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DETAILED ANALYSIS OF THE FINANCE ACT, 2020 DIRECTLY CONCERNING THE REAL ESTATE SECTOR AND THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020 APPLICABLE FOR A.Y. 2021-2022 (F.Y. 2020-2021) AND ONWARDS

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DETAILED ANALYSIS OF THE FINANCE ACT, 2020 DIRECTLY CONCERNING THE REAL ESTATE SECTOR AND THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020

I N D E X

DETAILED ANALYSIS OF THE FINANCE ACT, 2020 DIRECTLY CONCERNING THE REAL ESTATE SECTOR WHICH RECEIVED PRESIDENTIAL ASSENT ON 27TH MARCH, 2020

I. INTRODUCTION

Ms. Nirmala Sitharaman presented her second Union Budget of the NDA 2.0 government amidst considerable expectations from the real estate sector and other economic contributors. The present budget is woven around three prominent themes – (1) **Aspirational India** in which all sections of the society seek better standards of living, with access to health, education and better jobs; (2) **Economic development** for all; and (3) **Caring Society** that is both humane and compassionate.

This circular highlights the key amendments made by the Finance Act, 2020 which are relevant to the real estate sector.

Furthermore, this Circular also highlights the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 which was issued as an Ordinance on 31st March, 2020 and which has now become an Act in order to ease the compliance burden on taxpayers due to outbreak of COVID-19 pandemic. The President of India gave his assent to the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 on 29th September, 2020.

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amends Income-tax Act, 1961, Central Goods and Services Tax Act, 2017, Finance Act, 2019, the Direct Tax Vivad se Vishwas Act, 2020 and the Finance Act, 2020.

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 aims to provide relief from various compliances under certain 'specified Acts' including the Act and further provides relaxation in the payment of interest due to delay in the payment of taxes. It further provides for immunity from penalty and prosecution if there is any delay in the payment of taxes for the specified period if the same is paid within the prescribed date.

II. GLOSSARY OF TERMS USED

"Act" means the Income Tax Act, 1961

"AMT" means Alternate Minimum Tax applicable to the assessees other than a company-assessee, as referred to in Section 115JC

"DTAA" means Double Taxation Avoidance Agreements

"IFSC" means the International Financial Services Centre as referred to in sub-section (1A) of Section 80LA

"In VITs" means Infrastructure Investment Trusts

"LRS" means the Liberalized Remittance Scheme of the Reserve Bank of India

"MAT" means Minimum Alternate Tax applicable to corporate assessees, as referred to in Section 115JB

"REITs" means Real Estate Investment Trusts

"Rules" means the Income Tax Rules, 1962

"SEZ" means Special Economic Zone

"SPV" means Special Purpose Vehicle

"TLAA" means The Taxation Law Amendment Act, 2019 which replaced The Taxation Laws (Amendment) Ordinance, 2019, which received the assent of the President of India on 12th December, 2019

III. INCOME TAX

Unless otherwise specifically mentioned, the amendments are effective from 1st April, 2021 i.e. A. Y. 2021-22 and are therefore applicable with respect to income arising on or after 1st April, 2020 i.e. during the F. Y. 2020-21. Specific mention is made at the relevant places, where the effective date of the amendment is other than 1st April, 2021. Any reference to the sections, unless otherwise stated, is to the sections of the Act.

1. IMPORTANT CHANGES TO TAX RATES FOR THE F. Y. 2020-21 (A.Y. 2021-22)

As regards rates of tax, the following changes have been made by the Finance Act:

(a) The Finance Act has not made changes in the existing tax rates for various types of assessee, subject however to the following:

(i) In case of Individuals and HUFs, a new regime of taxation is provided under Section 115BAC, wherein an ***option*** is given to such assessee to opt for concessional/ reduced tax rates, subject to such conditions as stated therein.

(ii) In case of resident co-operative societies, a new regime of taxation is provided under Section 115BAD, wherein an ***option*** is given to such assessee to opt for a concessional/ reduced tax rate of 22% as against the existing tax rate of 30%, subject to such conditions as stated therein.

(b) The existing "**Health and Education Cess**" continues to be @ 4%.

(c) There is no change in the rate of **Surcharge**.

(d) Maximum marginal rate of tax for individuals and HUF works out to 42.74% (including Surcharge of 37% and Health and Education Cess of 4%).

(e) For A. Y. 2020-21, a resident individual is entitled to tax rebate under Section 87A up to Rs.12,500/-, provided his Total Income is not in excess of Rs.5,00,000/-. This tax rebate shall remain the same for A. Y. 2021-22.

The income tax rates (inclusive of Surcharge, Health and Education Cess) and TDS Rates for the F. Y. 2020-21 is tabulated hereunder for ready reference. These income tax rates are applicable on income earned during the period from 1st April, 2020 to 31st March, 2021.

1.1 EFFECTIVE TAX RATES FOR INDIVIDUALS AND HUFs (INCLUSIVE OF SURCHARGE & HEALTH AND EDUCATION CESS)

Existing Tax Regime - For resident Individuals and HUFs

Particulars	Tax Rates for F. Y. 2019-20 & 2020-21			
	Resident Very Senior Citizens of age 80 Years & above	Resident Senior Citizens of 60 Years & above but below age of 80 years	Resident Men & Women below 60 Years & Non Residents (Men & Women)/ HUF	Applicable Surcharge
Total Income				
Up to Rs.2,50,000	Nil	Nil	Nil	Nil
Rs.2,50,001 – Rs.3,00,000	Nil	Nil	5.20%	Nil
Rs.3,00,001 – Rs.5,00,000	Nil	5.20%	5.20%	Nil
Rs.5,00,001 – Rs.10,00,000	20.80%	20.80%	20.80%	Nil
Rs.10,00,001 – Rs.50,00,000	31.20%	31.20%	31.20%	Nil
Rs.50,00,001- Rs.1,00,00,000	34.32%	34.32%	34.32%	10%
Rs.1,00,00,001 – Rs.2,00,00,000	35.88%	35.88%	35.88%	15%
Rs.2,00,00,001 – Rs.5,00,00,000	39%	39%	39%	25%*
Above Rs.5,00,00,000	42.74%	42.74%	42.74%	37%*

***** Surcharge on long term capital gains taxable under Sections 111A and short term capital gains taxable under Section 112A arising on transfer of listed equity shares and units of equity oriented fund / business trust would be restricted to 15%.

New Optional Tax Regime under Section 115BAC - For resident Individuals and HUFs

The Finance Act has introduced a new scheme for Individuals and HUFs with lower rates for those foregoing certain exemptions / deductions:

Total Income	Tax Rate (under the new regime)	Tax Rate (under the old regime)
Up to Rs. 2,50,000	Nil	Nil
Rs. 2,50,001 to Rs. 5,00,000	5%	5%
Rs. 5,00,001 to Rs. 7,50,000	10%	20%
Rs. 7,50,001 to Rs. 10,00,000	15%	20%
Rs. 10,00,001 to Rs. 12,50,000	20%	30%
Rs. 12,50,001 to Rs. 15,00,000	25%	30%
Above Rs. 15,00,000	30%	30%

1. The new scheme embodied in Section 115BAC is optional and the assessees will have to opt for the new scheme in the prescribed manner:

   (i) Where such individual or HUF does not have business income, the option is to be exercised for every year along with the filing of the return of income under Section 139(1) for the year; and

   (ii) Where such individual or HUF has business income or professional income, the option is to be exercised on or before the due date of filing the return of income under Section 139(1), and such option once exercised shall apply for that previous year and to all subsequent years.

2. If the assessee having business income or professional income has opted to be governed by the new scheme, then subsequently he can opt out only once (other than for the year for which it was exercised) and thereafter, he will never be eligible to opt for the new scheme again, except when he ceases to have any business income.

3. The above concessional tax rates can be opted after foregoing the following deductions/ exemptions/ allowances:

   (i) Specified exemptions under Section 10 viz. HRA, LTA, allowances under Section 10(14), allowance for income of a minor under Section 10(32), exemption for SEZ under Section 10AA and other specified exemption.

   (ii) **Standard Deduction**, deduction for entertainment allowance and employment/ professional tax under Section 16.

   (iii) **Housing loan 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).

   Comment

   However, standard deduction of 30% under Section 24(a) would still be available while computing the income under head 'Income from house property'.

   (iv) Deductions under Sections 32(1)(iia), 32AD, 33AB, 33ABA, 35(1), 35(2AA), 35AD, 35CCC and 57(iii).

   (v) **All deductions under Chapter VI-A excluding deduction under Section 80CCD(2) (Employer contribution to notified Pension Scheme) and Section 80JJAA (deduction on account of new employment)**

(vi) Set off of any loss or unabsorbed depreciation brought forward from any earlier assessment years if such loss or depreciation is attributable to deductions mentioned above

(vii) Set off of any loss under the head "Income from house property" with any other head of income

(viii) Any exemption or deduction for allowance or perquisite, provided under any other law

4. The Memorandum to the Finance Bill states that as many allowances are provided through notification of rules, the Rules would be amended subsequently, so as to allow only the following allowances notified under Section 10(14) to the Individual or HUF exercising option under the aforesaid section, viz. transport allowance to divyang employee, conveyance allowance in performance of office duties, allowance to meet cost of travel on tour or on transfer and daily allowance to employee on account of absence from his normal place of duty.

It is also proposed to amend Rule 3 of the Rules subsequently, so as to remove exemption in respect of free food and beverage through vouchers provided to the employee, being the person exercising option under the aforesaid section, by the employer.

5. The option shall become invalid, if the individual or HUF fails to satisfy the conditions and the existing provisions of the Act shall apply accordingly.

6. There is no separate higher threshold prescribed for senior and very senior citizens in the optional scheme.

7. Surcharge and Cess remain unchanged.

8. **Once this option is exercised, provisions relating to AMT and carry forward and set-off of AMT credit relating to the same will not be applicable.** For this, amendments have been made in Sections 115JC and 115JD.

9. If the individual or HUF has a Unit in the IFSC as referred to in sub-section (1A) of Section 80LA, the deduction under Section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that section.

10. If an assessee does not opt for the new scheme, he will continue to be governed by the existing regime.

11. The effective tax rates under the new scheme for different slabs of income is given as under :

Particulars	Tax Rates for F. Y. 2020-21			
	Resident Very Senior Citizens of age 80 Years & above	Resident Senior Citizens of 60 Years & above but below age of 80 years	Resident Men & Women below 60 Years & Non Residents (Men & Women)/ HUF	Applicable Surcharge
Total Income				
Up to Rs.2,50,000	Nil	Nil	Nil	Nil
Rs.2,50,001 – Rs.5,00,000	5.20%	5.20%	5.20%	Nil
Rs.5,00,001 – Rs.7,50,000	10.40%	10.40%	10.40%	Nil
Rs.7,50,001 – Rs.10,00,000	15.60%	15.60%	15.60%	Nil
Rs.10,00,001 – Rs.12,50,000	20.80%	20.80%	20.80%	Nil
Rs.12,50,001 – Rs.15,00,000	26%	26%	26%	Nil
Rs.15,00,001 – Rs.50,00,000	31.20%	31.20%	31.20%	Nil
Rs.50,00,001 – Rs.1,00,00,000	34.32%	34.32%	34.32%	10%
Rs.1,00,00,001 – Rs.2,00,00,000	35.88%	35.88%	35.88%	15%
Rs.2,00,00,001 – Rs.5,00,00,000	39%	39%	39%	25%
Above Rs.5,00,00,000	42.74%	42.74%	42.74%	37%

1.2 EFFECTIVE TAX RATES FOR COMPANIES (INCLUSIVE OF SURCHARGE & HEALTH AND EDUCATION CESS)

New Optional Tax Regime introduced for Domestic Companies vide amendments made to TLAA

A. Optional Tax Regime for Domestic companies under Section 115BAA (effective from F. Y. 2019-20)

1. Section 115BAA was inserted in the Act by TLAA to provide an option to domestic companies to pay income tax at the rate of 22% instead of 30% from F. Y. 2019-20 and onwards, if such domestic companies complies with certain prescribed conditions and which exercises the option on or before the due date specified under Section 139(1) for furnishing returns of income for any previous year relevant to the assessment year commencing on or after 1st April, 2020.

2. This option is available to any domestic company which satisfies the following conditions:

   (i) The total income of the domestic company shall be computed without any deductions under Sections 10AA, 32(1)(iia) i.e. additional depreciation, 32AD, 33AB, 33ABA, 35(1)(ii)/ (iia)/ (iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD or Chapter VI-A (other than Section 80JJAA).

   (ii) Carried forward business losses or unabsorbed depreciation which are attributable to any of the above referred deductions including deemed losses or depreciation under Section 72A

shall not be available for set off and it shall be deemed that full effect has been given to such losses or depreciation.

(iii) The total income shall be computed by claiming depreciation under Section 32 (other than additional depreciation) which shall be determined in a prescribed manner and after setting off normal business losses or unabsorbed depreciation, other than the business losses or unabsorbed depreciation referred to in sub-clause (ii) above.

3. The Finance Act has amended the provisions of Section 115BAA to allow deduction only under Sections 80JJAA and 80M under Chapter VI-A, to domestic companies opting for taxation under the aforesaid section.

4. **Comment**

(a) Standard deduction of 30% under Section 24(a) and interest deduction under Section 24(b), would be available while computing the income under head 'Income from house property'.

(b) A company having two units under single umbrella, one unit which is eligible for deduction under Section 80-IA ("80-IA Unit") and another unit which is not eligible for deduction under Section 80-IA unit ("Non 80-IA Unit"), may be restructured in a manner that the company can avail the option of lower deduction of corporate rate of tax under Section 115BAA in respect of Non 80-IA Unit and at the same time continue to avail the deduction under Section 80-IA in respect of profits and gains of its 80-IA Unit. The restructuring may be done by slump sale or demerger of the Non 80-IA Unit to another resultant company in which the shareholding structure is the same as that of the transferor company. Further, the demerger may be with NCLT's approval (tax compliant demerger) or without NCLT approval (non-tax compliant demerger). However, this would involve costs in the form of stamp duty and one should do costs-benefit analysis before undertaking the restructuring.

(c) A company having carried forward business losses, MAT credit or unabsorbed depreciation, may opt for lower rate of corporate tax under Section 115BAA once its entire carried forward business losses, MAT credit or unabsorbed depreciation is utilized/ set off.

B. Optional Tax Regime for new manufacturing Domestic companies under Section 115BAB (effective from F. Y. 2019-20)

1. Furthermore, a new Section 115BAB has been inserted in the Act by TLAA to give benefit of reduced corporate tax rate of 15% instead of 30% to domestic manufacturing companies, from F. Y. 2019-20 and

onwards, if such domestic manufacturing companies complies with certain prescribed conditions and which exercises the option on or before the due date specified under Section 139(1) for furnishing return of income for any previous year relevant to the assessment year commencing on or after 1st April, 2020.

2. This option is available to any domestic manufacturing company which satisfies the following conditions:

(i) This option is available to a domestic company which has been set-up and registered on or after 1st October, 2019 and engaged in the business of manufacture or production of any article or thing (including business of generation of electricity) and research in relation to, or distribution of, such article or thing manufactured or produced by it. The option is required to be exercised on or before the due date specified under Section 139(1) for furnishing the **first of the** returns of income for any previous year relevant to the assessment year commencing on or after 1st April, 2020.

(ii) **Manufacturing or production of the article or thing should commence on or before 31st March, 2023**.

(iii) The business is not formed by splitting up, or the reconstruction, of a business already in existence.

(iv) **The company does not use any machinery or plant previously used for any purpose. Second hand machinery or plant to the extent of 20% of the total value of machinery or plant and usage of machinery or plant which were previously used outside India are permitted.**

(v) **The company does not use any building previously used as a hotel or a convention centre in respect of which deduction under Section 80-ID has been allowed.**

(vi) The total income of the domestic company shall be computed without any deductions under the provisions of Sections 10AA, 32(1)(iia) i.e. additional depreciation, 32AD, 33AB, 33ABA, 35(1)(ii)/ (iia)/ (iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD or Chapter VI-A (other than Section 80JJAA).

(vii) Carried forward losses or unabsorbed depreciation which are attributable to any of the above referred deductions including deemed losses or depreciation under Section 72A shall not be available for set off and it shall be deemed that full effect has been given to such losses or depreciation.

(viii) The total income shall be computed by claiming depreciation under Section 32 (other than additional depreciation) which shall be determined in a prescribed manner and after setting off normal business losses or unabsorbed depreciation, other than

the losses or unabsorbed depreciation referred to in sub-clause (vii) above.

(ix) **Any income which is neither derived from nor is incidental to manufacturing or production of an article or thing shall be taxed @ 22% (with applicable Surcharge)**.

3. The Finance Act has amended the provisions of Section 115BAB to allow deduction only under Sections 80JJAA and 80M under Chapter VI-A, to domestic companies opting for taxation under the aforesaid section.

4. **Comment**

Standard deduction of 30% under Section 24(a) and interest deduction under Section 24(b), would be available while computing the income under head 'Income from house property'.

C. Amendments in MAT vide TLAA – Section 115JB (effective from F. Y. 2019-20)

1. **For companies opting for the new regime under Sections 115BAA or 115BAB, the provisions of Section 115JB relating to MAT are not applicable.**

2. For other companies, the rate of MAT is reduced from 18.5% to 15%.

3. For companies having income chargeable under sections 111A and 112A, the rate of surcharge on the tax on such income has been reduced to 15%.

These amendments are effective from 1st April, 2020 and accordingly, apply in relation to A. Y. 2020-21 and subsequent assessment years.

Effective tax rates (including surcharge and cess) for F. Y. 2020-21 will be as under:

Types of Companies	**Income not exceeding Rs.1 Crore**		**Income exceeding Rs.1 Crore and up to Rs.10 Crore**		**Income above Rs.10 Crore**	
	Effective tax rate (normal)	Effective MAT	Effective tax rate (normal)	Effective MAT rate	Effective tax rate (normal)	Effective MAT rate
New domestic manufacturing companies exercising option to pay tax as per Section 115BAB	17.16%**	Nil	17.16%**	Nil	17.16%**	Nil
Domestic company exercising option to pay tax as per Section 115BAA	25.17%**	Nil	25.17%**	Nil	25.17%**	Nil

Types of Companies	Income not exceeding Rs.1 Crore		Income exceeding Rs.1 Crore and up to Rs.10 Crore		Income above Rs.10 Crore	
Domestic company with turnover of up to Rs. 400 Crores in F.Y. 2018-19 and avails tax incentives or exemptions or tax holiday	26%	15.60%	27.82%*	16.69%*	29.12%*	17.47%*
Other domestic company	31.20%	15.60%	33.38%*	16.69%*	34.94%*	17.47%*
Foreign Company	41.60%$	15.60%$#	42.43%$	15.91%$#	43.68%$	16.38%$#

* Includes surcharge @ 7% in case of income from Rs.1 Crore up to Rs.10 Crore and 12% in case of income above Rs.10 Crore

** Includes surcharge @ 10%.

$ Includes surcharge @ 2% in case of income from Rs.1 Crore up to Rs.10 Crore and 5% in case of income above Rs.10 Crore

\# If MAT is applicable to the foreign company

1.3 EFFECTIVE TAX RATES FOR CO-OPERATIVE SOCIEITES (INCLUSIVE OF SURCHARGE & HEALTH AND EDUCATION CESS)

New Optional Tax Regime under Section 115BAD - For resident Co-operative Societies

1. The Finance Act has inserted a new Section 115BAD to provide for concessional rate of tax in case of a resident co-operative society. It provides that notwithstanding anything contained in the Act, but subject to the provisions of Chapter XII and satisfaction of certain conditions, a co-operative society resident in India shall have the option to pay tax at basic rate of 22% instead of 30% for F. Y. 2020-21 and onwards in respect of its total income.

2. The total income of the co-operative society shall be computed without the following exemption/ deductions:

   (i) Exemption for SEZ under Section 10AA

   (ii) Deductions under Sections 32(1)(iia), 32AD, 33AB, 33ABA 35(1)(ii)/ (iia)/ (iii), 35(2AA), 35AD and 35CCC;

   (iii) Chapter VI-A deductions, excluding deduction under Section 80JJAA (for new employment)

(iv) **Set off of any loss or depreciation brought forward from earlier assessment year if the same is attributable to any of the deductions specified above**.

3. In case the co-operative society fails to satisfy the conditions mentioned under sub-section (2) of Section 115BAD then the concessional rate of tax shall become invalid for that and subsequent assessment years as if the option to pay tax at concessional rate had never been exercised and other provisions of the Act shall apply.

4. Section 115BAD(3) provides that the loss or depreciation referred in Section 115BAD(2)(ii) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

5. Where depreciation allowance in respect of block of asset was not given full effect prior to the assessment years beginning on 1st April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1st April, 2020 in the prescribed manner, if the option to pay at concessional rate of tax is exercised for a previous year beginning 1st April, 2020.

6. Section 115BAD(4) provides that in case a person has a unit in IFSC, a deduction under Section 80LA shall be available to such a unit subject to conditions mentioned under that section.

7. Section 115BAD(5) provides that the co-operative societies must opt for concessional rate of tax on or before the due date mentioned under Section 139(1) for furnishing the return of income for any previous year relevant to A.Y. 2021-22 or any subsequent assessment year. Such option, once exercised, shall continue to apply for all subsequent assessment years and cannot be subsequently withdrawn for the same or any subsequent year.

8. **Once this option is exercised, provisions relating to AMT and carry forward and set-off of AMT credit under Sections 115JC and 115JD relating to the same will not be applicable**.

Effective tax rates (including surcharge and cess) for F. Y. 2020-21 will be as under:

Particulars	**Income up to Rs. 1 Crore**	**Income above Rs. 1 Crore**	
	Effective Tax Rate	**Effective Tax Rate**	**Surcharge Applicable for income above Rs. 1 Crore**
Co-operative societies opting for taxation under Section 115BAD	22.88%	25.17%	10%
Other Co-operative Society	31.20%	34.94%	12%

1.4 EFFECTIVE TAX RATES FOR OTHER ASSESSEES (INCLUSIVE OF SURCHARGE & HEALTH AND EDUCATION CESS)

Particulars	Threshold Limit for Surcharge	F. Y. 2020-21		
		Tax Rate without Surcharge	Tax Rate with Surcharge	Rate of Surcharge
Partnership Firm	Up to Rs.1 Crore	31.20%	NA	Nil
	Above Rs.1 Crore	NA	34.94%	12%
Limited Liability Partnership	Up to Rs.1 Crore	31.20%	NA	Nil
	Above Rs.1 Crore	NA	34.94%	12%
Local Authority	Up to Rs.1 Crore	31.20%	NA	Nil
	Above Rs.1 Crore	NA	34.94%	12%
AOP, BOI, whether incorporated or not, or every artificial juridical person	Up to Rs.2,50,000	Nil	NA	Nil
	Rs.2,50,001 to Rs.5,00,000	5.20%	NA	Nil
	Rs.5,00,001 to Rs.10,00,000	20.80%	NA	Nil
	Rs.10,00,000 to Rs.50,00,000	31.20%	NA	Nil
	Rs.50,00,000 to Rs.1,00,00,000	31.20%	34.32%	10%
	Rs.1,00,00,001 to Rs.2,00,00,000	31.20%	35.88%	15%
	Rs.2,00,00,001 to Rs.5,00,00,000	31.20%	39%	25%
	Above Rs.5 Crores	31.20%	42.74%	37%
Tax on profits distributed by Indian Companies				
(A) Buyback of shares by unlisted Domestic Companies during the F. Y. 2019-20 u/s.115QA		NA	23.27%	12%
(B) Buyback of shares by listed Domestic Companies made after 5th July, 2019 u/s.115QA		NA	23.27%	12%

1.5 ALTERNATE MINIMUM TAX ("AMT") RATES FOR NON CORPORATE ASSESSEES (INCLUSIVE OF SURCHARGE, HEALTH AND EDUCATION CESS)

Particulars	Threshold Limit for Surcharge	F. Y. 2020-21		
		Tax Rate without Surcharge	Tax Rate with Surcharge	Rate of Surcharge
Partnership Firm - Alternate Minimum Tax (Basic AMT Rate – 18.50%)	Up to Rs.1 Crore	19.24%	NA	Nil
	Above Rs.1 Crore	NA	21.55%	12%

Particulars	Threshold Limit for Surcharge	F. Y. 2020-21		
		Tax Rate without Surcharge	Tax Rate with Surcharge	Rate of Surcharge
Limited Liability Partnership – Alternate Minimum Tax (Basic AMT Rate – 18.50%)	Up to Rs.1 Crore	19.24%	NA	Nil
	Above Rs.1 Crore	NA	21.55%	12%
Co-operative Society – Alternate Minimum Tax (Basic AMT Rate – 18.50%)	Up to Rs.1 Crore	19.24%	NA	Nil
	Above Rs.1 Crore	NA	21.55%	12%
Individuals and HUFs – Alternate Minimum Tax (Basic AMT Rate – 18.50%)	Rs.50 Lakhs	19.24%	NA	Nil
	Rs.50 Lakhs to Rs.1 Crore	NA	21.16%	10%
	Rs.1 Crore to Rs.2 Crores	NA	22.13%	15%
	Rs.2 Crores to Rs.5 Crores	NA	24.05%	25%
	Rs.5 Crores	NA	26.36%	37%

Notes :

1. ***Non-corporate units located in International Financial Services Centre (IFSC) are liable to Alternate Minimum Tax at a concessional rate of 9% (instead of 18.50%) plus Surcharge and Health and Education Cess.***

2. ***For resident co-operative societies and Individuals and HUFs opting for the new tax regime under Sections 115BAC or 115BAD, the provisions of Section 115JC relating to AMT are not applicable.***

3. ***Any Individuals / HUF and Co-operative Society claiming deduction of an amount equal to 100% of the profits and gains derived from the business of developing and building affordable housing projects under Section 80-IBA and who has not opted for concessional/ reduced tax regime under Section 115BAC or Section 115BAD respectively, shall still be liable to pay AMT on its book profits at the basic rate of 18.50%. However, if such assesses opts for concessional / reduced tax regime under Section 115BAC or 115BAD, then such assessees shall neither be eligible to claim deduction under Section 80-IBA nor shall it be liable to pay AMT on its book profits and shall also not be entitled to carry forward and set off its past AMT credit and pay @ 25.17%.***

4. ***A company having two housing projects under one single umbrella, one affordable housing project which is eligible for deduction under Section 80-IBA ("80-IBA Project") and another non-affordable housing project which is not eligible for deduction under Section 80-IBA unit ("Non 80-IBA Project"), may be restructured in a manner that the company can avail the option of lower deduction of corporate rate of tax under Section 115BAA in respect of Non 80-IBA Project and at the same time continue to avail the deduction under Section 80-IBA in respect of profits and gains of its 80-IBA Project. The restructuring may be done by slump sale or demerger of the Non 80-IBA Project to another resultant company in which the shareholding structure is the same as that of the transferor company. Further, the demerger may be with NCLT's approval (tax compliant demerger) or without NCLT approval (non-tax compliant demerger). However, this would involve costs in the form of stamp duty and one should do costs-benefit analysis before undertaking the restructuring.***

1.6 TAX ON CAPITAL GAINS - SECTIONS 10(38), 111A, 112 & 112A

Category of Assessee	Long Term Capital Gains			Short Term Capital Gains	
	On all Assets (other than listed securities)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust		On all Assets (including listed securities, where STT is not paid)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust, where STT is paid
		If STT is paid (Refer No 5 below)	If STT is not paid		
Resident Individuals/ HUFs having taxable income up to Rs.2.50 lakhs	Nil	Nil	Nil	Nil	Nil
Individuals & HUFs having taxable income exceeding Rs.2.50 lakhs (Refer Note 1 below)	20% with indexation	10% with grandfathering	10% without Indexation or 20% with Indexation	Slab Rates Max – 30%	15%
Partnership Firms/ LLPs (Refer Note 2 below)	20% with indexation	10% with grandfathering	10% without Indexation or 20% with Indexation	30%	15%
Companies (Refer Notes 3 & 4 below)	20% with indexation	15.00% (MAT) with grandfathering	10% without Indexation or 20% with Indexation	30%	15%
Co-operative Societies (Refer Note 2 below)	20% with indexation	10% with grandfathering	20% with indexation	30%/	15%

Notes:

1. Surcharge for Individuals and HUF will be levied on Total Income based on thresholds as stated in para 1.1 above.

2. Where the taxable income of assessee being a Partnership Firm/ LLP/ Co-operative Society, exceeds Rs.1 Crore, then the surcharge applicable would be 12%.

3. Where the taxable income of an assessee being a Company, is between Rs. 1,00,00,001/- to Rs.10,00,00,000/- the surcharge applicable would be @ 7%. Where the taxable income of a Company exceeds Rs.10 Crores the surcharge applicable would be @ 12%.

4. In case of Company having not opted for concessional / reduced tax regime under Section 115BAA or Section 115BAB, MAT @ 15% plus applicable surcharge shall have to be paid on the Book Profits of the Company, determined in accordance with the provisions of Section 115JB.

5. No long term capital gains tax would be levied if the long term capital gains arising or accruing on sale of listed equity shares or units of equity-oriented mutual fund / business trust is up to Rs. 1,00,000/-.

6. The existing "Health and Education Cess" continues to be @ 4%.

7. Long Term Capital Loss cannot be set-off against Short Term Capital Gain.

1.7 MAXIMUM MARGINAL RATES OF INCOME TAX (INCLUSIVE OF SURCHARGE, HEALTH AND EDUCATION CESS)

Category of Assessee	Normal Income	Rental Income from House Property (post standard deduction of 30%)
Individuals & HUFs having taxable income exceeding Rs.5 Crores	42.74%	29.92%
AOPs / Joint Venture having taxable income exceeding Rs. 1 Crore	35.88%	25.116%
Partnership Firms/LLPs having taxable income exceeding Rs. 1 Crore	34.94%	24.46%
New Domestic manufacturing company exercising option to pay tax as per Section 115BAA	17.16%	12.01%
Domestic company exercising option to pay tax as per Section 115BAB	25.17%	17.62%
Domestic Company having turnover of less than Rs.400 Crores in the F. Y. 2018-19 and avails tax incentives or exemptions or tax holiday	29.12%	20.38%
Other Domestic Companies having taxable income exceeding Rs. 10 Crores	34.94%	24.46%
Co-operative Societies having taxable income exceeding Rs. 1 Crore	34.94%	24.46%

1.8 RATES OF TDS APPLICABLE FOR THE F. Y. 2020-21 DEPENDING UPON THE CATEGORY OF RECIPIENT WITH RESPECT TO THE IMPORTANT PAYMENTS MADE BY THE BUILDERS / DEVELOPERS

In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of COVID-19 pandemic, the Government of India, Ministry of Finance, Department of Revenue, CBDT vide its Press Release dated 13th May, 2020 followed by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, **has reduced the rates of TDS by 25% for non-salaried specified payments made to residents during the period 14th May, 2020 to 31st March, 2021**. **There is no revision in the rates of TDS for non-residents**. TDS will be continued to be charged at original rates under all other sections as also to all payments made to non-residents.

The revised rates of TDS applicable to non-salaried specified payments to residents, relevant to the real estate sector, during the period 14th May, 2020 till 31st March, 2021 are tabulated hereunder.

In respect of non-salaried specified payments made to residents or credited to a resident payee's account on or before 13th May, 2020, the rates of TDS would be 100% of the below-mentioned rates.

		Revised TDS Rates (being 25% of the original TDS Rates) applicable for the period from 14th May, 2020 to 31st March, 2021 for different Categories of Resident Recipient		
Main Section	**Nature of payment**	**Resident Individual / HUF/AOP**	**Resident Company**	**Resident Firm / LLP**
193	**Interest on Debenture issued by a Company** Basic exemption Rs. 5000/-, where the payee is a resident individual or HUF **Interest on listed Securities of a Company held in dematerialized form**	7.50% Nil	7.50% Nil	7.50% Nil
194	**Dividends** (Basic exemption limit Rs.5,000/-) (Refer Note No. 1 below)	7.50%	7.50%	7.50%
194K	**Dividends on Units** **(Basic exemption limit Rs.5,000/-)** **(Refer Note No. 2 below)**	**7.50%**	**7.50%**	**7.50%**
194A	**Interest other than interest on securities** i.e. interest on loan etc. (Basic Exemption - Rs.40,000/- (Rs.50,000/- for Senior Citizen w.e.f. 1st April, 2018) where the payer is a Banking Company, Co-op. Society engaged in the business of banking and Post Office; and Basic Exemption – Rs. 5,000/- for all other types of payers)	7.50%	7.50%	7.50%
194C	**Payments to Contractors** **(1) In case of Contract/Sub-Contract** **(2) Contractor/Sub-Contractor in Transport Business** **(provided Transporter furnishes his PAN)** **(Basic Exemption –Rs.30,000/- per Contract subject to overall limit, of Rs.1,00,000/- per annum per contractor) - Individuals/ HUFs whose total turnover exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession would be covered by Section 194C in respect of payments made by them to a resident contractor** **(Refer Note No. 3 below)**	**0.75%** **Nil**	**1.50%** **Nil**	**1.50%** **Nil**
194M	**Payment by Individual/ HUF to contractors and professionals** (Basic Exemption - Rs. 50,00,000/-) – Applicable to Individuals/ HUFs whose total turnover does not exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession	3.75%	3.75%	3.75%
194H	**Commission or Brokerage** (Basic Exemption –Rs.15,000/-)	3.75%	3.75%	3.75%
194-I	**Rent to Residents** **-Rent on Plant, Machinery and Equipment** (Basic Exemption-Rs.2,40,000/- per person) **-Rent for Land & Building or Furniture or Fittings** (Basic Exemption-Rs.2,40,000/- per person)	 1.50% 7.50%	 1.50% 7.50%	 1.50% 7.50%

194-IB	**Rent payable by Individuals/ HUFs for use of Land or Building in excess of Rs.50,000/- per month or part of the month** – Applicable to Individuals/ HUFs whose total turnover does not exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession	3.75%	3.75%	3.75%
194-IA	**Consideration for transfer of immovable property (other than agricultural land)** (Basic exemption - Rs.50 lakhs) Applies to person other than the person referred to in Section194LA (Refer Note No. 4 below)	0.75%	0.75%	0.75%
194-IC	**Monetary consideration payable by Developer to the Land owner being Individual / HUF under a specified agreement (Joint Development Agreement) referred to in Section 45(5A)**	7.50%	-	-
194LA	**Payment of compensation/ consideration on compulsory acquisition of certain immovable property** (Basic Exemption - Rs. 2,50,000/-)	7.50%	7.50%	7.50%
194J	**Fees for technical services** (Basic Exemption - Rs. 30,000/- per person, per annum) (Refer Note No. 5 below)	1.50%	1.50%	1.50%
194J	**Fees for other professional services** (Basic Exemption - Rs. 30,000/- per person, per annum) – Individuals/ HUFs whose total turnover exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession would be covered by Section 194J in respect of payments made by them of professional fees. (Refer Note No. 5 below)	7.50%	7.50%	7.50%
194J	**Remuneration (not in the nature of salary), fees or commission to Directors (w. e. f. 1st July, 2012)**	7.50%	-	-
194N	**Cash payments by banks and post office in excess of Rs 1,00,00,000/- in a financial year**	2%	NA	NA
194-LBA	**Distribution by a Business Trust to its resident unit-holders of any interest or dividend or any income received from renting or leasing or letting out any real estate asset owned directly by it**	7.50%	7.50%	7.50%

TDS RATES APPLICABLE TO PAYMENTS MADE TO NON-RESIDENTS

The rates of TDS applicable to payments made to non-residents relevant to the real estate sector, during the period 1st April, 2020 till 31st March, 2021 are tabulated hereunder :

Main Section	Nature of Payment	TDS Rates for different categories of Non-Resident Recipient	
195	**Payment of consideration exceeding Rs. 1 Crore by any transferee to a non-resident transferor towards purchase of any immovable property situated in India :**	**Non-Resident / Non Corporate Person (including surcharge)**	**Foreign Company (including surcharge)**
	For a period exceeding 24 months	23.92%	21.84%
	For a period up to 24 months	35.88%	43.68%
195	**Dividends** (Refer Note No. 6 below)	20% or rate prescribed in DTAA, whichever is less*	20% or rate prescribed in DTAA, whichever is less*
194LBA	**Distribution by a Business Trust to its non-resident unit-holders (not being a company) or a foreign company of -**	**Non-Resident (not being a company)***	**Foreign Company***
	Income being in the nature of interest income	5%	5%
	Income being in the nature of dividend income	10%	10%
	Income being in the nature of rent from renting or leasing or letting out any real estate asset owned directly by it	30%	30%

* Subject to applicable Surcharge and Health and Education Cess.

Notes:

1. **TDS on Dividend Income [Section 194]**

The following amendments have been made with effect from F. Y. 2020-21 (A. Y. 2021-22) :

(a) In light of the abolition of dividend distribution tax under Section 115-O, the third proviso to Section 194 relating to non-applicability of the provision relating to deduction of tax at source on dividends referred to in Section 115-O has been deleted, thereby making all the dividends declared and paid on or after 1st April, 2020 exceeding the threshold limit liable for deduction of tax at source.

(b) The threshold limit requiring deduction of tax at source has been increased to Rs.5,000/- from the existing Rs.2,500/-.

2. **TDS on Units of Mutual Funds [Section 194K]**

With effect from F. Y. 2020-21 (A. Y. 2021-22) :

(a) A new Section 194K has been introduced which require the mutual funds to deduct tax at source @ 10% on any income payable to a resident, at the time of payment or credit, whichever is earlier.

(b) Section 194K explicitly provides that no tax shall be deducted from the sum payable which is in the nature of capital gains.

(c) Section 194K shall not apply where the amount of such income or the aggregate of such income paid or credited during the financial year does not exceed the threshold limit of Rs.5,000/-.

3. **TDS on payments to Contractors [Section 194-C]**

With effect from F. Y. 2020-21 (A. Y. 2021-22) the following amendments have been made in Section 194-C relating to TDS on payments to contractors:

(a) The term "work" defined under Section 194C is amended to cover material purchased from any associate of the customer, thereby requiring the payer to deduct TDS under Section 194-C.

The word "associate" is 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 Section 40A(2).

4. **TDS on consideration for transfer of immovable property (other than agricultural land) [Section 194-IA]**

With effect from 1st September, 2019, the Finance Act, 2019 which received the presidential assent on 1st August, 2019 has amended the term "consideration for immovable property" to include all charges of the nature of club membership fees, car parking fees, electricity and water facility fees, maintenance fees, advance fees or any other charges of similar nature, which are incidental to transfer of the immovable property.

5. **TDS on Technical Fees [Section 194J]**

With effect from F. Y. 2020-21 (A. Y. 2021-22), the rate of TDS in case of fees for technical services (other than professional services) under Section 194J has been reduced to 2% from the existing 10%. This amendment is made to reduce litigations on the issue of short deduction of tax treating assessee in default, where the assessee deducts tax under Section 194C @ 1% or 2%, while the tax officers claim that tax should have been deducted under Section 194J @ 10%.

6. **Rate of TDS on dividend distributed to a Non-resident or Foreign Company [Section 195]**

With effect from 1st April, 2020, domestic companies distributing dividends to its non-resident shareholders are required to deduct tax at source @ 20%. However, where dividend income of a non-resident person is chargeable to tax at the reduced rate as per the provisions of DTAA, then tax shall be deducted at a rate provided under DTAA.

7. **Time of deduction of tax**

Except in case of salary (wherein tax is to be deducted at the time of payment), tax is to be deducted at the time of payment or credit, whichever is earlier.

8. **Time of deposit of tax**

All sums deducted shall be deposited with the government within 7 days from the end of the month in which the deduction is made and where payment is made under Section 194-IA (i.e. TDS on Purchase of Immovable Property) or Section 194-IB (Rent), the amount shall be deposit within 30 days from the end of the month in which it was deducted. However, where the amount is credited or paid to the account of the payee in the month of March, the tax is required to be deposited with the government on or before 30 April.

9. **Mode of making payment of Tax**

All company-deductors who are liable to tax audit have to make payment of tax by electronic mode. Others can make payment of tax either physically or by electronic mode.

10. **TDS Return**

Person deducting tax is required to file quarterly statements for the quarter ending on 30 June, 30 September, 31 December and 31 March in each financial year, in Form 26Q (Form 24Q for Salary), on or before 31 July, 31 October, 31 January, and 31 May respectively. Form 26Q and Form 24Q are to be filed electronically.

11. **Certificate for tax deduction in case of non-salary payments**

(a) TDS Certificate in Form 16A is required to be issued on quarterly basis within 15 days from the due date of furnishing the statement of TDS i.e. on or before 15 August, 15 November, 15 February and 15 June for quarters ended 30 June, 30 September, 31 December and 31 March respectively.

(b) Validity of TDS certificates issued by the TDS Department for lower deduction of tax at source or NIL deduction of tax for F. Y. 2019-20 has been extended till 30.06.2020 by the *Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020*.

12. **Certificate for tax deduction in case of salary payments**

TDS Certificate in Form 16 is required to be issued on annual basis by 31 May of the financial year immediately following the financial year in which the income was paid and tax deducted.

13. **Higher TDS rate of 20% for not furnishing PAN**

In case the payee does furnish his / her / its PAN to the payer, tax shall be deducted at higher of the rates specified in the relevant provisions of the Act or at the rates in force or 20%.

14. **Liability of Individual or HUF to deduct tax at source**

Individuals and HUFs are liable to deduct tax at source in case of Salary payments under Section 192, Interest other than securities under Section 194A, consideration payable for transfer of an immovable property under Section 194-IA, rent payable for use of land and building under Section 194-IB and payments to contractors and professionals under Section 194M, even if their turnover does not exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession.

15. **Consequence for delay in deposit of tax at source**

(a) As per the provisions of Section 201(1A), an assessee shall be liable to pay interest @ 1% per month from the date the tax was deductible to the date on which tax is deducted and @ 1.5% per month from the date of tax deduction till the date of tax payment to the Government.

(b) Amid COVID-19 outbreak, the Finance Minister addressed the concerns relating to statutory and regulatory compliance. To give effect to such announcement, the *Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020* was promulgated on 31st March, 2020. As per the said Ordinance for delayed payments of *inter alia* TDS to be made between 20.03.2020 and 30.06.2020, reduced interest rate @ 9% (i.e. 0.75% per month) shall be levied, instead of 12% / 18%, as applicable.

(c) No late fee/ penalty shall be charged for delay relating to this period.

16. **No Penalty in certain cases**

As per the provisions of Section 201 read with Section 201(1A), any person who fails to deduct the whole or any part of the tax on the sum **paid to a resident** or on the sum credited to the account **of the resident**, shall not be deemed to be an assessee in default in respect of such tax if the resident-payee:

(a) Has furnished his return of income under Section 139;

(b) Has taken into account such sum for computing income in such return of income; and

(c) Has paid tax due on the income declared by him in such return of income, and the resident-payee furnishes a certificate to this effect from a chartered accountant in the prescribed form. Accordingly, no penalty shall be leviable on such person under Section 221. However, such person shall still be liable to interest under Section 201(1A).

(d) Furthermore, if any person does not deduct the whole or any part of the tax or after deducting fails to pay the tax, he shall be liable to pay simple interest under Section 201(1A) as specified in Para 15 above.

CONCLUSION

Perusal of the aforesaid chart read with the press release issued by the Government on 13th May, 2020 reveals that there are some categories of taxpayers who will not benefit from this announcement of reduction in the TDS rates.

Firstly, where the recipient of income does not provide PAN or Aadhaar to the tax deductor then the lower rates of TDS will not be applicable to such payments.

Secondly, though the TDS is charged on salary income, as per the applicable income tax slab rate, the relief in the form of lower TDS has not been extended to salaried individuals. This means that the salary income will continue to attract TDS at the same rate as earlier.

Thirdly, the benefit of lower TDS rate can only be availed by resident individuals and is not available to non-resident taxpayers.

Fourthly, in respect of non-salaried specified payments made to residents or credited to a resident payee's account on or before 13th May, 2020, the benefit of lower TDS rate will not be available and TDS will have to be deducted at the original rates.

Fifthly, in respect of any payments credited to a resident payee's account during the F. Y. 2019-20, but paid during the F. Y. 2020-21, the benefit of lower TDS rate will not be available and TDS will have to be deducted at the full rates.

2. AMENDMENTS RELATED TO TRANSACTIONS IN IMMOVABLE PROPERTIES

2.1 Extending Time Limit for availing Deduction of Profits of Affordable Housing Projects [Section 80-IBA]

Background

Section 80-IBA provides a deduction to assessee of an amount equal to 100% of profits and gains from business of developing and building of affordable housing projects, subject to the fulfillment of specified conditions tabulated as under:

Particulars of Conditions	Applicable from A. Y. 2017-18 to A. Y. 2019-20	Applicable from A.Y. 2020-21 and A. Y. 2021-22
Period of approval of the affordable housing Project by competent authority	After 1st June, 2016 but before 31st March, 2019	The period of approval extended to affordable housing projects approved on or after 1st September, 2019 but before 31st March, 2020
Minimum Plot size		
# Applicable for metropolitan cities	1,000 sq. mtrs (applicable to Chennai, Delhi, Kolkata or Mumbai)	1,000 sq. mtrs*
# Other places	2,000 sq. mtrs	2,000 sq. mtrs
Size of residential units (carpet area)		
# Applicable for metropolitan cities	Up to 30 sq. mtrs (applicable to Chennai, Delhi, Kolkata or Mumbai)	Threshold increased to unit size up to 60 sq. mtrs*
# Other places	Up to 60 sq. mtrs	Threshold increased to unit size up to 90 sq. mtrs
Time limit of completion of the affordable housing Project	5 years from the date of approval by the competent authority	5 years from the date of approval by the competent authority
Threshold of stamp duty value of the residential unit	Nil	Rs.45 Lakhs**

***** The threshold was made applicable to other metropolitan cities viz. Bengaluru, National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, and Faridabad), Hyderabad and whole of Mumbai Metropolitan Region, in addition to Chennai, Delhi, Kolkata or Mumbai.

****** Applicable to stamp duty value of residential units comprised in affordable housing project approved on or after 1st September, 2019 but before 31st March, 2020.

Amendment made

With a view to making more homes available under affordable housing, the Finance Act has amended Section 80-IBA to provide that the deduction under this section would be available for profit arising from housing projects which are approved by the competent authority before 31st March, 2021 (thereby granting an extension of one year for approval of the housing project).

The fulfillment of the following other conditions as stated in Section 80-IBA continue to apply for availing deduction of the profits and gains in respect of projects approved by the competent authority on or after 1st September, 2019 but before 31st March, 2021 :

(i) The carpet area of the commercial component in the housing project does not exceed 3% of the aggregate carpet area;

(ii) The project is the only housing project on the said plot of land;

(iii) Only one residential unit in the housing project should be allotted to an individual or the spouse or the minor children of such individual;

(iv) The project should utilise 90% or more of the floor area ratio permissible in respect of the plot of land under the prescribed rules in Metropolitan Cities and 80% or more in other places; and

(v) The assessee maintains separate books of account for the housing project.

Comment

(a) The deduction under Section 80-IBA was initially available in respect of affordable housing projects approved by the competent authority after 1st June, 2016 but before 31st March, 2019. Thereafter, the Finance Act, 2019 amended Section 80-IBA to provide deduction in respect of affordable housing Projects approved by the competent authority on or after 1st September, 2019 but before 31st March, 2020. **Hence, affordable housing projects approved by the competent authority between 1st April, 2019 and 31st August, 2019 may not be eligible to claim deduction under Section 80-IBA.**

(b) Companies claiming deduction of an amount equal to 100% of the profits and gains derived from the business of developing and building affordable housing projects under Section 80-IBA and who have not opted for concessional / reduced tax regime under Section 115BAA, are still liable to pay MAT on their book profits at the rate of 15% (with applicable Surcharge) viz. 18.5%. Such companies shall be liable to pay tax on their normal income @ 25% if their turnover for the F. Y. 2018-19 is up to Rs.400 Crores or @ 30% in other cases. **However, if such company opts for concessional / reduced tax regime under Section 115BAA @ 22%, then such company shall neither be eligible to claim deduction under Section 80-IBA nor shall it be liable to pay MAT on its book profits and shall also not be entitled to carry forward and set off its past MAT credit.**

2.2 Tax Incentive for purchase of "affordable house" [Section 80EEA]

Background

(a) In order to promote growth in the affordable housing sector, Finance Act, 2019 had introduced Section 80EEA for the first time, whereunder a deduction of up to Rs.1,50,000/- is available to an Individual on interest paid on housing loan taken from the financial institution, provided *inter alia* the stamp duty value of such residential house property does not exceed Rs.45 Lakhs and loan

has been sanctioned by the financial institution during the period 1 April 2019 to 31 March 2020.

Similarly deduction of up to Rs.50,000/- is available to an Individual under Section 80EE on interest paid on housing loan taken from the financial institution, provided *inter alia* the stamp duty value of such residential house property does not exceed Rs.35 Lakhs and loan has been sanctioned by the financial institution during the period 1 April 2016 to 31 March 2017.

(b) The expressions "financial institution" and "stamp duty value" have been defined under Section 80EEA(5).

(c) The deduction of interest under Section 80EEA shall be available only if the Individual-assessee is not eligible for deduction under Section 80EE. Furthermore, if the deduction is claimed under Section 80EEA, then no deduction shall be allowed in respect of such interest under any other provisions of the Act for the same or for any other assessment year.

Amendment made

The Finance Act has extended the period of sanctioning of the housing loan to 31 March 2021 from the present 31 March 2020.

Comment

It is pertinent to note that that in addition to the interest payment deduction available to an individual under Sections 80EE or 80EEA, he is also entitled to claim additional deduction of the interest payment on the housing loan of up to a maximum amount of Rs.2 Lakhs under Section 24 for self occupied house property. However, where the house property is acquired out of borrowed funds is let out then the entire interest payment can be claimed as deduction against the rental income.

2.3 NOTIONAL UNDER VALUATION in case of a Real Estate Transaction - Increase in safe harbour limit [Section 43CA, 50C, 56(2)(x)]

Background

(a) Presently, if the amount of consideration received or accruing as a result of transfer of land or building or both, held as a capital asset, is less than its stamp duty value then Section 50C provides that stamp duty value shall be taken to be full value of consideration. The provisions of Section 50C are applicable to a seller/ transferor of an immovable property.

(b) Similarly, if the amount of consideration received or accruing as a result of transfer of land or building or both, held as stock-in-trade, is less than its stamp duty value then Section 43CA provides that stamp duty value shall be taken to be full value of consideration. The provisions of Section 43CA are applicable to a seller/ transferor of an immovable property.

(c) Upon receipt of land or building or both, for a consideration which is less than its stamp duty value, the difference between the stamp duty value and the

amount of consideration is chargeable to tax under Section 56(2)(x). The provisions of Section 56(2)(x) are applicable to a recipient/ transferee of an immovable property.

(d) Until 31st March, 2020, the aforesaid Sections 43CA, 50C and 56(2)(x) provide for a tolerance limit of 5% of the consideration i.e. if the difference between the stamp duty value and the amount of consideration received or accruing as a result of transfer is up to 5% of the amount of consideration, then stamp duty value was not required to be taken as full value of consideration and accordingly the difference between the stamp duty value and the amount of consideration was not chargeable to tax.

Amendment made

The Finance Act has increased the tolerance limit provided under Sections 43CA, 50C and 56(2)(x) from 5% to 10%.

Comment

(a) The impact of the tolerance limit stated hereinabove on a real estate transaction undertaken during the F. Y. 2019-20 and F. Y. 2020-21 is explained by way of an illustration as under :

Particulars	Scenarios			Remarks
	I	II	III	
Agreement Value (Rs.)	100	100	100	
Stamp Duty Value (Rs.)	105	110	115	
Difference between the Stamp Duty Value and Agreement Value (Rs.)	5	10	15	
Difference as a % of Agreement Value	5%	10%	15%	
For A. Y. 2020-21 :				
Value which shall be subjected to tax in the hands of the seller/ transferor under Section 50C/ 43CA	100	110	115	In Scenarios II and III, where the Stamp Duty Value exceeds 5% of the Agreement Value, the exemption of 5% is lost.
Value which shall be subjected to tax in the hands of the recipient / transferee under Section 56(2)(x), in case where the recipient has received the immovable property otherwise than for adequate consideration	Nil	10	15	
Value which shall be subjected to tax in the hands of the recipient / transferee under Section 56(2)(x), in case where the recipient has received the immovable property without consideration e.g. by way of a gift	105	110	115	

Particulars	Scenarios			Remarks
	I	II	III	
For A. Y. 2021-22 :				
Value which shall be subject to tax in the hands of the seller/ transferor under Section 50C/ 43CA	100	100	115	In Scenario III, where the Stamp Duty Value exceeds 10% of the Agreement Value, the exemption of 10% would be lost.
Value which shall be subjected to tax in the hands of the recipient / transferee under Section 56(2)(x), in case where the recipient has received the immovable property otherwise than for adequate consideration	Nil	Nil	15	
Value which shall be subjected to tax in the hands of the recipient / transferee under Section 56(2)(x), in case where the recipient has received the immovable property without consideration e.g. by way of a gift	105	110	115	

(b) **Although the Act allows safe harbour limit of 10% with effect from F. Y. 2020-21 onwards, in our view it will not be difficult to justify tolerance limit up to 25% for the transactions undertaken during the F. Y. 2020-21 on account of additional rebate / discount that may become available due to distress sale conditions created by COVID-19 crisis on the basis of past judicial pronouncements and further substantiated by latest available comparable sale instances of transfer of immovable property in the near vicinity.**

(c) Relying on the decision of Supreme Court in the case of C. B. Gautam Vs. Union of India [1993] [199 ITR 530], the developer shall be entitled to *inter alia* make following contentions before the tax authorities :

(i) The safe harbour limit of 10% cannot be applied mechanically in all cases and a reasonable margin for probable error in estimation has to be taken into consideration;

(ii) **Supreme Court in the foregoing case has recognised and permitted 15% margin of error in valuation i.e. tolerable limit for variation between the agreed sale consideration and fair market value of an immovable property**;

(iii) Reasonable discount for all the mitigating factors ought to be given for the purpose of valuation;

(iv) In a given transaction of an Agreement for Sell, there might be several bonafide considerations which may induce a developer to sell the immovable property for a consideration less than what might be considered to be the fair market value of such immovable property. For

instance, the developer being in immediate need of funds would be unable to wait till the time a willing buyer is found, who is willing to pay the fair market value of the immovable property intended to be sold;

(v) Apart from some disputes as regards the title of the immovable property intended to be sold by the developer, there may be other genuine reasons which may compel the developer to sell the immovable property to a particular bona fide purchaser, who is neither a relative nor an associate concern of the developer, at a price lower than its fair market value i.e. transaction at an arms length.

(d) Furthermore, **on account of current crisis in the economy due to COVID-19, it can be successfully contended by the developer/ Transferor/ Purchaser before the Divisional Valuation Office ("DVO") / CIT (Appeals) / ITAT of the Income Tax Department to allow a minimum margin of 25% on account distress sale conditions taken place during the F. Y. 2020-21**. Such distress sale conditions can be substantiated by proper documentation and few of the following evidences:

(i) Currently, available and comparable sale instances in the near vicinity; and Sale instances of the premises in the same building taken place during the F. Y. 2019-20, after giving minimum rebate of 25%;

(ii) Demonstrating the cash flow and liquidity position of the developer;

(iii) Default Notice received by the developer from its lender declaring an Event of Default on account of failure on the part of the Developer to pay the interest and installment amounts on or before the applicable due dates;

(iv) Any financial exigencies faced by the developer in payment of statutory dues or such other payments of critical nature;

(v) Refusal on the part of the lender to disburse to the developer the undisbursed loan amount as committed under the sanction letter for enabling the developer to complete the project in time; and

(vi) Unauthorised withdrawal of funds by the lender from the Escrow Bank Account of the developer.

The above factors should also be brought to the notice of the purchaser and relevant evidences should also be made available to the purchaser, for use in his income tax assessment proceedings.

(e) Attention is invited to Section 194-IA requiring TDS @ 1% on the consideration for transfer of any immovable property. With effect from 1st September, 2019, Explanation (aa) has been inserted to Section 194-IA of the Act to the define the term "consideration for transfer of any immovable property" to include all charges of the nature of club membership fees, car parking fees, electricity and water facility fees, maintenance fees, advance fees or any other charges of similar nature, which are incidental to the transfer of

the immovable property. **As such the consideration for transfer of any immovable property may increase to the extent of incidental charges for transfer thereby reducing the difference between the consideration and market value.**

(f) **Based on the foregoing discussion, the Developer may with a view to sustain its organisation, take an appropriate business call and sell the immovable property by giving a discount of about 25% from the stamp duty value or latest sale instance of the same immovable property taken place prior to Covid-19 pandemic. In the circumstances, the Developer as well as the flat purchaser can expect a reasonable and favourable decision from the judicial authorities in such type of distress sale transactions taken place during the COVID-19 pandemic, due to well established jurisprudence and settled case laws on the subject. However, while making distress sale of an immovable property, the Developer may face challenge of obtaining consent from its Lender for effectuating such distress sale.**

(g) Conclusion

(i) **From the foregoing analysis, it is quite evident that adequate care and caution needs to be taken while drafting the transaction documents recording the unique facts, extraordinary circumstances of distress sale and other salient / distinguishing features of the transaction, so as to ensure that the likely litigation on the direct tax front is avoided or minimised at a later stage.**

(ii) If the transaction is properly documented and substantiated then any action initiated by the Income Tax Department to invoke the aforesaid notional under valuation provisions during the F. Y. 2020-21 may not survive before judicial authorities on account of unprecedented economic conditions prevalent in the country.

(iii) Recently, ITAT Mumbai in case of Maria Fernandes Cheryl Vs ITO (International Taxation), 2(3)(1), Mumbai held that 10% tolerance limit applies retrospectively from AY 2002-2003 and not from AY 2021-2022.

2.4 Determination of cost of acquisition of land and building acquired prior to 1st April 2001 [Section 55(2)(ac)]

Background

The existing provisions of Section 55 provide that while computing income under the head capital gains, the cost of acquisition of the asset and cost of improvement, if any shall be allowed as deduction. Further, while computing capital gains for asset acquired prior to 1st April 2001, the assessee has an option to adopt fair market value of such asset to be its cost of acquisition. Similarly, where the capital asset has been received by the assessee in a mode mentioned in Section 49(1) i.e. by way of gift, inheritance, will, etc., and the capital asset became property of the previous owner before 1st April, 2001, then the assessee has an option to adopt fair market value of the asset as on 1st April, 2001 to be its cost of acquisition.

Amendment made

(a) To compute the cost of acquisition of land and building or both, the Finance Act has inserted a new proviso to below sub-clause (ii) of clause (b) of Explanation to Section 55(2)(ac) to provide that the fair market value of such an asset as on 1st April 2001 shall not exceed the stamp duty value of such asset as on 1st April 2001, where such stamp duty value is available.

(b) Thus, to determine the cost of acquisition of land and building or both acquired on or before 1st April 2001 for the purposes of computing the capital gains on its transfer, the assessee will have an option to substitute as the cost of acquisition of such asset either (i) the stamp duty value of such asset as on 1st April 2001, if the stamp duty value of such asset is available; or (ii) in other cases its fair market value as on 1st April, 2001 if the fair market value is higher than the cost of acquisition of the asset.

3. PROVISIONS PREVENTING TAX ABUSE, WIDENING OF TAX BASE

3.1 Amendment in Residential Status

Background

Off late, the Government has noticed that the residency provisions stipulated under the Act is being misused by many individuals, who are actually carrying out substantial economic activities from India but manage their period of stay in India in such a way, so as to ensure that they remain a non-residents in perpetuity and are therefore not required to offer their global income to tax in India. To prevent such tax abuse, the Finance Act has carried out certain amendments to the Act with regard to the residency provisions, which are discussed hereinafter and these amendments will take effect from 1st April, 2021 and will, accordingly, apply in relation to A. Y. 2021-22 and subsequent assessment years.

A. Scope of Total Income [Section 5]

Section 5 provides Scope of Total Income (a) in case of a person who is a resident in India; (b) in case of a person not ordinarily resident in India; and (c) in case of a person who is a non-resident, which includes Income from any source which (i) is received or is deemed to be received in India in such year by or on behalf of such person; or (ii) accrues or arises or is deemed to accrue or arise to him in India during such year; or (iii) accrues or arises to him outside India during such year.

The following Table explains the Scope of Total Income under Section 5 for the persons referred to hereinabove in a nutshell:

Sr. No	Particulars	Resident Ordinary Resident (ROR)	Resident but Not Ordinary Resident (RNOR)	Non Resident (NR)
1	Income received in India	Taxable	Taxable	Taxable
2	Income deemed to be received in India	Taxable	Taxable	Taxable
3	Income accrues or arises in India	Taxable	Taxable	Taxable
4	Income deemed to accrue or arise in India	Taxable	Taxable	Taxable
5	Income accrues or arises outside India	Taxable	Non Taxable	Non Taxable
6	Income accrues or arises outside India from business/ profession controlled/ set up in India	**Taxable**	Taxable	Non Taxable

B. Amendment to the Residency Provisions for Individuals [Section 6(1)]

(a) The existing provisions of Section 6(1) provide for situations in which an individual shall be resident in India in a previous year. An individual is resident in India in a previous year if (i) he is in India for a period or periods amounting to 182 days or more in that year; or (ii) he is in India for 365 days or more in the 4 years preceding that year ***and*** he is in India for a **period of 60 days** or more in that year.

(b) Explanation 1 to Section 6(1) provides that, in case of the following individual, the threshold of 60 days (referred to in sub para (ii) of para (a) above) **is relaxed to 182 days**, thereby enabling such individual to stay in India for longer duration of time, without becoming a resident in India and consequently not becoming liable to pay taxes in India on his foreign income.

(i) Individual, being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship or for the purposes of employment outside India; and

(ii) Individual being a citizen of India or a person of Indian origin, who is outside India and comes on a visit to India in a previous year.

(c) To plug the misuse of the extended period of 182 days, the Finance Act has made the following amendment :

(i) The existing limit of 182 days under Explanation 1(a) of Section 6(1) has been reduced to 120 days in case of a citizen of India or a person of Indian origin who is outside India and comes on a visit to India in a previous year and whose total income, other than income from foreign sources, ***exceeds***

Rs.15 Lakhs during the previous year. For this purposes, income from foreign sources means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

(ii) Accordingly, post the aforesaid amendment, an Indian citizen or a person of Indian origin who is outside India and comes on a visit to India in a previous year and whose total income, other than income from foreign sources, exceeds Rs. 15 Lakhs during the previous year will have to stay outside India for 245 days or more as compared to 183 days earlier for enabling him to qualify as a non-resident for tax purposes in India, thereby not becoming liable to pay taxes in India on his foreign income.

(iii) The **CBDT vide its Circular No. 11 of 2020 dated 8th May, 2020** has issued clarification in respect of an individuals who had come on a visit to India during the previous year 2019-20 for a particular duration and intended to leave India before the end of the previous year for maintaining their status as non--resident or not ordinary resident in India. However, due to declaration of the lockdown and suspension of international flights owing to outbreak of Novel Corona Virus (COVID-19), they are required to prolong their stay in India.

The CBDT has accordingly clarified for the purpose of determining the residential status under Section 6 during the previous year 2019-20 in respect of an individual who has come to India on a visit before 22nd March, 2020 and:

(a) has been unable to leave India on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to 31st March, 2020 shall not be taken into account; or

(b) has been quarantined in India on account of Novel Corona Virus (Covid-19) on or after March, 2020 and has departed on an evacuation flight on or before 31st March, 2020 or has been unable to leave India on or before 31st March, 2020, his period of stay from the beginning of his quarantine to his date of departure or 31st March, 2020, as the case may be, shall not be taken into account; or

(c) has departed on an evacuation flight on or before 31st March, 2020, his period of stay in India from 22nd March, 2020 to his date of departure shall not be taken into account.

C. Insertion of new Sub-Section (1A) to Section 6 – New concept of Deemed Resident

(a) A new Sub-Section (1A) to Section 6(1) is inserted to provide that Indian citizen whose total income, other than income from foreign sources, exceeds Rs.15 Lakhs during the previous year, shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of their domicile or residence or any other criteria of similar nature. Literal interpretation of the aforesaid provision would mean that the global income including foreign income of such individual can potentially become taxable in India after he becomes ordinarily resident of India.

(b) To avoid any misinterpretation and to give benefit to bona fide persons working abroad, the CBDT has issued a Press Release dated 2 February, 2020 to clarify that the aforesaid amendments are not intended to include within its tax net those Indian citizens who are bona fide workers in other countries, including Middle East, who are not liable to tax in those countries on income earned there. **The Press Release further clarifies that in case of an Indian citizen who becomes a deemed resident of India, the income earned outside India shall not be taxed in India, unless it is derived from an Indian business or profession.**

(c) Thus, from F. Y. 2020-21, an Indian citizen who is non-resident in India and earning total income in excess of Rs.15 Lakhs (other than from foreign sources) shall be deemed to be resident in India, if he is not liable to pay tax in any country. The residential status of such person shall be 'Not Ordinarily Resident' due to new insertion of Sub-Section (d) to Section 6(6). Accordingly, he would not be liable to pay tax in India on his foreign income, unless such income is derived from a business controlled in or a profession set up in India.

D. Amendment to the Residency Provisions for Resident but not Ordinarily Resident (RNOR) in India [Section 6(6)]

(a) As per Section 6(6)(a), an individual is a resident but not ordinarily resident in India, if he (i) has been a non-resident in India in 9 out of 10 years preceding that year; or (ii) has during the seven previous years preceding that year been in India for an overall period of 729 days or less. Similar provisions exist under Section 6(6)(b) for a manager of an HUF for determining the not ordinarily residential status of such an HUF.

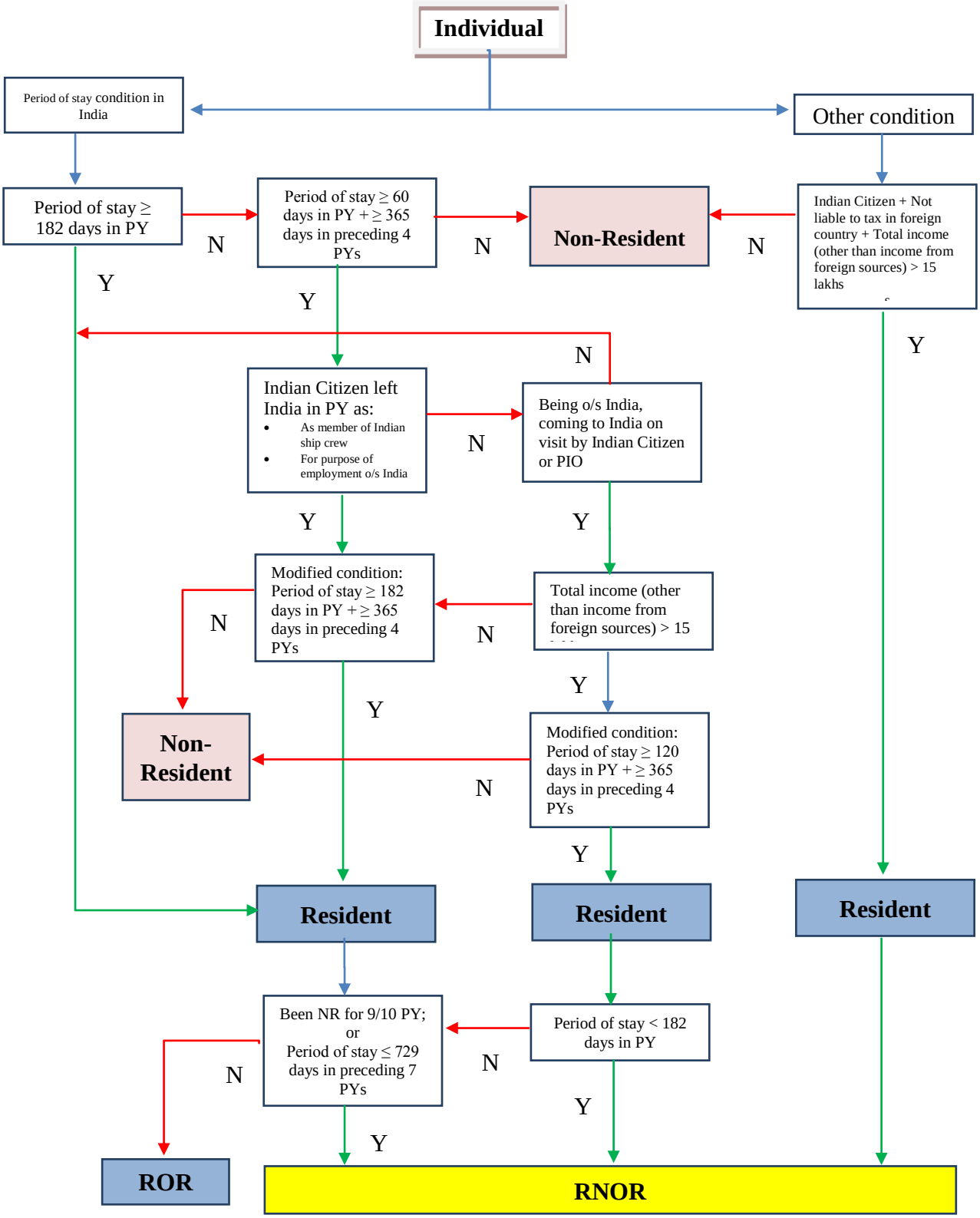
(b) The Finance Act has inserted the following two more situations wherein a resident person is deemed to be "Not Ordinarily Resident" in India:

(i) An Indian citizen or a person of Indian origin whose total income (other than income from foreign sources) exceeds

Rs.15 Lakhs during the previous year and who has been in India for a period of 120 days or more but less than 182 days;

(ii) An Indian citizen who is deemed to be a resident in India under the newly inserted Section 6(1A) – Deemed resident.

E. Flowchart depicting above amendments is as under :



Comment

Pursuant to the above changes introduced in the Act with regard to the residency provisions, it is important for an Indian citizens and PIOs to carefully evaluate their residential status and assess their tax liability in India accordingly, so to ensure that the likely litigation on the direct tax front can be avoided at a later stage.

3.2 Equalisation Levy on E-commerce Operator [Sections 165A, 10(50)]

(a) The Finance Act, 2016 introduced equalisation levy with effect from 1st June, 2016. This levy is charged at the rate of 6% from the consideration paid or payable to a non-resident person for the online advertisement services. The Finance Act has extended the scope of equalisation levy by introducing a new Section 165A to cover within its scope a levy to be charged @ 2% of the consideration received or receivable by an e-commerce operator from e-commerce supply of goods or services made or facilitated by it to the following specified persons:

(i) To a person who is resident in India; or

(ii) To a non-resident person in the following specified circumstances:

Sale of advertisement which targets a customer who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and

Sale of data collected from a person who is resident in India or from a person who uses internet protocol address located in India.

(ii) To a person who buys such goods or services or both using internet protocol address located in India.

(b) Equalisation levy shall not be chargeable if the sale, turnover or gross receipts of the e-commerce operator from e-commerce supply or services made or provided or facilitated to the persons mentioned above is less than Rs.2 Crores during the previous year.

(c) Consequential amendments have been made to Section 10(50) to give tax exemption for the income arising from any e-commerce supply or services made, on or after 01 April 2020, on which equalization levy is chargeable.

3.3 Provisions relating to TDS on payment of certain sums paid by e-commerce operator to e-commerce participants [Sections 194-O and 206AA]

(a) In order to widen and deepen the tax net and bring the e-commerce transactions within the tax net, a new Section 194-O is inserted requiring an e-commerce operator facilitating sale of goods or provision of services of an e-commerce participant, through its digital electronic facility or platform, to deduct tax @ 1% (where PAN/ Aadhaar Number of the e-commerce participant is furnished) or @ 5% (under Section 206AA if PAN/ Aadhaar Number of the e-commerce participant is not furnished) of the gross amount

of sales or services or both, at the time of credit or payment, whichever is earlier, to the e-commerce participant.

(b) For the purposes of deduction of tax, the gross amount of sale or services shall include any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for such sale of goods or services or both, which are facilitated by an e-commerce operator, as the same shall be deemed to be the amount credited or paid by e-commerce operator to e-commerce participant.

(c) No TDS is required to be deducted by an e-commerce operator from the sum credited or paid to an e-commerce participant, being an individual or HUF, if the gross amount of sales or services or both, of such individual or HUF during the previous year, through the e-commerce operator does not exceed Rs. 5 Lakh and the PAN or Aadhaar Number of e-participant is furnished to e-commerce operator.

(d) Consequential amendments have been made in Section 197 (relating to lower TDS) and section 204 (relating to person responsible for paying taxes).

3.4 TCS on Forex Transactions [Section 206C]

The Finance Act has introduced a new tax provisions on all forex transactions made under Liberalised Remittance Scheme ("**LRS**"). Under LRS, all resident individuals, including minors, are permitted to freely remit / avail foreign exchange facility up to USD 2,50,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.

The new tax provisions on all forex transactions made under LRS are summarized hereunder :

(a) An Authorised Dealer (Bank) shall be required to collect tax at source (TCS) at 5% on all forex transactions under LRS, exceeding Rs. 7,00,000/- in a financial year (except for remittances towards overseas education made out of loan obtained from a financial institution, for which TCS at 0.5% will be applicable).

For instance, if the total foreign exchange facility availed by a resident individual under LRS in a financial year is say Rs. 10,00,000, then TCS at 5% will be collected by the Authorised Dealer from the resident individual on Rs. 3,00,000 (Rs. 10,00,000 - Rs. 7,00,000) and accordingly tax collected will be Rs. 15,000.

(b) For remittances to Foreign Tour Operators through the Authorised Dealer, 5% TCS of the total amount remitted shall be applicable and the amount remitted will not be subsumed under the threshold limit of Rs. 7 Lakhs mentioned in para (a) above. For instance, if the amount remitted by a resident individual to Foreign Tour Operators is say Rs. 5,00,000, TCS at 5% will be applicable and tax collected will be Rs. 25,000/-.

(c) TCS at 5% will be applied on LRS transactions exceeding INR 7 lakhs, even if foreign exchange facility is availed by a resident individual through foreign currency cash withdrawal from authorised branches / loading forex cards.

(c) The TCS rates mentioned above are to be increased by applicable surcharge as well as Health and Education Cess in case a remitter is non-resident as per the provisions of Act.

(d) The remitter of forex under the LRS is entitled to claim credit for the tax collected at source by the Authorised Bank while filing his tax return.

(e) The above provisions will not apply in case the remitter is liable to deduct tax at source under any other provision of the Act and the amount has been deducted and if the remitter is a Government or any another person notified by the Government.

(f) The above provisions will be effective from 1st October, 2020.

4. PROVISIONS RELATING TO AVOIDANCE OF MISCHIEF

4.1 TDS on cash withdrawal above threshold limit [Section 194N]

To discourage cash transactions and to move towards the cash-less economy, a new Section 194N had been inserted in the Act vide the Finance Act, 2019. This provision requiring deduction of tax by a banking company or a co-operative bank or a post office @ 2% from the amount withdrawn in cash from any account (saving or current account), if the aggregate of the amount withdrawn from one or more account exceeds Rs.1 Crore during the year. The tax shall be deducted on the amount exceeding Rs.1 Crore only.

Amendment made

(a) The Finance Act has expanded the scope of this provision by substituting the existing section with a new Section 194N. The new section provides different tax rates for two different class of persons. Further, it also prescribes two threshold limits.

(b) As per the new Section 194N, a banking company or a co-operative bank or a post office which is responsible for paying any ***sum***, being the amount or the aggregate of amounts, in cash ***exceeding Rs. 1 crore*** during the previous year, to any person from one or more account, shall at time of payment of ***such sum***, deduct income tax @ 2% of ***such sum***.

(c) A new proviso has been inserted to Section 194N, which reduces the threshold limit for deduction of tax from Rs.1 Crore to Rs.20 lakh, if the person has not filed his return of income for three previous years immediately preceding the previous year in which cash is withdrawn, and the due date for filing income tax return under Section 139(1) has expired.

The deduction of tax under this situation shall be at the following rates:

(i) 2% from the amount withdrawn in cash, if the aggregate of the amount of withdrawal exceeds Rs.20 Lakhs during the previous year; or

(ii) 5% from the amount withdrawn in cash if the aggregate of the amount of withdrawal exceeds Rs. 1 Crore during the previous year.

In the above situation, the tax shall be deducted on the amount exceeding Rs.20 Lakhs or Rs. 1 Crore, as the case may be.

(d) The exclusions provided in old Section 194N has been continued in the new Section 194N. However, the Govt. may specify the recipient to whom the provisions of this section shall not apply or apply at the reduced tax rate. Further, no tax shall be deducted if the amount is withdrawn by the following recipient viz. Central or State Government, Banks, Co-operative Banks, Post Office, Banking correspondents, White label ATM operators and Other persons notified by the Govt. in consultation with the RBI.

These amendments will apply from 1st July, 2020.

4.2 Penalty for fake invoices and false entry in books [Section 271AAD read with Section 122 of the CGST Act, 2017]

(a) In the recent past after the launch of GST, several cases of fraudulent ITC claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. The Government intends to deal with such fraudulent arrangements in harsh manner by incorporating penal provisions under the Act and CGST Act, 2017.

(b) Accordingly, with a view to curb the practice of claiming fraudulent ITC under the GST law, a new Section 271AAD has been inserted to provide that if during any proceeding under the Act, either a (i) false entry; or (ii) an omission of any entry which is relevant for computation of total income of such person is found in the books of account maintained by any person with a view to evade tax liability, the Assessing Officer may levy a penalty equal to the aggregate amount of such false or omitted entry. Further, in addition to the penalty the false entry may also be subject to disallowance / addition under the provisions of the Act.

Definition of "false entry" includes use or intention to use (i) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or (ii) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or (iii) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

The above amendments will take effect from 1st April, 2020.

(c) Similar corresponding penal provisions are introduced by amending Section 122 of the CGST Act, 2017 which deals with the penalty relating to various offences under which a person shall be liable to penalty of an amount specified in the said section. The Finance Act has inserted a new sub-section 1A to Section 122 of the CGST Act, 2017, which provides that any person who retains the benefit of following transactions and at whose instance such transaction is conducted **shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on :**

(i) A fake supplier of any goods or services or both, who makes any such supply, without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) A fake supplier of any goods or services or both who issues any invoice or bill, without supply of such goods or services or both in violation of the provisions of CGST Act or the rules made there under;

(iii) A fake recipient of any goods or services or both who takes or utilises input tax credit, without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of CGST Act or the rules made there under; and

(iv) A fake recipient of any goods or services or both who takes or distributes input tax credit in contravention of Section 20 of the CGST Act, or the rules made there under.

Comment

Perusal of the foregoing provisions under the Act and CGST Act, 2017 indicates that for any of the defaults mentioned hereinabove both the beneficiary as well as the wrongdoer will be liable for penalty for an amount equal to the tax evaded or ITC availed.

If we do the conjoint reading of both the Section 271AAD of the Act and Section 122(1A) of the CGST Act, then we will find that there may be situations that can lead to imposition of penalty under both the Sections for the same assessee. The same has been explained in the table below :

Situations	Section 271AAD of Income Tax Act 1961	Section 122(1A) of CGST Act 2017
A fake supplier supplying any goods or services or both, without issue of any invoice	Assessing Officer may invoke penalty under Section 271AAD(1)(ii) as this transaction can be classified as an omission of any entry which is relevant for computation of Total Income of such fake supplier. (Supply without Invoice will lead to lower Turnover and hence lower profits declaration by such fake supplier and hence omission of entry necessary for computation of total income)	Such fake supplier can be held as beneficiary of a transaction covered under Section 122(1)(i) for the supply being made without issuance of any invoice or for issuance of an incorrect or false invoice with regard to such supply and hence liable for penalty equivalent to the amount of tax evaded u/s 122(1A)

A fake supplier issuing an invoice in respect of supply or receipt of goods or services or both issued by the person or any other person, without actual supply or receipt of such goods or services or both.	Assessing officer may under Section 271AAD(1)(i) classify the transaction as a "False Entry" and may direct such fake supplier to pay by way of penalty, a sum equal to the aggregate amount of such false entry. (Refer definition of "False Entry" in sub-para (b) above).	Such fake supplier can be held as beneficiary of a transaction covered under Section 122(1)(ii) for issuance of invoice or bill without supply of goods or services or both and hence liable for penalty equivalent to the amount of tax evaded u/s 122(1A).
A fake recipient taking or utilising input tax credit, without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of CGST Act or the rules made there under;	The Assessing Officer may under Section 271AAD(1)(i), classify the transaction as a "False Entry" and may direct such person to pay by way of penalty, a sum equal to the aggregate amount of such false entry. (Refer definition of "False Entry" in sub-para (b) above).	Such fake recipient can be held as beneficiary of a transaction covered under Section 122(1)(vii) for availment of input tax credit without actual receipt of goods or services or both and hence liable for penalty equivalent to the amount of ITC availed u/s 122(1A).
A fake recipient forging or falsifying documents such as a false invoice or, in general, a false piece of documentary evidence	The Assessing Officer may under Section 271AAD(1)(i) classify the transaction as a false entry and may direct such fake recipient to pay by way of penalty, a sum equal to the aggregate amount of such false entry. (Refer definition of "False Entry" in sub-para (b) above).	Such fake recipient can be held as beneficiary of a transaction covered under Section 122(1)(i) for forging or falsifying false invoice and hence liable for penalty equivalent to the amount of tax evaded u/s 122(1A).

The above table lists only few of the instances. There can be many more situations where the assessee may get covered in both the sections. In both the sections, the onus for default has been placed on the beneficiary as well as the initiator of the transaction.

Section 271AAD(2) of the Act states that any person who causes the person referred to in sub-section (1) ("**other person**") to make a false entry or omits or causes to omit any entry then such other person shall also be liable to pay penalty equal to aggregate amount of such false or omitted entry. Hence, provision has been made for imposing penalty on the assessee as well as any other person involved in making the false entry or omission of any entry in books of assessee.

Similarly, Section 122(1A) of the CGST Act states that "any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on." Here also, the objective of this amendment is to penalise the beneficiary

and the wrongdoer of the transactions specified in clause (i), (ii), (vii) or clause (ix) liable for penalty.

From above discussions, one can make out that accounting and book keeping needs to be done by also keeping above points in mind. Proper reconciliation of books with GSTR-2A and GST Returns is very much essential in order to avoid any disputes in future. Any mistake or negligence on the part of the assessee can expose him to penalties under Income Tax Act as well as CGST Act. For example, even where the assessee is maintaining proper records of all purchase invoices, but the vendor has not maintained any records to enable the department to cross verify and establish its correctness, in such cases the assessee can be a defaulter, due to no fault of his own. Hence background check and cross verification of vendors is also necessary. This was just one of the cases and there can be several examples like this.

5. PROVISIONS RELATING TO DIVIDENDS

5.1 Abolition of Dividend Distribution Tax (DDT) [Section 115-O and 115-R]

The following amendments have been made to make the dividend income taxable in the hands of the shareholders or unit holders at the applicable rate and the domestic company or specified company or mutual funds who were earlier required to pay DDT on dividends declared by them to their shareholders, are not required to pay any DDT:

(a) Sections 115-O and 115-R is amended to provide that DDT under Section 115-O (by a domestic company) and under Section 115R (by mutual fund, etc.) will not be payable in respect of dividends declared, distributed or paid by a domestic company/income distributed by a mutual fund on or after 1st April, 2020.

(b) Exemption hitherto granted to dividend/ income on units under Sections 10(34)/ 10(35) will no longer apply to dividend income, received on or after the 1st April, 2020.

(c) Section 115BBDA levying tax on dividend income in excess of Rs.10 Lakh @ 10% in the hands of the shareholder will no longer be applicable.

(d) Sections 115AC, 115ACA and 115AD relating to income of non-residents have been amended to remove reference of dividend referred to in Section 115-O to make such dividend taxable in accordance with these provisions.

However, the non-residents will be eligible to claim benefit of applicable DTAA which would include limit on tax rate for dividend specified in the DTAA and tax credit in the home country.

(e) Consequential amendments have been made in Sections 10(23D), 10(23FC), 10(23FD), 115UA, 194LBA, 196A, 196C, 196D.

(f) Removal of reference of Sections 115-O in various sections viz. Sections 57, 115A, 115C, 195.

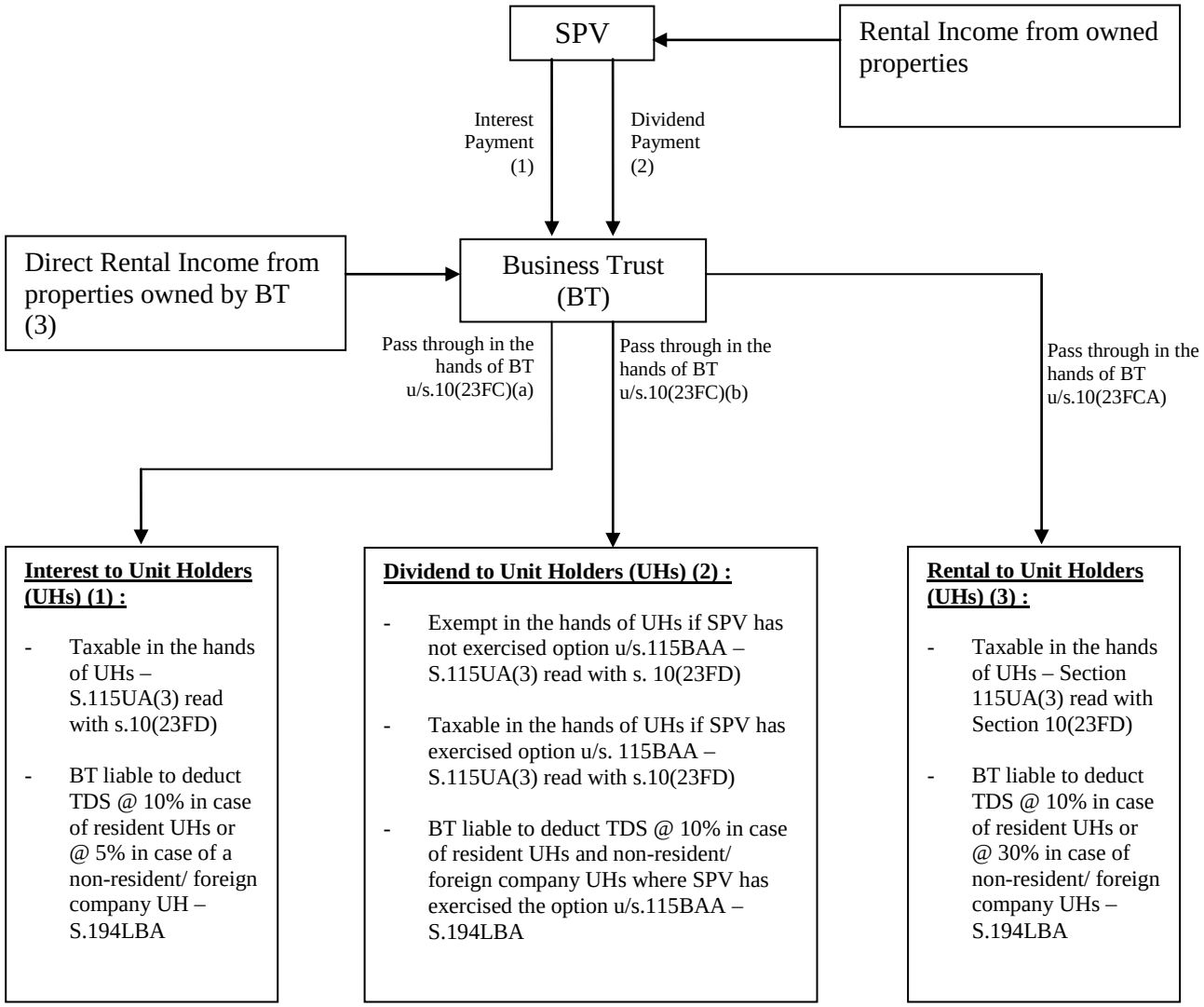
The amendments relating to TDS provisions on Dividends will take effect from 1st April, 2020. All the other amendments above will take effect from 1st April, 2021 and will, accordingly, apply in relation to A. Y. 2021-22 and subsequent assessment years.

Comment

Post aforesaid amendment, the domestic companies will have higher cash flows available for distribution as dividends, and this will in turn lead to a higher dividend pay-out by the companies. However, on the other hand the persons in the highest tax bracket will need to pay tax on dividend income at the maximum marginal rates instead of special rate of 10%, which shall eventually result in higher tax outflow for the high net worth individuals and promoters of such domestic companies.

5.2 Taxation of REIT [Sections 115UA, 10(23FD)]

(a) The taxation of a REIT is explained by way of following flow chart:



(b) Any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by, or accrued to, the business trust. In other words, the income distributed by the business trust is taxable in hands of unit holders under the same head of income which would have been considered if such income was not distributed. E.g., if REIT earns direct rental income or interest/ dividend from SPV and distributes such income to the unit holder, then in hands of unit holder such income shall be broken down into (i) Rental Income to the extent of direct rental income earned by REIT would be taxable under the head 'Income from house property' subject to deductions under Section 24; (ii) Interest Income to the extent of interest income earned by REIT from SPV would be taxable under the head 'Income from other sources' with applicable tax rates; and (iii) Dividend Income to the extent of dividend income earned by REIT from SPV will be exempt under Section 10(23FD) provided the SPV has not opted for concessional rate of tax under Section 115BAA. However where the SPV has opted for concessional rate of tax under Section 115BAA such dividend will become taxable in the hands of the unit holder under the head 'Income from other sources'. Such division is done by taking the same ratio of income as in hands of business trust.

(c) **Taxability of Other Incomes of a Business Trust**

(i) Long term capital gains on transfer of assets of a Business Trust shall be taxable in the hands of Business Trust under Section 112 at the rates given therein.

(ii) Short term capital gains on transfer of assets of a Business Trust shall be taxable at maximum marginal rate (MMR) i.e. @ 42.74% subject to provisions of Section 111A.

(iii) As per section 115UA(2), all other income of a Business Trust (other than interest/ dividend income received/ receivable from SPV and rental income from leasing its properties), shall be taxable at MMR i.e. @ 42.74%.

(d) The taxability of dividend distributed by SPV after the amendments made to Sections 10(23FC), 10(23FD) and 115UA, is explained with the help of the following table:

Particulars	***SPV opts for Concessional Tax Rate under Section 115BAA***	***SPV does not opt for Concessional Tax Rate under Section 115BAA***	***Remarks***
Is SPV liable to pay DDT on dividend distributed to a Business Trust?	No	No	*DDT has been abolished by the Finance Act. Thus, SPV shall not be required to pay DDT on dividend distributed to a Business Trust**

Particulars	***SPV opts for Concessional Tax Rate under Section 115BAA***	***SPV does not opt for Concessional Tax Rate under Section 115BAA***	***Remarks***
Is Business Trust liable to pay tax on dividend received or receivable from SPV?	No	No	*Dividend received from SPV by a Business Trust shall be exempt from tax under Section 10(23FC)*
Is unit-holder liable to pay tax on dividend received through a Business Trust from SPV?	Yes	No	*The Finance Act provides an exemption under Section 10(23FD) to unit holders only if SPV does not opt for Section 115BAA. The dividend shall be taxable in the hands of the unit holder, if the SPV opts for Section 115BAA.*
Is Business Trust liable to deduct tax on dividend distributed to its shareholders	Yes	No	

* *An SPV was not liable to pay DDT even before the abolition of DDT by the Finance Act, but only when a Business Trust holds the whole of the nominal value of equity share capital of the SPV.*

(e) Section 194-LBA provides for deduction of tax at source by a Business Trust from income distributed to its unit holders.

A new sub-section (2A) is inserted under Section 194-LBA which reads as under:

"Nothing contained in sub-sections (1) and (2) shall apply in respect of income of the nature referred to in sub-clause (b) of clause (23FC) of section 10, if the special purpose vehicle referred to in the said clause ***has not exercised*** *the option under section 115BAA."*

(f) Sub-section (1) and sub-section (2) of Section 194-LBA provides for deduction of tax from income distributed to unit holders by a Business Trust. Sub-clause (b) of clause (23FC) of Section 10 talks about dividend received or receivable from SPV. Section 194-LBA(2A) been inserted to provide that no tax shall be deducted by a Business Trust from dividend distributed to its unit holders where such dividend is distributed out of sum received as dividend from an SPV and the SPV "***has not exercised***" the option under Section 115BAA. In other words, if SPV has opted for Section 115BAA, then Section

194-LBA requires Business Trust to deduct tax from dividend distributed to unit holders.

5.3 Deduction of Expenses in relation to Dividend Income [Section 57]

Background

Currently any expenses incurred for earning dividend income is not allowed as deduction, since dividend income was not taxable in the hands of recipient of the dividend income.

Amendment made

The Finance Act has inserted a proviso to Section 57(1) to provide that only expenditure by way of interest, restricted to a maximum of 20% of dividend income or income from units, shall be allowed to be deducted from such income. No other deductions will be allowed from such income.

Comment

It may be noted that the aforesaid amendment to Section 57 overrules the Supreme Court decision in case of ***Rajendra Prasad Moody, [1978] 115 ITR 519***, wherein it was held that interest paid on money borrowed for investment in shares, which had not yielded any dividend, was admissible under Section 57(iii).

5.4 Deduction in respect of certain Inter-Corporate Dividend [Section 80M]

(a) The Finance Act has inserted a new Section 80M (as it existed before its removal by the Finance Act, 2003) to remove the cascading effect in case of inter-corporate dividends, to provide that the dividend received by a domestic company from another domestic company or a foreign company or a business trust, shall be allowed to be set off by the recipient domestic company to the extent of the dividend received by it and distributed by such company on or before the due date. "Due date" has been defined in an *Explanation* to the section to mean the date one month prior to the date for furnishing the return of income under Section 139(1). It has been provided that where the amount of dividend distributed by the domestic company has been allowed as a deduction in a previous year, no deduction shall be allowed in respect of such amount in any other previous year.

(b) The deduction under Section 80M shall also be available to domestic companies opting for concessional/ reduced rate of corporate tax as per Sections 115BAA and 115BAB.

6. OTHER SIGNIFICANT AMENDMENTS

6.1 Increase in limit of Turnover for Audit of Books of Account [Section 44AB]

Background

Under Section 44AB, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed Rs.1

Crore in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, Rs.50 Lakhs in any previous year.

Amendments made

(a) In order to reduce compliance burden on small and medium enterprises (SMEs), the Finance Act has increased the threshold limit for a person carrying on business from Rs.1 Crore to Rs.5 Crores, in cases where the aggregate of all receipts and payments in cash during the previous year does not exceed 5% of such receipt or such payments respectively. The threshold limit for audit for professionals is not changed and continues to be Rs.50 Lakh.

(b) Further, the tax audit report is required to be furnished by the specified date. Under the existing provisions, the specified date means the due date for furnishing the return of income under Section 139(1). It is now provided to substitute the specified date as one month prior to the due date for furnishing the return of income. This implies that the tax audit report under Section 44AB will now have to be furnished one month prior to the due date for filing of return under Section 139(1). This provision has been amended to enable the Government to provide the pre filled income tax return forms.

(c) The existing due date for filing return of income in case of assessees to whom tax audit is applicable is 30th September. Now, the due date of filing return of income by a company, any other person whose accounts are required to be audited under the Act or any other law and any partner of the firm whose accounts are required to be audited under the Act or any other law will be 31st October of Assessment Year. It is pertinent to note that hitherto, the due date of filing return of income of only the working partner(s) of the firm, whose accounts are required to be audited under the Act or any other law was 30th September. Now, the due date of filing return of income of all partners of such firm will be 31st October.

(d) Thus, the revised time limits for compliance effective A. Y. 2020-21 read with press release dated 30.12.2020 will be as follows:

Category of Assessee	Due date for filing tax audit	Due date for filing return of income
Assessee to whom tax audit is applicable under Section 44AB	15th January, 2021	15th February, 2021
Assessee to whom audit is applicable under Section 92E (Transfer pricing audits)	15th January, 2021	15th February, 2021
All partners in firm which are subject to audit under Sections 44AB/ 92E	15th January, 2021 (wherever applicable)	15th February, 2021

(e) There are various sections under the Act which provide for furnishing various reports by the due date specified for tax audit purpose under Section 44AB. Corresponding amendments have been made in all such sections.

(f) Further, there are certain withholding sections, which determine the applicability of TDS / TCS based on the threshold limit of turnover or gross receipts as specified in Section 44AB. These include Sections 194A (Interest other than Interest on Securities), 194C (Payments to Contractors), 194H (Commission or brokerage), 194I (Rent), 194J (Fees for Professional or Technical Services) and 206C (TCS on trading in alcoholic liquor, forest produce, scrap, etc.). The existing provisions of these sections fasten liability of TDS/TCS on certain categories of person viz. Individual, HUF, AOP or BOI, if the gross receipt or turnover from the business or profession carried on by them exceed the monetary limit specified in clause (a) or clause (b) of Section 44AB viz. Rs.5 Crore in case of the business or Rs.50 Lakhs in case of the profession.

Now, all of the above sections stand amended to provide that the said provisions shall be applicable to such Individuals, HUF, AOP or BOI, whose turnover or gross receipts exceed Rs.1 Crore in case of business and Rs.50 Lakhs in case of profession. This implies that the enhanced limit of tax audit is not extended for the purpose of deduction of tax at source or tax collectible.

6.2 Rationalisation of provision relating to Form 26AS [Sections 203AA and 285BB]

Background

(a) The existing provisions of Section 203AA *inter alia* casts a responsibility on the prescribed income tax authority or the person authorised by such authority to prepare and deliver a statement in Form 26AS to every person from whose income the tax has been deducted or in respect of whose income the tax has been paid specifying the amount of tax deducted or paid.

(b) With the advancement in technology and enhancement in the capacity of system, multiple information in respect of a person, such as sale/ purchase of immovable property, share transaction, etc. are being captured or proposed to be captured. In future, it is envisaged that in order to facilitate compliance, this information will be provided to the assessee by uploading the same in the registered account of the assessee on the designated portal of the Income-tax Department, so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability.

Amendment made

(a) Further, as the mandate of Form 26AS would extend beyond the information about tax deducted and other tax payments, a new Section 285BB has been introduced regarding 'Annual Information Statement'. This section mandates the prescribed income-tax authority or the person authorised 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.

(b) Consequently, Section 203AA is deleted and section 285BB is inserted with effect from 1st June, 2020.

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

6.3 Provisions relating to Improving effectiveness of Tax Administration

6.3.1 *Verification of return of income [Section 140]*

(a) Presently, in case of a company, the return of income is required to be verified by its managing director. Where the managing director is not able to verify for any unavoidable reason or where there is no managing director, any director of the company can verify the return.

(b) Similarly, in case of a limited liability partnership, the return has to be verified by its designated partner or by any partner, where such designated partner is not able to verify for any unavoidable reason or in case there is no such designated partner.

(c) Section 140 has been amended so as to enable the assessee to authorize any other person, as may be prescribed for this purpose, to verify the return in the cases where the managing director or designated partner is not able to verify it or where there is no such managing director or designated partner.

This amendment is effective from 1st April, 2020.

6.3.2 *Modification of faceless assessment scheme, introduction of E-Appeals Scheme, Scheme for conducting penalty proceedings electronically [Sections 143(3A), 143(3B) 250, 274]*

In order to impart greater efficiency, transparency and accountability to the assessment, appeal and penalty proceedings, the Finance Act/ the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, has made the following amendments to the provisions of the Act:

Section	Particulars
Section 130 inserted	Section 130 is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020to empower the Central Government to notify by March 31, 2022, a scheme for faceless jurisdiction of income-tax authorities. This amendment will take effect from 1st November, 2020.
Section 135A inserted	Section 135A is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to empower the Central Government to notify by March 31, 2022, a scheme for faceless collection of information under certain specified sections of the Act.

Section	Particulars
	This amendment will take effect from 1st November, 2020.
Section 142B inserted	Section 142B is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to empower the Central Government to notify by March 31, 2022, a scheme for making faceless inquiry or valuation. This amendment will take effect from 1st November, 2020.
Sections 143(3A) & 143(3B) amended	Hitherto, the provisions of faceless assessment i.e. E-assessment Scheme, 2019 notified under Section 143(3A), were applicable only to an assessment under Section 143(3). Now, faceless assessment has been extended to best judgement assessment under Section 144. Furthermore, the time limit for the Central Government to issue any notification giving direction under Section 143(3B) was extended from 31st March, 2020 to 31st March, 2022 by the Finance Act. However, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has curtailed the time limit for the Central Government to issue any notification giving direction under Section 143(3B) to 31st March, 2021. This amendment will take effect from 1st April, 2020.
Section 144B inserted	Section 144B is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to provide for the manner in which faceless assessments under Section 143(3) (Scrutiny Assessment) and Section 144 (Best Judgement Assessment) shall be made. This amendment will take effect from 1st April, 2021.
Sections 144C(14A) and (14C) inserted	Sections 144C(14A) and (14C) are inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to empower the Central Government to notify by March 31, 2022, a scheme for faceless issuance of directions by the dispute resolution panel. This amendment will take effect from 1st April, 2021.
Section 151A inserted	Section 151A is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to empower the Central Government to notify by March 31, 2022, a scheme for making faceless assessment of income escaping assessment vis-à-vis assessment, reassessment or re-computation under Section 157 or issuance of notice under Section 148 or sanction for issue of

Section	Particulars
	such notice under Section 151. This amendment will take effect from 1st November, 2020.
Section 157A inserted	Section 157A is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to empower the Central Government to notify by March 31, 2022, a scheme for making faceless rectification of mistake apparent from record under Section 154 or other amendments under Section 155 or issuance of notice of demand under Section 156 or intimation of loss under Section 157. This amendment will take effect from 1st November, 2020.
Sub-Sections (6A), (6B) and (6C) to 250 inserted	Under the existing provisions, the filing of appeal before Commissioner of Income Tax (Appeals) is mandatorily to be done through electronic mode. However, once the appeal is filed, the hearings before CIT(A) are to be attended in person before the CIT(A) and all the subsequent procedures are also not done by electronic mode. In order to further reduce human interface from the system and taking it to the next level, the Finance Act provides for bringing out a new E-appeal Scheme on similar lines of E-assessment Scheme. Section 250 is amended to empower the Central Government to notify by March 31, 2022, an e-appeal scheme for disposal of appeals, by eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible and introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals). This amendment will take effect from 1st April, 2020.
Section 264A inserted	Section 264A is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to empower the Central Government to notify by March 31, 2022, a scheme for making faceless revision of orders under Sections 263 or 264. This amendment will take effect from 1st November, 2020.
Section 264B inserted	Section 264B is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to empower the Central Government to notify by March 31, 2022, a scheme for giving faceless effect of orders under Sections 250, 254, 260, 262, 263 or 264. This amendment will take effect from 1st November, 2020.

Section	Particulars
Section 274 amended	Section 274 has been amended to empower the Central Government to notify by March 31, 2022, a scheme of imposing penalty, by eliminating the interface between the Assessing Officer and the assessee in the course of assessment proceedings to the extent technologically feasible and introducing a mechanism for imposing penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities. This amendment will take effect from 1st April, 2020.
Section 293D inserted	Section 264A is inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to empower the Central Government to notify by March 31, 2022, a scheme for faceless approval or registration. This amendment will take effect from 1st November, 2020.

6.3.3 ***Modification in the power of the Appellate Tribunal to grant a stay [Section 254]***

(a) Section 254(2A) empowers ITAT to grant a stay from the recovery of alleged demand for a maximum period of 180 days (which may be extended for another 185 days, however that the total stay including the aforesaid extension cannot exceed 365 days in total).

(b) Section 254(2A) has been amended to provide that ITAT may grant a stay of demand for 180 days only with a condition that the assessee has deposited not less than 20% of total disputed demand or furnish security of equal amount in respect thereof. Provided however the total stay granted by ITAT cannot exceed 365 days, as is currently the case.

Similar condition of payment of 20% of demand was prescribed by the CBDT through its Office Memorandum, while preferring appeal before first appellate authority i.e. CIT(A). However the Supreme Court in case of **L E Electronics India Private Limited** has held that the Commissioners can grant stay on payment of an amount lesser than 20% depending upon the facts of individual cases.

(c) The Courts have consistently taken a view that the Tribunal has power to extend the stay beyond 365 days even after the substituted third proviso to Section 254(2A) was introduced.

This amendment will take effect from 1 April, 2020.

6.3.4 Currently, there is no provision under the Act providing for declaration and adoption of Taxpayer's Charter by the CBDT. In order to enshrine it in the Statute, a new Section 119A has been inserted mandating the CBDT to adopt and declare a Taxpayer's Charter. The CBDT is also empowered to issue such orders, instructions,

directions or guidelines to other income-tax authorities as it may deem fit for the administration of Taxpayer's Charter. This amendment will take effect from 1 April 2020.

6.4 Other Significant Announcements

6.4.1 Vivad se Vishwas Scheme

(a) Pursuant to the announcement made by the Finance Minister in her Budget speech, to reduce tax litigation a new direct tax dispute settlement scheme "*Vivad Se Vishwas*" has been launched/ introduced through enactment of "The Direct Tax Vivad Se Vishwas Act, 2020" which has received Presidential assent on 17th March, 2020, where under a taxpayer opting for the Scheme would be required to pay only the amount of the disputed arrears [comprising of disputed taxes, disputed fee, disputed interest (not being interest charged or chargeable on disputed tax) and disputed penalty (not being penalty levied or leviable on disputed income or disputed tax)] and will get complete waiver of interest and penalty provided he pays the disputed arrears by 31st March, 2020, which date has now been extended up to 30th June, 2020 by a Press Release dated 25th March, 2020 in view of COVID-19. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 read with Notification dated 27th October, 2020 has extended the time period for availment of Vivad se Vishwas Scheme for making payment without additional amount to 31st March, 2021.

(b) The CBDT has released Direct Tax Vivad Se Vishwas Rules, 2020 vide Notification No. 18/2020-Income Tax dated 18th March, 2020. The CBDT has issued clarifications on Direct Tax Vivad Se Vishwas Bill, 2020 vide Circular No. 7/2020 F. No. IT(A)/1/2020-TPL dated 4th March, 2020 revised vide Circular No. 9/2020 F. No. IT(A)/1/2020-TPL dated 22nd April, 2020.

(c) The CBDT has at FAQ No. 28 as to what amount of tax is required to be paid if an assessee wants to avail the benefit of the Vivad se Vishwas Scheme, replied that under the Vivad se Vishwas, the declarant is required to make following payment for settling disputes:

A. In case where an appeal/ writ petition/ Special Leave Petition/ objections before Dispute Resolution Panel/ revision application under Section 264/ arbitration is filed by the assessee -

(a) In case payment is made till 31th March, 2021:

(i) 100% of the disputed tax (125% in search cases), where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty levied or leviable), or

(ii) 25% of the disputed penalty, interest or fee, where dispute relates to disputed penalty, interest or fee only.

(b) In case payment is made after 31th March, 2021:

(i) 110% of the disputed tax (135% in search cases), where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty), or

(ii) 30% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

However, if in an appeal before Commissioner (Appeals) or in objections pending before DRP, there is an issue on which the appellant has got favorable decision from ITAT (not reversed by HC or SC) or from the High Court (not reversed by SC) in earlier years, then the amount payable shall be half or 50% of above amount.

Similarly, if in an appeal before ITAT, there is an issue on which the appellant has got favorable decision from the High Court (not reversed by SC) in earlier years, then the amount payable shall be half or 50% of above amount.

B. In case where an appeal/ Writ Petition/ Special Leave Petition is filed by the Department -

(a) In case payment is made till 31th March, 2021:

(i) 50% of the disputed tax (62.5% in search cases) in case of dispute related to disputed tax; or

(ii) 12.5% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

(b) In case payment is made after 31th March, 2021 :

(i) 55% of the disputed tax (67.5% in search cases) in cases of dispute related to disputed tax, or

(ii) 15% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

The Scheme will remain open till 31th March, 2021. It is likely that the Scheme may be extended for a further period considering the COVID-19 situation.

6.4.2 A new National Policy on Official Statistics has been introduced to improve data collection and dissemination with the help of technology. Aadhaar-based verification of taxpayers is being introduced to weed out dummy or non-existent units.

6.4.3 A scheme is to be launched under which PAN is to be instantly allotted online on the basis of Aadhaar without any requirements for filling up of detailed application form.

6.4.4 The Finance Minister, in her Budget speech, has announced that pre-filled returns will be made available to the assessee.

CONCLUSION

To conclude, though there is not much in terms of addressing the problems of the real estate sector, the move of the Government in increasing the tolerance limit from 5% to 10% in case of immovable property transactions is a welcome move.

The abolition of dividend distribution tax on domestic companies and moving to a regime of taxing dividends in the hands of the recipient-shareholders, will lead to increase in availability of cash flows in the hands of the companies thereby giving an impetus to their growth.

In addition to present e-assessment system, moving to e-appeals scheme and e-penalties scheme, whereunder appeals will be decided and penalties will be imposed respectively, without any human interface is a welcome move. This move will to a great extent reduce harassment faced by taxpayers in the hands of the Assessing Officer/ Appellate Authority at the stage of assessment/ appeal and impart greater efficiency, transparency and accountability to the whole assessment/ appellate process, provided the e-appeal scheme and e-penalty scheme is formulated, administered and implemented with due care and caution and keeping in mind the principles enumerated in the proposed Taxpayer's Charter.

Having of a Taxpayers' Charter on the statute is a welcome move. However, the same will have to be formulated, administered and implemented with due care and caution keeping in mind the principles for bringing the same on the statute books and giving it a statutory status. Time alone will show whether the Taxpayer's Charter is administered by the Department in its true letter and spirit in accordance with the principles envisaged therein.

The option given to domestic companies, Individuals, HUFs and co-operative societies to opt for reduced/ concessional rate of tax will not only increase the compliance burden on the taxpayers, but tend to make the tax structure more complex rather than simplifying it.

* * *

PRIVATE CIRCULAR

DETAILED ANALYSIS OF THE FINANCE ACT, 2020 DIRECTLY CONCERNING THE REAL ESTATE SECTOR AND THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020

Compiled in collaboration with
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SAMIR SANGHAVI & ASSOCIATES
Chartered Accountants

22nd day of January, 2021