 5% of the corpus of the fund;
  - The monthly average of the corpus of the fund shall not be less than INR 100 crore except where the fund has been established in the FY in which case the corpus of the fund shall not be less than INR 100 crore at the end

of a period of six months from the last day of the month of its establishment or at the end of such FY, whichever is later

- The following amendments are proposed to the above conditions:
  - For the purposes of calculation of the aggregate participation or investment in the fund, any contribution made by the eligible fund manager during the first three years of operation of the fund, not exceeding twenty-five crore rupees, shall not be taken into account;
  - The monthly average corpus of the fund shall be fulfilled within twelve months from the last day of the month of its establishment.

#### ELP COMMENTS:

This amendment is welcome a measure, considering the founders put a substantial part of his net worth in the fund as “skin in the game” to create reputation to attract investment.

## INCOME NOT FORMING PART OF TOTAL INCOME

### Section 10(45) of the IT Act proposed to be omitted

- Exemption to notified allowance or perquisite paid to the serving/retired chairman or members of Union Public Service Commission is proposed to be withdrawn.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

### Section 10(23FE) of the IT Act proposed to be inserted

- In order to promote investment of sovereign wealth fund, including the wholly owned subsidiary of Abu Dhabi Investment Authority, an exemption is proposed to be provided to 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) of the IT Act or such other business as may be notified.
- In order to be eligible for exemption, the investment is required to be made on or before March 31, 2024 and is required to be held for at least three years.
- For the purpose of this exemption, “specified person” is defined to mean
  - A wholly owned subsidiary of the Abu Dhabi Investment Authority, which is a resident of the United Arab Emirates and makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates
  - A sovereign wealth fund which is wholly owned and controlled by Government of a foreign country and meets other prescribed conditions.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

The above proposal will promote investment in infrastructure sector from sovereign wealth funds.

It may be noted that Abu Dhabi Investment Authority has already signed an investment agreement with National Investment and Infrastructure Fund committing to invest USD 1 billion in India.

The above proposal will provide an exemption to such sovereign wealth funds earning dividend, interest or long-term capital gains from investments made in infrastructure sector in India.

### Proposed insertion of Section 10(48C)

- It is proposed to exempt 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 the directions of the Central Government in this behalf.
- 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 is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

## SALARY INCOME

### Amendment to Section 17 of the IT Act

- It is proposed to insert clause (vii) under Section 17(2) of IT Act to provide an aggregate upper threshold limit with respect to any contribution made to the account of the employee by the employer in relation to a recognised provident fund, national pension scheme and approved superannuation fund. It is proposed that the aggregate of the amounts in relation to the above funds to the extent it exceeds INR 7.5 lakhs in a FY shall be regarded as a perquisite under Section 17(2) of the IT Act.
- Clause (viia) is proposed to be inserted in Section 17(2) of the IT Act to provide that the 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 referred to in sub-clause (vii) to the extent it relates to the employer's contribution which is included in total income shall be regarded as a perquisite under Section 17(2) of the IT Act.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

Currently, the threshold limit has been provided with respect to contributions made to recognized provident fund, approved superannuation fund, national pension scheme etc, on standalone basis. Any contribution over and above such individual threshold is taxable. However, there is no upper threshold limit which has been suggested on an aggregate basis. With the proposed amendment, the aggregate threshold has also been introduced.

## INCOME FROM BUSINESS AND PROFESSION

### Amendment to Section 35AD of the IT Act

- Section 35AD of the IT Act is proposed to be amended to make the deduction optional in the hands of the assessee.
- This amendment is proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

#### ELP COMMENTS:

Typically, the deduction provisions do not permit assessee to opt out of prescribed deductions and are mandatory in nature. The concessional corporate tax rate provision under Section 115BAA and Section 115BAB were introduced provided no deduction was claimed by the assessee. However, a legal interpretation had arisen wherein even though deduction under Section 35AD was not claimed by the assessee, the concessional rate of corporate tax could have been denied. This amendment now clarifies the position.

### Amendment to Section 43 of the IT Act

- Section 43(5) of the IT Act is proposed to be amended to replace the words “recognised association” wherever they occur, with the words “recognised stock exchange”. The recognised stock exchange would mean same as that referred to in Securities Contracts (Regulation) Act, 1956 and fulfils such conditions as may be prescribed.

### Amendment to Section 44AB of the IT Act – rationalization of the audit provisions

- It is proposed to increase the threshold limit for audit of a person carrying on business from INR 10,000,000 to INR 50,000,000 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, the term “specified date” means the due date for furnishing of the return of income under Section 139(1).
- It is also proposed to amend the definition of “specified date” for the purpose of Section 44AB of the IT Act shall mean the date one month prior to the due date for furnishing of the return of income under Section 139(1).
- On account of the proposed amendment to the due date of for filing of the audit report, corresponding amendments have been proposed to Section 10, Section 10A, Section 12A, Section 32AB, 33AB, 33ABA, 35D, 35E, 44DA, 50B, 80-IA, 80-IB, 80JJAA, 92F, 115JB, 115JC and 115VM, which mandates filing of the audit report in the respective forms.
- Section 139 of the IT Act, which deals with the filing of the return of income, is also proposed to be amended to change the due date from September 30 of the assessment year to October 31 of the assessment year. Further, the same due date is at present also 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 April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.
- Corresponding amendments have also been proposed to tax withholding provisions such as Section 194A, 194C, 194H, 194I, 194J and 206C as these provisions fasten liability of withholding on certain categories of person, if the gross receipts of business or profession exceeds certain thresholds under Section 44AB of the IT Act. These amendments are proposed to take effect from April 1, 2020.

#### ELP COMMENTS:

The above proposal would reduce compliance burden on qualifying small & medium enterprises and also promote digital economy.

## CAPITAL ASSETS & CAPITAL GAINS

### Amendment to Section 43CA, 50C and 56 of the IT Act – increase in safe harbour limit

- Section 43CA, 50C, 56 are proposed to be amended to increase the safe harbour limit from 105% to 110%.
- Section 43CA was introduced to deem the stamp duty value as consideration of assets, being land or building, other than capital assets. Section 50C was introduced to deem the stamp duty value as full value of consideration in case of transfer of a capital asset being land or building while computing taxable income in the hands of the seller. 56(2)(x) was introduced to deem stamp duty value in case of immovable property, while computing taxable income in the hands of the buyer.

#### ELP COMMENTS:

Increase in the safe harbor limit is a welcome relief in case of real estate transactions.



### Cost of acquisition, period of holding in respect of segregated portfolios

- Sub-section 42A of Section 2 of the IT Act is proposed to be amended to provide that in case of capital assets being unit(s) in a segregated portfolio, the period for which the original unit(s) in the main portfolio were held by the assessee shall be included for determination of period of holding of the said capital asset.
- A new sub-section (2AG) is proposed to be inserted under Section 49 to provide that the cost of acquisition of unit(s) in segregated portfolio shall be calculated as: Cost of acquisition of units in Total Portfolio x [NAV of assets transferred to the segregated portfolio] / [NAV of total portfolio immediately before the segregation]. Further, the cost of acquisition of original units in the main portfolio 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 expressions “main portfolio”, “segregated portfolio” and “total portfolio” shall have the meaning assigned to them in the SEBI circular dated December 28, 2018.
- This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

#### ELP COMMENTS:

SEBI has, *vide* circular SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018, permitted creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes. As per the SEBI circular, all the existing unit holders in the affected scheme as on the day of the credit event shall be allotted equal number of units in the segregated portfolio as held in the main portfolio. On segregation, the unit holders come to hold same number of units in two schemes –the main scheme and segregated scheme.

The proposed amendment seeks to rationalize the provisions of Section 49 and clause (42A) of Section 2 of the IT Act to deal with capital gains in respect of segregated portfolios.

## INCOME FROM OTHER SOURCES

### Amendment to Section 55 of the IT Act

- A new proviso under Section 55 of the IT Act is proposed to be inserted to provide that in case of a capital asset, being land or building or both, 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.

## SET OFF OR CARRY FORWARDS AND SET OFF

### Proposed substitution of Section 72AA

- Section 72AA of the IT Act currently 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 under the relevant provisions of the Banking Regulation Act, 1949. The said Section is proposed to be amended so as extend the said benefit even to mergers pertaining to specified corresponding new banks as well as merger of public sector general insurance companies.
- Thus, the benefit is sought to be extended to a corresponding new bank, 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. Similarly, the benefit is also proposed to be extended to a government company, as defined under Section 2(45) of the Companies Act, 2013, which is 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.
- This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

## DEDUCTIONS

### Amendment to Section 80EEA of the IT Act

- Section 80EEA of the IT Act pertains to deduction in respect of interest on loan taken for residential house property (stamp duty value not exceeding INR 4,500,000) from any financial institution up to INR 150,000. Further, the said deduction is available for the loan sanctioned by the financial institution during the period beginning on April 1, 2019 and ending on March 31, 2020.
- It has been proposed to amend Section 80EEA of the IT Act to extend the deduction to loan sanctioned upto March 31, 2021.
- This amendment will take effect from the April 1, 2021, and accordingly would apply in relation to the AY 2021-2022 and thereafter.

#### ELP COMMENTS:

Section 80EEA of the IT Act aims to 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 March 31, 2021.

### Amendment to Section 80-IAC of the IT Act

- Section 80-IAC of the IT Act is proposed to be amended to provide that:
  - The deduction of an amount equal to 100% of the profits and gains derived from an eligible business 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 the eligible start-up is incorporated;
  - The total turnover of its business should not exceed one hundred crore rupees in the previous year relevant to the assessment year for which deduction under Section 80-IAC of the IT Act is claimed.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

Section 80-IAC of the IT Act was introduced vide Finance Act, 2016, for promoting and boosting “start-up” ecosystem in India. Accordingly, tax holiday benefit was provided to eligible “start-up” for 3 years out of 7 years having total turnover less than INR 25 Crores.

Subsequently, DPIIT vide Notification No. G.S.R. 127(E) dated 19.02.2019 has widened the definition of eligible “start-up” which considers an entity as “start-up” for a period of 10 years and has a turnover upto INR 100 Crores.

The above proposal is a welcome move and brings in much needed parity with the DPIIT notification.

### Amendment to Section 80-IBA of the IT Act

- Section 80-IBA of the IT Act provides tax holiday benefit of 100% of the profits and gains derived from affordable housing projects; fulfilling certain conditions including that the project is approved by the competent authority during the period from June 1, 2016 to March 31, 2020.
- It is proposed to extend the period of approval of the project by the competent authority to March 31, 2021.
- This amendment will take effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

**ELP COMMENTS:**

In order to give an impetus to the 'Housing for All by 2022' mission, tax holiday benefit under Section 80-IBA of the IT Act available to eligible "affordable housing projects" has been extended to the projects obtaining approval till March 31, 2021.

**SPECIAL PROVISIONS****Aligning purpose of entering DTAA's with MLI - Amendment to Section 90 and 90A of the IT Act**

- Section 90 of the IT Act empowers the Central Government to enter DTAA's with foreign countries or specified territories. Clause (b) of sub-section (1) of Section 90 provides that DTAA's can be entered into *inter-alia* for avoidance of double taxation of income under the IT Act and corresponding law in force in the foreign country or specified territory.
- The said clause (b) is proposed to be amended by inserting that the purpose of avoidance of double taxation shall 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 the said agreement for the indirect benefit of residents of any other country or territory).
- Similar amendment is proposed under Section 90A which contains provisions analogous to Section 90 for an agreement between a specified association in India and any specified association in specified territory outside India for avoidance of double taxation etc.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

**ELP COMMENTS:**

India has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (commonly referred to as MLI), which is an outcome of the G20-OCED's BEPS project. 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 provisions of MLI will be applicable to India's DTAA's from FY 2020-21 onwards. 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 DTAA's with the purpose of MLI. The said language is suggested to be included in the preamble of a covered tax agreement.

**Filing of statement of donation by donee to cross-check claim**

- As per the provisions of IT Act, a person, on making donation or certain sum to an exempt entity, gets deduction in the computation of his income. Currently, there is no reporting obligation by the exempt entity receiving donation or certain 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 deduction by the assessee. The same is akin to the provisions relating to the tax collection/ deduction at source existing under the provisions of the IT Act. Accordingly, it is proposed that the entities receiving donation/ certain sum would furnish a statement in respect thereof, and would issue a certificate to the donor/ payer and the claim for deduction to the donor/ payer to be allowed on that basis.
- Accordingly, the following amendments are proposed to the provisions of the IT Act:
  - Deduction under Section 80G/ 80GGA of the IT Act to a donor shall be allowed only if a statement is furnished by the donee 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 IT Act, deduction of cash donation under Section 80GGA shall be restricted to INR 2,000 only.
- These amendments are proposed to come into effect from June 1, 2020.

### Rationalisation of registration/ approval process

- The following amendments are proposed for rationalisation of registration and approval process of the exempt entities under the provisions of the IT Act:
  - Exemption under Section 10(46) of the IT Act shall be allowed to an entity even if it is registered under Section 12AA of the IT Act 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 for deduction under Section 10(46) of the IT Act from the date on which the registration becomes operative. The condition of inoperability is with the purported objective that only one mode of exemption is made available. Further, the switching may be allowed only once so that such switching is not done routinely, and it remains efficient to be administered.
  - An entity approved, registered or notified under Section 10(23C), Section 12AA or Section 35 of the IT 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, to be calculated from April 1, 2020. Similarly, an entity already approved under Section 80G of the IT Act shall also be required to apply for approval and on doing so, the approval, registration or notification in respect of the said entity shall be valid for a period not exceeding five years at one time. These proposed amendments are with the purported objective that the approval or registration or notification for exemption should be for a limited period which would act as a check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption.
  - An entity making fresh application for approval under Section 10(23C) of the IT Act or for registration under Section 12AA of the IT Act or 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.
  - 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. This is with the stated objective of standardising the process of one-to-one matching between what is received by the donee and what is claimed as deduction by the donor.
  - Application for approval under Section 80G of the IT Act shall be made to Principal Commissioner or Commissioner.
- These amendments are proposed to come into effect from June 1, 2020.

### Amendment relating to Dividend Distribution Tax (Section 115-O, 115BBDA)

- Section 115-O of the IT Act 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 dividend shall be charged to additional income-tax, known as DDT. The tax so paid by the company 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) of the IT Act.
- Further, Section 115BBDA of the IT act provides for taxing dividend income in excess of INR 1 million in the hands of shareholder at 10% to only dividend declared, distributed or paid by a domestic company on or before the March 31, 2020.
- The above provisions of Section 115-O of the IT Act pertaining to levy of DDT are proposed to be abolished for dividend declared, distributed or paid on or after April 1, 2020. This amendment will take effect from April 1, 2021 and will, accordingly, apply in relation to the AY 2021-2022 and subsequent AYs. Similarly, Section 115BBDA are proposed to be amended to limit its application only on dividend declared, distributed or paid on or before March 31, 2020.

- Additionally, following Sections are proposed to be consequentially amended -
  - Dividend declared, distributed or paid by a domestic company is proposed to now be subject to deduction of tax at source under Section 194 of the IT Act. Such tax shall be deducted at the rate of 10% on dividend falling within the ambit of Section 2(22) of the IT Act;
  - Further, Section 195 of the IT Act is also proposed to be amended in order to delete the exemption provided to dividend referred to in Section 115-O
  - Section 196C: Dividend distributed under Section 115-O, which was excluded from applicability of TDS, is now proposed to be included
  - Section 196D: Dividend distributed under Section 115-O, which was excluded from applicability of TDS, is now proposed to be included
  - Section 10(34) and Section 10(35) has been proposed to be amended to provide that exemption under said Sections should not be available on income by way of dividend received on or after April 1, 2020
  - Section 10(23FC) is proposed to be amended to exempt dividend received by business trust from a special purpose vehicle
  - Section 10(23FD) is proposed to be amended to exclude exemption to dividend income received by a unit holder from business trust, so that dividend income is taxable in the hand of unit holder of the business trust
  - Section 115UA(3) is proposed to be amended to exclude distributed income of the nature as referred to in clause (23FC) or clause (23FCA) of Section 10 and the same shall be deemed to be income of the unit holder and shall be charged to tax as income of the previous year. Thus dividend income distributed by a special purpose vehicle to business trust would be taxed in the hands of unit holder

#### ELP COMMENTS:

Ever since introduction of DDT vide Finance Act 1997, DDT provisions have witnessed multiple revisions and amendments, including rate changes (from the 10% introductory rate to the present rate of 15%) and shifting of burden from domestic company to shareholder and vice versa. In terms of the Budget Speech, the abolition of DDT is driven by dual objective of lowering tax burden for select class of shareholders as well as availability of credit to foreign investors, which is at present unavailable on account of the burden of discharging DDT being on the domestic company. Apart from being taxed to DDT in India, such dividend income is also taxable in the foreign shareholders place of residence (depending upon its local tax laws).

The proposed amendment is likely to benefit the dividend received by foreign shareholders as it would be eligible for respective tax treaty benefits, which is currently not available. In other words, unlike the present regime, such dividend income will be offered to tax only once, consequently leading to a substantial reduction in the tax costs which is at present faced by foreign shareholders investing in India. From another perspective, the present amendment will also lead to reduction in litigation under Section 14A of the IT Act.

OECD, in its report of Corporate Tax Statistics 2019 First Edition had earmarked India as the jurisdiction with the highest statutory tax rate of 48.3%, which included DDT. Now with abolition of DDT, effective corporate tax rate could be as low as 15% (excluding surcharge and cess). This would go a long way in changing the global perception of Indian tax laws and attracting higher foreign investments in India. However, while the abolition of DDT in the hands of domestic company would be a welcome step, similar facilitation could have been extended to 'buyback tax' which will continue to be taxable in the hands of the domestic company.

#### Insertion of new Section 80M and Amendment to Section 115BAA and Section 115BAB

- Finance Bill 2020 proposes to insert a new Section 80M in the IT Act to provide that where the gross total income of a domestic company in any FY includes any income by way of dividend from any other domestic company, such domestic company shall be allowed a deduction of dividend received from such other domestic company as does not exceed the amount of dividend distributed by such first mentioned domestic company one month before the due date of filing return of income under Section 139(1) of the IT Act.

The proposed Section 80M further provides that where any such deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed in any FY, no deduction shall be allowed in respect of such amount in any other FY.

- Additionally, Section 115BAA and Section 115BAB are proposed to be amended to provide deduction under proposed Section 80M.
- This amendment will take effect from April 1, 2021 and will, accordingly, apply in relation to the AY 2021-2022 and subsequent assessment years.

#### ELP COMMENTS:

This amendment seeks to provide relief from cascading effect in respect of inter-corporate dividend and is similar to the provisions of Section 80M that existed before its removal by the Finance Act, 2003.

### Amendment to Section 115A, 115AC, 115AD

- Following provisions of the IT Act are proposed to be amended to also cover within its ambit dividend referred to in Section 115-O of the IT Act. Earlier, dividend referred to in Section 115-O were omitted from said Sections. Effective from AY 2021-2022, all dividend income is taxed in the hands of non-resident (not being a company) or a foreign company in terms of said Sections.
  - Section 115A: Tax on dividend in the hands of non-resident or foreign company
  - Section 115AC: Tax on income from bonds or Global Depository Receipts purchased in foreign currency for non-residents
  - Section 115ACA: Section 115AC: Tax on income from bonds or Global Depository Receipts purchased in foreign currency for individual resident being an employee of Indian Company engaged in specified knowledge based industry
  - Section 115AD: Tax on income of foreign institutional investors from securities or capital gains arising from their transfer
  - Section 115C: Definition of ‘investment income’ to also include dividend referred in Section 115-O
- Further, if the total income of the non-resident consists only of income in the nature of dividend or interest, then exemption from furnishing return of income under Section 139(1) was available. Now such exemption is also available if total income consists of royalty or fee for technical services. This relaxation is available subject to the condition that tax has been deducted as per the provisions of Part B of Chapter XVII, at rates which are not less than the rate specified under clause Section 115A.
- This amendment is proposed to be made effective April 1, 2021 and will, accordingly, apply in relation to the AY 2021-2022 and subsequent AY.

### Amendment to Section 115R

- Similar to Section 115O, Section 115R pertaining to tax on distributed income to unit holders is proposed to be amended to limit its applicability on any amount distributed up to March 31, 2020.
- Consequential amendment has been proposed to Section 196A to provide that income distributed to unit holder, which was excluded from applicability of TDS, is now included. Further, Section 196A has been extended to cover payment in any mode. Further, it is also proposed to substitute “of the Unit Trust of India” with “from the specified company defined in Explanation to clause (35) of section 10”.

### Amendment to Section 196C and Section 196D

- Section 196C pertains to TDS on income by way of interest or dividend in respect of bonds or Global Depository Receipts and Section 196D pertain to TDS on income in respect of securities referred to in clause (a) of sub-section

(1) of section 115AD, not being income by way of interest referred to in section 194LD. The said sections have been amended to also include dividend referred to under Section 115-O within its ambit. Further, the said Sections has also been proposed to be amended to allow credit of income or payment thereof by any mode.

## PROVISIONS IN RELATION TO ADMINISTRATION AND ASSESSMENT

### Taxpayer's Charter

#### Insertion of Section 119A

- A new Section 119A is proposed to be inserted to empower the CBDT to adopt and declare a Taxpayer's Charter and issue orders, instructions, directions or guidelines to other income-tax authorities for the administration of such Charter.
- This amendment is proposed to come into effect from 1<sup>st</sup> April, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

*ELP Comment: In past also, the CBDT has put up the Citizen's Charter of the income tax department, which set out inter alia the timelines which ought to be adhered to by the income tax department in relation to key services such as issue of refunds, issue of tax clearance certificates etc. While such Citizen's Charter had no legal enforceability per se, the proposed amendment would perhaps result in CBDT making these objectives and timelines mandatory. One will have to wait for the final Taxpayer's Charter to be declared to understand the exact guidelines sought to be stipulated and the extent of enforceability of such guidelines.*

### Check on Survey Operations

#### Amendment to Section 133A

- The proviso after sub-section (6) of Section 133A is proposed to be substituted with a new proviso, with an intention to provide further checks on survey operations carried out by income-tax authorities. The effect of the proposed amendment is summarized as under:

Parameter	Present position	Proposed amendment
Upon receipt of information from prescribed authorities	To undertake surveys, Assistant Directors, Deputy Directors, Assessing Officers, Tax Recovery Officer or Inspectors of Income-tax were merely required to obtain approval of Joint Director or Joint Commissioner.	Assistant Directors, Deputy Directors, Assessing Officers, Tax Recovery Officer or Inspectors of Income-tax can undertake surveys upon satisfaction of two conditions, viz. (a) Receipt of information from prescribed authorities, <b>and</b> (b) Approval from the Joint Director or Joint Commissioner
Without receipt of information from prescribed authorities	<b>There was no requirement of receiving any information from prescribed authorities.</b>	Surveys without receipt of information from prescribed authorities, can be undertaken by Joint Directors, Assistant Directors, Deputy Directors, Assessing Officers, Tax Recovery Officer or Inspectors of Income-tax only upon obtaining a specific approval from the Director or Commissioner

- This amendment is proposed to come into effect from 1<sup>st</sup> April, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

*ELP Comment: This proposal is aligned towards the Government's recent moves, such as e-assessment and proposed e-appeal, to minimize the interface between the income-tax authorities and the assessee.*

## Extension of due date to file return of income

### Amendment to 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<sup>th</sup> September of the assessment year, is proposed to be changed to 31<sup>st</sup> October of the assessment year.
- 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<sup>st</sup> April, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

## Amendment in relation to verification of return of income

### Amendment to Section 140

- Clause (c) and (cd) Section 140 is proposed to be amended to provide that to enable any other person, as may be prescribed by the Board to verify the return of income in the cases of a company and a limited liability partnership.
- These amendments are proposed to come into effect from 1<sup>st</sup> April, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

*ELP Comment: At present, a return of income can be verified only by specified personnel such as a Managing Director, or in his absence any director of a company or in designated partner, or in his absence any partner of an LLP. The proposed amendment can thus be seen as a facilitative measure to allow other persons to also verify the return of income.*

## Modification of E-assessment Scheme

### Amendment to Section 143

- Sub-section (3A) of Section 143 which was inserted in the last budget, provides that the Central Government may notify a scheme for the purposes of making assessment under sub-section (3) of section 143 so as to impart greater efficiency, transparency and accountability by certain means specified therein. Accordingly, E-assessment Scheme, 2019 was notified last year under the said sub-section.
- It is proposed to expand the scope of the said sub-section to include the reference of section 144 of the Act relating to best judgement assessment in the said sub-section.
- It is also proposed to provide that Central Government may issue any direction under sub-section (3B) of the Section 143, in relation to non-applicability of any provisions of the IT Act relating to assessment to the E-assessment Scheme by March 31, 2022. At present, such direction can be issued by March 31, 2020.
- These amendments are proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

## Amendment in DRP

### Amendment to Section 144C

- Section 144C of the IT Act provides that in case of certain eligible assessee, viz., foreign companies and any person in whose case transfer pricing adjustments have been made under sub-section (3) of section 92CA of the IT Act, the 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.
- It is proposed that under sub-section (1) of Section 144C, the words “in the income or loss returned” is be omitted. This amendment is proposed 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;



- It is further proposed to expand the scope of the said section by defining eligible assessee to include a non-resident, not being a company.

*ELP Comment: The proposed amendment would therefore allow for reference to DRP even in situations where the return of income has not been filed. Further, while at present, “eligible assessee” includes a foreign company and it is now proposed to extend to even cover other non-resident persons.*

## NEW TAX REGIMES

- In line with the recently introduced income-tax regime for corporates under Section 115BAA and Section 115BAB of the IT Act, it has been proposed to provide a similar option to individuals and HUFs under Section 115BAC of the IT Act and resident co-operative societies under Section 115BAD of the IT Act.

### Section 115BAC – Incentives to Individuals and HUF

- The rate of tax applicable under the proposed regime are as under:

Income (INR)	Proposed Rates (%)
0 - 250,000	NIL
250,001 - 500,000	5
500,001 - 750,000	10
750,001 - 1,000,000	15
1,000,001 - 1,250,000	20
1,250,001 – 1,500,000	25
1,500,001 and above	30

- The key mechanics of the proposed regime are as under:
  - The proposed regime is applicable only to Individuals and HUF;
  - Individuals and HUFs opting for the new regime will not be chargeable to AMT under Section 115JC of the IT Act;
  - Where the total income of such Individuals and HUFs does not include business income, the option under the proposed regime will have to be exercised every year while filing the return of income;
  - Where the total income of such Individuals and HUFs includes business income, the option once exercised, shall be applicable for every year thereafter;
  - The said tax regime will be subject to the below mentioned exemptions and deductions under the IT Act:

Exemptions and deductions not allowable	Exemptions and deductions allowable
Leave travel concession under Section 10(5)	Deduction under Section 80CCD(2) (i.e. employer contribution on account of employee in notified pension scheme), Section 80JJAA (i.e. for new employment)
House rent allowance under Section 10(13A)	Transport allowance granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty
Certain allowance under Section 10(14)	Conveyance allowance granted to meet the expenditure on conveyance in performance of duties of an office
Allowances to MPs/MLAs under Section 10(17)	Any allowance granted to meet the cost of travel on tour or on transfer
Allowance for income of minor under Section 10(32)	Daily allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty

Exemption for SEZ unit under Section 10AA	Deduction under Section 80LA (provided such Individual or HUF has a Unit in IFSC subject to fulfilment of the conditions contained in that Section)
Standard deduction, deduction for entertainment allowance and employment/professional tax under Section 16	
Interest under Section 24 in respect of self-occupied or vacant property referred to in Section 23(2) (Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law)	
Additional depreciation under Section 32(1)(iia)	
Deductions under section 32AD, 33AB, 33ABA	
Various deduction for donation for or expenditure on scientific research contained under Section 35(1)(ii), Section 35(1)(iia), Section 35(1)(iii), Section 35(2AA)	
Deduction under Section 35AD, Section 35CCC	
Deduction from family pension under Section 57(iia)	
Any deduction under chapter VIA (viz. Section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc)	

- The option under the new regime can be withdrawn only once by such Individual and HUF and where the option is withdrawn, such Individual and HUF will not be eligible for the new regime.
- The new regime will become invalid if any of the above conditions are not fulfilled.
- The proposed amendment will take effect from April 1, 2021 and will accordingly apply in relation to AY 2021-22 and subsequent AYs.

#### ELP COMMENTS:

India has been reeling with slowest GDP growth rates in over a decade. In order to provide an impetus to the economy, the Government made a bold move of reducing the corporate tax rates to 22% / 15% (for new manufacturing companies), which is lowest in the history of India. However, reduction in the corporate tax rates failed to give the desired effect of boosting up consumption.

Many economists reasoned that a reduction in personal tax rate is required for boosting consumption, as against corporate tax rate, as more money in the hands of consumer will directly result in increased demand.

Accordingly, the Finance Minister has proposed a new regime for individuals and HUFs providing an option to avail beneficial tax rate if they forgo availing certain deductions and exemptions. While the new taxation regime for corporates was lucrative (since it reduced effective tax rates by around 10%), the new regime for individuals and HUFs may not be that attractive. However, the scheme will provide much greater relief to some of the Individuals and HUFs taxpayers, not availing exemptions and deductions.

## Section 115BAD – Incentives to resident co-operative societies

It has been proposed to insert Section 115BAD under the IT Act to provide for an option to co-operative societies on similar lines with Section 115BAA of the IT Act. The key mechanics 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:
  - (i) Such co-operative societies will not be eligible to avail deduction under Section 10AA or Section 32(1)(iia) or Section 32AD or Section 33AB or Section 33ABA or Section 35(1)(ii), Section 35(1)(iia), Section 35(1)(iii), Section 35(2AA) or Section 35AD or Section 35CCC or any provisions of Chapter VI-A;
  - (ii) Such co-operative societies will not be eligible to set off of any loss carried forward or depreciation from any earlier AY, if such loss or depreciation is attributable to any of the aforesaid deductions;
  - (iii) Such co-operative societies will be eligible to claim depreciation under Section 32 (except as specified under Section 32(1)(iia) of the IT Act);
  - (iv) Such co-operative societies will have to opt for the new regime on or before filing the return of income for the year and such option once exercised, shall apply to subsequent AYs. Such option once exercised, cannot be withdrawn;
  - (v) Such co-operative societies will be eligible for deduction under Section 80LA (provided such co-operative societies has a Unit in IFSC subject to fulfilment of the conditions contained in that section);
- The surcharge applicable to such co-operative societies will be 10%, irrespective of the amount of total income;
- Co-operative societies opting for the new regime will not be chargeable to AMT under Section 115JC of the IT Act. Consequently, the provisions of Section 115JD (i.e. credit of AMT) will not be applicable to such co-operative societies.
- The proposed amendment will take effect from April 1, 2021 and will accordingly apply in relation to AY 2021-22 and subsequent AYs.

## PROCEDURAL ASPECTS

### Introduction of e-appeal scheme

- Section 250 of the IT Act which deals with procedure in appeal before the CIT(A) has been proposed to be amended to insert sub-section 6B, 6C and 6D as under:
  - Section 6B is proposed to be inserted to empower the Central Government to notify an e-appeal scheme for the purposes of disposal of appeals by CIT(A) so as to impart greater efficiency, transparency and accountability by:
    - Eliminating the interface between the CIT(A) and the Appellant in the course of appellate proceedings;
    - Optimizing utilisation of resources;
    - Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more CIT(A).
  - For the purpose of giving effect to the e-appeal scheme proposed under sub-section 6B, sub-section 6C empowers the Central Government to issue notifications to direct that any of the provisions of the IT Act relating to jurisdiction and procedure for disposal of appeals by CIT(A) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. The said direction ought to be issued on or before March 31, 2022.
  - Sub-section 6D provides that every notification issued under sub-section 6B or sub-section 6C be laid down before each House of the Parliament.
- The amendment to Section 250 of the IT Act will take effect from April 1, 2020.

**ELP COMMENTS:**

In line with the e-assessment scheme, the Government also desires to launch an e-appeal scheme for disposal of appeal. The said scheme is proposed to be launched with the objective of imparting greater efficiency, transparency and accountability while facilitating hassle-free proceedings. The said scheme aims at eliminating human interface to the extent feasible, optimum utilization of the resources through economies of scale and introduction of appellate system with dynamic jurisdiction.

**Appeal against order passed under Section 12AB of the IT Act**

- Section 253 of the IT Act which deals with appeals to the Appellate Tribunal is proposed to be amended to allow filing of appeal before the ITAT against any order passed by a Principal Commissioner or Commissioner under proposed Section 12AB of the IT Act which deals with procedure for fresh registration.
- The amendment shall be effective from April 01, 2020.

**Amendment to stay provisions by ITAT**

- Section 254 of the IT Act which deals with orders of ITAT is proposed to be amended to allow stay in any proceedings relating to the appeal filed under Section 253(1) of the IT Act for a period not exceeding 180 days 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 the IT Act, or furnishes security of equal amount in respect thereof.
- It is also proposed to amend the ITAT's powers for extension of stay to provide that no extension of stay shall be granted by ITAT where such appeal is not so disposed within the period of stay as specified in the order of stay unless the following conditions are fulfilled:
  - The assessee makes an application for stay,
  - Where the ITAT is satisfied that 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 the IT Act or furnish security of equal amount in respect thereof.
- The aggregate of the original and extended stay granted by ITAT cannot exceed 365 days.
- The amendment shall be effective from April 01, 2020.

**ELP COMMENTS:**

It is pertinent to note that Instruction No, 1914 dated December 2, 1993 as amended by CBDT Office Memorandum dated February 29, 2016 and further by CBDT Office Memorandum dated July 31, 2017 made it mandatory for the tax officer to grant stay of balance demand once the taxpayer pays 20% of the disputed demand, while the appeal is pending before the Commissioner of Income Tax (Appeals), unless the case falls in any of the specified categories.

The Hon'ble Supreme Court in the case of PCIT Vs. LG Electronics India Pvt. Ltd. (Civil Appeal No. 6850 of 2018) inter alia 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 recent amendment seeks to make pre-deposit of 20% of the disputed demand a pre-requisite to granting stay of the balance demand in all appeals pending before the ITAT without any exceptions.

This may cause hardships and increase the taxpayer's burden. The deposition of 20% is proposed to be a pre-requisite even in covered matters or other genuine cases where the Assessing Officer is willing to grant stay.

It would be interesting to note that the Hon'ble Supreme Court in case of Pepsi Foods (P.) Ltd [2017] (246 Taxman 223) dismissed SLP against High Court's ruling by observing that Tribunal has power to grant extension of stay beyond 365 days in deserving cases where delay in disposing of appeal is not attributable to assessee.

## WITHHOLDING TAX PROVISIONS

### Amendment to Sections 191 and 192 of the IT Act

- Sub-section (1C) is proposed to be inserted under Section 192 to provide that an eligible start-up paying perquisite in the nature of specified security or sweat equity shares as specified under Section 17(2)(vi) should deduct or pay tax 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.
- Section 191 (applicable for assessees who directly pay tax in case where tax is not deducted at source), Section 156 (for notice of demand) and Section 140A (for calculating self-assessment) are proposed to be amended on similar lines as aforesaid.
- These amendments are proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

#### ELP COMMENTS:

ESOPs form a significant component of the compensation for employees of start-ups. Taxation of ESOPs is spilt into two components:

- (i) Tax on perquisites as income from salary at the time of exercise; and
- (ii) Tax on income from capital gains at the time of sale.

Requirement to pay tax on perquisites at the time of exercising of option as mentioned above, leads to a cash flow issue at present, since the benefit accrues only in kind at that stage. The proposed amendments will ease this burden as the liability to deduct or pay tax will stand deferred.

### Amendment to Section 194A of the IT Act

- Scope of TDS under Section 194A is proposed to be extended to cover interest paid by large co-operative societies with:
  - (a) Total sales, gross receipts or turnover exceeding INR 500,000,000 in the financial year immediately prior to interest being credited or paid; and
  - (b) 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.
- The proposed amendment will apply to incomes referred to in clause (v) and clause (vii) of Section 194A(3) which cover:
  - Income credited or paid by a co-operative society (other than a co-operative bank) to a member or to income credited or paid by a co-operative society to any other co-operative society;
  - Income credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank and deposits (other than time deposits) with a co-operative bank other than a co-operative society or bank engaged in carrying on the business of banking.
- These amendments are proposed to come into effect from April 1, 2020.

### Amendment to Section 194J of the IT Act

- TDS rate under Section 194J in case of Fees for Technical Services (other than professional services) is proposed to be reduced from 10% to 2%.

- The TDS rate in other cases under Section 194J (royalty, professional fees, etc.) would remain the same at 10%.
- These amendments are proposed to come into effect from April 1, 2020.

**ELP COMMENTS:**

The proposed amendment seeks to reduce litigation on the issue of short deduction of tax where the assessee deducts tax at 1% or 2% under Section 194C by treating the payment as being made for carrying out work in pursuance of a contract, while tax officers claim that tax should have been deducted at 10% under Section 194J considering the payment as towards FTS.

**Proposed new Section 194-O of the IT Act**

- Section 194-O is proposed to be inserted to provide for TDS at 1% on payment of certain sums by e-commerce operators to e-commerce participant.
- TDS is to be deducted in following manner:
  - By e-commerce operator in respect of sale of goods or provision of service facilitated by it through its digital or electronic facility or platform;
  - At the time of credit of amount for 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;
  - On the gross amount of such sales or service or both;
  - 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;
  - 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 5,000,000 and such e-commerce participant has furnished his PAN or Aadhaar number to the e-commerce operator.
  - For transactions dealt with under this Section, there shall be no further TDS liability under Chapter XVII-B of the IT Act.
  - This provision 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
  - The following terms are proposed to be defined for the purposes of this Section 194-O:
    - “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.
  - Consequential amendments are proposed to be made in Section 197 (for lower TDS), Section 204 (to define person responsible for paying any sum) and Section 206AA (to provide for tax deduction at 5% in non-PAN/Aadhaar cases).
  - These amendments are proposed to come into effect from April 1, 2020.

**Amendment to Section 206C of the IT Act**

- Section 206C of the IT Act which provides for TCS on specified transactions is proposed to be amended 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 TCS at 5%, and in non-PAN / Aadhaar cases at 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 5%, and in non-PAN / Aadhaar cases at 10%;
- The said TCS provision shall not apply if the buyer is:
  - liable to TDS under any other provision of the IT Act and 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 Section 10(20) or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified therein.
- Further, it is proposed to levy TCS on sale of goods above specified limit, as under:
  - A seller on consideration received from a buyer in a previous year in excess of INR 5,000,000 at 0.1% and in non-PAN / Aadhaar cases at 1%
    - Only those sellers whose total sales, gross receipts or turnover from the business carried on by it exceed INR 100,000,000 during the financial year immediately preceding the financial year, shall be liable to collect such TCS
    - The Central Government may notify persons, subject to conditions contained in such notification, who shall not be liable to collect such TCS.
- These amendments are proposed to come into effect from April 1, 2020 and accordingly would apply in relation to AY 2020-21 and thereafter.

**ELP COMMENTS:**

The idea of the Budget 2020 was to promote ease of doing business in India and to simplify direct taxation. However, with this proposed amendment to 206C imposing TCS on foreign remittance, selling overseas tour packages and sale of goods in excess of INR 5,000,000 will only further increase compliance.

**Section 203AA of the IT Act proposed to be omitted**

- Section 203AA of the IT Act is proposed to be omitted. The said Section requires the person authorised to prepare and deliver to every person from whose income, tax has been deducted or in respect of whose income, tax has been paid, a statement / certificate within the prescribed time after the end of each financial year.
- This amendment is proposed to come into effect from June 1, 2020.

**Amendment to Section 204 of the IT Act**

- Section 204, which defines 'person responsible for paying tax' is proposed to be amended to include, in case of a person not resident in India, the person himself or any person authorized by such person or the agent of such person in India including any person treated as an agent under Section 163.
- This amendment is proposed to come into effect from April 1, 2020.

**PENALTIES****Penalty for false entry, etc. in books of account**

- Section 271AAD of the IT Act is proposed to be inserted so as to empower the assessing officer to impose penalty on any person, where there is a false entry or an omitted entry which is relevant for computation of total income in the books of accounts maintained by such person. The penalty so proposed would be equal to the aggregate amount of such false or omitted entry.

- The said Section also empowers levy of penalty on any other person, who causes the person referred above, in any manner, to make a false entry or omits or causes to omit any entry.
- This amendment is proposed to be effective from April 01, 2020.

#### Penalty for failure to furnish statements, etc.

- Section 271K of the IT Act is proposed to be inserted so as to prescribe a penalty ranging from ten thousand rupees to one lakh rupees 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 June 01, 2020.

#### ELP COMMENTS:

In line with the amendments proposed under Section 35 and Section 80G, penalty provisions have been inserted to ensure that the statement and donor certificates are furnished by the specified institutions within the stipulated time.

#### Amendment to Section 274

- Section 274 lays down the procedure for imposition of penalty in case of non-compliance with the provisions of IT Act.
- New sub-sections are proposed to be inserted to Section 274 so as to enable the Central Government to notify an e-penalty scheme for the purposes of imposing penalty in line with the E-assessment Scheme, 2019 and the proposed e-appeal scheme under Section 250 of the IT Act.
- For the purposes of giving effect to the proposed e-penalty scheme, it also empowers the Central Government to issue notifications to direct that any of the provisions of the IT Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.
- It also provides that that every such notification so issued be laid down before each House of the Parliament.
- The proposed amendment shall be effective from April 01, 2020.

#### ELP COMMENTS:

In line with the e-assessment scheme, the Government also desires to launch an e- scheme for imposition of penalty. The said scheme is proposed to be launched with the objective of imparting greater efficiency, transparency and accountability while facilitating hassle-free proceedings. The said scheme aims at elimination of human interface to the extent feasible, optimum utilization of the resources through economies of scale and introduction of appellate system with dynamic jurisdiction.

## OTHERS

#### Furnishing of Annual financial statement

- Section 285BB of the IT Act is proposed to be inserted regarding annual financial statement. Section 285BB 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.
- This amendment is proposed to take effect from June 1, 2020.



### Amendment to Section 288

- Section 288 of the IT Act which *inter alia* provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee, as its “authorized representative”, in connection with any proceedings under the IT Act is proposed to be amended to include any other person as may be prescribed to appear as an authorized representative.
- This amendment is proposed to take effect from April 1, 2020.

## TRANSFER PRICING

### Amendment to Section 92CB of the IT Act

- Section 92CB of the IT Act contains enabling provisions for safe harbour rules by virtue of which a taxpayer may opt for safe harbour in respect of international transactions and specified domestic transactions.
- Section 92CB of the IT Act is proposed to be amended to extend the scope of safe harbour rules to income referred in Section 9(1)(i) of the IT 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).

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

### Amendment to Section 92CC of the IT Act

- Section 92CC of the IT Act is proposed to be amended to extend the scope of APA to income referred in Section 9(1)(i) of the IT Act or specifying the manner in which the said income is to be determined as is reasonably attributed to the operations carried out in India by or on behalf of a non-resident person.
- With this proposal, the following consequential amendments are also proposed in Section 92CC of the IT Act:
  - The manner of such determination may include methods provided by the rules made under the IT Act with such adjustments or variations as may be necessary.
  - Income, in respect of which APA has been entered into, shall be determined in accordance with APA.
  - APA in respect of income referred in Section 9(1)(i) of the IT Act may provide for determining such income during any period not exceeding four previous years preceding the first of the previous year referred to in Section 92CC(4) of the IT Act.

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

#### ELP COMMENTS:

**Ambit of APA is proposed to be expanded to include in its scope, determination of income in India for assesseees having business connection in India. This is a welcome amendment as it gives the stakeholder an option to determine the income attributable to India, thereby ensuring certainty and reduction in future litigation.**

### Amendment to Section 92F of the IT Act

- The definition of “specified date” provided under Section 92F(iv) of the IT Act is proposed to be amended to provide that specified date means the date one month prior to the due date of furnishing the return of income under Section 139(1) of the IT Act for the relevant AY.

This amendment is proposed to come into effect from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

**ELP COMMENTS:**

Section 92E of the IT Act requires furnishing of report from an accountant (i.e. Form 3CEB) by persons entering into international transactions or specified domestic transaction before the specified date. The existing provisions of the Section 92F(iv) define “specified date” as due date of furnishing return of income prescribed under Section 139(1) of the IT Act. With the proposed amendment, the due date of furnishing Form 3CEB is proposed to be preponed to one month before the due date of filing return under Section 139(1) of the IT Act.

**Amendment to Section 94B of the IT Act**

- Section 94B(1) of the IT Act provides limitation to the extent of interest deduction permissible in computation of income under the head “Profits and gains of business or profession” to an Indian company or permanent establishment of a foreign company in India, being the borrower, in respect of debt issued by a non-resident associated enterprise.
- Section 94B of the IT Act is proposed to be amended to provide that the provisions of Section 94B(1) of the IT Act shall not apply to interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident person engaged in the business of banking.

This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

**ELP COMMENTS:**

Non-resident person engaged in banking business, in India, can now claim deduction of interest paid to head office without any cap.

## VIVAD SE VISHWAS SCHEME OR DIRECT TAX AMNESTY SCHEME

### GENERAL

- The FM has proposed a “Vivad Se Vishwas” scheme allowing taxpayers to achieve a fast track closure of pending appeals concerning direct taxes.
- While the detailed contours of the scheme have not yet been made public, it is noted that the taxpayers in whose case appeals are pending, at any level, would be eligible to avail benefits of the scheme.
- The scheme would allow a complete waiver of interest and penalty provided the taxpayer pays entire disputed tax amount by March 31, 2020. Further, the scheme would be available till June 30, 2020. However, if taxpayers opt for the scheme from April 1, 2020 onwards, higher amount will be required to be paid to avail the benefit.

### CURRENT PENDENCY

The public domain data suggests following current pendency, of direct tax appeals, at various levels:

Sr. No.	Authority/ Forum	Pendency (No. of Cases in '000)
1	Commissioner (Appeals)	~340
2	Income Tax Appellate Tribunal	~93
3	High Court	~44
4	Supreme Court	~6
	<b>Total</b>	<b>~483</b>

Several news reports suggest that the total amount involved in these litigations may be in excess of INR 10 Lakh crores.

It may be observed that the pendency is on the rise, especially in past few years. When compared vis-à-vis pendency position as at end of FY16, the matters in pending appeals presently are up by ~47%.

#### ELP COMMENTS:

Various schemes have been introduced under direct tax laws since 1951. Most of these, however, pertained to declaration of undisclosed income. A dispute resolution scheme is, thus, a welcome move.

The FM suggested that the Vivad Se Vishwas Scheme is likely to be similar to Sabka Vishwas (Legacy Dispute Resolution) Scheme legislated in 2019 *qua* indirect taxes (i.e. “indirect tax amnesty scheme”). However, it may be noted that, the key to success of the indirect tax amnesty scheme was due to (a) relief it granted vis-à-vis the disputed tax amount per se being as high as 70% in some cases; and (b) the time allowed to the taxpayers to consider & decide for the amnesty scheme. *Prima facie*, the Vivad Se Vishwas Scheme does not appear to be in consonance with the indirect tax amnesty scheme on either of these parameters.

The scheme details would also be awaited to decode the following:

Sr. No.	Issue	Likelihood
1	Foreclosure of eligible proceedings partially	Unlikely
2	Immunity from prosecution proceedings	Likely
3	Refund of excess paid amount, if any	Unlikely
4	Adjustment of pre-deposits/ under-protest payments towards final settlement under the scheme	Likely

It is expected that the clarity on aforesaid issues shall emerge in due course.

## CORPORATE LAWS

### COMPANIES ACT, 2013

It is proposed that the Government will continue its efforts to remove criminal liability under the Companies Act, 2013.

#### ELP COMMENTS:

The FM, in her speech said that, the Government is committed to promoting trust and self-governance as one of the key initiatives.

However, one of the constraints that we have seen is claims against the directors and other officers of companies under various laws, even though, such persons may not be directly responsible for the non-compliances.

Under the Companies Act, 2013, the Government has recently made various amendments to de-criminalize certain provisions.

The proposed move indicates that initiatives to decriminalize civil offences would continue not only for the Companies Act, 2013 but for other laws as well.

This is a good initiative to avoid unnecessary harassment and is in line to enhance ease of doing business.

### FOREIGN DIRECT INVESTMENT

Specified categories of Government securities which are available to domestic investors are now also proposed to be opened up fully for non-resident investors.

### EXTERNAL COMMERCIAL BORROWING

Steps to enable sourcing ECB and FDI in education sector will be initiated, to enhance inflow of finance in higher quality education, for attracting talented teachers, innovate and build better labs.

#### ELP COMMENTS:

In the current challenging times, the funding gaps and concerns of NBFCs and NPAs have created hurdles for growth in this sector. Both of the aforementioned initiatives with respect to FDI and ECB are a welcome initiative to attract foreign investment, in the education sector, which is in line with the Government's philosophy to attract talent globally.

### INVESTMENT CLEARANCE CELL

There has been a proposal to set up an Investment Clearance Cell through a portal that will provide "end to end" facilitation and support, including pre-investment advisory, information related to land banks and facilitate clearances at Centre and State level. This initiative is in line with continuous Government efforts on "ease of doing business" in India.

#### ELP COMMENTS:

The Government has recently taken various initiatives towards reducing compliances and ease of business. Make in India, Skill in India, Start-up India and similar other initiatives are put in place to attract foreign investment.

Hopefully, this initiative of investment clearance cell would facilitate and attract investment. We will have to wait for the legislation and steps that the Government would announce while implementing this move.

### INTELLECTUAL PROPERTY RIGHTS

A digital platform is proposed to be set up to facilitate seamless application and protection of intellectual property rights.

Further, a centre of Institute of Excellence, is proposed to be established that would work on the complexity and innovation in the field of intellectual property.

## COMMERCIAL AND OTHER DISPUTES

The Government has constituted various Tribunals and specialized bodies for speedy disposal of commercial and other disputes. In order to attract best talents and professional experts on such Tribunals and specialized bodies it is proposed that a robust mechanism is established for appointment including direct recruitment thereon.

### ELP COMMENTS:

Whilst, it is not unknown that one of the reasons for delayed proceedings and the heavy burden on Tribunals and other such forums, has been the lack of adequate number of judges.

The announcement provides hope and the mindset of the Government to work towards speedy disposal of cases.

## START UPS

Government proposes to provide early life funding, including a seed fund to support formation and development to early stage start-ups.

Certain tax benefits have been proposed to be introduced to ease burden of tax on ESOPs issued by start-ups. It is proposed that the tax will be paid at the earlier of 5 years, leaving the company or at the time of sale of the shares. Please refer to the Tax section for further details.

### ELP COMMENTS:

Employee Stock Ownership Plans (ESOPs) have been one of the significant tools in attracting and retaining talent for many Start-ups in India. However, one disadvantage was the potential tax outflows when the ESOPs are exercised. The deferment of tax is a great incentive in addressing this concern. Similarly, extending the tax allowance period from 7 years to 10 years also addresses the industry's concern that many of the Start-ups do not make adequate profits during their initial years of establishing themselves.

## NATIONAL LOGISTICS POLICY

It is proposed that a National Logistics Policy will soon be released with a view to create a single window e-logistics market and focus on generation of employment, skills and making MSMEs competitive.

## INDIAN STAMP ACT, 1899

### Amendment to the Indian Stamp Act

Pursuant to Finance Act, 2019, a new Section 9A of the Indian Stamp Act, 1899 was proposed to be inserted from April 1, 2020. This new provision levies stamp duty on instruments sold or issued through a depository participant. Section 9A of the Indian Stamp Act, 1899 is proposed to be further amended by which the duty chargeable under Section 9A will not be applicable to the instruments of transaction in stock exchanges and depositories established in any International Financial Services Centre set up under Section 18 of the Special Economic Zones Act, 2005.

## OTHER CIVIL OFFENCES

It is proposed that criminal liability of acts that are civil in nature in certain statutes, to be decriminalized.

## DATA CENTRE PARKS

With the intention to take advantage of the changing landscape and legal requirements centred around Data, Analytics, Fintech, and Internet of Things, and to enable Indian firms skilfully incorporate data in every step of their value chain, the Finance Minister has contemplated bringing out a policy to enable private sector players build data centre parks throughout India (Data Parks).

**ELP COMMENTS:**

The aforesaid announcement of providing a policy enabling the setup of Data Parks (DC Policy) is a step in the right direction. Given that the laws governing Personal Data as well as those governing Non-Personal Data will be introduced, there is a necessity of setting up Data Parks in India which will not only serve the purposes of national security but also for economic reasons, more particularly if India can become a hub for storing data. This may facilitate in creating a value chain for developing new technologies such as Artificial Intelligence, Internet of Things (IOT), Blockchain and Quantum Computing for use of public and social good as well as foreign exchange earnings as a service industry.

The framework under the DC Policy should prescribe standards that are robust, commensurate with international best practices. It will be important from the perspective of promoting private participation, that the DC Policy provides One Window Clearance for land acquisition, utilities as well as taxation benefits.

**MISCELLANEOUS****Amendments to FR Act to extend invoice financing to MSMEs**

It has been proposed that necessary amendments to the Factor Regulation Act, 2011 will be made to enable Non-Banking Finance Companies to extend invoice financing to MSMEs through Trade Receivables electronic Discount System which help them enhance their economic and financial sustainability.

## FINANCIAL MARKETS

### PROPOSED CHANGES IN RELATION TO FPIs

It is proposed that investment by FPIs in corporate bonds, will be increased to 15% of the outstanding stock of corporate bonds as against the current limit of 9% of outstanding stock.

#### ELP COMMENTS:

FPIs are known to have a progressive investment strategy, and we could witness significant participation of the FPIs in the corporate bond market.

### DEBT-BASED EXCHANGE TRADED FUND (ETF)

The Government has proposed to float a new debt-based ETF consisting of primarily G-Sec, with a view to provide an avenue to retail investors to G-Sec and attractive investment options for pension funds and long-term investors.

#### ELP COMMENTS:

- The retail investors had limited options to invest in G-Sec.
- The proposed change would enable retail investors to invest in new debt-based ETF with the underlying G-Sec, which is another avenue in addition to the existing avenues, depending on their respective risk appetite.

### GIFT (GUJARAT INTERNATIONAL FINANCE TEC CITY) - IFSC

With a view to enable India to enhance its position worldwide, create jobs in India and for better price discovery of gold, the Government has proposed to set up International Bullion exchange(s) in GIFT-IFSC as an additional option for trade by global market participants.

#### ELP COMMENTS:

- In recent times, the Government has been trying to incentivize and attract players in GIFT-IFSC, and this move is another step forward in this regard.
- This is the most positive and progressive proposition of the Government to bring India on the global platform of bullion market.
- The proposed International Bullion exchange(s) would also attract foreign players and enhance the domestic skill set of the professionals engaged by such foreign players.

### NETTING OF FINANCIAL CONTRACTS

The Government has proposed to formulate a legislation, for laying down a mechanism for netting of financial contracts, with an intent to improve investors' confidence and to expand the scope of credit default swaps.

#### ELP COMMENTS:

- Defaults in repayment of bonds have negative impacts on the confidence of investors.
- The move is aimed to protect the credit default swaps.
- However, the finer details of the proposed legislation will need to be understood to evaluate as to whether such move will or will not improve the investors' confidence.

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## DISINVESTMENT OF LIC

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The Government has proposed to sell a part of its holding in LIC by way of an initial public offer in order to provide access to financial markets, unlock value and to give opportunity to retail investors to participate in the wealth creation.

### ELP COMMENTS:

- The Government has been trying to divest its stake in the Government owned entities (for example, in the Government owned air carrier Air India, Coal India), either to raise money or provide them a lifeline to continue running their business.
- LIC is one of the most cash rich Government entities and allowing public participation by way of an initial public offer will be a welcome move by the investors.

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## SALE OF IDBI BANK

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In order to address the need for private capital in the banking system, the Government has proposed to sell its balance holding in the IDBI Bank to private, retail and institutional investors through the stock exchanges.

### ELP COMMENTS:

- It is interesting to note that over the years, the Government has been consistently selling its stake in IDBI Bank and presently LIC is its largest shareholder.
- It would be interesting to see the timing of the divestment of LIC and IDBI.

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## LISTING OF SEA PORTS

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- The Government is considering corporatizing at least one major sea port and subsequently its listing on the stock exchanges.



## BANKING & FINANCE

### NBFCs – EMANCIPATION FROM LIQUIDITY CRISIS

The liquidity crisis which has engulfed NBFCs is one of the reasons provoking the slowdown in the economy. FM in her speech has proposed various steps aiming to salvage NBFCs from the ongoing liquidity crisis.

Reducing the limits of asset size from INR 5,000,000,000 to INR 1,000,000,000 for being eligible to be notified under SARFAESI shall ensure that additional NBFCs may be notified as financial institutions under SARFAESI and the reduction of loan size of INR 10,000,000 to INR 5,000,000 will help NBFCs in invoking rights under SARFAESI for a larger portion of their portfolio thereby ensuring widened recovery net and speedy recovery for NPAs. This may also reduce burden of Courts in India.

### PARTIAL CREDIT GUARANTEE

- Post the Union budget 2019-20 Partial Credit Guarantee Scheme was formulated by the Government which provided a one-time 6 months' partial first loss credit guarantee to the public sector banks for upto 10% for purchase of high-rated pooled assets from NBFCs.
- FM announced that such Partial Credit Guarantee Scheme will be revised to lend further support to NBFCs and stated that Government would guarantee the securities floated

#### ELP COMMENTS:

The Government's guarantee would provide confidence and strengthen investor sentiments thereby aiding revival of NBFCs from the liquidity crisis and propelling investments by NBFCs.

### NABARD REFINANCING SCHEME

Presently NBFCs are eligible only for long-term refinance from NABARD against the long-term loans provided by them in rural areas to the farmers, SHGs, joint liability groups etc. Proposals of FM to extend the refinancing by NABARD to NBFCs and Co-operatives against all forms of agricultural loans, Viability Gap Funding for setting up warehouses at the block/taluk level etc. would boost the production and holding capacity of farmers and increase interests of NBFCs in rural lending and also ease the liquidity.

### MSME – RESTRUCTURING SCHEME EXTENSION

- Restructuring scheme for MSMEs was announced by RBI on January 1, 2019, with respect to loans to MSME of upto INR 250,000,000 which were stressed but still classified as standard asset at the time of releasing the guidelines. As per the scheme restructuring would not cause downgrade in the asset classification of the accounts.
- The Government has requested RBI to consider extension of restructuring scheme for MSME for 1 more year (which earlier lasted till March 31, 2020).

#### ELP COMMENTS:

Such proposals will strengthen the confidence of MSME in Government and will provide a boost to entrepreneurs.

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## HOLISTIC GROWTH OF THE BANKING AND FINANCE SECTOR

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FM emphasized on clean, reliable and robust financial sector being crucial for country's economy. Given the recent events involving Punjab and Maharashtra Co-operative Bank and few commercial banks, FM stated that it is crucial to make the banking and finance system robust and maintain the health of the scheduled commercial banks to ensure that the depositor's money is safe.

### Deposit Insurance

- FM with an aim to boost depositor's confidence mentioned that the Government has a robust mechanism in place to monitor health of all Scheduled Commercial Banks and that depositors' money is safe.
- Further, FM announced that Deposit Insurance and Credit Guarantee Corporation (DICGC) has been permitted to increase Deposit Insurance Coverage for a depositor to INR 500,000 from the present INR 100,000.

### Co-Operative Banks

Amendments to the Banking Regulation Act are proposed for increasing professionalism, enabling access to capital and improving governance and oversight for sound banking through the RBI. Such steps would ensure better confidence of the customers of the co-operative banks and help in avoiding episodes akin to Punjab and Maharashtra Co-operative Bank.

### Amendment to the Banking Regulation Act, 1949

FM also proposed amendments to the Banking Regulation Act, 1949 in order to strengthen the co-operative banks in the country.

#### ELP COMMENTS:

The proposals and changes seem to be aiming towards improving governance and ensuring better supervision and control of the co-operative banks by RBI and government.

## INFRASTRUCTURE

### INTRODUCTION

The FM focused on infrastructure as part of her second theme for the Union Budget i.e. economic development. As regards infrastructure, the focus has been on transportation and connectivity as well as increasing the solar power generation capacity, in the backdrop of the larger theme of 'Aspirational India' being development for all.

In line with the overall "Sabka Saath, Sabka Vikas, Sabka Vishwas" principle, the FM also proposed that the National Skill Development Agency would give a special thrust to infrastructure-focused skill development opportunities in light of the huge employment potential of the infrastructure sector. A project preparation facility for infrastructure projects is also proposed to be set up. This step is significant, given that the lack of capacity with the relevant expertise has been identified as a major requirement for the sector.

### INVESTMENTS IN INFRASTRUCTURE SECTOR

#### Tax Exemptions for Sovereign Wealth Funds

One of the most significant announcements for the infrastructure sector was the 100% tax exemption granted to sovereign wealth funds of foreign governments in respect of their interest, dividend and capital gains income from investments made in infrastructure and other notified sectors before March 21, 2024. The only conditionality placed on such exemption is a minimum lock-in period of 3 years.

The aforesaid move should definitely incentivize further investment in India by sovereign wealth funds, that generally make longer term investments in socially relevant sectors as compared to other foreign funds.

#### National Infrastructure Pipeline

In consonance with one of the prominent themes of the FM for the Union Budget i.e. a caring society, the Union Budget aims to improve the physical quality of life through the NIP. The NIP was launched by the FM on December 31, 2019. As per the PIB release dated December 31, 2020, the total project capital expenditure in infrastructure sectors in India during the fiscals 2020 to 2025 was projected at over INR 10.2 trillion.

The FM indicated that the NIP would consist of over 6,500 projects. As per the FM, about INR 220 billion has already been provided, as support to NIP, which would cater for equity support to infrastructure finance companies such as IIFCL and a subsidiary of NIIF. As per the Union Budget, such companies would leverage it, as permissible, to create financing pipeline of more than INR 1 trillion which would in turn create a major source of long-term debt for infrastructure projects.

In our view, the NIP is a critical measure that would boost investments in the infrastructure sector. However, given the mammoth proposal, the financing of the NIP may be a challenge.

### POWER, OIL AND GAS

In her speech, the FM hinted about the Central Government's intention to provide a push for solarization of farms. The FM has proposed support to the farmers for setting up solar powered hand pumps and grid connected solar plants on barren lands owned by farmers. The Central Government hopes that the sale of power generated from the farmers' solar power plants through the grid would provide promising income to the farmers.

Acknowledging India's best effort commitments to the Paris Agreement signed in 2015, the FM has recommended that the concerned power utilities close old thermal power plants having high carbon emissions than permitted.

The FM also urged the State Governments and Union Territories to adopt smart metering systems instead of the conventional ones which would not only help in checking payment defaults (due to prepaid metering) but will also provide the customer with the ability to choose the power supplier. This is a welcome move, but many more reforms are required to aid ailing DISCOMs.

In the passing, the FM also spoke about deliberations by the Government on honoring of the terms of its contracts. It may be inferred that this, in part, has to do with the recent arm twisting of power developers by state DISCOMs/State Governments by renegotiating the power tariffs and the terms and conditions of the renewable power purchase agreements.

The FM proposed an allocation of INR 220 billion for the power and renewable energy sector. The FM has proposed to extend the new concessional corporate tax rate of 15% to new domestic companies engaged in the generation of electricity in order to incentivize investment in the power sector.

With respect to the oil and gas sector, the FM announced that reforms will be undertaken to make natural gas price discovery more transparent and facilitate ease of transactions. Additionally, the FM also announced that the existing national gas grid will be expanded from 16,200 km to 27,000 km.

While the FM acknowledged the never ending stress over DISCOMs, nothing was proposed on how the Central Government would address the present situation. In her previous budget speech in July 2019, the FM mentioned that the performance of the efforts to address the DISCOM stress including the success of Central Government's UDAY Scheme is being evaluated. However, the FM did not discuss the same in this speech. It may be advisable for the Central Government to focus on the more critical concerns that have been looming over the power sector such as, fuel supply issues, easing the renewable purchase obligations, cross - subsidy surcharge, pilferage and transmission losses, transmission capacity augmentation and open access availability, payment defaults by DISCOMs and compliance of their obligations under the power purchase agreements (such as providing payment securities to the developer/power supplier), the long pending amendments to the Electricity Act, 2003 and the captive power rules, anti-dumping, building indigenous capabilities for renewal equipment and technologies etc.

## ROADS

The FM announced that accelerated development of highways would be undertaken, including development of 2,500 km access control highways, 9,000 km of economic corridors, 2,000 km of coastal and land port roads and 2,000 km of strategic highways. The Delhi-Mumbai Expressway and two other packages are targeted to be completed by 2023 and work on the Chennai-Bengaluru Expressway would also be started.

The FM also stated that the FASTag mechanism encourages towards greater commercialization of highways enabling the NHAI to raise more resources. It was proposed to monetize at least 12 lots of highway bundles of over 6,000 km before 2024.

While monetization of 12 lots of highway bundles is a welcome move, it would be important to see whether timely monetization is actually achieved in a manner that enables NHAI to decrease its debt burden. Given the tepid response received for the previous TOT bundles, it would be crucial to ascertain whether the Central Government proposes another model for the monetization or amends the TOT model as envisaged by the Cabinet in November 2019. The geographies of the identified bundles would be key.

## RAILWAYS

The FM envisions the setting up of "Kisan Rail" through PPP arrangements, with a view to attaining a seamless national cold supply chain for perishables, inclusive of milk, meat and fish. Equipping express and freight trains with refrigerated coaches is also identified under the theme "Aspirational India" in the Union Budget.

As regards railways, the Central Government's focus has been on fostering economic development through optimization of costs and ensuring greater connectivity through the following:

- Increase in the number of Tejas type trains;
- High speed train between Mumbai and Ahmedabad;
- Setting-up a large solar power capacity alongside the rail tracks on the land owned by the railways;
- Re-development projects for 4 stations and operation of 150 passenger trains would be done through PPP mode;
- Grant of financial assistance for the 148 km long Bengaluru Suburban transport project;

The Union Budget reinforces the importance of raising resources through PPP for network strengthening, connectivity and modernization of Indian Railways. In light of the announcement by the FM that bidding for various PPP projects is underway, it is clear that effective steps are being taken to make the sector on railways amenable to private investment. Insofar as the setting up of large solar power capacity alongside the rail tracks on the land owned by the railways has been envisioned, it remains unclear whether land owned by private players will be excluded for the purpose, in a scenario where the stretch of land alongside the rail tracks owned by the Indian Railways is not contiguous.

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## AIRPORTS

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Noting the rapid growth in air traffic in the country, the FM announced that 100 more airports would be developed by 2024 to support the Regional Connectivity Scheme i.e. UDAN. It was also proposed that the air fleet number is expected to double from the present number of 600 by 2024.

The development of new airports would ease the strain on the existing airports. However, it would be important to see whether such development is done through the PPP mode or otherwise. Furthermore, given the news reports from January 2020 suggesting that the Central Government may introduce a cap on the number of projects a bidder can get, it would be interesting to see whether such move leads to wider participation by private parties in the sector and more realistic bids.

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## PORTS AND WATERWAYS

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In order to increase the efficiency of sea-ports, the FM proposed to implement a governance framework in line with global benchmarks. Further, it has also been proposed to corporatize at least 1 major port and subsequently list it on the stock exchanges.

As regards inland waterways, the FM announced that the Jal Vikas Marg on the 1,620 km Haldia-Allahabad stretch of river Ganga would be completed. Further, the 890 km Dhubri-Sadiya connectivity was proposed to be done by 2022. The FM announced that in consonance with Arth Ganga, plans are being prepared to energize economic activity along river banks.

Corporatization of ports would go a large way in improving operational efficiencies which has been a challenge with India's major ports. It would be interesting to see the way this would be achieved and to also evaluate the global benchmarks that are introduced by the Central Government.

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## LOGISTICS

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The FM announced that a National Logistics Policy would be released clarifying the roles of the Central Government, the State Governments and other regulators. A single window e-logistics market is also envisaged under the policy.

Given that a National Logistics Policy has been in the works for a while now, it would be important to ensure that the aforesaid announcement of the FM is implemented timely and efficiently. Considering that logistics involve inter-state movement, it would be crucial for the policy to harmonize the roles of the Central Government and the various State Governments, whilst at the same time bringing down the cost of logistics and making the Indian logistics sector globally competitive.

### ELP COMMENTS:

With respect to infrastructure, the proposals made by the FM aim to address pressing concerns regarding the lack of investments therein. The proposal to exempt investments by sovereign wealth funds in infrastructure projects and to further the NIP should go a long way in boosting investments in the sector.

Special emphasis has also been laid on development of India's solar power generation capacity whilst at the same time attempting to alleviate the present financial condition of DISCOMs. As for transportation, with the proposal to provide around INR 1.70 trillion for transport infrastructure in 2020-21, the focus has as always been on improving connectivity and efficiency.

Having said that, issues such as protracted dispute resolution, snarls in land acquisition and approvals, and issues around contract enforcement would still need to be addressed so as to make the Indian infrastructure sector globally competitive and attractive. The FM in passing has mentioned amendments to the Indian Contract Act, 1872 to strengthen contract enforcement. How this would affect government entities reneging on contracts with private entities remains to be seen. In any case, States and the Central Government should be cautious of recourse that may be sought in relation to foreign investment through bilateral investment treaties.

Apart from boosting investments, the steps towards capacity building as well as increased outlays also indicates how serious the Central Government is in addressing worrying unemployment numbers.

All in all, the announcements in relation to the infrastructure sector are a continuation of previous policies with suitable amendments to the scope in the backdrop of the larger social aims that underly this Union Budget.

## REAL ESTATE

### AGRICULTURAL LAND LEASING

Land and agriculture are State subjects under the Constitution of India and Central Government may merely provide advisory and incentives to States but cannot legislate laws on such subjects. Presently there are restrictions and limitations at different levels on leasing of agricultural lands in various States. Examples are as below:

- In Telangana, as per the Andhra Pradesh (Telengana Area) Tenancy & Agriculture Act, 1950, leasing of agricultural land is prohibited except by certain categories of land owners, such as (a) land owners who hold land equal to or less than 3 times the family holding, and (b) disabled persons (minors, females, persons with physical and/or mental infirmity, persons in defense services with permission of district collector).
- In Bihar, as per the Bihar Land Reforms Act, 1961, leasing of agricultural land is prohibited except by disabled ryots i.e. minor, widow, or unmarried, divorced or separated woman, or person with physical or mental disability or a person in the armed forces or a public servant in receipt of salary not exceeding INR 250 per month.
- In Gujarat, as per the Bombay Tenancy and Agricultural Land Act, 1948 – there is no explicit ban on leasing of agricultural land, but the landowner has a risk of losing land right, due to creation of tenancy. A tenant farmer acquires the right to purchase the agricultural land within 1 year of lease period. Legal leases are possible only when the tenant is not in a position to exercise his/her right to purchase due to financial difficulties or otherwise. Also, in the Kutch area of Gujarat, separate statute provides for voluntary purchase of ownership rights.
- In Himachal Pradesh, as per the H.P. Tenancy and Land Reforms Act, 1972, leasing of agricultural land is banned except by disabled persons such as members of armed forces unmarried/divorced/separated women, a widow, a minor, persons under physical or mental disability or a student of a recognized institution.

Such restrictions and limitation have always discouraged landowners from leasing out their lands due to fear of losing their ownership rights and this led to unorganized and concealed tenancies in India. Informal tenants who are deprived of access to loans through financial institutions, insurance, disaster relief and other Government supports have no incentive to make any investment for land and soil improvements. Central Government had issued the Model Agricultural Land Leasing Act, 2016 for consideration of states with an aim to protect the ownership rights of owners of agricultural lands and provide benefits and security to tenant farmers. The aforesaid model Act also provides for Special Land Tribunal in civil court. FM has proposed to encourage the State Governments who undertake implementation of the aforesaid model law. This will help in bringing in uniformity of laws for leasing of agricultural lands in India, reduce disputes, organize the agricultural leasing in the country and further improve the soil quality and productivity.

#### ELP COMMENTS:

This will help in bringing in uniformity of laws for leasing of agricultural lands in India, reduce disputes, organize agricultural leasing in country and incentivize the tenant farmers to improve soil quality and productivity of agricultural land.

### ENVIRONMENTALLY SUSTAINABLE DEVELOPMENT

- FM mentioned about the launch of the CDRI which would help the country in achieving the SDGs as agreed by United Nations members as per the Sendai Framework.
- Proposals have been made for providing clean air in big cities and parameters for the same would be framed by the Ministry of Environment, Forests and Climate change.

#### ELP COMMENTS:

Such environment friendly efforts coupled with the measures to increase FDI in India may help in attracting investment from multinational companies which are generally conscious of carbon footprints and the need to reduce it.

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## ONLINE INFORMATION ON LAND BANKS

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FM mentioned setting up of the Investment Clearance Cell for providing online information *inter alia* on the land banks.

**ELP COMMENTS:**

The proposed Investment Clearance Cell would ensure faster discovery of suitable real estate for investors and entrepreneurs with information on land banks (presumably owned by Government) available on their portal.

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## AMENDMENT IN THE PROHIBITION OF BENAMI TRANSACTIONS ACT, 1988

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Amendment has been proposed in the Prohibition of Benami Transactions Act, 1988 by virtue of which, a person qualified for appointment as a District Judge can also be appointed as an adjudicating authority under the Act.



## DEFENCE & AEROSPACE

### OVERVIEW

The Union Budget of 2020-21 has allocated INR 471,378 crores towards the Ministry of Defence for revenue and capital expenditure, defence pensions and other miscellaneous expenditures. Out of this allocation, the Defence Expenditure (Revenue and Capital) budget for 2020-21 amounts to INR 323,053 crores. The Defence Expenditure equals roughly 10.61% of the Central Government's total expenditure for 2020-21 and 1.44% of India's estimated GDP. There has been a very slight increase over the previous year's budget estimates, with the share of revenue expenditure only increasing by 1.65%, while capital expenditure has increased by just a mere 3%.

### INDIA'S DEFENCE BUDGET ANALYSIS

India's defence budget for 2019-20 has grown by only 5.8% over last year's budget estimates, and it still remains at just 1.44% of the projected GDP. In order to achieve its status as a self-sufficient country that primarily exports rather than imports its defence equipment, the Standing Committee on Defence in its 2014 report had recommended that India's defence budget should be increased to about 3% of GDP. However, in the last decade, the highest point reached by the defence budget as a proportion of GDP has just been 2.4% in 2011-12 and since then we have seen a consistent decline.

#### ELP COMMENTS:

The allocation of INR 471,378 crores towards the Ministry of Defence's budget only accounts for 10.61% of the Central Government's total expenditure for 2020-21. The allocation was 1.44% of the country's GDP, and this low allocation is more pronounced when one compares China spending 3% and Pakistan 3.5% of their GDP for defence. This coupled with stated ambitious plans to boost the Defence Industrial Base, leaves no room for new purchases or funding any R&D projects for the military by the industry.

Under the Draft Defence Production Policy 2018, the Indian government is aiming towards a figure of USD 5 billion towards defence exports by 2025. According to Defence Minister Rajnath Singh, USD 10 billion investment in aerospace and defence goods and services was expected by 2025, which could provide employment to 2-3 million people. The Ministry of Defence also visualizes funding of 250 start-ups, 16 personal initiatives and 5 defence innovation hubs through the Defence Innovation Organisation in the next 5 years.

The downside of increasing the defence capital budget by only 3% could be that India's much heralded 'Make in India' initiative may stall without the adequate funds necessary to sustain investment in the country. The budget for 2020-21 has fallen well short of the mark, with a mere increase of 2.13% over last year's revised estimates. While no major increase was expected in the budget given the urgent demands of the overall economy, this low allocation barely even meets the inflation-adjusted previous year's budget and will dampen the industry's investment spirits, unless Government looks at more innovative measures to bring in funds from other sources.

## GLOSSARY OF TERMS

Abbreviation	Meaning
AD	Anti Dumping
AE	Associated enterprise
AD Agreements	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.
AD Rules	Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
AIF	Alternative investment fund
ALP	Arm's length price
AMT	Alternate minimum tax
AO	Assessing officer
AOP	Association of persons
APA	Advanced pricing agreement
ARE	Alternate reporting entity
ASCM	Agreement on Subsidies and Countervailing Measures
AVGC	Animation, Visual effects, Gaming and Comics
AY	Assessment year
BBT	Buy-back tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base erosion and profit shifting project
Bill	Finance Bill 2020
BOI	Body of individuals
CAT	Common aptitude test
CBCR	Country by country reporting
CBDT	Central Board of Direct Taxes
CDRI	Coalition for Disaster Resilient Infrastructure
CGST Act	Central Goods and Services Tax Act, 2017
CTA	Customs Tariff Act, 1975
CVD	Countervailing Duty
CVD Rules	Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995
DDT	Dividend Distribution Tax
DGTR	Directorate General of Trade Remedies
DISCOMs	Distribution Companies
DPIIT	Department of Promotion for Industry and Internal Trade
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement entered into by India
EC	European Commission
ECB	External Commercial Borrowings
FAME	Faster Adoption and Manufacture of Hybrid and Electric Vehicles
FDI	Foreign Direct Investment
FTS	Fee for Technical Services
FII	Foreign Institutional Investors
FM	Finance Minister
FMV	Fair market value
FPI	Foreign Portfolio Investors
FTA	Free Trade Agreement
FTP	Foreign trade policy
FY	Financial Year
G2B	Government to Business

<b>GDP</b>	Gross Domestic Product
<b>G-Sec</b>	Government securities
<b>GST</b>	Goods and Services Tax
<b>HFC</b>	Housing Finance Company
<b>HNI</b>	High net worth individual
<b>HUF</b>	Hindu Undivided Family
<b>IBC</b>	Insolvency and Bankruptcy Code, 2016
<b>IDBI</b>	Industrial Development Bank of India
<b>IFSC</b>	International Financial Services Centre
<b>IGST</b>	Integrated Goods and Services Tax
<b>IGST Act</b>	Integrated Goods and Services Tax Act, 2017
<b>IIFCL</b>	India Infrastructure Finance Company Limited
<b>IIM</b>	Indian Institute of Management
<b>Ind AS</b>	Indian Accounting Standards
<b>INR</b>	Indian Rupees
<b>InvITs</b>	Infrastructure Investment Trusts
<b>IPO</b>	Initial Public Offering
<b>IT Act</b>	The Income-tax Act, 1961
<b>ITC</b>	Input Tax Credit
<b>KYC</b>	Know Your Customers
<b>LIC</b>	Life Insurance Corporation
<b>LLP</b>	Limited Liability Partnership
<b>LRS</b>	Liberalised Remittance Scheme
<b>MAT</b>	Minimum Alternate Tax
<b>MoF</b>	Ministry of Finance
<b>MoC</b>	Ministry of Commerce
<b>MSME</b>	Micro Small and Medium Enterprises
<b>NABARD</b>	National Bank for Agriculture and Rural Development
<b>NBFC</b>	Non-Banking Finance Company
<b>NCCD</b>	National Calamity Contingent duty
<b>NCLT</b>	National Company Law Tribunal
<b>NEFT</b>	National Electronic Funds Transfer
<b>NELP</b>	New Exploration Licensing Policy
<b>NHAI</b>	National Highways Authority of India
<b>NHB</b>	National Housing Bank
<b>NIIF</b>	National Investment and Infrastructure Fund
<b>NIP</b>	National Infrastructure Pipeline
<b>NPA</b>	Non-performing assets
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>PAN</b>	Permanent Account Number
<b>PIB</b>	Press Information Bureau
<b>PMAY</b>	Pradhan Mantri Awas Yojana
<b>PPP</b>	Public Private Partnership
<b>PSU</b>	Public sector undertaking
<b>PTA</b>	Purified Terephthalic Acid
<b>QFIs</b>	Qualified Foreign Investors
<b>RBI</b>	Reserve Bank of India
<b>RBI Act</b>	Reserve Bank of India, Act, 1934
<b>RDB</b>	Rupee Denominated Bond
<b>REITs</b>	Real Estate Investment Trusts
<b>RIC</b>	Road and Infrastructure Cess
<b>ROO</b>	Rules of Origin
<b>RTGS</b>	Real Time Gross Settlement
<b>SAD</b>	Special Additional Duty

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<b>SAED</b>	Special Additional Excise Duty
<b>SARFAESI</b>	The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002
<b>SCN</b>	Show Cause Notice
<b>SCRA</b>	Securities Contracts (Regulation) Act, 1956
<b>SDGs</b>	Sustainable Development Goals
<b>SEBI</b>	Securities and Exchange Board of India
<b>SEBI Act</b>	Securities Exchange Board of India Act, 1992
<b>SFT</b>	Statement of financial transaction
<b>TCS</b>	Tax Collected at Source
<b>TOT</b>	Toll Operate Toll
<b>TDS</b>	Taxes Deducted at Source
<b>TRQ</b>	Tariff Rate Quota
<b>UTGST</b>	Union Territory Goods and Services Tax
<b>UDAN</b>	Ude Desh ka Aam Naagrik
<b>UDAY</b>	Ujjwal DISCOM Assurance Yojana
<b>UK</b>	United Kingdom
<b>USA</b>	United States of America
<b>WTO</b>	World Trade Organisation



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