Union Budget - 2020

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Budget Special Edition 2020

SBS Wiki

2020 Budget Special

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Dear All,

Greetings!

By this time, I am sure that all of your mailboxes would have been flooded with colourful presentations detailing the budget proposals. Let me also add burden to your mailbox with our presentation. In this budget edition, we discuss clause by clause each significant proposal pertaining to income tax and goods and services tax laws. Hope this effort of ours is useful for understanding the proposals. Let me also allow to summarise the various proposal before going to deal clause by clause.

The significant of direct tax proposals is the relaxation of tax audits for business who are having less than turnover of INR 5 Crores subject to a condition that there cash transactions are less than 5%. This would be a great relief to the MSME sector, since, it reduces compliance cost.

Another significant of the proposal was to provide relief for companies from payment of DDT for the dividends declared. Currently, the dividends declared by the company are taxable at 15% + surcharges and cesses and exempted in hands of shareholders, except where the dividends exceed INR 10 lakhs. Now that with removal of DDT, the dividends will become taxable in the hands of shareholders and also encourage the companies to declare dividends and may lead to chance in increase in spending.

The alternative tax regime for individuals subject to a condition that no deduction or exemption shall be claimed has to be tested to see, whether the same is beneficial or not. However, a step towards the alternative tax regime is positive.

The eligible start-ups are provided longer period to claim the deductions of profits in a block of 10 years instead of current 7 years. Further, the increase of turnover to INR 100 Crores for becoming an eligible start up is also a welcome move, since it provides impetus to the start-up community.

The relief provided by deferring payment of tax on perquisites by employees who are provided with ESOPs by an eligible start-up employer is encouraging. However, the same would have been awesome if it is extended to every employee.

The amendment related to adoption of actual consideration vis-à-vis deemed full value of consideration for the purposes of transfer of assets or capital assets, in the nature of buildings or land or both, in case, where the difference of actual consideration and market value is 10% instead of current 5% is also a welcome move. However, 15% would have been ideal. Further, it would have been friendly tax measure, if anyone, either the buyer or seller is asked to pay tax. However, the double taxation still continues qua Section 50C and Section 56(2)(x).

Including the non-resident (not being a company) in the ambit of eligible assesses for the purposes of reference to DRP is a welcome move. Further, amendment providing that non-resident not being a company or foreign company need not file return, if they are in receipt of dividend or fee for technical services subject to conditions also relieves such class of assessees from filing the returns. Bringing the profit attribution under the purview of SHR and APA is also a good move, which brings tax certainty in such cases. The deferral of implantation of SEP till 2022 is inevitable in light of the fact that still discussions are being made as part of OECD BEPS project.

The extension of one year for the loan agreements for the purpose of applicability of concessional rate of interest paid to foreign companies under Section 194LC, the extension of one year for approvals of projects which are eligible for deduction under Section 80IAB for affordable housing projects and deduction of additional interest for individuals for purchase of affordable house are all much needed amendments.

On the GST side, the provision for allowing extended time for availing credit based on debit note is much awaited one. Further, the retrospective amendment for availing credit of taxes paid during previous regime qua transitional provisions by allowing extra time is also required keeping in view that GST was much newer then and expecting taxpayers to understand within the limited time is challenging.
With this, I present you the detailed analysis on significant clauses on Finance Bill 2020. We wish this effort of ours is fruitful and we would love to receive feedback on this.

Thanking You,

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Amendments to Income Tax Act, 1961

Section 6–Residence in India

1. Section 6 deals with residence in India. As per the current scheme of taxation, a person is treated as resident for a pervious year if he is in India in that year for a period or periods amounting in all to 182 days or more or having within four years preceding that year been in India for a period or periods exceeding 365 days or more, is in India for a period or periods amounting in all to 60 days or more in that year.

2. However, an individual who is a citizen of India or person of Indian origin, who being outside India, comes on a visit to India in any previous year, the 60 days (supra) shall be replaced with 182 days. This provides a relief to the individual not be called as resident, even if he had stayed more than 365 days in the preceding four years prior to previous year in consideration, but stayed in India for a period less than 182 days in that year.

3. Now, the said period of 182 days is proposed to be replaced with 120 days. Hence, with effective from 1st April 2021, an individual would be treated as resident if he stays more than 120 days in India in the previous year in consideration for treating as resident if he satisfies the 365 days test. Needless to say, that a person becoming resident would bring his global income to tax in India.

4. The above amendment is brought to curb practices by individuals who were hitherto managing their affairs in a way that the continue not to be a resident so that they can avoid offering their global income in India. Hence, the test of shorter duration of 120 days when compared to 182 days would curb such practices.

Section 6(1A):

5. A new sub-section has been introduced to state that an individual being a citizen of India, shall be deemed to be resident in India in any previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

6. This resolves the double non-taxation, because of this provision, the citizen of India would be treated as resident of India, if he does not become resident of any other country. In absence of this provision, individuals were managing their affairs in such a way that they do not become resident of any country and thereby not offering certain portion of income forever.

Section 6(6):

7. The existing scheme provides satisfaction of any two conditions for an individual or HUF to be treated as 'not ordinarily resident'. Now, under the proposed scheme, an individual or HUF would be treated as 'not ordinarily resident' if such individual or manager of HUF is a non-resident in India in 7 out of 10 previous years preceding that year. Under the proposed scheme, an individual or manager of HUF would be treated as 'not ordinarily resident' on satisfaction of much lighter conditions as compared to the previous regime.

Section 9 – Income deemed to accrue or arise in India vis-à-vis Significant Economic Presence:

8. Finance Act, 2018 has introduced Explanation 2A to Section 9(1) to state that significant economic presence (SEP) of a non-resident in India shall constitute 'business connection' in India, so that the income attributable to such SEP activities in India would be treated as income deemed to accrue or arise in India to bring such income into the scope of Section 5 of Act. The said phrase 'SEP' was defined vide Explanation 2A. However, the said Explanation 2A was not made effective, since the rules determining the threshold was not in place to determine what constitutes SEP.

9. However, Finance Bill, 2020 provides for omission of Explanation 2A anda new Explanation 2A is in place, with effective from 01st April 2022.There is no change in the existing definition of SEP and proposed one.

10. A new Explanation 3A has been proposed to be introduced to Section 9(1)(i) to state that for the purposes of Explanation 1, the income attributable to operations carried out in India, shall include income from:
    - such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India
    - sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India
    - sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India

11. The definition of 'royalty' as per Explanation 2 to Section 9(1)(vi), has been amended to omit the exclusion of consideration for the sale, distribution or exhibition of cinematographic films. Hence, with effect from 01st April 2021, the consideration for sale, distribution or exhibition of cinematographic films will be called as 'royalty'. Because of exclusion of such consideration, India could not tax even if the DTAA gives right to tax such amount because of much wider definition of 'royalty' as per the later. Hence, in order to remove this contradiction, the proposed amendment is being made.

Section 9A – Extended time to achieve monthly average corpus by specified funds – FIIs

12. Section 9A deals with certain activities which do not constitute business connection in India so that there does not arise any liability under Section 5(2) read with Section 9 pertaining to such transactions. Generally, Foreign Institutional Investors (FII) are safeguarded vide Section 9A to state that no income is deemed to accrue or arise in India for FIIs from their activity in India subject to certain conditions. The eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit.

13. One of the conditions attached is that the aggregate participation or investment in fund, directly or indirectly, by persons resident in India does not exceed 5% of the corpus of the fund. A proviso has been proposed to be inserted stating that for the purposes of calculation of aggregate participation or investment in the fund, any contribution made by eligible fund manager during the first 3 years of operation of fund, not exceeding Rs 25 Crores shall not be taken into account.

14. One more condition attached is that, the fund managed by such FII shall maintain an average corpus of fund of minimum of Rs 100 Crores. However, if the fund is established or incorporated in the previous year, the corpus of fund shall not be less than Rs 100 Crores at the end of period of 6 months from the last day of the month of its establishment or incorporation or at the end of such previous year, whichever is later. An amendment is proposed to replace the said time period of 6 months or end of such previous year with a 12-month period from the last day of the month of its establishment or incorporation.

Section 10(23C)–Certain Incomes not to be included in Total Income

15. Section 10(23C)(iv) states that any income received by a fund or institution established for charitable purposes or any trust or institution wholly for public religious purposes or wholly for public religious and charitable purposes or any university or other educational institution existing solely for educational purposes and not for purposes of profit or any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for some other prescribed ailments, existing solely for philanthropic purposes and not for purposes of profit does not form part of total income if the same are approved by prescribed authority.

16. However, such income does not form part of total income if an application is made in prescribed form and manner to prescribed authority for the purpose of grant of exemption. The current amendment states that an application for exemption is to be made to Principal Commissioner or Commissioner within the prescribed time limits in cases where the fund, trust or institution, educational institution or hospital is already approved under second proviso, which stood before the subject amendment.

17. Further, under the current scheme, vide second proviso, once the exemption is accorded, the said exemption stays forever unless it is subsequently cancelled. However, the current amendment states that the approval is accorded for five years after the Principal Commissioner or Commissioner is satisfied with the genuineness of the activities. This provides an opportunity for the tax authorities to check the activities at a defined interval to take an appropriate decision.

Section 17 – Perquisite

18. Section 17(2) deals with the meaning of 'perquisite'. The current sub-section (vii) is amended to state that the amount or the aggregate of amounts of any contribution made to the account of the assessee by employer:
    - in a recognized provident fund
    - in the national pension scheme – Section 80CCD(1)
    - in an approved superannuation fund

in excess of Rs 7,50,000/- shall be treated as perquisite and accordingly taxable. In the same way, annual accretion by way of interest, dividend or any other amount of similar nature to the extent it relates to the employer's contribution which is included in total income is also treated as perquisite and accordingly made taxable.

19. This proposal is brought to curb the practices of employee with high salary income place request to employer to contribute to the above three funds, so that they remain exempted.

Section 43CA – Special provisions for FVC for transfer of assets other than Capital Assets

20. The current section deals with deemed full value of consideration as market value of such assets (instead of actual sale consideration)for transfer of assets other than capital assets, if such assets are transferred at a value less than market value. The market value is the value adopted or assessed or assessable by any authority of State Government for purposes of stamp duty.

21. However, the said provision shall not be applicable if market value of said asset does not exceed 105% of the actual consideration. Now, an amendment is being made to enhance 5% to 10%, with effective from 1st April 2021.

22. Accordingly, the said provision does not apply if market value of said asset does not exceed 110% of the actual consideration. In all such cases, the actual consideration received will be the full value of consideration.

Section 44AB – Audit of Accounts

23. Section 44AB prescribes audit of accounts of person carrying on a business, if his total sales, turnover or gross receipts, as the case may be, in business exceeds Rs 1 Crore in any previous year. The current amendment is by way of insertion of proviso which states that in case of a person whose-

- aggregate of all amounts received including amounts received for sales, turnover or gross receipts during the previous year, in cash does not exceed 5% of the said amount and
- aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed 5% of the said amount

then, the person is required to get his books of accounts audited only if his total sales, turnover or gross receipts, as the case may be, in business exceeds Rs 5 Crore in any previous year.

24. Further, earlier the tax audit report can be submitted till the due date for filing the return of income under Section 139(1). Now, it is being amended to stipulate that the due date for filing the tax audit report one month prior to the due date for filing the return of income under Section 139(1). Hence, due date for filing tax audit report remains same, in light of due date for filing return of income is being extended by one month.

Section 50C – Special Provision for FVC in certain cases

25. The current section deals with deemed full value of consideration as market value of capital asset being, land or building (instead of actual sale consideration) for transfer of capital assets, if such capital assets are transferred at a value less than market value. The market value is the value adopted or assessed or assessable by any authority of State Government for purposes of stamp duty.**Further, the subject section is applicable only for seller, whereas the buyer is caught under Section 56(2)(x) and accordingly similar amendment is also made in the later section.**

26. However, the said provision shall not be applicable if market value of said asset does not exceed 105% of the actual consideration. Now, an amendment is being made to enhance 5% to 10%, with effective from 1st April 2021.

27. Accordingly, the said provision does not apply if market value of said asset does not exceed 110% of the actual consideration. In all such cases, the actual consideration received will be the full value of consideration.

Section 57 – Deductions – Income from Other Source

28. Currently, the said section allows deduction of certain expenditure for computing income from other sources. Earlier, in case of dividends other than dividends referred under Section 115O, any reasonable sum paid by way of commission or remuneration to a banker or any other person for purpose of realising such dividend.

29. Since the Section 115O is not applicable for dividends declared 1st April 2020, the said restriction in Section 57 becomes unwarranted. Further, a proviso is added stating that the only deduction of interest is allowed for set off against income from dividends or income in respect of units of mutual fund specified under Section 10(23D) or income in respect of units from a specified company as per Section 10(35). Further, the said interest shall be allowed only to the extent of 20% of dividend income or income in respect of such units, computed, without deduction under this section.

Section 80EEA – Deduction of Interest – Rs 1.5 Lakhs – Eligible Loans – Granted till 31st March 21

30. Last year, a new section has been proposed to allow a deduction of interest payable on loan taken from financial institution for purpose of acquisition of residential house property whose stamp duty value does not exceed Rs 45 lakhs. The assessee is eligible for deduction only if the individual is not eligible to claim deduction under Section 80EE.

31. The maximum deduction (from 1st April 20 to subsequent years) allowed under this section is Rs 1,50,000/- and such loan has to be sanctioned from 1st April 19 to 31st March 20 and the assessee does not own any other residential house property on the date of sanction of such loan.

32. The current amendment proposes to extend the benefit for the loan sanctioned till 31st March 21 instead of current cut-off date, 31st March 20.

Section 80IAC – Special provision in respect of specified business – Start Up

33. The current section allows eligible start up to claim deduction of an amount equal to 100% of profits and gains derived from such business for 3 consecutive years. The deduction, may, at the option of eligible start-up, be claimed by him for any 3 consecutive years out of 7 years beginning from the year in which eligible start-up is incorporated.

34. Further, currently, the eligible start-up has been defined among others, where the turnover of his business does not exceed Rs 25 Crores in the previous years for which deduction of 100% profits is claimed.

35. The current amendment is proposed to replace 7 years with 10 years for claiming the deduction of profits. This allows additional period for eligible start up to claim the said deduction, since it hard for start up to generate profits in 7 years. Further, the definition of 'eligible start-up' has also been amended to replace the turnover restriction from Rs 25 Crore to Rs 100 Crore, to allow more start-ups to avail this benefit.

Section 80G – Deduction in respect of donations

36. The said section allows deduction in respect of donations to certain funds, charitable institutions. The said deduction will be allowed to an institution of fund, only if it is established in India for a charitable purpose and it fulfils certain conditions. Certain conditions are being proposed to be added to the existing list of conditions, which will be dealt hereunder.

37. The institution or fund prepares such statement for such period as may be prescribed and deliver to the income tax authority or any person authorised in this connection. The institution or fund furnishes to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of donation.

Section 80IBA – Affordable Residential Housing

38. The said section deals with deductions in respect of 100% of profits and gains from business of developing and building housing projects subject to certain conditions. The project is to be approved by competent authority between 1st June 16 to 31st March 20 to be eligible for such deductions.

39. The current amendment proposes to extend the benefit for the projects approved till 31st March 21 instead of current cut-off date, 31st March 20.

Section 80M – Deduction in respect of certain inter-corporate dividends

40. A new section is proposed to be added to provide deduction with respect to inter-corporate dividends. The said section states that if a domestic company in its gross total income has income from dividend received from another domestic company, the first domestic company shall be allowed a deduction equal to the amount declared as dividend by the first domestic company before one month prior to the date of filing of return of income under Section 139(1).

Section 90 – Agreement with foreign countries or specified territories

41. The said section gives the power to the Central Government to enter into agreement with the Government of any country outside India or specified territory outside India amongst other for avoidance of double taxation of income under the Income Tax Act or under the corresponding law in force in that country or specified territory as the case may be.

42. The current amendment aims at addition of words 'without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefits to residents of any other country or territory' to align with the objectives enshrined vide Article 6 of MLI. Similar amendment is proposed in Section 90A too.

Section 92CB – Safe Harbour Rules

43. The said section gives power to Board to make safe harbour rules (SHR), which means the circumstances in which the tax authorities shall accept the transfer price declared by the assessee. This would help the assessee to reduce the disputes in transfer pricing matters and provide certainty to the taxpayer.

44. Currently, the said section deals with determination of arm's length price under Section 92C or Section 92CA. Now, an amendment is proposed to be made to subject the income referred Section 9(1)(i) to the safe harbour rules. This is very much required because of the wide discretionary powers under Rule 10 which is used for determining the profit attribution to the PE in India. Subjecting the said income to the SHR reduces litigation and provides certainty to the taxpayer.

Section 92CC – Advance Pricing Arrangements

45. The said section allows Board with the approval of Central Government to enter into an advance pricing arrangement (APA) with any person determining the arm's length price or specifying the manner in which arm's length price to be determined, in relation to an international transaction to be entered into by that person.

46. Currently, the said section deals with determination of arm's length price or specifying the manner in which arm's length price is to be determined in respect to an international transaction. The current amendment is proposed to include the income referred to in Section 9(1)(i), which deals with attribution of profit to the PE in India. A similar objective as to that mentioned in Section 92CB.

Section 94B – Limitation on Interest

47. The said section deals with disallowance of excess interest paid by an Indian company or PE of foreign company on loan borrowed from AE, if the interest payment is more than Rs 1 Crore. Any amount of interest which is in excess of 30% of EBITDA of borrower in previous year or interest paid or payable to AE for that previous year whichever is lower.

48. The current amendment is proposed to state that the said limitation of interest shall not be applicable if the loan is issued by PE in India being a person engaged in banking business.

Section 115A –Tax on dividends, royalty and technical service fees in case of foreign companies

49. The said section deals with tax rates pertaining to dividends, royalty, fee for technical services and interests earned by foreign companies. The said section also states that a foreign company which is earning interest and dividend and appropriate taxes have been deducted, then such company is absolved from filing the return of income under Section 139(1).

50. However, the above relief is not made applicable to the foreign companies which has income from royalty or fee for technical services. The current amendment proposes that such companies need not also file return of income if taxes have been deducted at rates not less than the rates prescribed under Section 115A(1). It is important to note that the foreign company has to evaluate whether filing return is beneficial or not vis-à-vis lower rate of deduction as applicable qua DTAA.

Section 115BAC – Tax on Income of Individuals and HUF

51. A new section has been inserted for an individual or HUF, at their option, to pay taxes at a concessional rate subject to certain conditions for income earned for any previous year relevant to the assessment year beginning on or after 1st April 2021. The rate of tax is as under:

Total Income	Rate of Tax
Upto Rs 2,50,000	Nil
From Rs 2,50,001 to Rs 5,00,000	5%
From Rs 5,00,001 to Rs 7,50,000	10%
From Rs 7,50,001 to Rs 10,00,000	15%
From Rs 10,00,001 to Rs 12,50,000	20%
From Rs 12,50,001 to Rs 15,00,000	25%
Above Rs 15,00,001	30%

52. The said option shall be exercised in prescribed manner by person:
    - having business income – on or before the due date specified under Section 139(1) for furnishing the return of income for any previous year relevant to assessment year commencing on or after the 1st April 2021**and such option once exercised shall apply to subsequent assessment years. The said option can be withdrawn only once for a previous year other than for which it was opted and thereafter, the person shall never be eligible to exercise such option unless he fall under the below class.**
    - having no business income – along with return of income to be furnished under Section 139(1)

53. However, as stated supra, the above rates will be applicable only if individual or HUF satisfy certain conditions. The total income of such individual or HUF shall be computed –
    i. without any exemption or deduction with respect to:
        - travel concession or assistance – Section 10(5)
        - HRA – Section 10(13A)
        - special allowance or benefit, specifically granted to meet expenses wholly, necessarily and exclusively incurred in performance of the duties of an officer or employment of profit, any allowance granted to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate the cost of living – Section 10(14)
        - any allowance by reason of his membership of Parliament/State legislature or any committee thereof, constituency allowance – Section 10(17)
        - exemption with respect to minor child – Section 10(32)
        - exemption available in respect of newly established units in SEZ – Section 10AA
        - deductions from salaries – Section 16
        - Interest payable on loan borrowed in respect of house property mentioned in Section 23(2)
        - Additional Depreciation – Section 32(1)(iia)
        - Investment in new plant and machinery in notified backward areas – Section 32AD
        - Tea, Coffee and Rubber Development Account – Section 33AB
        - Site Restoration Fund – Section 33ABA
        - Certain expenditures pertaining to Scientific Research – Section 35
        - Deduction in respect of expenditure on specified business - Section 35AD
        - Expenditure on Agriculture Extension Project – Section 35CCC
          Deduction in nature of Family Pension – Section 57(iia)
        - Any provisions under Chapter VIA other than Section 80CCD(2) or Section 80JJAA

    ii. Without set off of any loss:
        - carried forward or depreciation from any earlier AYs, if such loss is attributable to any of the deductions referred above
        - under the head income from house property with any other head of income

    iii. by claiming depreciation, if any under the provisions of Section 32 except depreciation as per Section 32(1)(iia)

    iv. Without any exemption or deduction for allowances of perquisite, by whatever name called, provided under any other law for the time being in force

Section 115O – Dividend Distribution Tax

54. The said section deals with additional income tax payable on amounts which are distributed as dividends by the company, colloquially known as Dividend Distribution Tax (DDT). The said section is not made applicable for dividends which are declared and distributed after 31st March 2020. The said amendment is made effective from 1st April 2021.

55. With this, the DDT becomes history and the tax on such dividend shall be paid by the shareholders at rates applicable to them.

Section 115BBDA – Tax on certain dividends received from domestic companies

56. Normally, the dividend received by shareholders is exempted in terms of Section 10(34). However, the said section has a proviso which states that dividend mentioned in terms of Section 115BBDA is not covered under Section 10(34).

57. The said section states that the specified assessee resident in India is supposed to pay tax at the rate of 10% if the dividend received by such assessee is more than Rs 10 lakhs.

58. With the above amendment omitting DDT and stating that the exemption provided in Section 10(34) does not apply to dividends received on or after 1st April 2020, the provisions of Section 115BBDA becomes redundant and accordingly amended to state that the section is restricted to dividend declared before 31st March 2020.

Section 139 – Return of Income

59. The current section stipulates due dates for filing of return of income for various assesses. The due date for filing the return of income for company or person who is required to be audited under the Income Tax Act or under any other law for the time being in force or a partner of firm whose accounts are to be audited under the Income Tax Act or under any other law for time being in force is changed to 31st October instead of 30th September.

Section 143 – Assessment

60. The said section deals with assessment when returns were filed under Section 139(1) or in response to a notice under Section 142(1). Currently, the subject assessment is carried through online qua e-proceedings notified under Section 143(3A). Now, the said section is being amended to include a reference to Section 144 also under the ambit of e-proceeding.

Section 144C – Reference to DRP

61. The said section provides reference to DRP (a collegium of three principal commissioners or commissioners), if the eligible assessee is not in acceptance with the draft order (which is prejudicial to the interest of assesse because of variation in the income or loss returned) served by Assessing Officer. The Assessing Officer shall work as per the directions of DRP and conclude the assessment in a time bound manner. The said section currently applicable to eligible assessee, which means, a person in whose case there is an adjustment in terms of Section 92CA(3) and a foreign company.

62. An amendment is proposed to omit the variation because of income or loss returned to cover any variation which is prejudicial to the interest of eligible assessee. Further, non-resident not being a company is also brought under the ambit of eligible assessee.

Section 192 – Salary – Tax Withholding Obligation

63. The said section deals with withholding obligation qua employer with respect to the salaries paid by him. A new sub-section is proposed to be inserted to give relief to employees who have been allotted stocks by an eligible start-up as defined in Section 80IAC.

64. As per the new sub-section, an eligible start-up who is responsible for paying any income to the employee being perquisite (in the nature of specified security or sweat equity shares allotted directly or indirectly at free of cost or concessional rate)shall deduct/pay as the case may be, tax on such income within 14 days:
    - after the expiry of 48 months from end of relevant assessment year or
    - from the date of sale of such specified security or sweat equity share by employee or
    - from the date he ceases to be employee of the eligible start-up

65. This is a welcome move because the current system of taxation of perquisites in the nature of specified security or sweat equity mandates the employee to pay tax (accordingly obliging employer deduct tax) on the fair market value of the equity at the time of exercise of the option. The balance tax is to be paid as capital gain, when the employee sells such shares.

66. The above taxation would be painful as the employee has to pay tax on fair market value despite the fact that there is no cash flow to him. In order to provide relief to such employees, the taxation is being deferred to a maximum period of 48 months. It is important to note that the above relief is available only to employees of eligible start-up and not everyone.

Section 194 – Dividend – Tax Withholding Obligation

67. The person responsible for making payment of dividend before making payment, is obliged to deduct tax at rate of 10%, if the dividend or the aggregate of dividends payable by company during the financial year exceeds Rs 5,000/-.

Section 194A – Interest other than 'Interest on Securities'

68. The said section deals with deduction of tax on interest payments made by any person, if the amount of interest exceeds specified threshold. Currently, the withholding requirement does not apply:
    - to such income credited or paid by co-operative society to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society
    - to such income credited or paid in respect of deposits with a primary agricultural credit society or co-operative land mortgage bank or a co-operative land development bank
    - to such income credited or paid in respect of deposits with a co-operative society, other than co-operative society or bank

69. By virtue of the above section, the co-operative societies were not obliged to withhold tax for any payments thereof. Now, a proviso is being introduced stating that the said exemption is applicable only for small co-operative societies and not to all. As per the proposed amendment, the co-operative society is responsible for withholding obligation if the following conditions get satisfied:
    - total sales, gross receipts or turnover of the co-operative society exceeds Rs 50 Crore during the financial year preceding the financial year in which interest is credited or paid and
    - the amount of interest or aggregate of the amounts of interest credited or paid, or is likely to be credited or paid, during the financial year is more than Rs 50,000/- in case of payee being a senior citizen and Rs 40,000/- in case of other payee.

Section 194C –Payments to Contractors and Sub-Contactors

70. The current section deals with the deduction of tax when the payments were made to contractors or sub-contractors for carrying out any work. The phrase 'work' has been defined as sub-clause (iv) to the explanation attached to the said section. Currently, the definition of 'work' include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from customer but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

71. The current amendment aims to curb the practices wherein the customers are resorting to make supplies through an associate, so that they will be satisfying the exclusion part and thereby no withholding obligation applies to them. Now, the section is amended to include purchases from customer or its associate in the ambit of 'work'. For the purpose of determining as to who is an 'associate', the reference to Section 40A(2)(b) is provided.

Section 194J – Fee for professional or technical services

72. The current section prescribes a deduction of 10% deduction when payments are made for professional services or fee for technical services subject to satisfaction of certain thresholds. The current amendment is proposed to stipulate that deduction of 2% on fee for technical services and 10% for other services.

Section 194K – Income in respect of Units

73. A new section has been introduced to mandate withholding of tax @ 10% on payments (if payment exceed Rs 5,000/-) made to resident any income in respect of units of mutual fund specified under Section 10(23D) or units from Administrator of the specified undertaking or units from specified company.

Section 194LC – Income by way of Interest from Indian Company

74. The current section allows concessional rate of withholding requirements for interest payments made by Indian company to a non-resident, not being a company or a foreign company, subject to certain conditions.

75. One of the conditions is that the loan agreement has to be entered during the period 1st July 2012 to 1st July 2020. The current amendment is aimed at providing applicability of concessional rate for loan agreements entered till 1st July 2023.

Section 194O – Payments of Certain sums by e-commerce operator to e-commerce participant

76. A new section is proposed to be introduced to mandate a tax withholding obligation on e-commerce operator for provision of goods or services to customers qua e-commerce participant. The rate of tax which is to be withheld is stated to be 1% on the gross amount.

77. For the purposes of arriving gross amount, it is deemed that the amounts paid by customer directly to e-commerce participant are deemed to be paid by e-commerce operator to e-commerce participant. Accordingly, even in cases, where the customer pays directly to the e-commerce participant, the e-commerce operator is required to withhold 1% of such amounts from the amount which he receives directly from the customer on behalf of e-commerce participant. Section 206AA is also amended to state that if the tax is required to be deducted under this section and the e-commerce participant has not furnished PAN, then instead of deduction at 20%, it is proposed to make a deduction of 5%.

78. Further, the said section also provides that the e-commerce operator is not obliged to deduct tax, if the payments are being made to individual or HUF, if the total payments during a financial year does not exceed Rs 5 lakhs, subject to condition that the e-commerce operator possesses PAN or Aadhaar number of such individual or HUF e-commerce participant.

79. Further, the said section also states that once an amount is being deducted under this section, then the same amount would not be subjected to other provisions relating to tax deductions, to remove probable double deductions. However, it is provided that the income earned by e-commerce operator through advertisements or providing any other service which are not in connection with sale of goods or services will not be eligible for the lower deduction and such amounts are subjected to the provisions relating to other tax deductions.

Section 206C – Collection at Source

80. The current section deals with collect of tax at source on business of trading in alcohol, liquor or other specified business. The said section is now being proposed to include certain other amounts in its ambit to widen and deepen the tax net. The said additions are as under and tax is to be collected at source at 5%:
    - an authorised dealer, who receives an amount, or an aggregate of amounts, of Rs 7 lakhs or more in a financial year for remittance out of India from a buyer, being a person remitting such amount under Liberalised Remittance Scheme (LRS)
    - a seller of an overseas tour program package, who receives any amount from buyer, being the person who purchases such package

    The new section also provides that there shall be no collection at source, if the buyer is liable to deduct tax at source under any of the provisions relating to tax deductions.

81. Further, the said section is amended to introduce obligation on seller of goods [other than those specified in sub-section (1), (1F) and (1G)] if he receives consideration for sale of any goods of the value or aggregate of such value exceeds Rs 50 lakhs in any previous year, is obliged to collect tax at rate of 0.1% of the sale consideration exceeding Rs 50 lakhs as income tax. If the buyer does not possesses PAN or Aadhaar number, the rate of deduction shall be 1% instead of 0.1%.

82. Further, the seller is only obliged to collect tax if his total sales, gross receipts or turnover from the business carried on by him during the financial year immediately preceding financial year in which the sale of goods is carried out and not being a person notified by Central Government.

Section 250 – Procedure in Appeal

83. The said section deals with procedure in appeal before Commissioner (Appeals). An amendment is made to extend the e-proceedings for appeals also, which is currently available only for e-assessment. This eliminates the interface between Commissioner (Appeals) and Appellant in the course of appellate proceedings. The future system will also be made available with dynamic jurisdiction in which appeal shall be disposed by one or more Commissioner (Appeals).

Section 254 – Orders of Appellate Tribunal

84. Under the current section, appellant is allowed stay on the order passed by Commissioner (Appeals) for a period of 180 days by the Tribunal. However, if the 180 days gets exhausted and the matter is not heard, the stay gets vacated, unless, such delay is not attributable to the Appellant. If the delay is not attributable to the Appellant, the Tribunal can give certain more period so that the stay continues, however the total period including additional period cannot exceeds 365 days. Post 365 days, the stay gets vacated, even if the delay is not attributable to the Appellant.

85. Now, it is proposed that the stay of application of order of Commissioner (Appeals) for a period of 180 days shall not be allowed by Tribunal unless the Appellant deposits not less than 20% of the amount of tax, interest, fee, penalty or any other sum payable or furnishes security of equal amount thereof.

86. Further, the extension of stay for a period more than 180 days, shall not be allowed by Tribunal, unless the later is satisfied that the Appellant has satisfied the condition relating to pre-deposit and the delay is not for the reason attributable to Appellant. However, the total period including the further period, in any case shall not exceed 365 days.

Section 271AAD – Penalty for False Entry

87. A new section has been introduced to state that if during any proceeding under the Act, if it is found that the books of accounts has-
    - false entry or
    - an omission of any entry which is relevant for computation of total income of such person, to evade tax liability

then such person shall be liable for a penalty of a sum equivalent to the aggregate of amount of such false entry or omitted entry. This penalty is not prejudice to any other provisions of the act, to mean that this would be in addition to the existing penalties.

88. Further, the said section also states that the assessing officer may direct any other person who causes the assessee to make a false entry or omit an entry, will also be liable to penalty of a sum equal to the aggregate amount of false entry or omitted entry.

89. This is much needed provision, in light of day to day GST frauds which the Central Government is unearthing.

Section 274 – Procedure in Penalty

90. The said section deals with procedure in penalty proceedings. An amendment is made to extend the e-proceedings for penalty also, which is currently available only for e-assessment. This eliminates the interface between Assessing Officer and assessee in the course of penalty proceedings.

Amendments to Prohibition of Benami Property Transactions Act, 1988

Section 9 – Qualification for Appointment of Chairperson and Members

91. The current section states that a person shall not be qualified for appointment as the chairperson or member of Adjudicating Authority (AA) unless he:

- has been a member of Indian Revenue Service and has held that post of Commissioner of Income Tax or equivalent in that service or
- has been a member of Indian Legal Service and has held the post of Joint Secretary or equivalent post in that service

92. Now, the said section is proposed to be amended to include a person who is qualified for appointment as District Judge to the above list.

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Amendments to Central Goods & Services Tax Laws

Section 2(114) – Definition of Union Territory

93. Ladakh region of the Jammu & Kashmir state was reconstituted as a separate union territory under the Jammu & Kashmir Reorganization Act, 2019. Further the two union territories Dadra & Nagar Haveli and Daman & Diu are merged into a single union territory under Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories), Act, 2019.

94. In view of the reorganization of the union territories in the country, the definition of 'Union Territory' as existing under Section 2(114) is amended to include Ladakh as a union territory and Dadra & Nagar Haveli and Daman & Diu as one single union territory.

Section 10 – Composition Levy

95. Section 10 provides for two separate composition schemes. The first type is applicable to suppliers of goods, manufacturers and restaurant service suppliers whose aggregate turnover in the preceding financial year does not exceed Rs150 lakhs. The second type of composition scheme is applicable to all suppliers of goods and services whose aggregate turnover in the preceding financial year does not exceed Rs 50 lakhs. The conditions specified for eligibility under these two types of composition scheme are similar except for the following

S.No	Condition for First Type	Conditions for Second Type
1.	he is not engaged in making ***any supply of goods*** which are not leviable to tax under this Act	he is not engaged in making ***any supply of goods or services*** which are not leviable to tax under this Act
2.	he is not engaged in making any ***inter-State outward supplies of goods***	he is not engaged in making ***any inter-State outward supplies of goods or services***
3.	he is not engaged ***in making any supply of goods*** through an electronic commerce operator who is required to collect tax at source under section 52	he is not engaged ***in making any supply of goods or services*** through an electronic commerce operator who is required to collect tax at source under section 52

96. The above conditions specified for the first type of composition scheme are limited to goods while for the second type of composition scheme the conditions are made applicable to goods and services. It is now proposed to amend this section to harmonize the conditions related to the first type of composition scheme in line with that of the second type of composition scheme.

Section 16 – Eligibility and conditions for taking input tax credit

97. Section 16 provides eligibility and conditions for taking input tax credit. One of the conditions for claiming the credit is time limit for availing the credit qua Section 16(4). Under the current scheme, a registered person is not allowed to take credit in respect of any invoice or debit note for supply of goods or services or both after the due date for GSTR-3B for September period following the end of financial year in which such invoice or invoice relating to such debit note pertains or furnishing the annual return, whichever is earlier.

98. Therefore, under the current methodology, the time limit for availing the credit qua invoice and debit note are same. For example, the recipient can avail the credit based on invoice issued in Financial Year 19-20, before the due date of GSTR-3B for the month of September 20. Post September return, the credit cannot be availed. The same holds good even a debit note is issued in respect of an invoice pertaining to FY 19-20.

99. It is proposed to amend the above position by delinking the debit note vis-à-vis date of invoice and thereby providing additional time limit for availing the credit based on the debit note. Continuing with the above example, if the debit note for invoice pertaining to FY 19-20 is issued in FY 20-21, the time limit for availing the credit note based on such debit note now gets extended to the due date of GSTR-3B for the month of September 21 instead of earlier position to September 20.

100. However, such debit note should not be as a result of tax paid in accordance with Section 74, Section 129 and Section 130 since the said credit is blocked in terms of Section 17(5)(i).

Section 29 – Cancellation/Suspension of Registration

101. In terms of Section 29(1)(c), registration can be cancelled when a person other than the person who has obtained registration voluntarily is no longer liable to be registered. This sub-clause implies that registration obtained by a person voluntarily under section 25(3) cannot be cancelled.

102. It is proposed to amend this section to provide that registration can be cancelled even in cases where a person has obtained voluntary registration if such person intends to cancel his registration.

Section 30 – Revocation of Cancellation of Registration

103. In terms of Section 30, in a case where registration of a person is cancelled by the proper officer on his own motion, such person can apply for revocation of cancellation of registration within 30 days of the date of service of cancellation order.

104. The limit provided is static and there is no discretion given to the officers to extend the time limit. As a result of this, the taxpayers are forced to obtain new registration in all those cases where their registrations are cancelled, and thirty days have been expired without any application for its revocation.

105. It is now proposed to amend this section to provide that in cases where sufficient cause is shown for delay in making an application for revocation, the time limit specified can be extended by the additional commissioner for a period not exceeding 30 days and by the commissioner for another 30 days.

Section 31 – Tax Invoice

106. It is proposed to amend Section 31 to empower the Central Government to provide for the time and the manner in which tax invoice is required to be issued with respect to specified supplies.

Section 51 – Tax Deduction at Source

107. Section 51(3) provides that the tax deduction certificate shall be issued by the dedcut or to deductee by mentioning the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.

108. It is proposed to be amended this sub-section to empower Central Government to provide for the form and manner in which the tax deduction certificate shall be issued.

Section 122 – Penalty for Certain Offences

109. Section 122(1) provides that the taxable person who commits the contraventions specified thereunder liable to a penalty which higher of Rs 10,000/- or an amount equivalent to the tax evaded or input tax credit availed of or passed on or distributed irregularly.

110. The specified contraventions for this penalty proposed on the taxable person includes the supply of taxable goods or services without any invoice or incorrect invoice, issuance of invoice without a supply of underlying goods or services, avails credit without actual receipt of goods or services.

111. It is proposed to insert sub-section (1A) to impose a penalty on the person at whose instance the transactions are conducted and who retains the benefit of these transactions. The penalty imposed shall be equivalent to the amount of tax evaded or input tax credit availed or passed on. Similar to the penalty introduced under Section 271AAD of Income Tax Act.

Section 132 – Punishment for Certain Offences

112. It is proposed to amend Section 132 so as to make the offence by way of fraudulent availment of input tax credit without invoice or bill as cognizable and non-bailable and to make any person at whose instance such transactions are conducted and retained the benefit of such transactions liable for punishment.

Section 140 – Transitional Arrangements for Input Tax Credit

113. It is proposed to amend various sub-sections of Section 140 relating to transitional arrangements for the input tax credit, so as to prescribe the time limit and the manner for availing input tax credit against certain unavailed credit under the existing law. This amendment shall take effect retrospectively from the 1stJuly 2017.

Section 7(1A) vis-à-vis Schedule II

114. In terms of Section 7(1A), certain activities or transactions specified in schedule II which constitute supply under Section 7(1) shall be treated either as the supply of goods or supply of services as specified in the said schedule.

115. Para 4 of Schedule II provides that disposal of business assets with or without consideration as the supply of goods while private use of business assets with or without consideration as the supply of service. The said para of schedule II is inconsistent with the definition of supply under section 7(1) which pre-requisites consideration in all cases except the transactions covered by the schedule I.

116. It is proposed to amend para 4 of Schedule II to remove this inconsistency and align the said para with the definition of 'supply' under section 7(1). Accordingly, the proposed amendment provides that the disposal of business assets constitutes a supply of goods only when such disposal is for consideration. Similarly, private use of business assets constitutes a supply of service only when such use is for consideration.

Clause 130 – Retrospective Exemption to Fish Meal

117. Clause 130 of the Finance Bill2020 proposes for retrospective exemption on intra-state supply of fish meal during the period from 01.07.2017 to 30.09.2019. Similarly, Clause 133 of Finance Bill, 2020 provides for similar exemption for inter-state supplies made during the above-referred period.

Clause 130 – Retrospective Levy to Pulley & Others

118. Clause 130 of the Finance Bill2020 proposes to retrospectively levy tax at the reduced rate of twelve per cent on intra-state supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery of headings 8432, 8433 and 8436 during the period from 01.07.2017 to 31.12.2018. Similarly, Clause 133 of Finance Bill, 2020 provides for similar levy in case of inter-state supplies.

Clause 131 – Retrospective Denial for Inverted Tax Structure – Tobacco Products

119. Notification No. 3/2019- Compensation Cess (Rate) dated 30.09.2019 is issued by Central Government to deny a refund of compensation cess levied on tobacco products under inverted tax structure in terms of section 54(3). Clause 131 of the Finance Bill2020 proposes to give retrospective effect to this notification effective from 01.07.2017 in order to deny refund arising out of inverted tax structure for tobacco products.

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