KATALYST
ADVISORS LLP

Katalyst Kaleidoscope

February 2020: The Union Budget 2020-21

A. Background and Macro factors

Introduction

The Union Budget 2020 has been woven around three prominent themes:
- Aspirational India,
- Economic Development, and
- Caring Society.

Various initiatives have been introduced in the areas such as rural development, education and development of infrastructural facilities and reforms on the digitization front.

While the specific details for tax and other proposals have been captured in the next section, some key macro-economic pointers have been captured below:
- The World Economic Organization has estimated India's economy at 2.9 Trillion USD to become the fifth largest in the world, as measured using GDP at current US$ prices, moving past United Kingdom and France;

- The net FDI and net Foreign Portfolio Investment (FPI) in first eight months of FY 2019-20 stood at US$ 24.4 billion and US$ 12.6 billion respectively;

- The Balance of Payments (BoP) position has improved from foreign exchange reserves of US$ 302 billion in end March 2019 to US$ 461 billion as on 10 January 2020.

Budget 2020 at a glance:

Budget at a Glance				
				(In ₹ crores)
	2018-2019 Actuals	**2019-2020 Budget Estimates**	**2019-2020 Revised Estimates**	**2020-2021 Budget Estimates**
1. Revenue Receipts	15,53,000	19,60,000	18,50,000	20,20,000
2. Tax Revenue (Net to Centre)	13,17,000	16,50,000	15,00,000	16,35,000**
3. Non Tax Revenue	2,36,000	3,00,000	3,50,000	3,85,000
4. Capital Receipts	7,62,000	8,25,000	8,50,000	10,00,000
5. Total Receipts	23,00,000	28,00,000	27,00,000	30,00,000
6. Total Expenditure	23,00,000	28,00,000	27,00,000	30,00,000
7. On Revenue Account	20,00,000	25,00,000	23,50,000	26,30,000
8. On Capital Account	3,00,000	3,00,000	3,50,000	4,00,000
9. Revenue Deficit	**4,50,000**	**5,00,000**	**5,00,000**	**6,00,000**
%	**(2.4)**	**(2.3)**	**(2.4)**	**(2.7)**
10. Fiscal Deficit	**6,50,000**	**7,00,000**	**7,66,000**	**8,00,000**
%	**(3.4)**	**(3.3)**	**(3.8)**	**(3.5)**

*** after a transfer to the states of INR 7,88,000 crores.*

The breakup of grossed-up figure (INR 24,23,000 crores) for FY 2020-21 is as under:

Break up of Revenues	FY 20	FY 21	% chg
Rs. (in billion)	RE	BE	FY 21
Direct Taxes	**11,769**	**13,265**	**12.7**
Corporation tax	6,105	6,810	11.5
Income tax	5,595	6,380	14.0
Other taxes	69	75	8.7
Indirect taxes	**9,865**	**10,965**	**11.2**
Central GST	6,123	6,905	12.8
Customs Duty	1,250	1,380	10.4
Excise Duty	2,480	2,670	7.7
Service Tax	12	10	
Total Direct Taxes + Indirect Taxes	**21,634**	**24,230**	

B. Certain key policy announcements

- **NBFCs**

  The limit for NBFCs to be eligible for debt recovery under the SARFAESI Act, 2002 is proposed to be reduced from asset size INR 500 crore to asset INR 100 crore or loan size from existing INR 1 crore to INR 50 lakhs.

- **Infrastructure**

  The infrastructure sector in once again in focus where in the emphasis on the PPP model towards creating a huge infrastructural pipeline.

- **Disinvestment**

  In order to gain access to more private capital, the Government has proposed to sell the holding in IDBI to private, retail and institutional investors through the stock exchange.

  The government has now proposed to sell a part of its holding in LIC by way of an Initial Public Offer.

- **MSMEs**

  A new scheme for MSMEs insofar as the recasting of debts are concerned has also been proposed by the budget.

- **Enabling foreign investment**

  The limit for FPI in corporate bonds, currently at 9% of outstanding stock, will be increased to 15% of the outstanding stock of corporate bonds.

- **Decriminalising laws**

  The speech of the Finance Minister refers to decriminalizing the quantum of penalty for certain offences that are civil in nature. Amendments to that effect shall be made in the Companies Act, 2013 and other laws, as well.

- **GST**

  The budget has proposed to transfer the GST Compensation Fund balances due out of collection of the years 2016-17 and 2017-18, in two installments. Hereinafter, transfers to the fund would be limited to collection by way of GST compensation cess.

Foreign Investments

1. Specified Government securities to be made available for investment to NRIs

- In order to attract foreign investment in India, the Finance Ministry in her speech has proposed to provide certain specified categories of Government securities ('G-secs') exclusive for non-resident investors only, apart from being available to domestic investors as well.

- The proposal will likely bring in a new class of investors in Indian G-secs. Issuance of G-secs to NRIs would bring down the cost of borrowing for the Government. It would be interesting to see how Govt. will formulate framework to address the currency risks involved in process of issuance and remittance of G-secs

2. Investment limit for FPIs in corporate bonds hiked

- In order to boost inflow of foreign funds into the Indian Capital Market, it is proposed to increase the limit for FPI in corporate bonds from 9% of outstanding stock to 15% of the outstanding stock of corporate bonds. This move is likely to result in inflow from overseas investors in the country's capital markets.

C. Key Tax Proposals

1. Paradigm shift in corporate dividend taxation regime

- Under the existing dividend tax regime (section 115-O, section 10(34), section 115BBDA and related provisions of the Income-tax Act, 1961 ('IT Act')), the liability of tax (@ 20.56% effectively) vests with the company declaring the dividend. Further, while the dividend is exempt in the hands of the shareholders, shareholders other than companies which are shareholders in other companies (i.e. individuals, trusts, partnership firms, LLPs, etc.) earning dividend income in excess of INR 10 lakhs are liable to additional tax @ 10% (plus surcharge and cess). This regime, in addition to 2 levels of taxation, resulted in several other issues such as disallowance under section 14A despite the shareholders being

economically taxed and unavailability of tax credit to foreign companies being shareholders in Indian companies against DDT paid in India.

- To rationalise the difficulties being faced in the existing regime, it is proposed to shift the dividend taxation to the classical regime whereunder the company declaring dividend will not be liable to pay DDT; instead, the shareholders would be subject to tax at applicable rates. Further, the company declaring dividend will be liable to withhold taxes on dividend distributed @ 10% (section 194) in respect of dividend to Indian residents and at applicable rates on dividend distributed to foreign shareholders (section 195).

- In case of companies receiving dividend, credit for dividend received will be eligible to the recipient company when it declares dividend onward to its shareholders (section 80M). However, if such dividend income is offered to tax by such recipient shareholders as income from other sources, it is also proposed to restrict any deduction against such dividend income upto 20% of the dividend income only.

- In order to better understand the impact of the proposed amendment on individuals, please see the indicative computation below (assuming that the cash outflow by the companies/ mutual funds continues to remain the same):

Dividend on equity shares:

(Amouts in INR lakhs)

Total Income (excl. dividend of INR 15 lakhs)	30 lakhs		60 lakhs		150 lakhs		250 lakhs		550 lakhs	
Scenario	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
Total outflow towards dividend by company	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
Less: DDT	-2.56	-	-2.56	-	-2.56	-	-2.56	-	-2.56	-
Dividend payout	12.44	15.00	12.44	15.00	12.44	15.00	12.44	15.00	12.44	15.00
Less: Recipient tax	**-0.25**	**-4.68**	**-0.28**	**-5.15**	**-0.29**	**-5.38**	**-0.32**	**-5.85**	**-0.35**	**-6.41**
Net Dividend	12.19	10.32	12.16	9.85	12.15	9.62	12.12	9.15	12.09	8.59
Additional Tax		**-1.87**		**-2.31**		**-2.53**		**-2.97**		**-3.50**

Dividend on units of Equity Oriented Mutual Funds:

Total Income (excl. dividend of INR 15 lakhs)	30 lakhs		60 lakhs		150 lakhs		250 lakhs		550 lakhs	
Scenario	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
Total outflow towards dividend by fund	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00
Less: DDT	-1.36	-	-1.36	-	-1.36	-	-1.36	-	-1.36	-
Dividend payout	13.64	15.00	13.64	15.00	13.64	15.00	13.64	15.00	13.64	15.00
Less: Recipient tax	**-**	**-4.68**	**-**	**-5.15**	**-**	**-5.38**	**-**	**-5.85**	**-**	**-6.41**
Net Dividend	13.64	10.32	13.64	9.85	13.64	9.62	13.64	9.15	13.64	8.59
Additional Tax		**-3.32**		**-3.78**		**-4.02**		**-4.49**		**-5.05**

Dividend on units of Debt Mutual Funds:

Total Income (excl. dividend of INR 15 lakhs)	30 lakhs		60 lakhs		150 lakhs		250 lakhs		550 lakhs	
Scenario	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed	Existing	Proposed
Total outflow towards dividend by fund	15.00	15.00	15.00	15.00	120.56	100.00	15.00	15.00	15.00	15.00
Less: DDT	-3.00	-	-3.00	-	-24.11	-	-3.00	-	-3.00	-
Dividend payout	12.00	15.00	12.00	15.00	96.45	100.00	12.00	15.00	12.00	15.00
Less: Recipient tax	-	**-4.68**	-	**-5.15**	-	**-35.88**	-	**-5.85**	-	**-6.41**
Net Dividend	12.00	10.32	12.00	9.85	96.45	64.12	12.00	9.15	12.00	8.59
Additional Tax		**-1.68**		**-2.15**		**-32.33**		**-2.85**		**-3.41**

Katalyst comments:

1. *The shifting of dividend tax from company to shareholder is logical since it resolves various issues such as litigation u/s 14A, availability of tax credit to foreign companies, etc.; however, the rate of tax should have been a concessional rate especially since the individual tax rates are high and therefore, domestic investors are put at a significantly greater disadvantage as compared to a foreign investor.*

2. *To elaborate, as a result of the proposed amendment, while the issue of disallowance under section 14A and availability of tax credit for foreign shareholders may be resolved, a plethora of new concerns and disputes are likely to arise, for instance:*

   (i) Individual shareholders would be liable to tax on dividend income on slab rates and therefore, in case of individuals falling in slabs attracting 30% will end up paying significantly higher tax (as compared to what would have been payable under the existing regime even with the additional tax of 10%), especially, when the applicable surcharge is added thereto;

   (ii) Where shareholders are domestic companies (which do not pass on the dividend to their shareholders), partnership firms/LLPs or discretionary Trusts, dividend income will be subject to tax at rates applicable to the respective entity. Resultantly, in case of LLPs and discretionary Trusts, the effective tax cost on dividend will be much higher. In case of specific Trusts, the tax rate would be dependent on the form of entity of each beneficiary.

2. Alternate regime for taxing income earned by individuals introduced

- A new section 115BAC has been proposed to be inserted to provide an alternative to Individuals and HUFs to pay tax at lower rates on income upto Rs. 15,00,000 ("New Regime"). The slab rates proposed under this regime are as under:

<table>
<tr><th>Total Income</th><th>Existing Rates (%)</th><th>Proposed Rates (%)</th></tr>
<tr><td>Upto 2,50,000</td><td>NIL</td><td>NIL</td></tr>
<tr><td>2,50,001 to 5,00,000</td><td>5</td><td>5</td></tr>
<tr><td>5,00,001 to 7,50,000</td><td rowspan="2">20</td><td>10</td></tr>
<tr><td>7,50,001 to 10,00,000</td><td>15</td></tr>
<tr><td>10,00,001 to 12,50,000</td><td rowspan="3">30</td><td>20</td></tr>
<tr><td>12,50,001 to 15,00,000</td><td>25</td></tr>
<tr><td>Above 15,00,000</td><td>30</td></tr>
</table>

- No proposed change in rebates, surcharge and cess.

- Key conditions to be satisfied to opt for New Regime:

  - The income under this scheme shall be computed without claiming any of the deductions or exemptions available as under:
    - Leave Travel Allowance
    - House Rent Allowance
    - Standard Deduction/ Profession Tax
    - Interest on Housing Loan
    - Deduction on additional depreciation, deduction u/s 32AD/ 35AD, etc
    - Chapter VIA deductions (80C, 80CCD, 80D, 80E, 80GG, etc)

  - Brought forward loss or unabsorbed depreciation pertaining to above deductions, would not be available for set off.

  - Loss under the head house property would not be allowed for set off against any other head of income.

  - No exemption or deduction to be claimed for any other allowances or perquisites.

- The option to be governed under the New Regime is to be exercised by the Tax Payers as follows:

  - In case of individuals, HUFs having no business income, option to be exercised annually while filing return of income.

- In case of individuals/HUFs having business income, option to be exercised while filing return of income. The option once exercised shall apply to subsequent years. Withdrawal from this option is permitted only once.

- In case any of the conditions of the New Regime is not satisfied by the taxpayer, such taxpayer to be liable to tax as per the existing provisions.

- Provisions relating to AMT not to be applicable to taxpayers under New Regime

Katalyst comments:

While it was mentioned by the Finance Ministry that taxpayers would gain if they move to the new no-exemption, no-deduction tax regime, however, it is to be noted that under the new regime, since all the exemptions and deductions which were not subject to tax earlier (either fully or partially) would now be subject to tax, depending on the gross total income, the actual total (taxable) income could go up without any changes in gross total income. This will dilute the gains from lower rate and in some cases increase the tax liability.

3. Constriction of provisions for determining residential status of individuals

The Finance Act 2020 has proposed to amend the residential status under section 6 as under:

- Reduced the said period of stay of Indian citizens visiting India from 182 days to 120 days.

- Widening the ambit of taxability of an Indian citizen Indian who are non-resident in India and not liable to tax anywhere in any other jurisdiction by reason of his domicile, residency or similar criteria will be deemed to be tax residents of India.

- An individual or an HUF to be considered as "not ordinarily resident", if such individual or manager of such HUF is a non-resident in India for 7 out of 10 years preceding the relevant previous year (as opposed to existing period being 9 out of 10 previous years). Alternate condition of stay in India upto 729 days in preceding 7 years is deleted.

Katalyst comments:

1) *As seen from above, significant amendments have been made in the definition of who can be considered as a resident for tax purposes. Shortening of the period of stay for a visiting NRI from 182 days to 120 days will reduce the flexibility of coming back to India.*

2) *Further, widening the scope of deemed residency for any citizen of India who is not "liable to tax" in any country by reason of his domicile/residency could expose such individual's global income to Indian tax. This could be subject treaty protection.*

3) *On 2 February 2020, CBDT issued a press release clarifying that the deemed residency tax provision is not intended to include those Indian citizens who are bona fide workers in other countries. While it is not expressly mentioned, the reference to bona fide workers should be interpreted broadly to cover within its scope self-employed individuals and professionals as well.*

4) *While the said press release seeks to clarify that this provision is intended to cover only such individuals who migrate to low or no tax jurisdictions to avoid Indian taxes, and therefore, only Indian sourced income would be subject to tax in India, it would be advisable if a specific clarity in the provision itself is provided to clarify that only such individuals who are "stateless residents" are intended to be covered and individuals with a valid tax residency certificate would be outside the ambit of this provision.*

5) *The issue of Indians seeking to migrate abroad is a larger issue and merits focused attention by the Government; the endeavor should be of creating an atmosphere which encourages Indians to stay in India. However, introduction of proposals such as the above could result in individuals staying abroad to consider other citizenship in order to avoid the deeming residency provisions.*

4. Restricting benefits to employees to on employer's contribution

- Contribution by employers to National Pension Scheme ('NPS'), Superannuation Fund ('SAF') and Recognised provident fund ('RPF') does not suffer any taxation due to Exempt-Exempt-Exempt (EEE) regime is followed for these three funds.

- It is now proposed that:

  - Employers contribution to the NPS, SAF and RPF exceeding INR 7.50 lakhs per annum in aggregate to be taxable as perquisite in the hands of the employee.

  - Any annual accretion by way of interest, dividend or any other amount of similar nature to the balance at the credit of the fund or scheme would be treated as perquisite to the extent it relates to the employer's contribution which is included in total income.

5. Modification of concessional tax schemes for domestic companies under new corporate tax regime (i.e. section 115BAA and 115BAB of the IT Act)

- The Taxation Law Amendment Act, 2019 ("TLAA") introduced section 115BAB wherein new companies incorporated on or after 1 October 2019 can choose to be subject to

concessional tax rate of 17% if such company is engaged in any business of manufacture or production of any article or thing.

- The Finance Act 2020 has now extended the benefit to such concessional corporate tax to domestic companies engaged in the business of generation of electricity.

6. Definition of "business trust" modified to recognise amended Infrastructure Investment Trust ('InvIT') Regulations by Securities and Exchange Board of India ('SEBI')

- Under the existing provisions, a "business trust" has been defined to mean a trust registered as an InvIT or a REIT under the respective SEBI regulations and the units of which are required to be listed on a recognised stock exchange in accordance with the SEBI regulations. While all the units issued by an InvIT were mandatorily required to be listed as per the SEBI (InvIT) Regulations, 2014, SEBI amended the said regulations vide a notification dated 22 April 2019 to introduce a separate framework for privately placed units which are not mandatorily required to be listed. In view of the extant definition of "business trust", unlisted units issued by an InvIT would have resulted in the InvIT not falling within the definition of "business trust" (albeit, being permitted and recognised by the SEBI regulations) and resultantly, not being eligible to the benefits that would have been available otherwise.

- To remedy this, it is proposed to amend the definition of "business trust" (under section 2(13A)) and do away with the requirement of the units of business trust to be listed on a recognised stock exchange. This amendment is applicable from AY 2021-22.

Katalyst comments:

While the amendment is a welcome move, its applicability only from AY 2021-22 would result in a gap of 1 year before the InvIT (having issued unlisted units) would be covered by the definition and therefore, be eligible to the benefits otherwise available for AY 2020-21, unless the definition can be said to be clarificatory in nature.

7. Dividend income earned by Business Trusts is proposed to be taxable in the hands of unit holders

- Under the existing provisions, dividend received by unit holders in a Business Trust is not subject to tax (and is also exempt from tax in the hands of the SPV and Business Trust).

- It is proposed to make the dividend earned by the Business Trust taxable in the hands of the unit holders. Business Trust will be liable to withhold taxes at 10% on distribution of dividend. This may put the feasibility of such InvIT/ REIT at a significant disadvantage for domestic investors.

8. Safe Harbour limit increased to 10% applicable to transfers of immovable property

- Under several existing provisions applicable to transfer of immovable property (sections 43CA, 50C and 56(2)(x)), there is a safe harbour limit of 5% of consideration as compared to stamp duty valuation (i.e. if the stamp duty valuation does not exceed the consideration received by more than 5%, the stamp duty valuation will be ignored).

- It is proposed to increase this safe harbour limit to 10%.

9. Fair Market Value ('FMV') of immovable property as on 1 April 2001 to not exceed stamp duty value

- As per existing provisions of section 55 of the IT Act, FMV as on 1 April 2001 of the immovable property transferred can be substituted for the actual cost of acquisition of the property if it is higher.

- It is proposed to restrict such FMV to the stamp duty value of the property as on 1 April 2001.

10. Extension of time limit for loan sanction for affordable housing

- As a boost to the affordable residential industry, Finance (No 2) Act, 2019 had introduced incentives (covered in our July 2019 Budget edition of Katalyst Kaleidoscope) which included deduction of interest upto INR 1.5 lakhs on loan taken for acquiring residential house property (stamp duty value of which does not exceed INR 45 lakhs), provided the loan has been sanctioned between 1 April 2019 to 31 March 2020 (and tax payer does not own any other residential property on the date of sanction).

- It is now proposed to extend the time limit for obtaining loan sanction to 31 March 2021.

Katalyst comments:

While this is a welcome change, a really critical expectation in relation to affordable housing sector that has been missed out is increasing the stamp duty value limit of INR 45 lakhs, which is insignificant (even from an affordable housing perspective) in Tier 1 and Tier 2 cities. Also, several other measures related to quantum of interest deduction, set off of loss arising therefrom and other real estate related tax aspects, have unfortunately not been addressed, in spite of intense representations by this badly hit sector.

11. Rationalization of tax holidays available to start-ups

- Under the existing provisions (section 80-IAC), 100% profit deduction can be claimed by an eligible start-up for 3 consecutive years out of 7 years, provided the start-up is incorporated before 1 April 2021 and its total turnover does not exceed INR 25 crores.

- It is proposed to extend the period in which the start-ups can avail 100% profit deduction i.e. 3 years out of 10 years from the year of incorporation. Further, the cap on the total turnover has been relaxed to INR 100 crores.

12. Deferment of tax liability on ESOPs issued by eligible start-ups

- Presently, perquisite to employees in the form of ESOPs are taxable at the time of exercise of the option, thus leading to cash flow issues since the ESOPs are not monetised at the time of exercise.

- It is now proposed to defer the point of taxation (TDS under section 192(1C)) of such ESOPs to the earliest of the following events:
  (i) expiry of 48 months from the end of AY (in which options were exercised); or
  (ii) sale of shares; or
  (iii) when assessee ceases to be an employee of the company.

Katalyst comments:

It is not rational to restrict it to only such start-ups and not extend it to all ESOPs because the principle should be the same. Even in relation to the start-ups, it is not that the tax is only at the time of monetisation, but the earliest of 48 months of the end of the relevant assessment year, or the date of sale, or the date on which the person ceases to be an employee. This would mean that if the ESOPs are not sold, the tax will still trigger at the expiry of 48 months. Strangely, this provision has been introduced in TDS provisions and not in the charging provisions, creating another controversy.

13. Sections 90/ 90A modified to reflect alignment with Multilateral Instrument ('MLI')

- Sub-section 1 of sections 90/ 90A refer to the purposes of entering into DTAAs, which includes, *inter alia*, avoidance of double taxation in two countries.

- Since India has signed the MLI (which has been ratified) and also deposited the Instrument of Ratification with its final position to the OECD, the provisions of MLI will become applicable to India's DTAAs from FY 2020-21. In order to align the IT Act to Article 6 of the MLI which requires insertion of preamble text, the provisions of sections 90/ 90A have been amended to provide that India may enter into a DTAA for avoidance of double taxation without opportunities for non-taxation or reduced taxation through tax evasion

or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the DTAA for the indirect benefit of residents of any other country or territory).

Katalyst comments:

The provisions of General Anti-avoidance Rules ('GAAR') and the introduction of "Principal Purpose Test" in MLI as well as the overall approach to tax avoidance has gone completely over the top anyway. The proposed amendment may add enormously to confusion, and uncertainty and will further spook foreign investors.

14.Exemption from indirect transfer tax (under section 9(1)(i)) not available to non-resident investing in Category-II Foreign Portfolio Investor ('FPI') under the new SEBI (FPI), 2019 regime

- Under the existing provisions (Explanation 5 to section 9(1)(i)), a share or interest in a foreign company is deemed to be situated in India if it derives its value substantially from assets located in India. However, shares held by non-resident in a Category-I and -II FPIs (registered as such under the SEBI (FPI), 2014 Regulations) were exempted from the applicability of the said section.

- SEBI, however, repealed the 2014 FPI Regulations and introduced SEBI (FPI), 2019 Regulations, wherein, *inter alia*, Category-I and -II FPIs were converged into Category-I.

- In order to align the provisions with these changes, it is proposed to grant the exemption only to those non-resident investors that have invested in Category-I FPI registered under the new SEBI (FPI), 2019 regime. Additionally, the non-resident investors having investment in Cat-I and -II FPIs registered in the erstwhile 2014 regime have been grandfathered.

15.Scope of Tax Collection at Source ('TCS') broadened to cover additional transactions

- Under the Foreign Exchange Management Regulations, a resident is permitted to remit upto USD 2,50,000 per financial year (approx. INR 1.8 crores) under the Liberalised Remittance Scheme for any purpose (say, investment). It has now been proposed (under section 206(1G)) that an Authorised Dealer (usually, a bank) who receives an amount or amounts of Rs. 700,000 or more in a financial year for LRS remittance shall collect 5% as TCS, subject to certain exceptions which very often will not apply. This is again an unfair provision and contrary to Ease of Doing Business.

- Further, a new section is proposed to be inserted (section 206C(1H)) whereunder a seller of goods shall be liable to collect tax @ 0.1% of sale consideration exceeding Rs. 50,00,000 as TCS from every buyer, unless the buyer is liable to deduct tax at source under any other provision of this Act and has deducted such amount.

Katalyst comments:

The tax collected at source under the above provisions will be available as a credit. However, in addition to being a draconian provision from Ease of Doing Business perspective, a practical challenge will be for the seller to determine whether the buyer has indeed deducted tax at source. This will create enormous confusion and is totally detrimental to Ease of Doing Business.

16.Amendments to Withholding Tax provisions:

The key amendments to withholding tax ('WHT') / tax deduction at source ('TDS') provisions under Chapter VIIB of the IT Act are as under:

Sr. No	Relevant Section	Proposed Amendment
1.	194A - Interest (other than "Interest on securities")	• Revision of monetary limit for individuals and HUF based on the threshold whose total sales, gross receipts or turnover from the business or profession carried on by such individuals / HUFs exceed INR 1 Cr in case of business and INR 50 lakhs in case of profession. • Co-operative societies bought within the ambit of TDS if the total sales, gross receipts or turnover exceeds INR 500 million and interest payment to a payee during a FY exceeds INR 40,000 (INR 50,000 in case of senior citizen).
2.	194C – Payment to contractors	• Revision in monetary limit for individuals and HUF similar to section 194A • Amendment to definition of 'work' to provide that if any product is supplied or manufactured according to requirements of the customer, it shall fall under the category of 'work' even if raw material is supplied by the associated enterprise of such customer
3.	194H – Commission or brokerage	• Revision in monetary limit for individuals and HUF similar to section 194A
4.	194I - Rent	• Revision in monetary limit for individuals and HUF similar to section 194A
5.	194J – Fees for technical or professional services	• Revision in monetary limit for individuals and HUF similar to section 194A • Withholding Tax rate in case of fees for technical services (other than professional services) is proposed to be reduced from 10% to 2% (previously it was 10%). • The withholding tax rate in other cases including fees for professional services to remain the same.
6.	194K – Income in respect of units	• Provides that a TDS of 10% to be deducted by person responsible for paying to a resident <u>any income</u> (in excess of INR 5,000) in

Sr. No	Relevant Section	Proposed Amendment
	(Newly inserted provision)	respect of units of a Mutual Fund or units from the specified company
7.	194LBA – Certain income from units of a business trust	• 10% tax deduction by business trust (i.e. REITs and InvITs) on dividend income paid to resident unit holder and 5% to non-resident unit holder.
8.	194LC – Income by way of interest on certain bonds	• Section 194LC of the Act provides for deduction of tax at concessional rate of 5% on interest payable by a specified company or a business trust to non-residents on foreign currency loan or Rupee Denominated Bonds. • The period of said concession has been proposed to be extended to bonds upto 1 July 2023 (presently, 1 July 2020). • Further, the rate of TDS been reduced to 4% on interest payment against borrowings through issues of long-term bonds and RDB which are listed only on a recognised stock exchange in any IFSC.
9.	194LD - Income by way of interest on certain bonds and Government securities.	• Section 194LD of the Act provides for lower TDS of 5% in case of interest payments to Foreign Institutional Investors (FII) and Qualified Foreign Investors (QFIs) on their investment in Government securities and Rupee Denominated Bonds of an Indian company. • It has been proposed to extend the period of concessional TDS of 5% on interest on bonds paid upto 1 July 2023 (from 1 July 2020) • Further, the concessional rate of TDS of 5% under the said section shall also apply on the interest payable to an FII or QFI in respect of the investment made in municipal debt security.
10.	194-O – Payment of certain sums by e-commerce operator to e-commerce participant *(Newly inserted provision)*	• In order to widen and deepen the tax net by bringing participants of e-commerce within tax net, it is proposed as under: – TDS @ 1% to be deducted by e-commerce operator operating a digital platform on payment made for sale of goods or services by e-commerce participant (original seller). – TDS to be deducted even if payments made directly by buyer to e-commerce participant. – No TDS required where e-commerce participant is individual or HUF having gross turnover through the e-commerce operator not exceeding INR 5 lacs and PAN/Aadhaar is provided. – In absence of PAN, TDS to be deducted @ 5%.
11.	196A - Income in respect of units of non-residents.	• TDS @ 20% (plus applicable surcharge and cess) introduced on income of non-residents from Mutual Funds

Katalyst comments:

1) *Extending the benefit of concessional tax rate for long term bond and Rupee denominated bonds should attract the foreign fund flow in Indian capital markets.*

2) *Introduction of TDS e-commerce would impact potential employment generation because the e-commerce participant may be in penetration pricing mode and may not even be making profits. Further, deduction of tax would also block the working capital of the e-commerce players and will adversely affect the margins.*

17.Insertion of Tax Payers Charter

- A new section 119A is introduced under the IT Act which will empower the CBDT to adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of Charter. The notification in this regard will follow subsequently.

- The Charter will define the rights of the tax payer and the obligations of the tax department.

Katalyst comments:

Although a proposal with good intent, this could be very difficult to legislate and implement.

18.Other changes:

- **Option** has been granted to assessees **to not opt for deduction of capital expenditure under section 35AD** of the IT Act (for specified businesses). This proposed amendment is to clarify that companies opting for beneficial tax rate under section 115BAA or section 115BAB shall be eligible to claim depreciation on such capital expenditure (since they would not be claiming deduction under section 35AD). Further, this will also benefit closely held companies which are into such specified businesses and have incurred significant capital expenditure; at present, owing to mandatory deduction u/s 35AD, it would result in mandatory business losses in the initial years for such companies and therefore, any change in shareholding (in excess of 51%) at the time of set off of such losses in later years, would have resulted in lapse of such business loss u/s 79.

- **Income of sovereign wealth funds** (either in the form of interest, dividend or long-term capital gains), including the wholly owned subsidiary of Abu Dhabi Investment Authority (ADIA) as well as sovereign wealth funds (fulfilling prescribed conditions), is **proposed to be exempt** subject to the specified conditions:
  (i) Income arises from investment in an infrastructure company or such other business as may be notified by the Central Government;
  (ii) The investment is made on or before 31 March 2024 and is to be held for 3 years.

- **Dispute Resolution Scheme (Vivad se Vishwas)** has been announced with a backdrop of endeavour to facilitate dispute resolution and bring closure to numerous cases pending litigation. While the finer details of the Scheme are yet to be notified, the Scheme is likely to be applicable to appeals pending at all levels and will allow a taxpayer to settle disputes by paying 100% of tax due (interest and penalty to be foregone) by 31 March 2020.

  Katalyst comments:

  It seems impractical to expect taxpayers involved in high-pitched assessments (involving tax demands in excess of INR 100 crores) to pay the full amount in such a short span of time. Further, while the Finance Minister made reference to the success of a similar Scheme in the indirect tax regime, what seems to have been missed is that the settlement amounts payable were in the range of 50% to 70% based on several criteria. A similar approach for resolution of direct tax demands and litigation should be adopted.

- **Requirement of filing tax return by non-resident/ foreign company proposed to be foregone** provided the non-resident/ foreign company only has income in the nature of royalty/ fees for technical services (in addition to dividend/ interest as covered under the existing provisions of section 115A) and the same has been subject to appropriate withholding tax.

- **Revision in due date of filing return of income and increase in threshold of Tax Audit in certain cases:**

  - **Amendment to section 139(1) of the IT Act**

    The due date for filing return of income under section 139(1) is proposed to be extended to 31 October of the assessment year (as against 30th September) for an assessee being a company and any person (other than company) whose accounts are required to be audited under section 44AB of the IT Act.

  - **Amendment to section 44AB of the IT Act**

    In order to reduce compliance burden on small and medium enterprises, it is proposed to amend provisions of section 44AB of the IT Act to increase the threshold limit for applicability of tax audit to a person carrying on business from existing INR 1 Cr to INR 5 Cr provided:

    (i) aggregate of all cash receipts during the previous year does not exceed 5% of total receipts; and

    (ii) aggregate of all cash payments during the previous year does not exceed 5% of total payments.

Further, to enable auto-population of returns in case of persons having income from business or profession, it is proposed that the Tax Audit Report may be furnished by the said assessee at least one month prior to the due date of filing of return of income. Accordingly, the due date of filing TAR will be 30 September of that relevant assessment year.

- As a step further towards digitisation of tax administration, a **"Faceless Appeal" scheme** has been announced, the details of which will be notified in due course. Additionally, the scope of e-assessment has been extended to include best judgement assessment under section 144 of the IT Act as well as penalty.

- **Stay on** payment of **demand** may be granted **by Income-tax Appellate Tribunal** ('ITAT') **only if the assessee deposits** or furnishes security for **at least 20%** of the amount of tax, interest, fee, penalty payable.

Indirect Tax Provisions:

Goods and Services Tax ('GST'):

- **Tax invoice** - Section 31 of the CGST Act amended to notify the categories of services or supplies in respect of which tax invoice shall be issued and to make rules regarding time and manner of its issuance

- **Tax deducted as source (TDS)** – Section 51 of the CGST Act amended to provide for the form and manner in which TDS certificate shall be issued.

- **100% Penalty** – A new sub-section (1A) is inserted in Section 122 of the CGST Act, to provide that any person who retains the benefit of transactions covered under clause (i), (ii), (vii) or (ix) of sub-section 1 (i.e. supplies any goods or services without issue of any invoice or issues an incorrect or false invoice or issues invoice without supply of goods or services or takes our utilizes ITC without actual receipt of goods or services or takes or distributes ITC in contravention of section 20) and at whose instance such transaction is conducted, shall be liable to penalty equivalent to the tax evaded or ITC availed or passed on.

- **Punishment** – Section 132 of the CGST Act amended to make the offence of fraudulent availment of ITC without invoice or bill, cognizable and non-bailable and to make any person who retains the benefit of certain transactions and at whose instance such transactions are conducted, liable for punishment.

- **Schedule II** – Entries (a) and (b) of paragraph 4 of the schedule amended to exclude word 'with or without consideration' in case of transfer of business asset. As, transfer of business asset without consideration where ITC is availed is liable to GST under 'Schedule I', the

word 'with or without consideration' is excluded under schedule II to give more clarity to entries (a) and (b).

- **Retrospective GST levy** – Retrospective levy of IGST @12% or CGST @6% and SGST/UTGST@6% on supply of pulley, wheels and other parts (falling under heading 8483 – transmission shafts and cranks etc.) and used as parts of agricultural machinery of heading 8432 (agricultural or horticultural machinery etc.), 8433 (harvesting or threshing machinery etc.) and 8436 (other agricultural, horticultural and forestry machinery, etc.)

- **Refund of accumulated credit** – Refund of accumulated credit of compensation cess on tobacco products arising out of inverted duty structure shall not be disallowed w.e.f. July 1, 2017.

- **Other Amendments-**
  - Eligibility criteria for compensation levy to apply for goods and services both
  - Removal of difficulty order to be issued upto June 30, 2022.
  - Provisions relating to timeline for taking transition credit to be amended retrospectively
  - For cancellation of voluntary registration, enabling provisions inserted.
  - Delay in application for revocation of cancellation of registration can be condoned for cumulative period of 60 days.

Customs:

- **Health Cess –**
  - Health cess at 5% ad valorem, to be levied on import of medical devices falling under chapter heading 9018 to 9022, on import value of such goods as per section 14 of the Customs Act, 1962, to finance the health infrastructure and services.
  - Health cess will not be imposed on devices which are exempt from BCD.
  - Export promotion scripts will not be used for payment of said cess.

- **Free Trade Agreement**
  - **New Chapter VAA** - A new Section 28DA inserted to provide enabling provision for administering the preferential tariff treatment.
  - The proposed new section seeks to provide for obligations on importer and prescribe time bound verification from exporting country in case of doubt.
  - In case of pending verification, preferential tariff treatment shall be suspended and goods shall be cleared only on furnishing security equal to differential duty.

- **Other amendments**
  - **Electronic Duty Credit Ledger** – A new section 51B is being inserted to provide for creation of Electronic Duty Credit Ledger to enable duty credit in lieu of duty remission to be given in case of export or other benefit in electronic form for its usage, transfer etc.

- **Measure to prevent injury to economy** – Section 11(2) of the Customs Act empowers the Government to prohibit uncontrolled import or export of gold or silver, to prevent injury to economy. This clause is being amended to include 'any other goods' in addition to gold and silver.

➢ **Social Welfare Surcharge**
- Exempted on certain goods including commercial vehicles, if imported in Completely Built Units (CBU)
- Exemption withdrawn for certain goods covered under chapter 84 and chapter 85

Following export incentive schemes to be announced:
- Export Credit Insurance Scheme,
- NIRVIK,
- RODTEP (Remission of Duties or Taxes on Export Product) which will digitally refund local taxes to exporters and will replace the current Merchandise Exports from India Scheme (MEIS).

Amendments to Customs Tariff

➢ **Increase in Basic Customs Duty ('BCD') rates to protect domestic industry**

To protect and promote domestic manufacturing, customs duty on various items has been increased. Prominent items where material increase in the duty has taken place are household items & appliances, machinery parts, furniture goods, electrical vehicles, etc.

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