

BUDGET PANORAMA 2021

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Reinvigorating
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Innovation
and R&D



Minimum
Government,
Maximum
Governance

AatmaNirbhar Bharat



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Foreword

The Hon'ble Finance Minister presented the Budget 2021 under circumstances which were unprecedented. The outbreak of pandemic and its negative impact was felt around the world and India was no exception. The lockdown that was announced to contain the spread of virus and its impact on the economy was brutal. The FM had a very difficult job to do, to present the Budget in such a backdrop.

Given such pressure and heightened expectations, one must admit that the Indian Budget 2021 presented by Hon'ble FM was certainly in the right direction. On the hind side, it may be easy to state what more could have been done but to walk the path of choosing between required budgetary spending and maintaining fiscal prudence is a very tough task. The Hon'ble FM and the entire team at Finance Ministry must be appreciated for what they have done. The increased spending on Healthcare is the absolute need of the hour. It is a momentous opportunity to strengthen the healthcare system of this country and it should be done now. Steady spending on education and defence is also extremely crucial which has been well crafted. A constant eye on Fiscal deficit also needs to be kept going forward.

The only doubt in my mind is that a considerable budgetary allocation is made for Capital expenditures, which is a conditional spending. No doubt that is the right thing to do but, everyone is aware that Government has the flexibility to spend on Budgeted Capital expenditures only when the funds that are planned are available. It should be ensured that the budgeted collections are met. It should be ensured that the disinvestment target which is fixed is achieved by all means by the Government to ensure the spending that is planned can also be achieved.

Coming to the amendments proposed to Direct tax laws, it is extremely heartening to see that no new taxes were levied, or tinkering was done regarding tax slabs and rates. Having a certainty on tax is the most important thing and that seems to be achieved. Further, the amendments which have been proposed are largely aimed at negating some of the rulings of High courts and Supreme Court on matters regarding Depreciation on Goodwill or taxation on reconstitution/dissolution of Firms. Such an approach to continue to negate positions settled by court rulings has been a game that the Government in the past have continued to play and this comes as no surprise.

The attempt to make the entire assessment and appeal procedures under the Income Tax law, faceless in my personal view is dangerous and may not go as expected. Assessments and appeals under the Tax law involve interpretation of law under a given set of facts. Assuming that a uniformity can be brought by making it faceless seems to be an erroneous assumption. With the appeals before tax tribunals also becoming faceless, the entire system has the risk of becoming opaque and unidirectional. The Government seems to be suggesting that, there can only be one right way, which is the tax departments' view. This attitude coupled with target driven tax collection for tax officers, would make tax compliance more burdensome rather than ease it. Technological advancement is the biggest boon that mankind has seen in the last century, but it should invade our lives, justice system and tax administration in a manner which would make it less stressful. Hope the Government realise this and gathers enough experience before making every step in tax administration faceless. Faceless is fine but will it also become mindless and heartless.... time would tell.

Krishna Upadhya S
Lead, Direct Tax Services

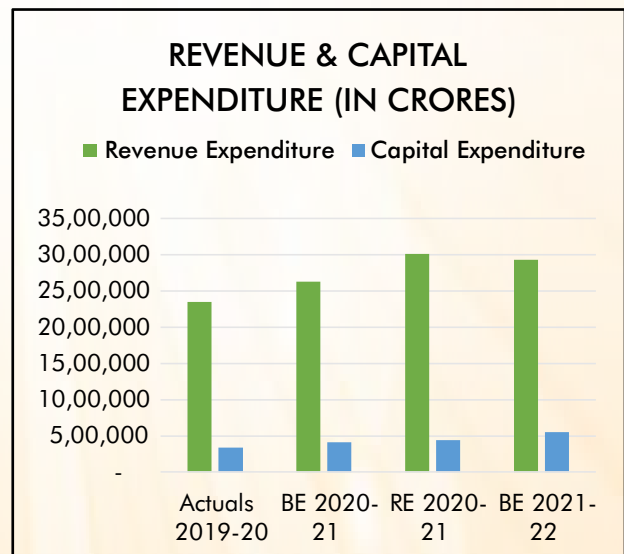
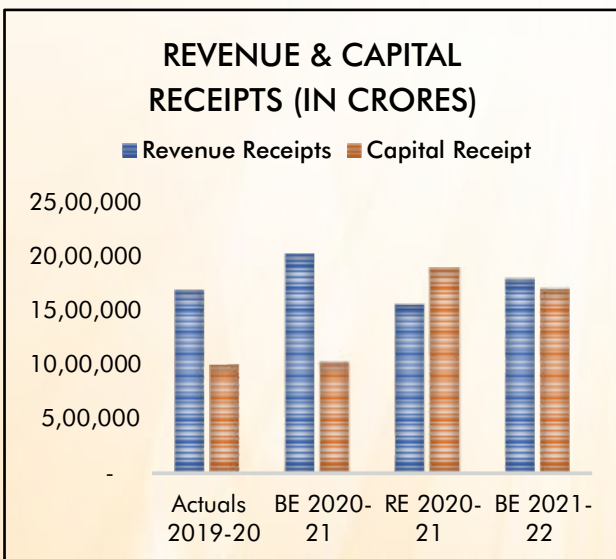
Macro-Economic Scenario

The entire budgetary proposal was presented under 6 pillars namely:



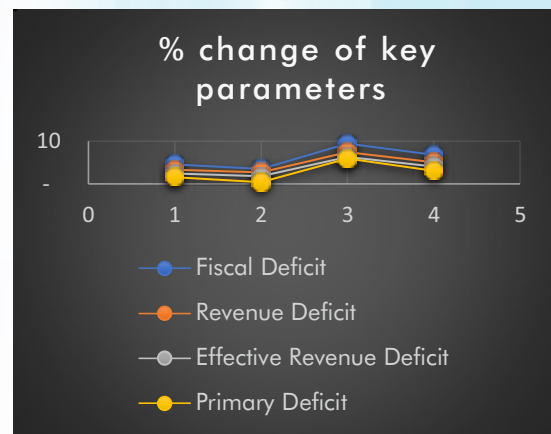
A snapshot of the Macro-economic parameters emerging out of the Budget 2021 is captured hereunder:

Macro-Economic Snapshot



► The fiscal deficit in BE 2021-2022 is estimated to be 6.8% of GDP. The gross borrowing from the market for the next year would be around INR 12 lakh crore.

Particulars	2019-20	2020-21	2020-21	2021-22
	Actuals	Budget Estimates (BE)	Revised Estimates (RE)	Budget Estimates (BE)
Fiscal Deficit	4.6%	3.5%	9.5%	6.8%
Revenue Deficit	3.3%	2.7%	7.5%	5.1%
Effective Revenue Deficit	2.4%	1.8%	6.3%	4.1%
Primary Deficit	1.6%	0.4%	5.9%	3.1%

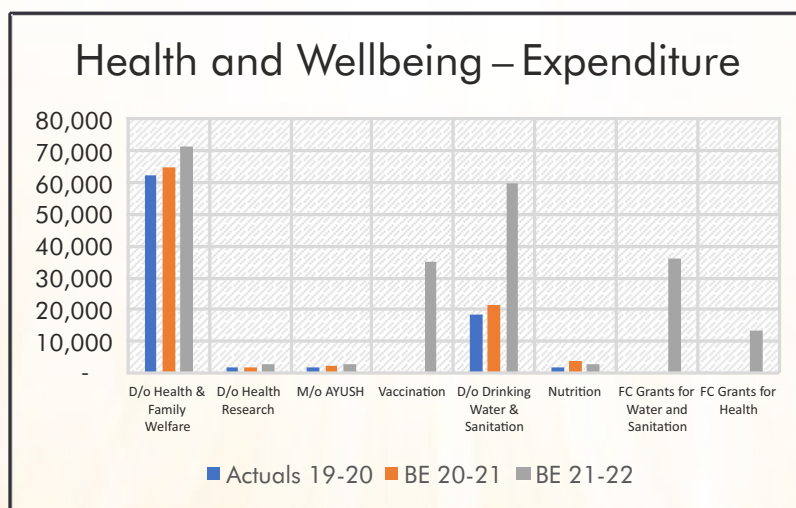


▶ To ensure that the economy is given the required push, BE for expenditure in 2021-2022 are made at INR 34.83 lakh crores. This includes INR 5.54 lakh crores as capital expenditure, an increase of 34.5% over the BE figure of 2020-2021.

▶ The first ever digital budget though at macro level concentrated on supporting and facilitating economy's reset, it is enumerated that it is equally important to provide opportunity for our economy to raise and capture pace for sustainable growth which is presented as 6 Pillars to the budget proposals.

Health and Wellbeing

▶ Record 1.8% of GDP spend has been planned in BE 2020-21 as against 1.5% of GDP in RE 19-20.



▶ Total financial impact of all Atma Nirbhar Bharat packages including measures taken by RBI was estimated to about INR 27.1 lakh crores which amounts to more than 13% of GDP.

▶ Provided INR 35,000 crores for Covid-19 vaccine in BE 2021-22. The Budget outlay for Health and Wellbeing is estimated to be INR 2,23,846 crore for FY 2021-22, INR 94,452 crore FY 2020-21, which is a rise by 137%.

▶ As a victory to revival and health measure, India has one of the lowest death rate of 112 per million population and active cases of about 130 per million.

Physical & Financial Capital, and Infrastructure

- ▶ To achieve a 5 trillion economy, target growth for manufacturing set at double digits. Increase of contribution of Service sector to the share in Gross Value Added (GVA) over the decade contributing nearly 56% to total GVA is estimated to continue though manufacturing and agri allied activities are expected to contribute higher in AE 2020-21.
- ▶ With respect to Securities market, rationalised single Securities Markets Code by 2022, world class fintech hub at GIFT IFSC (Gujarat International Finance Tec) and SEBI to involve greatly for WDRA and commodity market boost are planned.

Inclusive Development for Aspirational India

- ▶ Agricultural sector is boosted with MSP (Minimum Support price) regime which has undergone sea change to assure all commodities to get price which is 1.5 times the cost of production.
- ▶ Agricultural credit target is enhanced to INR 16.5 Lakh crores and Rural infrastructure Development fund enhanced to INR 40,000 crores. Also margin for agri allied activities is reduced from 25% to 15%.

Reinvigorating Human Capital

- ▶ Good response to The National Education Policy (NEP) was reiterated.
- ▶ More than 15,000 schools will be qualitatively strengthened to include all components of the National Education Policy.
- ▶ 100 new Sainik Schools are proposed to be set up in partnership with NGOs private schools/states
- ▶ The education spend for BE 2020-21 increased to 3.5% of GDP as against spend of 3% to RE 2019-20.
- ▶ Higher Education Commission promised in last budget is urged to get its legislative implementation.
- ▶ India also achieved 48th rank in Global Innovation Index (GII) among 131 nation from 52nd in 2019.

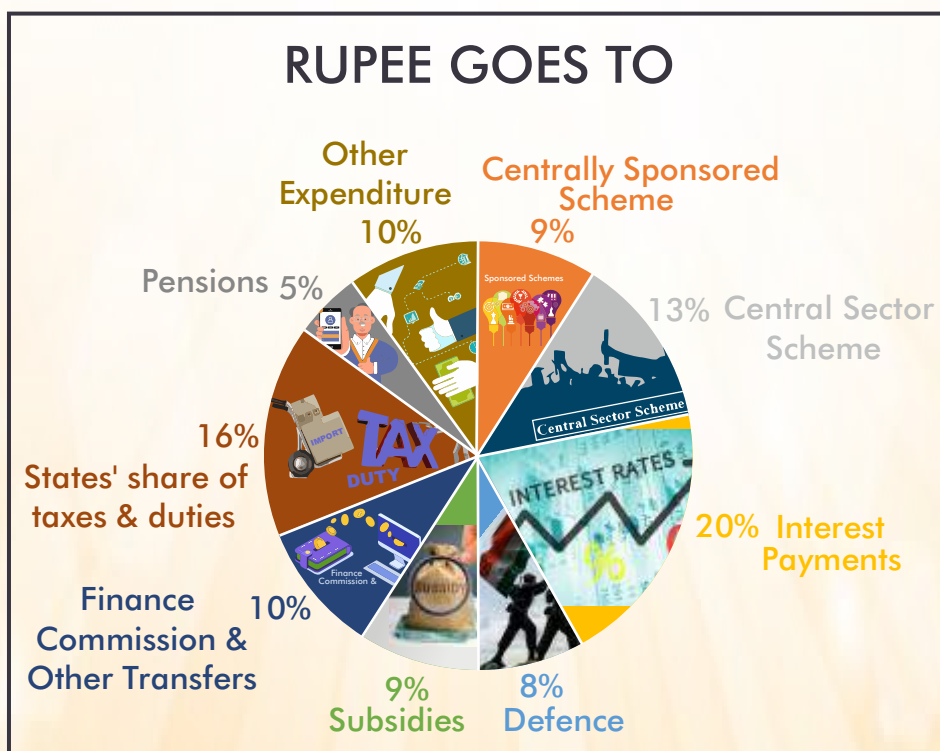
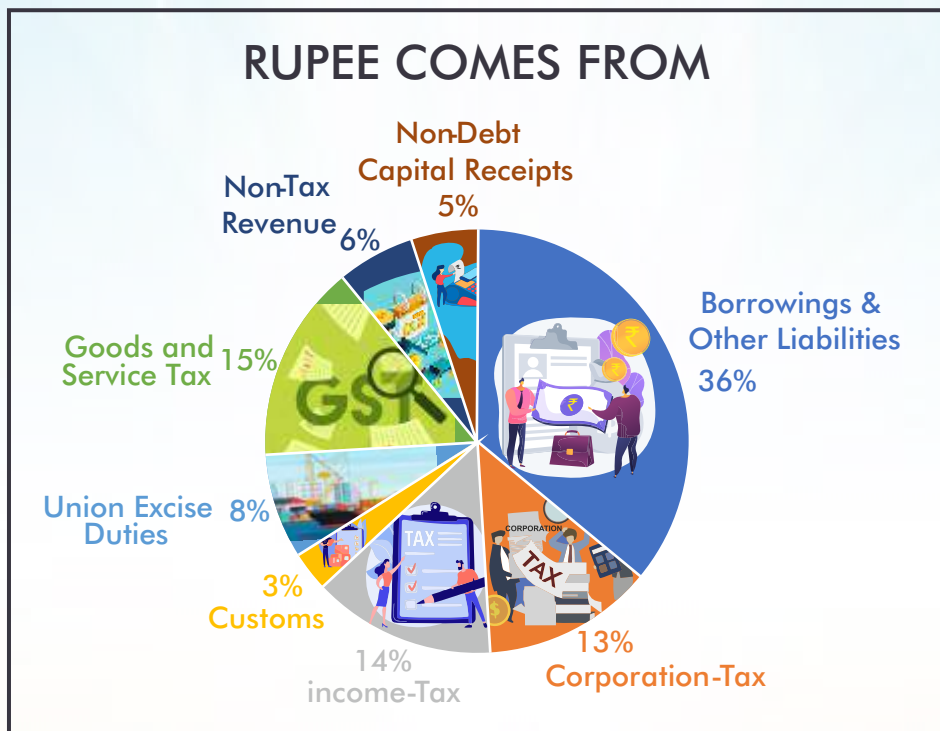
Innovation and R&D

- ▶ Logistic Performance Index Rank is jumped to 44th as against 54th in 2014
- ▶ Outlay of INR 50,000 crores to National Research Foundation for the benefit of all research related ecosystem, INR 1,500 crores for uplifting digital payments, INR 4,000 crores for Deep ocean mission are earmarked along with Gaganyaan mission.

Minimum Government, Maximum Governance

► For the first time digital census are being planned and considered as monumental and milestone-marking task to which spend of INR 3,768 crores are being earmarked.

The Budgetary estimates for the next fiscal is as under:



Direct Tax Related Proposals

1. Proposals specifically relating to Individual/HUF Taxpayers

▶ There are no changes proposed in the tax rate or tax slabs.

▶ **Section 139 (1)** provides that every person is required to furnish a return of his income, if his total income during that year exceeds the maximum amount not chargeable to tax i.e. INR 2,50,000.

A new **section 194P** is proposed to be inserted whereby, the following things are proposed:

- In case of a **senior citizen (75 years or above)**
- Resident in India
- Has income only from pension and interest from the same bank
- Furnishes a declaration to the bank
- Such specified bank shall withhold taxes on the individual senior citizen after allowing relevant deductions under chapter VI A and rebate allowable u/s 87A
- Such individual is exempt from filing tax returns

▶ **Interest income from PF and RPF:** It has been proposed that the interest income accrued/received from Provident Fund (PF) and Recognised Provident Fund (RPF) will become taxable if the aggregate contribution towards the specified funds made by an individual exceeds INR 2,50,000 in any previous year.

▶ **Taxation of proceeds from ULIP:** It has been proposed that the individual can claim tax exemption u/s 10(10D) for maturity proceeds of the Unit Linked Insurance Policy (ULIP) only for those ULIP's for which he is paying annual premium upto INR 2,50,000 in aggregate. However, the amount received on death shall continue to remain exempt without any limit on the annual premium.

If the proceeds from ULIP are not eligible for tax exemption, then such ULIP will be treated as a capital asset and the concessional capital gain tax regime will be applicable as available to units of equity-oriented fund.

This cap of INR 2,50,000 will be applicable for the **policies issued on or after 01st February 2021**.

▶ **Leave Travel Concession (LTC) benefit:** Due to covid many employees could not use LTC claim and hence it has been proposed that the exemption u/s 10(5) will also be applicable to cash allowance received by an employee in lieu of LTC subject to conditions mentioned as under:

- Exercise of option by the employee for the block 2018-2021
- Such cash allowance must be incurred by the employee on his family members on goods and services which are subject to GST @12% or more between the period 12th October 2020 to 31st March 2021.
- Payment of such expenses must be through proper banking channel.
- Maximum limit of exemption is lower of INR 36,000 or 1/3rd of the expenses incurred.

Applicable for AY 2021-22 only.

▶ **Taxability of withdrawal from retirement funds maintained outside India:** It is proposed to insert a new section 89A with effect from AY 2022-23 to provide tax relief for the income accruing to a resident who had opened the retirement fund when he/she was a non-resident in India and resident in such foreign countries, which are yet to be notified.

▶ **Deduction of interest for loan on affordable residential house property:** Provisions of section 80EEA provides a deduction of a maximum of INR 1,50,000 in respect of interest on loan, subject to the following conditions:

- on loan taken for a residential house property from any financial institution (including banks)
- the stamp duty value of residential house property does not exceed INR 45,00,000
- the taxpayers do not own any residential house property on the date of sanction of loan
- loan has been sanctioned during the period beginning on 1st April 2019 and ending on 31st March, 2021

It has been proposed to extend the outer date for sanction of loan by one year i.e. 31st March 2022.

2. Proposals relating to Business Income

▶ No change in tax rates for Corporates or any other form of entity has been proposed.

▶ The depreciation on acquired Goodwill has been a subject matter of multiple litigations in the past. In this regard, section 2(11) is proposed to be amended to provide that the **definition of block of assets shall not include goodwill of a business/profession**. Consequently, the amendments are proposed to be made in section 32(1) to provide that goodwill of a business/ profession will not be considered as depreciable asset and hence, not eligible for depreciation. Transition provision of already recorded and depreciated Goodwill has also been provided. These are proposed to be made applicable from AY 2021-22.

▶ **Section 36(1)(va)** provides that when an employer receives any contribution towards any social security funds (Provident Fund, Employee State Insurance or superannuation fund), such contribution are to be deposited to the employee's account in the relevant fund or funds on or before the due date specified under relevant regulations. On failing to do so, it shall be treated as income. A few courts had ruled that such deposits can also be made before the due date of filing the tax returns by the employer. **In this regard, a clarificatory explanation is proposed to be inserted to section 36(1)(va) and 43B which has a retrospective effect, clarifying that due date does not mean extended due date till the due date of filing tax returns.**

▶ The threshold limit for tax audit u/s 44AB for the person carrying on business where the aggregate amounts received in cash does not exceed 5% of total sales/turnover/gross receipts and the aggregate of all payments made including amount incurred for expenditure does not exceed 5% of the said payment, is proposed to be increased from INR 5 crores (INR 50mn) to INR 10 crores (INR 100mn) from AY 2021-22 and onwards.

▶ Section 44ADA which talks about the presumptive taxation of certain specified professional, was applicable to all the residents. Amendment is proposed with effect from AY 2021-22 to this section to restrict the applicability to

- Individual
- Hindu Undivided Family (HUF)
- Partnership firm

▶ Section 115JB provides for computation of book profit and payment of Minimum Alternate Tax (MAT). Following amendments have been proposed to this section from AY 2021-22 and onwards:

- Provision to make adjustment where past year income is included in books of accounts during the previous year on account of an APA or a secondary adjustment. Computation mechanism is expected to be prescribed.
- Dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the Double Taxation Avoidance Agreement (DTAA).

▶ **Proposal relating to tax deduction for affordable housing projects** - The existing provision of the section 80-IBA provides for tax deduction for the business of developing and building affordable housing project. One of the conditions is that the project is approved by the competent authority after the 1st June 2016 but on or before the 31st March 2021.

It is proposed to amend section 80-IBA by:

- Extending the outer time limit for getting the affordable housing project approved by one more year i.e. upto 31st March 2022.
- Also extend the benefit of this deduction to rental housing projects which are notified by the Central Government in the Official Gazette

▶ **Safe Harbour limits on sale of residential house/unit resulting in Business Income:** At present, while taxing business profits (section 43CA) arising out of transactions in immovable property, higher of the sale consideration or stamp duty value is adapted if the stamp duty value is more than 110% of the sale consideration. The difference is taxed as income both in the hands of the purchaser and the seller [as other sources u/s 56(2)x].

Amendments have been proposed to both the above sections to provide that in the case of transfer of residential unit if the difference between stamp duty value and the actual consideration is 20%, such difference shall be ignored and actual sale consideration itself will be considered, if the following conditions are satisfied:

- The transfer of residential unit takes place between 12th November, 2020 to 30th June, 2021
- The transfer is by way of first time allotment of the residential unit to any person
- The consideration received or accruing as a result of such transfer does not exceed INR 2 crores

It is pertinent to note that this amendment does not apply to sale of residential house/unit, which would be taxable as Capital gains.

3. Proposals relating to Capital gains taxation

▶ In the case where there was a slump exchange, a question used to arise whether such transactions gets covered for the purpose of taxation as a slump sale as the word 'sale' was used. In order to clarify this, an amendment has been **proposed to section 2(42C)**, where it has been clarified that slump sale means transfer of an **undertaking by any means and such transfer would cover all types of transfer as per section 2(47)** and not merely sale. This is proposed to be applicable from AY 2021-22.

▶ **Capital gain on distribution of capital assets, money or any other asset by a Firm/AOP or BOI - Section 45(4)** deals with taxation of profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise.

It is proposed to amend section 45(4) with new 45(4) and to insert 45(4A) with effect from AY 2021-22 to provide for the following:

- The profits or gains arising from the receipt of capital asset/money/other asset by the partner of a firm or member of other association of persons or body of individuals (specified entity) at the time of dissolution or reconstitution, shall be chargeable to income-tax as income of the firm or other association of persons or body of individuals (specified person) under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which the capital asset or money or other asset was received by the specified person.
 - In computing the capital gains, value of the money/ FMV of the capital asset or other asset on the date of such receipt shall be deemed to be the full value of the consideration and the balance in the capital account of the specified person in the books of accounts of the specified entity shall be deemed to be the cost of acquisition.
 - Consequential amendment has been proposed for the section 48 which provides for computation mechanism, detailing of which is yet to be notified.
- ▶ **Tax neutral conversion of co-operative bank** - Section 44DB provides for computing deductions in the case of business re-organization of cooperative banks. It is proposed to expand the scope of this section so as to include conversion of a primary co-operative bank to a banking company.

Following transfers to converted banking company are proposed to be tax neutral u/s 47:

- Transfer of any capital asset by the predecessor co-operative bank
- Transfer of shares by a shareholder held by him in the predecessor co-operative bank provided he is allotted with shares of converted banking company

It is proposed to amend the provisions relating to carry forward and set off accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger (section 72A) so as to include the applicability of this section to amalgamation of public sector companies engaged in all kinds of business.

4. Proposals specifically relating to trusts

- ▶ **Section 10(23C)** provides for exemption of income of certain forms of entities, including University or education institution established solely for the purpose of education and hospitals established solely for such purpose. Such exemption was applicable for the above entities, if their annual gross receipts was less than INR 1 crore (INR 10mn). **This is proposed to be increased to INR 5 crores (INR 50mn).**
- ▶ It is also proposed to insert an explanation to state, if the aggregate annual receipts of the person from university or educational institution as well from hospitals exceed INR 5 crore (INR 50mn), the automatic exemption u/s 10(23C) shall not apply.
- ▶ Amendments are proposed to section 10(23C) and 11 to state that, any voluntary contributions which are made with a specific direction that it shall form part of the corpus **shall be invested or deposited in one or more of the forms or modes specified in 11(5)** maintained specifically for such corpus, to be exempt.
- ▶ Following spend are proposed to not to consider as application for charitable or religious purposes:
 - a) Application from the corpus fund
 - b) Application from loan or borrowing

It is also proposed to insert the provisos to above clauses to state that, amounts not so treated as application, shall be treated as application for charitable or religious purposes, if such amounts are invested or deposited in one or more of the forms or modes specified in 11(5) in the case of clause (a) and in the year in which the repayment is done in the case of clause (b).

- ▶ A clarificatory amendment is proposed to state that for calculation of income required to be applied or accumulated during the previous year as required u/s 11, set off or deduction or allowance of excess application of earlier years shall not be allowed.

These amendments are proposed to be made applicable from AY 2022-23.

5. Proposals relating to Start-ups

- ▶ The existing provisions of section 80-IAC provide for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business by an **eligible start-up for 3 consecutive assessment years out of 10 years**, at the option of the taxpayers. This provision had a sun-set clause of start ups incorporated before 1st April, 2021. **This is now proposed to be extended upto 1st April, 2022.**
- ▶ Section 54GB provides for exemption from Capital gains arising from transfer of long-term capital asset, being a residential property, a house or a plot of land, owned by the eligible taxpayers, if the same were to be invested in the equity shares of an eligible start-up. This benefit is available only when the residential property is transferred on or before 31st March 2021. This limit of 31st March 2021 is proposed to be **extended by one-year i.e. 31st March 2022.**

6. Proposals relating to Equalisation Levy

- ▶ The existing provision of section 10(50) specifies that on or after 1st April 2021, income tax will not be applicable on any income arising from any e-commerce supply of goods and services and are chargeable to equalisation levy tax. There was unintended time gap of 1 year in the provision of Section 10(50) and provisions of Equalization Levy. Because of this time gap, the interpretation comes that for one year equalization levy as well as Income Tax both would be levied. **Amendment is proposed by making 10(50) applicable from 01st April, 2020.**
- ▶ It is proposed by way of an explanation that for the purposes of **defining e-commerce supply or service, "online sale of goods" and "online provision of services"** shall include one or more of the following activities taking place online:
 - a) Acceptance of offer for sale
 - b) Placing the purchase order
 - c) Acceptance of the Purchase order
 - d) Payment of consideration
 - e) Supply of goods or provision of services, partly or wholly
- ▶ It is proposed by way of a clarification that **consideration received or receivable for specified services** and consideration received or receivable for e-commerce supply or services **shall not include** consideration which are taxable as **royalty or fees for technical services** in India under the Income-tax Act read with the agreement notified by the Central Government u/s 90 or 90A of the Income-tax Act.
- ▶ It is also proposed to amend that **consideration received or receivable from e-commerce supply or services shall include:**
 - (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
 - (ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

These amendments will take effect from AY 2021-22

7. Proposals relating to compliances

- ▶ The due date for filing of tax returns by a **Partner of a Firm, which is subject to Transfer Pricing** provisions were not aligned to the due date of the filing the returns of such Firm. It is now proposed to align the due date for the Partner of such Firm to file returns to **30th November, on par with such Firm.**
- ▶ The due date for filing the **Revised and Belated return** was before the end of the assessment year or completion of the assessment whichever is earlier. It has been proposed that the due date for filing a belated or revised return be reduced by 3 months. With the proposed amendment the revised due dates stand at **3 months before the relevant assessment year (31st December) or before the completion of the assessment, whichever is earlier.**

- ▶ Section 139(9) lays down the procedures for curing a defective return. It provides that in case a return is found defective on the basis of specified conditions mentioned in law, the tax officer will intimate the defect to the taxpayers and that defect needs to be rectified within 15 days or more as mentioned by the tax officer. If the defect is not rectified, the return will be treated as invalid return. It is proposed to amend this section by empowering the board to specify the conditions via notifications where such provisions either shall not be applied to specific class of taxpayers or shall apply with modifications.
- ▶ Section 234C lays down the provision for payment of interest @ 1% per month by a taxpayer who has not paid advance tax instalments on time. However, there is **relaxation which provides that if the shortfall/ failure of advance tax instalment is on account of income where accurate determination of advance tax liability is not possible** due to intrinsic nature of the income then interest will not be applicable, if a taxpayer has paid full tax in the next instalment. The list of income which has intrinsic nature is mentioned in section 234C. It is proposed to amend that list and include dividend income but not the deemed dividend as per section 2(22)(e).

8. Proposals relating to deduction and collection of tax at source

- ▶ **Section 194** provides for deduction of tax at source on payment of dividend to a resident. However, this section is not applicable to such income credited or paid to certain insurance companies or insurers. **It has been proposed to extend this relaxation to business trusts as well.** Henceforth dividend income credited or paid to a business trust by a special purpose vehicle or payment of dividend to any other person as may be notified, section 194 will not be applicable.

This amendment will take effect retrospectively from 1st April 2020.

- ▶ **Section 196D** provides for TDS to be deducted on income of Foreign Institutional Investors (FIIs) from specified securities @ 20%. As the said provision provides for TDS at the specified rate, the benefit of lower rates mentioned in the DTAA is not applicable. Therefore, it has been proposed to provide that in case of a payee to whom DTAA is applicable and the payee has submitted Tax Residency Certificate, then the tax shall be deducted @ 20% or rate provided in DTAA, whichever is lower.
- ▶ Section 194Q a new section is proposed to be inserted into the Income Tax Act. It is proposed to provide that:
 - any person responsible for paying any sum to any resident for purchase of goods from the seller for a value or aggregate value exceeding INR 50 lakh in the previous year is required to deduct TDS @ 0.1%.
 - The tax is required to be deducted by those buyers whose total sales, gross receipts or turnover from the business carried on by him exceed INR 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out.
 - If on a transaction TDS or TCS is required to be carried out under any other provision, then it would not be subjected to TDS under this section. However, if on a transaction TCS is required u/s 206C (1H) as well as TDS u/s 194Q, then on that transaction only TDS under this section shall be carried out.
 - Consequentially, it is also proposed to amend section 206AA by providing that where the tax is required to be deducted under section 194Q and Permanent Account Number (PAN) is not provided, the TDS shall be @ 5%.

These amendments will take effect from 1st July, 2021.

▶ **New sections 206AB and section 206CCA** as a special provision providing for **higher rate for TDS and TCS** respectively for the **non-filers** of income-tax return. The proposed TDS/TCS rate in this section is higher of the followings rates:

- Twice the rate specified in the relevant provision of the Income tax Act; or
- Twice the rate or rates in force (not applicable for TCS) or
- The rate of 5 %
- If the provision of section 206AA is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.

The specified person is :

- A person who has not filed the returns of income for 2 previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be.
- Time limit for filing tax return u/s 139(1) has expired for both these years.
- Aggregate of TDS and TCS in his case is INR 50,000 or more in each of these two previous years.
- Specified person shall not include a non-resident who does not have a permanent establishment in India.

This amendment will take effect from 1st July, 2021.

9. Proposals relating to assessments and dispute resolution

▶ Once a return is filed, it is processed and an intimation is generated u/s 143(1). There are multiple permitted items based on which adjustment to income was permitted. It is now proposed to add 'Increase in income indicated in the audit report but not taken into account while computing the total income, as one of the items.

▶ The time limit for issue of notice u/s **143(2) for carrying out regular assessment** was 6 months from the end of the financial year in which the return is filed. It is proposed to reduce the time limit to issue notice to 3 months.

▶ **Section 153** provides time limit for completion of assessment, re-assessment and re-computation. It has been proposed that the time limit for completing assessment is proposed to be **9 months from the end of the assessment year** in which income was first assessable, from the AY 2021-22. This was 12 months before this amendment.

▶ In the backdrop of all assessment procedures becoming faceless, it has been proposed to allow **prescribed income-tax authority besides the Assessing Officer** to issue notice under section 142(1).

▶ **Proposed constitution of Dispute Resolution Committee (DRC):** In order to provide early tax certainty to small and medium taxpayers, it has been proposed to incorporate a new section 245MA and has the following features:

- DRC will be eligible to consider only those disputes where the returned income is INR 50 lakhs or less (if there is a return) and the aggregate amount of variation proposed in specified order is INR 10 lakh or less.
- DRC will not be eligible to consider specified orders based on a search initiated u/s 132 or requisition made u/s 132A or a survey initiated under 133A or information received under an agreement referred to in section 90 or section 90A.

- Taxpayers would not be eligible for benefit of this provision if there is detention, prosecution or conviction under various laws as specified in the proposed section.
- The DRC shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence under this Act in case of a person whose dispute is resolved under this provision.

► **Proposal for constitution of the board for Advance ruling-** The existing set-up of Authority Advance Ruling (AAR) is proposed to be replaced with one or more Board for Advance Ruling constituted under a new section. This Board is proposed to be consisting of two members, each being an officer not below the rank of Chief Commissioner. The orders of this Board are also proposed to be made appealable before High Court.

► **Proposal relating to discontinuance of Settlement Commission** – it has been proposed to discontinue Income-tax Settlement Commission (ITSC) and to constitute Interim Board of settlement for pending cases. ITSC shall cease to operate on or after 1st February, 2021 and no application under section 245C for settlement of cases shall be made thereon.

► **Proposals relating to Income escaping assessment and search assessments –**

New Section 148A proposes that before issuance of notice u/s 148, the AO shall conduct enquiries, if required, and provide an opportunity of being heard to the taxpayers. After considering his reply, the AO shall decide, by passing an order, whether it is a fit case for issue of notice u/s 148 and serve a copy of such order along with such notice on the taxpayers. Approval of specified authority is required before conducting any such enquiries. However, this procedure shall not be applicable in search or requisition cases.

A new list of items which constitutes information available with tax officer to believe income escaping assessment is also made part of new section 148A.

The time limitation for issuance of notice under section 148 is proposed to be amended in section 149 and is as below:

- In normal cases, within 3 years from the end of the relevant AY.
- In specific cases where the AO has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to INR 50 lakhs or more, notice can be issued beyond the period of 3 year but not beyond the period of 10 years from the end of the relevant AY.

These amendments will be implemented from AY 2021-22.

► **Proposals relating to Faceless Appeals** – Continuing the Government intent to make the entire process of dispute resolution faceless, new section 255 is proposed to be inserted to make the appeal before the 2nd level appellate authority, Income Tax Appellate Tribunal (ITAT) also faceless.

Indirect Tax Related Proposals

The effective date for these proposals yet to be notified.

1. Proposals relating to Mutual associations

- ▶ A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
- ▶ Consequent to the amendment in section 7 of the CGST Act paragraph 7 of Schedule II to the CGST Act is being omitted retrospectively, with effect from the 1st July, 2017.
- ▶ While the concept of mutuality otherwise applies in case of members and their associations, Government has always made its intention clear to deem the inter-se supplies as taxable supplies. This was earlier covered under schedule II as an entry therein. Vide earlier amendments made to section 7, schedule II no longer was given the power to determine what constitutes a supply, but to merely classify an activity which already constitutes as supply into supply of goods or supply of services. Thereby, this amendment was needed to rationalize the law.
- ▶ The other entries in schedule II which are interpreted as deemed supplies by tax officers also need a similar correction to avoid unnecessary litigations (e.g. tolerating an act, construction of complex, etc.)

2. Proposals relating to Filing of GSTR1 by counterparty a pre-condition for ITC

- ▶ A new clause (aa) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.
- ▶ This is in line with Government's objective of bringing in the matching concept for ITC availment, indirectly without affecting the format of the returns.
- ▶ The condition of ITC appearing in GSTR2A is now hard-coded into the Act itself. Taxpayers will have to further streamline ITC process to ensure 2A v 3B matching is not a postmortem reco, but a concurrent one.



3. Proposals relating to Interest provisions

- ▶ Section 50 of the CGST Act is being amended, retrospectively, to substitute the proviso to sub-section (1) so as to charge interest on net cash liability with effect from the 1st July, 2017.
- ▶ Amendment to make interest payable on net cash payment w.e.f. 1-7-2017. It may be noted that this interest on net cash payment is applicable only for output tax of a month disclosed in returns of the same month, and not any other cases (like output tax of a month disclosed in other months, ITC reversal, etc.).

4. Proposals relating to removal of External certification of GSTR9C

- ▶ Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self certification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.
- ▶ Sub-section (5) of section 35 of the CGST Act is being omitted so as to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional.
- ▶ GSTR9C certification by independent professional is done away with. Self-certification (for notified taxpayers) shall suffice.
- ▶ This is expected to facilitate ease-of-doing business, where taxpayers can now audit / reconcile their GST data as per their needs rather than based on mandate format of the Government.

5. Proposals relating to GSTR-1

- ▶ An explanation to sub-section (12) of section 75 of the CGST Act is being inserted to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.
- ▶ This is in continuation of the Government's desire to enforce reconciliation of data. If any turnover is shown in GSTR1 which is not shown and paid in GSTR3B, the same shall be treated as "self-assessed tax" in respect of which recovery proceedings can be initiated without going through the rigours of notice under section 74, 75.



6. Proposals relating to eWaybill

- ▶ Section 129 of the CGST Act is being amended to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.
- ▶ Section 74 of the CGST Act is being amended so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.
- ▶ A proviso to sub-section (6) of section 107 of the CGST Act is being inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of penalty has been paid by the appellant.
- ▶ Apart from the delinking of proceedings relating to goods in transit and other cases, the amount payable for releasing said goods is now changed from tax plus 100% penalty to 200% of penalty.
- ▶ While the amount payable remains the same, the tax amount could have been offset against the output tax payable in respect of said supply. Post this amendment, the entire amount will be paid as penalty, which cannot be offset against any output tax. Impact may also be doubled under section 37 of Income Tax Act if this penalty amount is disallowed therein. Taxpayers have to tighten the eWaybill generation process.
- ▶ Increase in restrictions relating to eWaybills come as a surprise when industry was already complaining of harassments being faced in this regard, during transit.
- ▶ Pre-deposit in case of appeals against e-waybill related penalty orders is increased to 25% [it is normally 10% of disputed tax in cases of other demands not relating to e-Waybills].

7. Proposals relating to Exports and refund

- ▶ Section 16 of the IGST Act is being amended so as to:
 - (i) zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit only when the said supply is for authorised operations;
 - (ii) Restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and
 - (iii) link the foreign exchange remittance in case of export of goods with refund.
- ▶ Refund related provisions were scattered across IGST Act, CGST/SGST Act and CGST/SGST Rules. In many cases, restrictions exist in rules which are not expressed in the Act. This has led to several writ petitions filed challenging the legitimacy of such restrictions placed in the rules.
- ▶ To correct this drafting anomaly, amendments have been made to section 16 of IGST Act. In effect, Government hopes to ensure that :

- ▶ Suppliers to SEZ receive endorsed invoices to prove that said supplies were for authorised operations.
- ▶ In case of LUT refund claimed on export of goods, where realization is not made with time prescribed under FEMA (generally 9 months), the refund has to be deposited back with interest.
- ▶ Refund of IGST paid, which is not allowed to certain taxpayers, is validated once these amendments are effective.
- ▶ **CUSTOMS LAW [rate changes effective immediately]**
- ▶ **Rationalisation of rates and exemptions**
 - Reduction import duties on steel related products, gold and silver.
 - Increase in import duties and removal of exemptions on several intermediate products to further increase value addition under make in India
 - Going forward, exemptions under customs to be valid for 2 financials years only (unless specifically extended)
 - An Agriculture Infrastructure and Development Cess (AIDC) - only on specified goods. BCD rates have been simultaneously lowered on such items.
- ▶ **Updates to customs tariff (HSN)** Changes to the first schedule to the Customs Tariff Act are being proposed that are to come into effect from 01.01.2022. This is in accordance with HSN-2022, which proposes 351 amendments to the existing harmonized nomenclature, covering a wide range of goods moving across borders.
- ▶ **Ease of doing business**
 - Permit jobwork for goods imported under concessional duty; permit clearing capital goods used for specific purpose upon payment of duty on depreciated value
 - Common portal concept under customs for facilitating registration, filing of bills of entry, shipping bills, any other document or form prescribed, payment of duty and notices, orders, appeals, etc.
- ▶ **Penalties for fraudulent exports**
 - Wrongful claim on exports to result in confiscation of goods
 - Penalty provisions to include cases where any person has obtained any invoice by fraud, etc. to utilize Input Tax Credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of any duty or tax.



Proposals relating to Company Law

- ▶ It is proposed to decriminalize some of the offences under Limited Liability Partnership (LLP) Act, 2008.
- ▶ Definition under the Companies Act, 2013 for 'Small Companies' is proposed to be revised by increasing their thresholds as below which is made to ease the compliance requirements:
 - Paid up capital from **INR 50 Lakh to INR 2 Crores.**
 - Turnover from **INR 2 Crore to INR 20 Crores.**
- ▶ Proposal to incentivize the incorporation of One Person Companies (OPCs) are made:
 - By allowing OPCs to grow without any restrictions on paid up capital and turnover
 - Allowing their conversion into any other type of company at any time
 - Reducing the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days
 - Also allow Non-Resident Indians (NRIs) to incorporate OPCs in India.
- ▶ To ensure faster resolution of cases, NCLT framework is proposed to be strengthened, e-Courts system is proposed to be implemented and alternate methods of debt resolution and special framework for MSMEs are proposed to be introduced.

During the coming fiscal 2021-22, launch of data analytics, artificial intelligence, machine learning driven MCA21 Version 3.0 are proposed which would include additional modules for e-scrutiny, e-Adjudication, e-Consultation and Compliance Management.

Proposals related to Other laws

- ▶ Proposal to consolidate the provisions of SEBI Act, 1992, Depositories Act, 1996, Securities Contracts (Regulation) Act, 1956 and Government Securities Act, 2007 into a rationalized single Securities Markets Code.
- ▶ In the budget of 2018-19, Government had announced its intent to establish a system of regulated gold exchanges in the country. For the purpose, SEBI will be notified as the regulator and Warehousing Development and Regulatory Authority (WDRA) will be strengthened to set up a commodity market eco system arrangement including vaulting, assaying, logistics etc in addition to warehousing.
- ▶ Towards investor protection, it is proposed to introduce an investor charter as a right of all financial investors across all financial products.
- ▶ To instil confidence amongst the participants in the Corporate Bond Market during times of stress and to generally enhance secondary market liquidity, it is proposed to create a permanent institutional framework. The proposed body would purchase investment grade debt securities both in stressed and normal times and help in the development of the Bond Market.

- ▶ To improve credit discipline while continuing to protect the interest of small borrowers, for NBFCs with minimum asset size of INR 100 Crores, the minimum loan size eligible for debt recovery under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 is proposed to be reduced from the existing level of INR 50 lakhs to INR 20 lakhs.
- ▶ It is proposed to amend the provisions of Indian Stamp Act 1899 to make strategic sale, disinvestment etc, of immovable property by Government company not to be liable for stamp duty.



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