

Finance Bill, 2020 - An insight into the changes proposed

We have summarised below the key highlights of the Union Budget 2020 as announced on 1st February, 2020:

Income-tax

1. **New Optional Tax Regime Introduced** - As per New Optional Tax Payers Regime a taxpayer can now choose to opt for the new tax slab for FY 2020-21 (AY 2021-22). If an individual opts for the new slab rates he will not be eligible to claim tax benefits like LTA, HRA, Section 10 allowances, Standard Deduction, Professional tax, Interest on housing loan, etc.

2. **Modification of Residential Status in case of individuals** - The Budget proposes that a citizen of India would be deemed to be a resident in India in any financial year, if he/she is not liable to tax in any other country. In case a person of Indian origin comes on a visit to India, the number of days as mentioned in the existing basic condition of residential status is reduced to 120 days or more from existing 182 days or more. For the purposes of defining an individual as "not ordinarily resident", an Indian resident would be considered as not ordinarily resident if he has been a non-resident in India in 7 out of 10 preceding financial years.

3. **Combined upper exemption limit in respect of employer's contribution to NPS, Superannuation fund and Recognised provident fund**

It is proposed to provide combined upper exemption limit of Rs. 750,000 in respect of employer's contribution in a year to NPS, Superannuation fund and Recognised provident fund and any excess contribution will be taxable.

Further any annual addition by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme may be treated as perquisite to the extent it relates to the employer's contribution which is included in total income.

4. **Increase in safe harbour limit of 5 per cent under section 43CA, 50C and 56 of the Act to 10 per cent** - As per the present provisions, where the consideration received for transfer of land or building or both, is less than the value provided by stamp valuation authority in respect of such transfer, the value so adopted for the purpose of computing profits and gains from transfer of such assets shall be deemed to be the full value of consideration.

However, where the value received is not less than the 5% of the value adopted for the purpose of payment of stamp duty, the amount of consideration received shall be deemed to be the full value of the consideration.

The budget proposes to enhance the present limit of 5% to 10%. Accordingly, now in case the value received is not less than the 10% of the value adopted for the purpose of payment of stamp duty, the amount of consideration received shall be deemed to be the full value of the consideration.

5. **Enhanced tax audit limit under section 44AB** - Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed or exceeds one crore rupees in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, fifty lakh rupees in any previous year.

In order to reduce compliance burden on small and medium enterprises, the Budget has proposed to increase the threshold limit for a person carrying on business from one crore rupees to five crore rupees provided the aggregate of all receipts/ payments in cash during the previous year does not exceed five per cent of such receipts/ payments.

Further it is also proposed that tax audit report may be furnished by such assesseees at least one month prior to the due date of filing of return of income to enable prefilling of their Income tax returns on the government tax portal.

6. **Rationalization of provisions relating to computation of cost of acquisition** - The existing provisions of section 55 of the Act provide that for computing capital gains in respect of an asset acquired before 1st April, 2001, the assessee has been allowed an option of either to take the fair market value of the asset as on 1st April, 2001 or the actual cost of the asset as cost of acquisition.

It is proposed to rationalise the provision 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.

7. **Extending time limit for sanctioning of loan for affordable housing for availing deduction under section 80EEA of the Act.** - The existing provisions of section 80EEA of the Act provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. One of the conditions is that loan has been sanctioned by the financial institution during the period from 1st April, 2019 to 31st March,

2020. The Budget proposes to extend the time limit and allow the deduction even in cases where the loan has been sanctioned by the financial institution upto 31st March, 2021.

8. **Filing of statement of donation by donee to cross-check claim made by donor** - It is proposed that the deduction under section 80G/ 80GGA shall be allowed to the donor 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.

9. **Deferring Significant Economic Presence (SEP) proposal and extending the Source Rule** - Finance Act, 2018, *inter alia*, inserted the “significant economic presence” (SEP) provision relating to of a non-resident in India. The thresholds for the aggregate amount of payments arising from the specified transactions and for the number of users were required to be prescribed in the Rules. However, since discussion on this issue is still going on in G20-OECD BEPS project, these numbers have not been notified yet. G20-OECD report is expected by the end of December 2020. In the circumstances, it is proposed to defer the applicability of SEP to starting from assessment year 2022-23.

Further, as per the discussion going on in international forum, countries generally agree that income from advertisement that targets Indian customers or income from sale of data collected from India or income from sale of goods and services using such data collected from India, needs to be accounted for in Indian revenue . Hence, it is proposed to amend the source rule to clarify this position.

10. **Startups** - The existing provisions of section 80-IAC of the Act provide for a deduction of an amount equal to one hundred per cent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of seven years, at the option of the assessee, subject to the condition that the eligible start-up is incorporated on or after 1st April, 2016 but before 1st April, 2021 and the total turnover of its business does not exceed twenty-five crore rupees.

In order to promote investment in eligible start-ups, it is proposed to amend the section 80IAC so as to provide that -

(a) the deduction shall be available to an eligible start-up for a period of three consecutive assessment years out of 10 years instead of 7 years beginning from the year in which it is incorporated;

(b) the deduction under the said section shall be available to an eligible start-up, if the total turnover of its business does not exceed Rs. 100 crore instead of Rs. 25 crores in any of the previous years beginning from the year in which it is incorporated.

It is also proposed to defer the tax burden on employees due to tax on Employee Stock Options by five years or till they leave the company or when they sell, whichever is earliest. The said amendment shall be available to an eligible start-up, if the total turnover of its business does not exceed Rs. 100 crore in any of the financial years from the year of incorporation.

11. **Rationalising the definition of royalty** - Currently, due to exclusion of consideration for the sale, distribution or exhibition of cinematographic films from the definition of royalty, such royalty is not taxable in India even if the DTAA gives India the right to tax such royalty. Such a situation is discriminatory against Indian residents, since India is foregoing its right to tax royalty in case of a non-resident from another country without that other country offering similar concession to Indian resident.

Accordingly, the definition of royalty provided under section 9(1)(vi) is proposed to change to cover consideration for the sale, distribution or exhibition of cinematographic films under the ambit of royalty. Therefore, now consideration received for the sale, distribution or exhibition of cinematographic films under the ambit of royalty proposed to deemed accrue and arise in India and shall be taxable in India.

12. **Dividend Distribution tax - "back to the old classical system"** - It is proposed to abolish section 115O for removing DDT and to adopt the classical system of taxation under which dividend from domestic company and dividend on units of mutual fund / business trust shall be taxable in the hands of receiver and the company/MF/Trust shall be liable to deduct TDS @ 10% under section 194 if the payment of dividend exceeding Rs. 5,000. The receiver of the dividend shall be liable to pay tax according to the normal provision of the Act as applicable and shall not be allowed to claim expense against income from dividend more than 20% of the dividend income. Further, in order to remove cascading effect, it is proposed to insert new section 80M to allow deduction for the dividend received by domestic holding company from its domestic subsidiary company.

13. **Reducing the rate of TDS on fees for technical services (other than professional services)** - Due to the difference in understanding of section 194J and 194C provisions, there are large number of litigations on the issue of short deduction of tax treating assessee in default where the assessee deducts tax under section 194C, while the tax officers claim that tax should have been deducted under section 194J of the Act.

It is proposed to reduce rate for TDS in section 194J in case of fees for technical services (other than professional services) to 2% from existing 10%. The TDS rate in other cases under section 194J would remain same at 10%

14. **Amendment in definition of “work” under section 194C of the Act**- The tax authorities have noticed that some assesseees are using the escape clause of the section 194C by getting the contract manufacturer to procure the raw material supplied through its related parties. As a result, a substantial amount of income escapes the tax net. It is hence proposed to amend the definition of “work” u/s under section 194C to provide that in a contract manufacturing, the raw material provided by the assessee or its associate shall fall within the purview of the ‘work’ under section 194C. Associate is proposed to be defined to mean a person who is placed similarly in relation to the customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A of the Act.

15. **Due Date for the filing Income Tax return and Certification changed** - It is proposed to change due date of filing income tax return from 30th September to 31st October for the Company, other person whose accounts are required to be audited and partner of the firm whose accounts are required to be audited.

Further, it is also proposed to file tax audit report, MAT certificate and Transfer pricing certificate at least one month prior to the due date of filing of return of income where applicable.

16. **Widening the scope of TDS on E-commerce transactions through insertion of a new section** - In order to widen and deepen the tax net by bringing participants of e-commerce within tax net, it is proposed to insert a new section 194-O in the Act so as to provide for a new levy of TDS at the rate of one per cent of the gross amount of sale.

17. **Widening the scope of section 206C to include TCS on foreign remittance through Liberalised Remittance Scheme (LRS) and on selling of overseas tour package as well as TCS on sale of goods over a limit**- In order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on overseas remittance and for sale of overseas tour package and sale of goods over a specified limit.

An authorised dealer receiving an amount or an aggregate of amounts of seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of five per cent. In non- PAN/Aadhaar cases the rate shall be ten per cent.

A seller of an overseas tour program package who receives any amount from any buyer shall be liable to collect TCS at the rate of five per cent. In non-PAN/ Aadhaar cases the rate shall be ten per cent

Further, in it is proposed to amend section 206C to levy TCS on sale of goods above specified limit. A seller of goods is liable to collect TCS at the rate of 0.1 per cent. on consideration

received from a buyer in a previous year in excess of fifty lakh rupees. In non-PAN/ Aadhaar cases the rate shall be one per cent.

18. **Provision for e-appeal and e-penalty similar to e-assessments**- It is proposed to reduce personal interface with tax officers by introducing faceless appeals and penalty proceedings in line of e-assessment scheme and empowering Central Government to notify an e-appeal and e-penalty scheme for disposal of appeal and penalty proceedings so as to impart greater efficiency, transparency and accountability.

19. **Form 26AS modifications**- Form 26AS presently contains the details of tax deducted or collected, self assessment tax and advance tax etc during the relevant year. With changes proposed in Budget 2020, Form 26AS will now have details pertaining to sale or purchase of property details and other specified transactions.

20. **Clarity on stay granted by the Income Tax Appellate Tribunal (ITAT)** - It is proposed to provide that ITAT may grant stay under the first proviso subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.

It is also proposed to substitute second proviso to provide that no extension of stay shall be granted by ITAT, where such appeal is not disposed of within the said period of stay as specified in the order of stay. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. The total stay granted by ITAT cannot exceed 365 days.

21. **'Vivad Se Vishwas' scheme to be introduced to end pending litigation in the Income-tax Act** - A taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays the tax by 31st March, 2020. Those who avail this scheme after 31st March 2020, will have to pay some additional amount.

22. **Amendment of section 115BAB of the Act to include generation of electricity as manufacturing**- The newly inserted section 115BAB provides that new manufacturing domestic companies set up on or after 1st October, 2019, which commence manufacturing or production by 31st March, 2023 and do not avail of any specified incentives or deductions, may opt to pay tax at a concessional rate of 15 per cent. Further, as per the explanation certain businesses have been excluded from the definition of manufacturing or production.

The Budget proposes to provide that the benefit of the concessional rate under section 115BAB of the Act to business of generation of electricity by including "generation of electricity" under the definition of manufacturing or production of an article or thing.

23. **Availing deduction under section 35AD made optional** - Due to the current legal interpretation of the provision, a domestic company opting for concessional tax rate under section 115BAA or section 115BAB of the Act, which does not claim deduction under section 35AD, would also be denied normal depreciation under section 32 due to operation of sub-section (4) of section 35AD. Since this has not been the intention of the statute, the budget seeks to clarify that it is proposed to amend sub-section (1) of section 35AD to make the deduction thereunder optional. It is further proposed to amend sub-section (4) of section 35AD to provide that no deduction will be allowed in respect of expenditure incurred under sub-section (1) in any other section in any previous year or under this section in any other previous year, if the deduction has been claimed by the assessee and allowed to him under this section.

24. **Exempting non-resident from filing of Income-tax return in certain conditions** - As per the current provisions of section 115A of the Act relief to non-residents from filing of return of income is provided where the non-resident is not liable to pay tax other than the TDS which has been deducted on the dividend or interest income while the same relief has not been extended to non-residents whose total income consists only of the income by way of royalty or FTS.

Therefore, it is proposed to amend section 115A of the Act and allow a non-resident to not file return of income under sub-section (1) of section 139 of the Act if their total income consists only of the income by way of royalty or FTS.

25. **Amendment in the provisions of Act relating to verification of the return of income and appearance of authorized representative** - Section 140 of the Act provides that in case of company the return is required to be verified by the managing director (MD) thereof. Where the MD is not able to verify for any unavoidable reason or where there is no MD, any director of the company can verify the return. Similarly, in case of a limited liability partnership (LLP), the return has to be verified by the designated partner of the LLP or by any partner, in case there is no such designated partner.

It is proposed to amend section 140 of the Act so as to enable any other person, as may be prescribed by the Board to verify the return of income in the cases of a company and a limited liability partnership.

26. **Penalty for fake Invoice**- It is proposed to introduce the new section 271AAD related to levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability. The penalty payable by

such person shall be equal to the aggregate amount of false entries or omitted entry. It is also propose to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false or omitted entries.

Goods and Services Tax - Similar and Consequential amendments are proposed in IGST Act/ SGST Act/ UGST Act.

1. **Exclusion of certain persons from Composition scheme**- following categories of taxable persons shall be excluded -

- supply of services not leviable to tax under the CGST Act
- inter-State outward supply of services
- outward supply of services through an e-Commerce operator

2. **Cancellation of registration** - Clause (c) of sub-section (1) of section 29 of the CGST Act is being amended to provide for cancellation of registration which has been obtained voluntarily under sub-section (3) of section 25.

3. **Revocation of cancellation of registration in certain cases** - Insertion of new sub-section to empower the jurisdictional tax authorities to extend the date for application of revocation of cancellation of registration in deserving cases. (*Section 30*)

4. **Invoicing formalities in cases of supply of taxable services** - Section 31 of the CGST Act is being amended to provide enabling provision to prescribe the manner of issuance of invoices in case of supply of taxable services.

5. A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed and to omit the corresponding provision of late fees for delay in issuance of TDS certificate (*Section 51*)

6. Inserted new sub section (1A) to make the beneficiary of the transactions of passing on or availing fraudulent Input Tax Credit liable for penalty equivalent to the tax evaded on the person who commits such specified offences (*Section 122*)

7. To make the offence of fraudulent avail of input tax credit without an invoice or bill a cognizable and non-bailable offence; and to make any person who commits, or causes the commission and retains the benefit of transactions arising out of specified offences liable for punishment. (*Section 132*)

8. Time extended from 3 years to 5 years, from the commencement of Act, enabling Government to issue clarifications for removal of difficulties (*Section 172*)

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