1 February 2020

Budget Connect 2020

Macro-fiscal developments

Budget provides limited stimulus to growth

- Despite slippage in the fiscal deficit for FY20 and FY21 by margins of 0.5% points each from their respective targets at 3.3% and 3% of GDP, the extent of stimulus provided by Union Budget FY21 has remained marginal.
- The centrepiece of stimulus through the Budget comes in the form of the proposed National Infrastructure Pipeline (NIP). Over the next 5 years, the proposed investment in infrastructure is INR103 lakh crore which is to be financed by the central and state Governments as well as the private sector.
- The centre will provide budgetary support through its capital expenditure. However, there are only small increases in capital expenditure as percentage of GDP, both in FY20 and FY21. Capital expenditure relative to GDP stands at 1.7% and 1.8% respectively in these two years.
- The margin of increase in capital expenditure relative to GDP is much less than the margin of slippage relative to GDP in fiscal deficit. This indicates that a good part of the additional borrowing is being spent on revenue expenditure.
- For incentivizing the investment by the Sovereign Wealth Funds of foreign governments in the priority sectors, the Budget has proposed 100% tax exemption to their interest, dividend and capital gains income in respect of investment made in infrastructure and other notified sectors before 31 March 2024, with a minimum lock-in period of 3 years.
- For attracting investment in power sector, the Budget has extended the concessional corporate tax rate of 15% to new domestic companies engaged in the generation of electricity.
- Additional taxation on imports in the form of cesses have been imposed on selected industries, such as furniture, footwear and medical equipment, is meant to stimulate domestic production by increasing the extent of tariff-based protection.
- Some net increase in personal disposable incomes has been provided for after balancing rate reductions against sacrificing deductions and exemptions.

Highlights

INR2.1 lakh crore
ambitious disinvestment target for FY21

10%
nominal GDP growth rate for FY21

3.5%
fiscal deficit target for FY21

Erosion of tax revenues

- Union Budget for FY21 was formulated in the background of significant tax revenue erosion compared to the budget estimates and a persistent downside in economic growth. The challenge was to stimulate the economy while avoiding excessive slippage in fiscal deficit.
- For achieving the gross tax revenue numbers as envisaged in FY20 (RE), a growth of 19% would be required in the last quarter of FY20. This seems a tall task given that there was a contraction to the extent of (-) 2.9% during the first nine months of FY20.
- The main reasons for this contraction are fall in nominal growth rate, significantly low tax buoyancies and the revenue impact of CIT rate reform. These reasons are likely to continue in the last quarter of FY20 as well. Furthermore, the full impact of CIT rate reform in terms of revenue erosion will also be visible in the last quarter of FY20 when the corporates finalize their accounts.
- Given the lower FY20 base numbers, the FY21 tax revenue growth projections are also clearly at risk. The assumed buoyancy for FY21 (BE) for gross taxes is 1.2, even as the achieved buoyancy for FY20 (RE) is 0.5 considering that the RE is to be realized.
- Besides tax revenues, the Budget FY21 has set an ambitious disinvestment target of INR2.1 lakh crore, which is 223% more than the FY20 RE at INR65,000 crore. Achievement history of disinvestment targets indicates that such a target is overoptimistic and would require considerable initiatives on the part of the Central Government.

Fiscal deficit: the new glide path

- Fiscal deficit for FY20 and FY21 has been relaxed. Accordingly, a new glide path has been specified for FY22 and FY23 at 3.3% and 3.1% of GDP respectively. The relevant issue is whether this slippage in fiscal deficit will be effective enough to reverse the ongoing slowdown.
- For this purpose, it is the budgeted capital expenditure in FY20 and FY21 and the budgetary support to the NIP in the next few years which is critical. Further, there has been a deterioration in the quality of fiscal deficit as reflected in the ratio of revenue deficit to fiscal deficit. This ratio is 65.1% in FY20 (RE) and is expected to deteriorate to 76.5% in FY21 (BE). Had the Government made more effort to improve the quality of fiscal deficit, risks to financing the ambitious NIP would have been mitigated.
- Since the State Governments are also experiencing revenue erosion due to the ongoing economic slowdown, their share in financing the NIP also remains at risk.

Highlights

Businesses with turnover >INR5 crores
- To be audited by an accountant

INR1.7 lakh crore for transport infrastructure

National Logistics Policy

New Education Policy

Investment Clearance Cell

Way forward

- The thrust of budgetary reform that is required at this juncture is to overhaul the structure of government expenditure, shifting it from current expenditures to non-defence capital expenditure.
- However, this requires a concerted effort toward reorganizing government administration; and focus of the Central Government on subjects of the union list under their direct responsibility rather than maintaining large ministries under state and concurrent subjects.

1 February 2020

Budget Connect 2020

Tax Alert – Corporate Tax

Key tax takeaways

- Concessional tax rate of 22% will now be available to resident cooperative societies provided they do not claim any incentive or deductions.
- 15% concessional tax regime for new domestic manufacturing companies will now be applicable to electricity-generating companies as well.
- The period over which start-ups can claim tax holiday has been increased from 7 years to 10 years and turnover limit is also increased to INR100 crore to align with regulatory limit.
- Business trusts are not required to be listed to enjoy pass-through benefit under Income Tax Law (ITL).
- Threshold for tax audit will be increased to INR5 crore for taxpayers carrying on business, provided cash transaction is less than 5% in value.
- The sunset date for taking approval for tax holiday on profits from affordable housing projects is extended by one year to 31 March 2021.
- Benefit of carryforward of unabsorbed losses and depreciation on amalgamation extended to amalgamation of public sector banks and insurance companies.
- For the purpose of computing capital gains on immovable properties acquired before 1 April 2001, the fair market value adopted will not exceed the stamp duty value as on 1 April 2001, wherever available.
- There is lower withholding of 2% on fees for technical services (other than professional services) paid to residents.
- Tax collection at source provision will be introduced on foreign remittance though Liberalised Remittance Scheme, on tour operators for providing overseas foreign tour and on seller for sale of any goods over a specified limit.
- The return filing due date for corporates and taxpayers not liable to tax audit (non-TP cases) has been extended to 31 October although due date for furnishing tax audit and other audit reports continues to be 30 September.
- Faceless appeal will be introduced to eliminate human interface during appeals.

Highlights

Extension of timeframe to avail tax incentives by start-ups proposed

DDT

Dividend Distribution Tax to be abolished

Faceless appeal regime to be introduced

- A new penalty will be levied on false or omitted entry in books of accounts, impacting computation of income of taxpayer.
- New dispute resolution scheme will be announced providing one-time window for settlement of tax disputes without payment of interest and penalty.
- Central Government is empowered to notify e-appeal and e-penalty scheme.
- Taxpayer's Charter will build trust between taxpayers and tax administration introduced in ITL.

Direct Tax
Corporate taxation

- **Tax rates**

Description	Existing rate (%)	Proposed rate (%)	Difference + - =
A) Domestic company			
Regular tax:			
Companies having turnover <= INR4 billion in financial year 2017-18/ 2018-19 - Total income <= INR10 million - Total income more than INR10 million to 100 million - Total income > INR 100 million	26[1] 27.82[2] 29.12[3]	26[1] 27.82[2] 29.12[3]	No change
Companies having turnover > INR4 billion in financial year 2017-18/ 2018-19 - Total income <= INR10 million - Total income more than INR 10 million to 100 million - Total income > INR 100 million	31.2[4] 33.38[5] 34.94[6]	31.2[4] 33.38[5] 34.94[6]	No change
New manufacturing companies (including power generation companies) set up and registered on or after 1 October 2019 not availing incentives (15% CTR company) (optional regime)	17.16[7]	17.16[7]	No change
Other domestic companies not availing incentives (22% CTR company) (optional regime)	25.17%[8]	25.17%[8]	No change

[1] 25% plus 4% cess
[2] 25% plus 7% surcharge plus 4% cess on tax and surcharge
[3] 25% plus 12% surcharge plus 4% cess on tax and surcharge
[4] 30% plus 4% cess
[5] 30% plus 7% surcharge plus 4% cess on tax and surcharge
[6] 30% plus 12% surcharge plus 4% cess on tax and surcharge
[7] 15% plus 10% surcharge plus 4% cess on tax and surcharge
[8] 22% plus 10% surcharge plus 4% cess on tax and surcharge

Description	Existing rate (%)	Proposed rate (%)	Difference + - =
DDT on deemed dividend by way of loan or advance paid by closely held company (Inclusive of surcharge @ 12% and cess @ 4%) (Refer note 1)	34.94	Not applicable	DDT removed and dividend to be now taxed in the hands of dividend recipient/ shareholder
DDT on other dividend (Inclusive of surcharge @ 12% and cess @ 4%) (Refer note 1)	20.56	Not applicable	DDT removed and dividend to be now taxed in the hands of shareholder
B) Foreign company			
Regular tax ▶ Total income <= INR 10 million ▶ Total income more than INR 10 million to 100 million ▶ Total income > INR 100 million	41.6[9] 42.43[10] 43.68[11]	41.6[9] 42.43[10] 43.68[11]	No change
C) Minimum Alternate Tax (Refer note 2)			
Regular ▶ Total income <= INR 10 million ▶ Total income more than INR 10 million to 100 million ▶ Total income > INR 100 million	15.6[12] 16.69[13] 17.47[14]	15.6[12] 16.69[13] 17.47[14]	No change
International Financial Service Centre (IFSC) ▶ Total income <= INR 10 million ▶ Total income more than INR 10 million to 100 million ▶ Total income > INR 100 million	9.36[15] 10.02[16] 10.48[17]	9.36[15] 10.02[16] 10.48[17]	No change

Notes:

1. DDT does not apply on (a) distribution of income to REITs or business trusts registered with SEBI by SPV and (b) the companies being unit located in IFSC in a SEZ.
2. MAT is not applicable to 15% CTR company and 22% CTR company. Further, there is no MAT on foreign companies having no PE in India or having no registration requirement under any other law in India. Further, through a clarificatory retrospective amendment applicable from financial year 2000-2001, MAT shall also

[9] 40% plus 4% cess
[10] 40% plus 2% surcharge plus 4% cess on tax and surcharge
[11] 40% plus 5% surcharge plus 4% cess on tax and surcharge
[12] 15% plus 4% cess
[13] 15% plus 7% surcharge plus 4% cess on tax and surcharge
[14] 15% plus 12% surcharge plus 4% cess on tax and surcharge
[15] 9% plus 4% cess
[16] 9% plus 7% surcharge plus 4% cess on tax and surcharge
[17] 9% plus 12% surcharge plus 4% cess on tax and surcharge

not apply to foreign companies whose total income comprises solely of profits and gains from business or profession which are subject to presumptive basis of taxation under normal computation (shipping, aircraft, oil and gas, civil construction and turnkey power projects). If MAT is applicable to foreign companies, rates of surcharge will differ.

- **Changes in relation to companies opting for Concessional Tax Regime (CTR)**
  - The Taxation Law Amendment Act, 2019 provides for 22% CTR to existing domestic companies and 15% CTR to new domestic manufacturing companies set up after 1 October 2019, subject to certain conditions.
  - One of the conditions is that the taxpayer cannot claim specified deductions and incentives. This condition has been relaxed to provide that the eligible taxpayers can claim deduction with respect to intercorporate dividends as introduced by Finance Bill 2020 (FB 2020).
  - 15% CTR will now also be available to electricity-generating companies satisfying the requisite conditions for opting in CTR.

- **Concessional tax rate for resident cooperative societies if they forego tax incentives**
  - Resident cooperative societies now have an option to pay tax at the rate of 22% (plus 10% surcharge and 4% cess) instead of erstwhile maximum tax rate of 30% (plus 12% surcharge and 4% cess).
  - The regime is optional and available if the cooperative society does not avail specified tax exemptions and fulfil the prescribed conditions. Option is to be exercised on or before the due date of filing ROI for the respective financial year. Once exercised, such option cannot be subsequently withdrawn.
  - Cooperative societies exercising such option will not be required to pay Alternate Minimum Tax (AMT) and any AMT credit of past years will lapse.

- **Extending tax holiday provisions to bigger start-ups with a turnover of <INR100 crore**
  - The Indian Income Tax Law (ITL) grants a 100% profit-linked deduction to eligible start-ups for income earned from eligible business18. The deduction is available at the option of the start-up taxpayer which is incorporated on or after 1 April 2016 and before 1 April 2021.
  - With effect from assessment year 2021-22, an eligible start-up can claim deduction for any 3 consecutive assessment years out of 10 years (previously 7 year) from the date of its incorporation provided that its total turnover from the eligible business in the year of deduction does not exceed INR100 crore (previously INR25 crore).
  - The amendment in number of years makes the benefit more meaningful for such start-ups who may incur losses in the initial period. Also, the increase in turnover threshold benefits bigger start-ups and aligns with eligibility criteria under regulatory norms which recognise the entity as eligible start-up for turnover up to INR100 crore.

- **Amendment to the definition of "business trust" in line with SEBI Regulations**
  - ITL provides for a partial pass-through regime in respect of income earned by business trusts.
  - Business trust is defined under ITL to mean SEBI-registered Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT), the units of which are required to be listed on a recognized stock exchange.
  - With effect from financial year 2020-21, the definition of business trust is amended to exclude the condition of listing of InvITs and REITs on a recognized stock exchange in line with SEBI InvIT Regulations, 2014 as amended by Notification No. SEBI/LAD-NRO/GN/2019/10 dated 22 April 2019[19] and to ensure that even the unlisted business trusts are granted partial flow through treatment under ITL.

- **Incentive to real estate companies involved in approved housing projects**

[18] "eligible business" means a business carried out by an eligible start-up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation and for which the start-up holds a certificate from the Inter-Ministerial Board of Certification

[19] Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019

- ITL provides for a 100% tax holiday on profits earned by real estate companies from developing and building housing projects which are approved by the concerned authority between the period 1 June 2016 and 31 March 2020.
- FB 2020 now extends the due date of approval of the housing projects by one year, i.e., up to 31 March 2021.

- **Extension of benefit of carryforward of losses to public sector banks and general insurance companies**
  - The existing provisions of ITL allows benefit of carryforward of accumulated losses and unabsorbed depreciation in the case of amalgamation of banking company with any other banking institution as per scheme sanctioned by the Central Government .
  - From financial year 2019-20 onwards, such benefit of carryforward of accumulated losses and unabsorbed depreciation shall also extend to amalgamated public sector banks and amalgamated Government insurance companies under a scheme sanctioned by the Central Government under respective laws.

- **Rationalization of computation of income of insurance companies other than life insurance companies**
  - Under ITL, certain expenses are allowed as a deduction in computation of business income only in the year of actual payment and not in the year of incurrence.
  - Further, ITL provides separate set of rules for computation of profits and gains from general insurance business, including disallowance of expenses which are otherwise allowed only on actual payment. However, the rules do not specifically provide for corresponding provision for deduction of the disallowed expense at the time of actual payment, potentially resulting in permanent disallowance.
  - As a measure of providing certainty, FB 2020 now provides that such specified expenditure is to be allowed as deduction in the year of payment. While the amendment is applicable from assessment year 2020-21, taxpayers may argue it to be clarificatory in nature.

- **Increase in threshold limit for tax audit cases for person carrying on business**
  - With effect from financial year 2019-20, the threshold limit for tax audit will be increased from INR1 crore to INR5 crore of total sales, turnover or gross receipts, in case of a person carrying on business. This relaxation will be subject to following conditions:
    - Aggregate of all receipts (including receipts from sales, turnover or gross receipts) in cash during the year does not exceed 5% of the total receipts
    - Aggregate of all payments made (including amount of expenditure incurred) in cash during the year does not exceed 5% of all the payments
  - The amended provision intends to reduce compliance burden on small and medium enterprises; however, the relaxation will not be available in case of person carrying on profession.
  - Due date of furnishing the tax audit report will be amended to one month prior to due date of filing of return of income tax return.

- **Rationalization of cost of acquisition of immovable property acquired before 1 April 2001**
  - Under the ITL, for computing capital gains on transfer of asset acquired before 1 April 2001, cost of acquisition can be taken as the fair market value as on 1 April 2001 or the actual cost of the asset, at the option of taxpayer.
  - With effect from financial year 2020-21, for computing cost of acquisition of land or building or both, acquired before 1 April 2001, the fair market value adopted will not exceed the stamp duty value as on 1 April 2001, wherever available.
  - For this purpose, stamp duty value will mean value adopted or assessed by any Central Government or State Government for payment of stamp duty.
  - This provision will limit ability of taxpayer to claim deduction of fair market value in excess of stamp duty value as also indexation benefit on such excess.

- **Cost of acquisition and period of holding of units in a Mutual fund segregated into equity and debt portfolio**
  - The regulatory authority governing mutual funds in India has recently permitted the mutual funds schemes to segregate mutual fund units into debt and money market units. As per the regulator, a mutual fund holder will be issued same number of units in the segregated portfolio as was held by him in the original portfolio.
  - As a consequential amendment in the ITL, the period of holding of the units in the segregated portfolio will include the period of holding of the units in the main portfolio.
  - Further, the cost of acquisition of the units in segregated portfolio will be:

    Cost of acquisition of units in total portfolio X net asset value of units in segregated portfolio/net asset value of units in total portfolio.

- **Increase in safe harbour limit in case of immovable properties from 5% to 10%**
  - Under the existing provisions of ITA, if consideration from transfer of land or building or both, is less than the stamp duty value and the difference between the two is less than 5% of actual consideration, then the actual sale consideration is deemed to be full value of consideration for the purposes of computation of capital gains and business income. Further, the buyer or recipient of such property is also taxed on the same difference.
  - With effect from financial year 2020-21, the above safe harbour of difference in stamp duty value and actual consideration is increased to 10% in the hands of both transferor and transferee.

- **Cooperative society to withhold taxes on payment of interest (other than interest on securities)**
  - Withholding of tax will be applicable in case of cooperative society making payment or credit of interest (other than interest on securities) to any resident of India, provided:
    - The total sales, turnover or gross receipts of cooperative society exceeds INR50 crore in the financial year immediately preceding the year payment or credit of interest
    - The aggregate amount of interest exceeds INR50,000 in case of senior citizen payee and INR40,000 in any other case

- **Lower withholding rate on fees for technical services (other than professional services)**
  - With effect from 1 April 2020, the withholding tax rate on fees for technical services (other than professional services) paid to residents, will be reduced from 10% to 2%.
  - The amendment seeks to reduce litigation on application of rate of withholding, by providing a uniform rate as applicable to payments made to residents under works contract.

- **Plugging the leakage of tax arising due to escape clause in works contract withholding provision**
  - Withholding at the rate of 2% on work done will now also apply to payment to residents for manufacturing or supplying of a product in accordance with the customer specification by using material purchased not only from the customer but also a party related to the customer.

- **Expanding scope of withholding tax (WHT) to e-commerce transactions**
  - In order to widen and deepen the tax net, the withholding tax will now be extended to e-commerce operator for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform.
  - The applicable rate of tax would be 1% on the gross amount of such sales or service or both payable by e-commerce operator to seller.
  - An e-commerce participant being an individual or Hindu Undivided Family is exempt from the scope of withholding, if the following conditions are cumulatively satisfied:
    - Where the gross amount of sales or services or both does not exceed INR0.5 million

- Upon furnishing of Permanent Account Number (PAN) or Aadhaar number to the e-commerce operator
- The exemption is only for sale of goods or services and not for other transaction.
- For non-PAN or Aadhaar cases, the withholding rate shall be increased to 5% (Section 206AA).
- The amendment will be effective from financial year starting 1 April 2020.

- **Tax collection at source (TCS) provision introduced on foreign remittance though Liberalised Remittance Scheme (LRS), on tour operators for providing overseas foreign tour and on seller for sale of any goods over a specified limit**
  - With effect from 1 April 2020, the tax collection mechanism will now be extended to cover the following persons:
    - Authorized dealer will be required to collect tax at the rate of 5% from the remitter if the aggregate sum remitted is INR7 lakh or more during the financial year for remittance outside India under the LRS scheme
    - Tour operator will be required to collect tax at the rate of 5% on the sum paid by the buyer of overseas tour package
    - All the sellers whose sales, turnover or gross receipts exceeds INR10 crores during the preceding financial year will be required to collect tax at the rate of 0.1% of the aggregate sale consideration with respect to all buyers buying any goods exceeding INR50 lakh. The rate of TCS will be 1% in case where the buyer fails to provide Permanent Account number or Aadhaar number to the seller.
  - The above provisions will not be required to be complied with cases where the buyer has deducted tax at source on the above payments as required under any other provision of the ITA.

- **Return filing due date**
  - With effect from 1 April 2020, the due date of filing return of income for companies and other taxpayers liable to tax audit (other than taxpayers who are required to file a transfer pricing report) will be 31 October (instead of 30 September) of the following financial year.
  - ITL presently prescribes two different due dates for filing return of income for a working and non-working partner of a firm. FB 2020 now provides a common return filing due date of 31 October of the following financial year.

- **Widening the scope of person for verification of return of income of Company and Limited Liability Partnership**
  - With effect from 1 April 2020, return of income in case of Company and Limited Liability Partnership can also be verified by person, prescribed for this purpose, other than by the director and partner, respectively.

- **CBDT empowered to declare and adopt Taxpayer's Charter**
  - To strengthen the trust between taxpayers and tax administration, a taxpayer's charter is proposed to be included in the law which will enumerate taxpayer's rights clearly.
  - To facilitate the above, CBDT will be empowered to adopt and declare the Taxpayer's charter. Further, CBDT will issue orders, instructions, directions and such guidelines to other income tax authorities as it may deem fit for the administration of the Taxpayer's Charter.

- **Automation of appeal proceedings including levy of penalty**
  - To automate the entire appeal process at the First Appellate level, including the process that follows after filing the appeal, the Central Government is now empowered to notify an e-appeal scheme for disposal of appeal so as to impart greater efficiency, transparency and accountability.
  - Further, in line with e-assessment scheme, the Central Government is now empowered to notify an e-penalty scheme for the purpose of imposing penalty to reduce human interface.

- These amendments will take effect from 1 April 2020.

- **New penalty for fake or omitted entry in books of accounts**
  - The Government has detected several arrangements used by taxpayers to falsely reduce Goods and Services Tax (GST) liability by claiming input tax credit from fake invoices in books of accounts. The GST charged in such fake invoices is neither paid nor intended to be paid to the Government. A new penalty will be levied under ITL to deal with such fraudulent arrangements.
  - The new penalty will be levied on taxpayers required to maintain books of accounts and such books contain a false entry or an omission of entry relevant for computation of total income, to evade tax liability. Penalty will be equal to a sum of such false or omitted entry.
  - Penalty will be levied on taxpayer making such false or omitted entry or any other person who causes such taxpayer to make the false or omitted entry.

- **New dispute resolution scheme announced**
  - In line with "Sabka Vishwas Scheme" which was introduced in last budget to reduce litigation in indirect taxes, the FM proposed similar scheme for direct taxes litigation – "Vivad se Vishwas" Scheme.
  - While no specific amendment appears to be proposed in FB 2020, the FM made following announcement:
    - Payment of disputed taxes by 31 March 2020 – taxpayer to get complete waiver of interest and penalty
    - Payment of disputed taxes between 31 March 2020 and 30 June 2020 – taxpayer to pay certain additional amount in addition to taxes payable
  - The scheme will cover cases where an appeal is pending at any level of appellate forum. Further, the scheme will be open till 30 June 2020.

1 February 2020

Budget Connect 2020

Tax Alert – Key amendments at enactment stage of Finance Bill, 2020

Indirect tax budget proposals focus on encouraging domestic manufacture, ease of doing business and curbing tax offences

Highlights

5 % Health Cess

Key tax takeaways

Indirect tax

- Health cess of 5% will be levied and collected as duty of customs on import value of medical devices.
- Refund of GST compensation cess due to inverted duty structure on tobacco and manufactured tobacco substitutes will retracted retrospectively from 1 July 2017.
- Punishment for offences in GST has been extended to person who causes to commit offence and retains the benefit arising from such offence.
- Penalty provisions in GST will be extended to cover persons who retain the benefit and at whose instance the specified offences are committed.

Indirect tax

Customs

- In order to promote Indian health care manufacturing industry, health cess will be imposed at 5% on import of various medical devices.
  - Cess will be computed on value of goods imported.
  - Export promotion scrips cannot be used for payment of cess.
  - The levy will be effective from 2 February 2020.

Highlights

Measures to curb tax evasion

Impact: This would help boost the domestic health care manufacturing sector in India and the proposition of limited use of this cess for generating resources for health services is expected to benefit the larger population.

- Importers will be made responsible to ensure compliance with prescribed Rules of Origin in case of imports at concessional duty rates under Preferential Trade Agreements.
  - Reliance on Certificate of Origin issued by notified authorities in exporting country will no longer be sufficient. Importer will have to provide declaration of compliance to Rules of Origin as well.
  - Importer will be required to maintain proper records and data to prove compliance with the Rules of Origin.
  - Preferential trade benefits may be disallowed or temporarily suspended in case the importer fails to provide requisite information for verification.
  - In case of suspension, goods may be released subject to furnishing of security or payment of differential duty in prescribed manner.
  - Goods imported in contravention of the provisions shall be liable to confiscation.

  Impact: This would help check undue benefits claimed, if any, by the importers and its adverse impact on the manufacturing domestic industry.
- The power to prohibit uncontrolled import or export of gold and silver for prevention of injury to the Indian economy, has now been extended to 'any other goods' as well
- Provisions relating to safeguard measures in case of surge in quantity of import or under such conditions that cause serious injury to domestic industry are being revamped.
  - Measures will now include application of a Tariff Rate Quota, imposition of a Safeguard Duty or any other measure that the Government may consider appropriate.
  - Tariff Rate Quota measures, where used, shall not be fixed lower than average level of imports in last 3 representative years for which statistics are available, unless a different level is deemed necessary.
- Anti-Dumping Rules will be made more comprehensive and wider to strengthen the anti-circumvention measures.
- Amendments are proposed to be made to rules relating to Countervailing Duty on subsidized articles to enable investigation in cases of circumvention of such duties.
- Duty credit will be introduced in lieu of duty remission given in respect of exports or other specified financial benefits.
  - This duty credit shall be maintained in customs automated system in the form of an electronic duty credit ledger.
  - The credit can be used by the person to whom it is issued or the person to whom it is transferred, toward payment of customs duties, subject to prescribed conditions.

  Impact: This reflects a blueprint of the proposed RoDTEP Scheme.
- Levy of Social Welfare Surcharge (SWS) rationalized by withdrawing exemption given to certain goods and further providing exemption to some other goods.

Goods and Services Tax

- Punishment for offences will be extended to also cover a person who causes to commit the offence and retains benefit arising from such offence.
- Fraudulent availment of Input Tax Credit (ITC) without invoice will be made cognizable and non-bailable offence.
- Penalty provisions are extended to cover persons who retain the benefits and at whose instance the following offences are committed:
  - Supplies made without issuing invoice or on issuing false invoice
  - Issue of invoice without actual supply in violation of the provisions of the GST law

    - Availing or utilizing ITC without actual receipt of goods or services
    - Taking or distributing ITC in contravention of provisions of input service distributor (ISD)

  Impact: These amendments should help check tax evasion and control fake invoicing or availment of credits.

- Refund of compensation cess due to inverted duty structure on tobacco and manufactured tobacco substitutes was not allowed with effect from 30 September 2019. Now, this restriction has been imposed retrospectively from 1 July 2017.
- Time limit for availment of ITC basis debit note will be considered from date of issuance of debit note and not the date of original invoice.

Impact: There will be financial benefits for many businesses; especially where price adjustments are long drawn.

- Central Board of Indirect Taxes and Customs (CBIC) is now empowered to issue Removal of Difficulties order for 5 years from commencement of GST (i.e.,1 July 2017) instead of 3 years provided currently.
- Amendments will be made to align GST provisions with reorganization of (i) Jammu & Kashmir and Ladakh and (ii) Daman & Diu and Dadra & Nager Haveli.
- Introduction of new simplified return system from 1 April 2020 and implementation of e-invoicing in phased manner will be re-emphasized.

Glossary

APA - Advance Pricing Agreement

BCD - Basic Customs Duty

GST - Goods and Services Tax

ITC - Input Tax Credit

TDS - Deduction of tax at source

For details on other sectors and solutions visit our website www.ey.com/in/budget

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1 February 2020

Budget Connect 2020

Tax Alert – Key amendments at enactment stage of Finance Bill, 2020

Alternative personal tax regime and additional tax implications due to change in DDT and contribution to retirals

Key tax takeaways

- In order to provide significant relief to the individual taxpayers, a new and simplified personal income tax regime (which is optional and case-specific) has been introduced. The new regime provides reduced tax rates without exemptions and deductions.
- Various measures will be introduced toward ease of compliance for taxpayers, such as instant allotment of PAN, e-appeals, e-penalty and dispute resolution.
- Taxability of employer's contribution to specified schemes in excess of the amount specified and dividend received by individual taxpayers will be introduced.

Personal tax

- **Taxpayers' Charter**

  Taxpayers' Charter will be institutionalized in statute to avoid any harassment for taxpayers.

- **New and simplified personal income tax regime**

  A new and simplified personal income tax regime will be introduced, which is optional.

  On satisfaction of certain conditions, an individual or HUF will have an option to pay taxes at the reduced slab rates (mentioned below) which are applicable without certain exemptions and deductions.

Highlights

Taxpayers' Charter

Simplified income tax regime

Definition of residency impacted

5 years

ESOPs' taxability deferred for **start-up** employees

Dividend now only taxable in the hands of taxpayers

Around 70 exemptions and deductions would be removed under the new simplified income tax regime.

A salaried taxpayer would have to forego deductions and exemptions, such as House Rent Allowance, Leave Travel Concession, certain exemptions under section 10(14) of the Income-Tax Act, 1961 (Act), standard deduction, professional tax and most of the deductions available under Chapter VI-A of the Act. Hence, the tax benefit would be based on the facts and case-specific.

Income (INR)	Existing rate (%)	Proposed rate (%)
Upto 250,000	Nil	Nil
250,001-500,000	5%	5%
500,001-750,000	20%	10%
750,001-10,00,000	20%	15%
10,00,001-12,50,000	30%	20%
12,50,001-15,00,000	30%	25%
Above 15,00,000	30%	30%

- **Changes in residential status conditions**
  - 182 days has been replaced with 120 days for determining residency of an Indian citizen or Person of Indian Origin (PIO) who being outside India comes on a visit to India (subject to satisfaction of other conditions).
  - Conditions for Not Ordinarily Resident status will be modified – individual who has been a nonresident in India in 7 out of 10 financial years preceding the concerned financial year. Additionally, the condition for physical stay of 730 days during preceding 7 previous years has been removed.
  - An Indian citizen will be deemed to be a resident if he or she is not liable for tax in any other country due to specified criteria.

- **Taxability of dividend**

  Dividends will be taxable only in the hands of individual taxpayers as per their applicable tax rates (Dividend Distribution Tax abolished).

- **Deferment of taxes arising on Employee Stock Options (ESOPs)**

  Tax on ESOPs arising at the time of exercise in the hands of employees of eligible start-ups can now be deferred from exercise date to:
  - Sale of shares; or
  - Exit from the start-up; or
  - Up to 5 years

  whichever is earlier.

  Further, the rates in force in the financial year in which the shares and security is allotted or transferred will be applicable.

- **Tax treatment of employers' contribution toward various schemes**

  Employer's aggregate contribution in excess of INR7.5 lakh toward:
  - Recognised Provident Fund
  - National Pension Scheme
  - Approved Superannuation Fund

  shall be taxable in the hands of employees. Any accretion on the said funds will also be taxable.

- **Instant allotment of PAN**

  A process will be introduced for instant allotment of PAN on the basis of Aadhaar without any requirement for filling up of application form.

- **Affordable housing**

  An additional deduction up to INR1.5 lakh will be continued to be provided for purchase of first residential house property, if the loan has been sanctioned between 01 April 2019 and 31 March 2021. The time limit for loan sanction has been extended from 31 March 2020 to 31 March 2021.

- **e-Appeals and e-Penalty**

  e-Appeals and e-Penalty will be enabled in line with faceless assessment, reducing human intervention and improving taxpayers' experience.

- **"Vivad se Vishwas" Scheme (No Dispute but Trust Scheme)**

  "Vivad Se Vishwas" Scheme has been introduced, which is open till 30 June 2020, for reducing litigation. For those who avail of this scheme:

  - The disputed tax amount if paid on or before 31 March 2020 will result in a waiver of interest and penalty.
  - Some additional amount may be levied for disputed tax payments made on or before 30 June 2020.

Glossary

APA - Advance Pricing Agreement

GST - Goods and Services Tax

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1 February 2020

Budget Connect 2020

Tax Alert – Key amendments at enactment stage of Finance Bill, 2020

Advance Pricing Agreement and Safe Harbour to cover Income Attribution to a Permanent Establishment

Key tax takeaways

- Expansion in scope of Advance Pricing Agreement (APA) and Safe Harbour provisions to include determination of income attributable to business connection and permanent establishment (PE) would enable taxpayers to obtain upfront certainty on a contentious issue.
- The due date for Transfer Pricing (TP) compliances, such as TP documentation (TPD) and Form 3CEB, will be advanced by one month.
- Eligibility for opting for Dispute Resolution Panel (DRP) will be expanded to cover all nonresidents (NR).

Transfer pricing

- **Widening of scope of APA and Safe Harbour provisions**
  - **Background:**
    - The APA and Safe Harbour provisions are applicable for determining the arm's-length price (ALP) in relation to an international transaction.
    - There was ambiguity on whether a taxpayer could seek an APA for determining attribution of profits to a PE.
  - **Amendment:**
    - The scope of APA and Safe Harbour provisions will be expanded to cover determination of income deemed to accrue or arise in India.

Highlights

APA and Safe Harbour scope expanded

Revised due date for TP documentation and Form 3CEB
31 Oct

DRP route
for non-resident

    - This could potentially include all income arising to an NR through or from a business connection and PE, or through or from any property or asset or source of income in India, or through a transfer of a capital asset situated in India as well as determining the manner in which income is to be attributable to operations carried on in India.
    - The manner of determining the income may include the methods provided under the Income-Tax Rules, 1962, including the prescribed TP method, with adjustments or variations as appropriate.
    - The amendment will be effective for APAs entered on or after 1 April 2020, and for Safe Harbour from AY 2020-21.

- **Change in due date with respect to TPD and Accountant's report**
  - **Background:**
    - Currently, the due date for maintenance of TPD and filing of Accountant's report in Form 3CEB is the date of filing return of income, i.e., 30 November of the relevant AY.
  - Amendment:
    - The due date for maintenance of TPD and filing of Accountant's report in Form 3CEB will be advanced by one month to 31 October of the relevant AY.

- **Amendment to DRP provisions**
  - **Background:**
    - Objections before the DRP can be filed by the eligible assessee for any variation in the income or loss returned which is prejudicial to the interest of the such eligible assessee.
    - "Eligible assessee" means any person in whose case the variation arises a consequence of the TP order or a foreign company.
  - **Amendment:**
    - The definition of eligible assessee will be expanded to include an NR, not being a company, in addition to a foreign company.
    - The objections before the DRP can be filed for any variation prejudicial to the interest of the eligible assessee, even in the absence of adjustment to income and loss (for example, orders pertaining to penalty).
    - This amendment will be effective for any variation made by the tax authorities on or after 1 April 2020.

Glossary

APA - Advance Pricing Agreement

AY - Assessment Year

DRP - Dispute Resolution Panel

NR - Nonresident

PE - Permanent Establishment

TP - Transfer Pricing

TPD - Transfer pricing documentation

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1 February 2020

Budget Connect 2020

Tax Alert – Key amendments at enactment stage of Finance Bill, 2020

Classical system of dividend taxation reintroduced SEP provisions deferred

Key tax takeaways

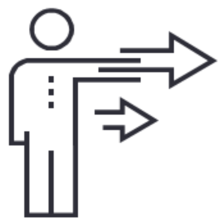
- Indian tax administration seeking to reinforce direction of its tax policy on taxing digital transactions
- Unilateral measures on digital taxation deferred in light of ongoing consultation process by the Organisation for Economic Co-operation and Development (OECD)/G20 Base Erosion and Profit Shifting Inclusive Framework (BEPS IF)
- Boost for fresh investments through extension of period of concessional withholding tax regime coupled with inclusion of certain securities under concessional withholding tax regime
- Strengthening International Financial Service Centre (IFSC)

International tax

- **Shift to classical system of taxing dividends in the hands of shareholders**
  - Under the current dividend taxation regime, a Dividend Distribution Tax (DDT) is levied on the payer company or mutual fund. Dividend income is exempt from tax in the hands of the shareholder or unit holder.
  - While the regime resulted in ease of tax collection, it was considered as regressive and as having a distortive effect in cross-border situations.
  - Therefore, the amendment will now shift the incidence of tax from the company to the hands of the shareholders or unit holders.
  - Nonresident shareholders or unit holders will be taxed at 20% on gross dividends under domestic tax law, subject to benefits under the Double Tax Avoidance Agreement (DTAA).
  - DTAAs could potentially provide lower tax rates for taxing dividends of nonresident shareholders subject to them qualifying as tax residents of an appropriate DTAA jurisdiction as well as satisfying anti-abuse provisions in the DTAA and domestic tax law, as may be applicable.

Highlights

Expansion of source rule taxation



Deferral of SEP provisions

- There is provision to remove the cascading affect by allowing set-off for dividend distributed through a holding-subsidiary structure.
- The amendment will be effective from financial year starting 1 April 2020.
- Corresponding amendments will be made to relevant withholding provisions.

- **Amendments to provision relating to "income deemed to accrue or arise in India"**
  - **Implementation of "Significant Economic Presence" (SEP) provisions deferred**
    - The Finance Act, 2018, inserted new explanation to Section 9 to clarify that the SEP of a nonresident in India shall constitute "business connection" in India although it was a non-recommended option for countries to adopt.
    - The OECD/BEPS IF has been working on addressing the tax challenges in digital economy since 2013 and mandated by G20 to deliver global consensus-based solutions by the end of 2020.
    - In light of the ongoing deliberations at the OECD where India is also actively participating, the SEP provisions will be deferred by one year. The provisions will now apply from financial year starting 1 April 2021.

      Minor changes will be made to the definition of SEP.

  - **Extending the source-based taxation rule to certain income:**
    - With regard to the ongoing discussions in the international forum on taxing rights of income from advertisement or user-based taxing rights, the source-based taxation rule will now be extended to cover the following income streams:
      - Income from advertisement
      - Income from sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India
      - Income from sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India
      - This amendment to be effective from financial year starting 1 April 2020
      - Nonresident taxpayers eligible to claim benefits under an applicable DTAA likely not impacted by the amendment to the domestic tax law

  - **Power to Indian tax administration to frame rules and procedure for arriving at the income of the nonresident in relation to:**
    - Operations carried out in India by a nonresident
    - Transactions or activities of a non-resident

  - **Rationalizing the definition of royalty**
    - The existing definition of "royalty" contained in the Income-tax Act, 1961 (Act) does not include consideration for the sale, distribution or exhibition of cinematographic films. Hence, royalty is not taxable in India even where the DTAA provides a right to tax such income.
      - Hence the definition of "royalty" is rationalized to include consideration for the sale, distribution or exhibition of cinematographic films.
      - This amendment will be effective from financial year starting 1 April 2020.

- **Aligning exemption from taxability of Foreign Portfolio Investors (FPIs), on account of indirect transfer of assets, with amended scheme of Securities and Exchange Board of India (SEBI)**
  - The exemption from taxability of FPIs, on account of indirect transfer of assets, is now aligned with the amended scheme of SEBI:
    - Grandfathering of exception to capital asset held by nonresident by way of investment in erstwhile Category I and II FPIs under the SEBI (FPI) Regulations, 2014

    - Extension of similar exemption to investment in Category-I FPI under the SEBI (FPI) Regulations, 2019
    - This amendment to be effective from financial year starting 1 April 2019

- **Interest limitation rules made inapplicable to a debt issued by permanent establishment of non-resident engaged in the business of banking in India**
  - Amendment provides much needed exemption to the Indian branches of foreign banks operating in India.
  - This amendment will be effective from financial year starting 1 April 2020.

- **Liberalization of investment-related conditions in the special taxation regime for offshore funds**
  - The Act provides for a safe harbor in respect of an eligible investment fund wherein the fund management activity, if carried out through an eligible fund manager located in India and acting on behalf of such fund, shall not constitute a business connection in India (Section 9A).
  - The benefit criteria under section 9A are linked to residence of fund, corpus, size, investor broad basing, investment diversification and payment of remuneration to fund manager at arm's length.
  - The following changes will now be made to the prescribed conditions:
    - For calculation of aggregate participation (either directly or indirectly) or investment in the fund by Indian resident, contribution of eligible fund manager up to INR250 million for the first 3 years will not be accounted.
    - The cut-off date to satisfy the "monthly average of corpus of fund" condition (i.e., INR10 million) for the funds established during the financial year shall be 12 months from the last day of the month of its establishment or incorporation.
  - This amendment will be effective from financial year starting 1 April 2019.

- **Extension of concessional rate of withholding tax (WHT) to certain securities as well as period for concessional rate**
  - Currently the applicability of preferential WHT on certain interest payments due to expire by 1 July 2020
  - Boost to IFSC:
    - Preferential WHT rate of 4% will be applicable on interest payable to nonresident on foreign currency (FC) borrowing.
    - However, money should be raised by way of long-term bond or rupee denominated bonds (RDB) between the period 1 April 2020 and 1 July 2023.
    - The long-term bond or RDB should be listed in any recognized stock exchanges located in any IFSC.
  - Extension of the period of concessional rate of WHT on approved borrowings in FC:
    - In an effort to encourage investment, the preferential rate of 5% WHT will be extended for another 3 years till 1 July 2023.
    - The amendment will be effective from financial year starting 1 April 2020.
  - Extension in period of applicability of concessional rate of WHT in relation to interest on certain bonds and Government securities:
    - The preferential rate of 5% WHT will be extended for another 3 years till 1 July 2023.
    - Also, it will be applicable on interest payable to Foreign Institutional Investor or Qualified Foreign Investor in respect of the investment made in municipal debt security between 1 April 2020 and 1 July 2023.
  - The amendment to be effective from financial year starting 1 April 2020

Glossary

Act - Income-tax Act, 1961

BEPS IF - Base Erosion and Profit Shifting Inclusive Framework

DTAA - Double Tax Avoidance Agreement

DDT - Dividend Distribution Tax

FC - Foreign Currency

FPI - Foreign Portfolio Investors

IFSC - International Financial Service Centre

OECD - Organisation for Economic Co-operation and Development

PAN - Permanent Account Number

RDB - Rupee Denominated Bonds

SEBI - Securities and Exchange Board of India

SEP - Significant Economic Presence

WHT - Withholding Tax

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