

Finance Bill 2020

Direct Taxes

Vikram Vijayaraghavan
SAPR Advocates

Finance Bill, 2020

Today's agenda!

- A. Rates of Income-tax
- B. Tax Incentives
- C. Taxpayer difficulties
- D. Tax certainty measures
- E. Tax base widening
- F. Revenue mobilisation measures
- G. Preventing tax abuse
- H. Rationalisation of provisions
- I. Improvement of Tax administration

Budget 2020

- Long....speech
- 104 amendment clauses to direct taxes
- Clarifications being issued one after the other
- Multiple personal tax regimes!

A. Rates of Income Tax

Personal Income Tax v2!

- “Increase consumption to boost the economy”, a new personal tax rate

Taxable Income Range (Rs.)	Existing Tax Rate	New Tax Rate
0-2.5 lakh	Exempted	Exempted
2.5-5 lakh	5%	5%
5-7.5 lakh	20%	10%
7.5-10 lakh	20%	15%
10-12.5 lakh	30%	20%
12.5-15 lakh	30%	25%

A. Rates of Income Tax

Personal Income Tax v2!

- Conditions for availing the reduced tax rates u/S.115BAC:
 - Total income computed without claiming certain specified deductions and exemptions.
 - Some of these crucial deductions which would fall away as a result of exercising the S.115BAC option include leave travel concession, house rent allowance, exemptions in respect of free food and beverages through vouchers provided to employees .
 - Individual shall not be allowed to set off (i) any carried forward losses from earlier AYs if such loss is attributable to the aforesaid deductions: or (ii) any loss under the head - house property with any other head of income.
 - Individual shall not be allowed to claim any exemption or deduction for allowances or perquisite provided

A. Rates of Income Tax

Personal Income Tax v2!

- The reduced rate shall not apply unless the option is exercised by the Individual in the prescribed form and manner at such time as indicated below:
 - In case where the Individual has no business income: along with the return of income to be furnished under section 139(1)
 - In any other case (where the Individual has business income): on or before the due date for filing return of income under section 139(1) and once option is exercised, it shall apply for subsequent AYs.
- However, the option can be withdrawn by the Individuals only once for a financial year other than the financial year in which it was exercised. Pursuant to such withdrawal, the Individuals shall never be eligible to exercise the option to be taxed at the reduced rates unless they cease to have business income.

A. Rates of Income Tax

Personal Income Tax v2!

- 70 commonly used tax exemptions and deductions for salaried employees who opt for the new lower personal tax rate regime.
- Most of the commonly available deductions such as section 80C (investments made in PF, NPS etc.), 80D (payment of medical insurance premium), standard deduction of Rs 50,000 etc. have been proposed to be removed
- The tax break on contribution to National Pension System (NPS) u/S.80CCD(2) made by the employer is still available!
- Revenue Secretary Ajay Bhushan Pandey said even those opting for the lower rates will retain tax benefits on payouts at the time of retirement like gratuity, employees' PF and NPS accumulations; employers' contributions to EPFO, the National Pension System or superannuation payments (upto ₹7.5 lakh), amounts received on VRS (upto ₹5 lakh).
- Amendment to relevant MAT provisions and the provisions relating to carry forward and set off of MAT credit, shall not apply to taxpayers opting to be taxed under section

A. Rates of Income Tax

Bye bye deductions...

Tax benefits to forgo under the optional tax regime

Standard deduction of Rs 50,000

Section 80C: Deduction for PF contribution, NPS, life insurance premiums, ELSS, PPF and a few others. Exemption limit is Rs 1.5 lakh

Section 80CCD(1B): Deduction on NPS contribution under section 80CCD(1B) of up to Rs 50,000

Section 80D: Deduction on medical insurance premium of up to Rs 25,000 (Rs 50,000 for senior citizens)

Section 80DD: Medical expenses of specially-abled dependents

Section 80DDB: Medical expenditure on certain specified illnesses

Section 10: House rent allowance

Section 10: Leave Travel Allowance

Section 10: Allowance for minor income

Section 24: Interest paid on housing loan

Section 16: Entertainment allowance and employment/professional tax

Section 80G: Donations made to charitable institutions

Section 80E: Deduction on education loan interest paid

Meal coupons

Common concessions that will continue

Section 80CCD(2): Employer's contribution to NPS

Section 80TTA: Deduction on savings bank interest up to Rs 10,000

*The list is not exhaustive

A. Rates of Income Tax

Some examples

Income	22,00,000	22,00,000
<i>Deductions</i>		
Home loan	2,00,000	
80C	1,50,000	
80D	25,000	
Standard deduction	50,000	
Taxable Income	17,75,000	22,00,000
Slabs	12,500 +50,000 +50,000 +75,000 +75,000 +82,500	12,500 + 25,000 + 37,500 + 50,000 + 62,500 +2,10,000
Tax payable	3,45,000	3,97,500

A. Rates of Income Tax

Some examples

Income	9,75,000	9,75,000
<i>Deductions</i>		
Home loan	2,00,000	
80C	1,50,000	
80D	25,000	
Standard deduction	50,000	
Taxable Income	5,50,000	9,75,000
Slabs	12,500 +10,000	12,500 +25,000 +33,750
Tax payable	22,500	71,250

A. Rates of Income Tax

Personal Income Tax v2!

- Prima facie anyone claiming tax exemptions and deductions of ~Rs. 2.5 lakh+ in a year will not gain from the new structure?

DON'T MOVE TO NEW REGIME IF YOU CLAIM MORE THAN THIS

Gross annual income	Deductions claimed*	Existing tax	New tax
Rs 8 lakh	Rs 1.38 lakh	46,800	46,800
Rs 10 lakh	Rs 1.88 lakh	78,000	78,000
Rs 12 lakh	Rs 1.91 lakh	1,19,600	1,19,600
Rs 15 lakh	Rs 2.5 lakh	1,95,000	1,95,000

*Including Rs 50,000 standard deduction for which no investment is required

(source: ET Feb 2, 2020)

A. Rates of Income Tax

OK Boomer!

- Those at the beginning of their careers, want a simple process, can consider making the switch.
- Unlikely to have committed to section 80C investments or taken home loans.
- **Otherwise**....salaried employees across tax slabs are unlikely to save more if they switch based on the most common deductions, exemptions claimed by them?
 - Insurance premiums, Home loan interests...why switch?

B. Tax Incentives

Startups!

- S.80I-AC: Deduction of 100% profits and gains derived from an eligible business by an eligible start-up for **3 consecutive AYs out of 7 years** at option of assessee if incorporated between April 2016-2021 and total turnover **< 25cr**
 - **3 consecutive AYs out of 10 years**
 - **turnover in any of the previous years from year of incorporation < 100cr (similar to DPIIT?)**

wef AY 2021-22 and subsequent years

Point to Ponder: dichotomy of wording between Memo and Finance Bill? DPIIT vs. 80-IAC?

B. Tax Incentives

Affordable Housing

- Buy one, get one free! Just kidding.....
- **80-IBA:** 100% deduction for developing & building affordable housing – period of approval of such project : 31st March 2021 sunset
- **80EEA:** Deduction in respect of interest on loan taken from for acquisition of an affordable residential house property – Rs.1.5Lakhs subject to certain conditions : 31st March 2021 sunset

Point to Ponder: Could have done much more here to kickstart industry? “affordable” housing limit still Rs.45 lakhs ? ↗

B. Tax Incentives

Generation of Electricity : 15% regime!

- S.115BAB to include generation of electricity as manufacturing
 - Thus can opt for concessional rate of 15%!

B. Tax Incentives

Sovereign Wealth & Offshore funds

- **S.10(23FE)** : Sovereign Wealth Fund
 - Exemption to any income of a “specified person” in the nature of dividend, interest or long-term capital gain arising from investment made by it in India whether in form of debt or equity in an enterprise carrying on the business of developing, or operating or maintaining any infrastructure facility
 - “specified person” to include a sovereign wealth fund satisfying a set of criteria
- **S.9A**: Offshore funds deemed to not have a business connection, criteria tweaks:
 - eligible fund manager to offshore funds during first 3 years upto 25cr shall not be accounted for;
 - Monthly average 100cr within 12 months from last day of establishment of fund.
- **S.10(48B)**: Exemption in respect of income of Indian Strategic Petroleum Reserve Limited

B. Tax Incentives

S.194LC & 194LD : Concessional rate of TDS on interest

- **S.194LC :**
 - Concessional TDS rate 5% till 1st July 2023.
 - Further, TDS at 4% on interest payable to NR by way of issue of any long term bond or RDB between 1 April 20- 1 July 2023 listed on a recognised stock exchange in any IFSC
- **S.194LD :** Extended till 1st July 2023 and also apply to FII or QFI for investment made in municipal debt security
- W.e.f 1st April 2020

C. Removing taxpayer difficulties

S.94B

- Thin capitalization (Finance Act 2017)
 - Addressing OECD BEPS (Action Plan 4) concern of a situation where cos are highly leveraged with a thin capital structure (high proportion of debt vs equity).
 - Excessive interest deduction possible as compared to dividend which isn't tax deductible
- S.94B introduced as a result: Deductible interest exceeding 1cr of an Indian co or PE of foreign co paid to AE shall be restricted to 30% of its EBOITDA
- Now, S.94B **interest limitation would not apply** to interest paid in respect of debt issued by PE of non-resident person engaged in banking business in India.

Point to Ponder: Thin cap continues to be applicable only to companies

C. Removing taxpayer difficulties

S.43CA, S.50C and S.56

- **Sellers hands:**

- S.50C : full value of consideration in case of transfer of capital assets
- S.43CA : full value of consideration for transfer of assets other than capital assets in certain cases (stock-in-trade)

*“Provided also that where the value adopted.....by stamp valuation authority does not exceed **one hundred and five percent** of the consideration received the consideration so received....shall for the purposes of S.48, be deemed to be the full value of consideration”*

- Finance Bill 2020 increases 5% safe harbour to 10% .

- **Purchasers hands:**

- S.56(2)(x) : taxes shortfall in declared purchase consideration in the hands of purchaser under Income from other sources
- Finance Bill 2020, in S.56(2)(x)(b)(B), safe harbour

C. Removing taxpayer difficulties

S.115A

- S.115A(5) : NR's exempt from filing returns if their total income consists **only of certain dividend or interest income** and TDS has been deducted
- S.115A now to *extend* to cases where NR total income consists of

C. Removing taxpayer difficulties ESOP!

- ESOP tax in hands of employees: S.17(2)
r.w. Rule 3(8)(iii)
 - Tax as perquisite at time of exercise ✚
 - Tax as capital gain at time of sale ✚ ✚
- Grant -> Vest -> Exercise -> Sell -> Profit!
- **Finance Bill 2020:** S.192(1C): Defer TDS or tax payment on shares allotted by S.80-IAC startups to employees under ESOP
 - At time of exit of company
 - At time of sale of such specified security or sweat equity share
 - At expiry of 48 month from end of AYWhichever is earliest on basis of rates in force in FY which the said specified security is allotted or transferred
- Corresponding amendments in S.191 (for assessee to pay tax direct in case of no TDS) and S.156 and S.140A (self-assessment)

(Point to ponder: Why this arbitrary two year

C. Removing taxpayer difficulties

S.35AD

- S.35AD provides 100% deduction on capital expenditure (other than land, goodwill and financial assets) incurred on certain specified businesses.
 - Allowable during previous year in which said expenditure was incurred
- S.35AD(4) provides that no deduction is allowable under any other section in respect to the expenditure referred to in S.35AD(1).
- Assessee did not have an option of not availing incentive!
- Finance Bill 2020 provides for option of not availing S.35AD deduction and amends S.35AD(4) correspondingly.
- Root cause was domestic co taking concessional tax rate of S.115BAA or 115BAB and not claiming S.35AD

C. Removing taxpayer difficulties

S.72AA

- S.72AA extended to include corresponding new banks and government companies in the General Insurance Business
 - Remember S.72AA has the notwithstanding anything in S.72A(2) (1B) clause diluting the requirements for carry forward and set-off of accumulated loss and depr in case of amalgamation of banking companies

(Remembering Scott McNealy's famous

C. Removing taxpayer difficulties

Section 115UA

- S.115UA : Taxation regime for business trusts (InvITs); total income of the trust excluding CG charged at maximum marginal. Income by way of interest, rent received from SPV is pass-through.
 - Currently business trust under S.2(13A) means registered under SEBI and units are listed on SE
 - Finance Bill, 2020 rationalizes with SEBI guidelines by removing mandatorily listing of InvITs.
 - Bottomline: Private unlisted InvITs can come under ambit of S.115UA!

D. Tax Certainty

APA & SHR amendments

- Two things are certain: Death & taxes
 - What we are trying to avoid is Death by taxes ^{^^}
- Attribution of profit to PE in Safe Harbor & APA provisions
 - S.92CB & S.92CC amended to cover determination of attribution of PE within scope of SHR and APA.
- S.92CC(1)(b) inserted:
 - “(b) income referred to in clause (i) of sub-section (1) of section 9, **or specifying the manner in which said income is to be determined** as is reasonably attributable to the operations carried out in India by or on behalf of that person being a non-resident”*

D. Tax Certainty

S.92CC amendments : A closer look

- **S.92CC(2), (3) and (9A) for clawback all suitably amended**

*“**S.92CC(2)**, The manner of determination of the arm’s length price referred to in clause (a) or the income referred to in clause (b) of sub-section (1), may include the methods referred to in sub-section (1) of section 92C or the methods provided by rules made under this Act, respectively, with such adjustments or variations, as may be necessary or expedient to do so.*

***(3)** Notwithstanding anything contained in section 92C or section 92CA or the methods provided by the rules made under this Act, the arm’s length price of any international transaction or the income referred to in clause (b) of sub-section (1), in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered*

- The proposal envisages additional rules prescribing the method of making such a determination, and this amendment will be

D. Tax Certainty

S.92CB amendments : Deep dive

- SHR is in Rules 10TA to 10THD of the Income Tax Rules, 1962 (“Rules”) identifies the taxpayer based on the nature of the transaction and does not cover scenarios where a business connection/PE can be said to exist. CBDT will prescribe a new set of SHR for profit attribution to PE?
- Explanation to Section 92CB states that “safe harbour” means situations where income tax authorities shall accept the transfer price declared by the taxpayer. Still unamended!

D. Tax Certainty

TDS : S.194J

- Short deduction cases galore
 - Deducted under S.194C
 - S.40(a)(i)/(ia) can't be applied in such cases
(CIT vs SK Tekriwal 46 Taxman.com 444 (Cal))
- S.194J TDS in case of fees for technical services (other than professional services) to reduce to 2% from existing 10%.
- Other cases u/S.194J to remain the same.

D. Tax Certainty

S.44 r.w. Rule 5 Insurance companies -

- Rule 5(c) First Schedule provides any sum payable by assessee which is added back under S.43B in accordance with Rule 5(a) shall be allowed as deduction in computing income under the Rule in previous year in which sum is actually paid

E. Widening & Deepening of Tax Base

Amazon, Flipkart...here we come!

- “Deepenening” of tax base
- **S.194-O** introduced: TDS to be paid by e-commerce operator for sale facilitated through its digital or electronic facility or platform.
- Deduct tax at time of credit of amount of sale or at time of payment thereof whichever is earlier.
- Tax at 1% on gross amount

E. Widening of tax base

S.194-O: Points to Ponder

- Obligation only for Indian resident supplier through the platform and not from non-resident service providers or sellers →
- Amounts paid directly by the customer to the “e-commerce participant” shall also be included within the gross amount, on which the 1% tax deduction is required to be discharged.
 - Even with cash on delivery shipments the e-commerce operator may have to withhold 1% which could cause operational issues?
- Further, “e-commerce participant” unable to provide PAN or Aadhar the operator is obliged to withhold at 5% instead of 1% (S.206AA)
- Provision also proposes that if a deduction is made under this section then no further deduction may be made in Chapter XVII-B

E. Widening of tax base

Large co-ops

- S.194A scope for tax deduction on interest enlarged to interest paid by large co-op society (R.50cr gross receipts, amount of interest more than 40k for non-senior payees)
- S.194K causing much strife!
 - TDS @ 10% on Mutual Fund income. Payee threshold limit mere Rs.5k
 - Govt says the move was initiated to keep treatment of MFs at par with bank FD where tax is already deducted at source, and will also curb under-reporting.
 - However provision is a dampener as it would leave less cash in the hands of investors?

E. Widening of Tax Base

TCS on LRS, overseas tour packages

- Tax collected at source (TCS) is the tax payable by a seller which he collects from the buyer at the time of sale – **S.206C**
- **5% TCS for remittances over Rs.7 lakhs under LRS and on payment to tour operators for foreign travel**
 - Banks who receive this amount from individual under IRS or from a seller of tour package shall debit a sum of 5% of remitted amount as income tax.
 - No PAN? 10% TCS
- **0.1% on sale of goods on consideration received from buyer in excess of Rs.50Lakhs!**
 - Applicable to sellers having >10cr turnover
 - No PAN? 1% TCS
- No TCS if buyer is liable to deduct and deducts TDS under any other provision, no TCS if buyer is Government.

E. Widening of Tax Base

TCS on LRS, overseas tour packages

- ***Points to ponder:***

- If the remittance is to the senders own account, then they can claim credit for the tax.
- However, if it is paid to an overseas tour operator or gift to a non-resident, remitter will NOT get tax credit as the recipient would not be filing returns in India if they do not have any presence.

F. Rationalization of provisions

MLI's grand entry!

- MLI: “Multilateral Instrument” is a multilateral treaty that enables jurisdictions to swiftly modify their bilateral tax treaties to implement measures designed to better address multinational tax avoidance. Part of OECD BEPS.
- Implementing tax treaty-related measures in a synchronised and efficient manner aimed at preventing treaty abuse, improve dispute resolution, preventing

F. Rationalization of provisions

MLI grand entry

- Minimum standards adopted by all OECD BEPS participants such as Principle Purpose test (LOB has also been widely adopted)
- Not treaty-by-treaty choices; MLI instrument is flexible and can be chosen to reflect country's policy preferences
- **Think everyone updating their tax treaties in a coordinated manner brokered by OECD!** Not an amending Protocol but along with treaties!
- 1 June 2019: 88 jurisdictions have signed the MLI, and 26 of those jurisdictions have deposited their instruments of ratification with OECD
- The same language as in preamble to MLI is proposed to be been **inserted into Section 90(1)(b)** so as to enable GoI to enter into treaties for avoidance of double taxation only covering such circumstances.

“Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating

F. Rationalization of provisions

MLI: Points to ponder

- Azadi Bachao Andolan: gone with the wind?
- Dichotomy between S.90(1)(a)(ii) and S.90(1)(b) ?
- Existing tax treaties not covered by MLI would need to be examined?
- S.90(1)(a) vs S.90(1)(b):
 - Tax relief articles now to fall under S.90(1)(b) as per whim of Ayakar Bhavan? Ex: sale of Indian shares to NR buyer under India-Netherlands treaty is a relief u/s 90(1)(a) or double taxation avoidance u/s.90(1)(b)!!

F. Rationalization of provisions

DDT

- S.115-O currently 15% additional income tax (DDT) in hands of domestic company. Exempt in hands of shareholders
- Introduced in 1997, discontinued in 2002, reintroduced in 2003
- Finance Bill 2020 does the following:
 - Sunsetting **S.115-O** and **S.10(34)** amendment specifying that the exemption thereunder, shall not apply to any income by way of dividend received on or after April 1, 2020. (Sunset of **S.115BBDA** too)
 - **S.56**: W.e.f this date, dividend income will be chargeable to tax as “income from other sources” under S.56 of the ITA.
 - Reintroducing 100% deduction in respect of inter-corporate dividends: Remember **S.80M**?! To provide dividends received deduction in respect of dividends received by one domestic company from another in computing total income of first company.
 - **S.115R** and **S.10(35)** amendments in respect of income distributed by mutual funds with SEBI – such income taxable in hands of unit holder w.e.f Apr1, 2020
 - **S.57** amended provide that: (i) for S.56, no deduction shall be allowed from dividend income other than deduction on account of interest expense and (ii) in any previous year such deduction shall

F. Rationalization of provisions

DDT

- DRD is available only where the first domestic company distributes dividends to its shareholders on or before one month prior to the due date of filing of return of income and is available to the extent of dividends received from the other domestic company.
 - Better than limited DRD under S.115-O(1A) which applied only to dividend received from an immediate “subsidiary”
 - Current S.115-O(1A) also restricted DRD to dividends received by the distributing company in the *same financial year* in which it itself received dividends from its subsidiary – No such restriction in proposed DRD!

F. Rationalization of provisions

DDT : Points to ponder

- S.115BBD corresponding amendment not made –
 - 15% tax on inbound dividends received by an Indian company from specified foreign subsidiary companies still taxable in hands of Indian company but without the benefit of set-off through a DRD
 - Creates unequal playing field between onshore and offshore holding structures with the problem of cascading effect of taxes continuing in latter structures –
- S.14A r.w Rule 8D – whither art thou?!
 - Dividend income (main component of exempt income, usually) taxable!

F. Rationalization of provisions

DDT: (More) Points to ponder

- **InvIT unit holders to be affected badly?**
- Private InvIT's now brought under ambit of S.115UA (tax regime of business trusts)
- Currently, no taxes on distribution of dividend income by the SPV to the business trust, and on subsequent distribution by the business trust to the unit holder.
- S.10(23FD) to now exclude dividend income received by a unit holder from a business trust from the exemption.
 - Implies dividend income becomes taxable in the hands of the unit holder. (Not taxed in hands of Business Trust)

F. Rationalization of provisions

DDT: (Even more) Points to ponder

- Closely held companies with substantial promoter shareholding may remain reluctant to increase dividend distribution, in light of the higher rate of tax applicable in the hands of domestic shareholders.
 - May incentivize some of those in higher tax brackets, to invest in mutual fund units over direct equity share participation
- Fillip to equity participation in Indian entities, particularly for shareholders residing in countries with which India has executed tax treaties, which typically cap the total tax chargeable by India for dividends well below the 20% tax applicable to non-residents under the Act.
 - But lower rates under tax treaties are usually restricted to a recipient being the 'beneficial owner' of the income received, the question of beneficial

F. Rationalization of provisions

Deferring SEP

- Significant Economic Presence (SEP) in S.9 **deferred** to April 2021 but the scope of income attributable to Indian operations which can be taxed in India has been clearly expanded especially in digital domain
- Following activities to be attributable to operations in India:
 - Sale of data collected from a person residing in India;
 - Sale of goods, services using data collected from a person residing in India;
 - Data collected from a person who uses internet protocol address located in India;
 - Sale of goods or services using data collected from a person who uses internet protocol address located in India.

F. Rationalization of provisions

SEP: Points to Ponder

- Further, the scope of SEP has been expanded to cover systematic and continuous soliciting of business activities or engaging in interaction with users in India through digital as well as any other means.
- “user”, “customer”, “person”
- “internet protocol address” – really going to track all IP’s ? VPN anyone?!
- “customer who resides in India”, “person who resides in India” ?

F. Rationalization of provisions

SEP: More Points to Ponder

- Data collected in India, revenue from operations in third jurisdiction, India wants a pie of that? How would this work. Complex triangular situations!
- Mere collection and storage of data does not necessarily mean that the data is being used or sold! How to convince Ayakar Bhavan ? ^
- Tracking data, ensuring compliance, proving usage of such data is COSTLY
- To note that these attribution rules apply to all business connection situations i.e., non-SEP too

F. Rationalization of provisions

Indirect transfer provisions

- Indirect transfer tax provisions provide that where there is a transfer of shares or interest of a foreign company or entity, whose value is derived substantially from assets located in India, income arising from such transfer can be brought within the Indian tax net. Some exemptions have been introduced from the applicability of indirect transfer provisions.
- Finance Act, 2017, introduced an explanation to Section 9 of the ITA, which exempted investments held in Category I and Category II FPIs registered under SEBI (Foreign Portfolio Investors) Regulations, 2014
- In 2019, SEBI repealed FPI Regulations 2014 and rationalized the categories of FPIs, with most sub-categories of Category I FPIs and Category II FPIs under the FPI Regulations 2014 being grouped together as Category I FPIs under the FPI Regulations 2019.

F. Rationalization of provisions

Indirect transfer provisions

- Finance Bill also proposes to grandfather the exemption with respect to investments held in Category I FPIs or Category II FPIs under the FPI Regulations 2014 prior to its repeal.
 - Good for Category II FPIs under the FPI Regulations 2014 which are NOT reclassified as Category I FPIs under the FPI Regulations 2019, such as Mauritius-based funds with Mauritius-based investment managers.
 - So investments made prior to the repeal of FPI Regulations 2014 should continue to be exempt but further investments made in such FPIs after such repeal, may be subject to tax u/S.9

F. Rationalization of provisions

Royalty

- Omit *“but not including consideration for the sale, distribution or exhibition of cinematographic films”* from S.9(1)
(vi) Explanation 2(v)

– *NVR Cinema vs ITO (ITA No.2125/Chny/2018) dated 14.2.2019*

→

F. Rationalization of provisions

Cost of acquisition

- S.55(2)(b) allows for computing CG option to take either fair market value or actual cost.
- Proviso to S.55(2)(b)(ii) to be added

*‘Provided that in case of a capital asset referred to in sub-clauses (i) and (ii), being land or building or both, **the fair market value** of such asset on the 1st day of April, 2001 for the purposes of the said sub-clauses shall not exceed the **stamp duty value**, wherever available, of such asset as on the 1st day of April, 2001.*

Explanation.—For the purposes of this proviso, “stamp duty value” means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of stamp duty in respect of an immovable property’

F. Rationalization of provisions

Trusts, Institution & Funds

- Existing trusts u/S.12AA, institutions u/S.10(23C) have to reapply for approval
- Charitable trusts and institutions having S.80G have to reapply also.
 - Order passed within 3 months and **valid for 5 years only!**
 - *“(vii) the application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.”*

F. Rationalization of provisions

Trusts, Institution & Funds

- New trusts u/S.12AA, institutions u/S.10(23C) have to apply for approval
 - First time fresh applicants will be given “**provisional registration**” of 3 years, no questions asked and even if activities not started. Given from AY from which registration is sought
 - Have to apply for full registration i.e. 5 years approval 6 months before expiry of provisional registration or within six months of start of activities, whichever is earlier.
 - Wording implies first time registrants will have to make application for approval early ie at least 1 month prior to commencement of FY from which exemption is required.

F. Rationalization of provisions

Trusts, Institution & Funds

- Renewal after expiry of 5 years to be applied for at least 6 months prior to expiry of registration.
 - PCIT will make necessary “enquiries” and pass orders within 6 months from end of month in which application is filed.
 - Applicable from the AY immediately following the FY in which application is made.

F. Rationalization of provisions

Trusts, Institution & Funds

- Simultaneous registration u/S12AA and S.10(23C), S.10(46) not possible anymore
 - Option to choose either one
- Due for ITR filing for such institutions extended to 31st Oct. from 30th Sept.
- Similar amendments are proposed in respect of institutions approved U/s. 35.

F. Rationalization of provisions

Trusts, Institution & Funds

- Deduction under section 80G/ 80GGA to a donor **shall be allowed only if a statement is furnished by the donee who shall be required to furnish a statement in respect of donations received** and in the event of failure to do so, fee and penalty shall be levied.
- Similar to section 80G of the Act, deduction of cash donation under section 80GGA shall be restricted to Rs 2,000/- only.

F. Rationalization of provisions

Tax Audit, S.285BB

- S.44AB: total sales or turnover or gross receipts limit increased to 5 crores from 1 crore where
 - Aggregate of cash receipts during PY does not exceed 5%
 - Aggregate of cash payments during PY does not exceed 5%
- Working/non-working partner of Firm due date distinction removed
- Due date of audited tax payers (S.44AB, 44ADA, 115JB etc) at 31st October with due date of tax audit now 1 month before i.e., 30th September.
- S.285BB inserted: Annual Information Statement to be uploaded to assessee portal by authority (S.203A A scrapped)

F. Rationalization of provisions

Mutual fund “side pocket” relief

- Investors in debt MF's whose investments in fixed income schemes can have been assigned to a '**side pocket**' - means they are segregated from the main portfolio due to the ratings downgrade of debt securities issued by crisis-hit entities such as DHFL and Vodafone Idea etc.
- Currently, units in the side pocket are considered created on the day the portfolio is segregated and not on the day the original investment was made. This means that investors would end up paying a higher STCG tax for the gains made during recovery. Finance Bill 2020 changes this.
- *“In the case of a capital asset, being a unit or units in a segregated portfolio referred to in sub-section (2AG) of section 49, there shall be included the period for which the original unit or units in the main portfolio were held by the assessee,”...*
“The cost of acquisition of a unit or units in the segregated portfolio shall be the amount which bears, to the cost of acquisition of a unit or units held by the assessee in the total portfolio, the same proportion as the net asset value of the

F. Rationalization of provisions

Verifying Rol, Authorized Rep.

- S.140(c), (cd) amended so as to enable any other person, as may be prescribed by the Board to verify return of income in case of company and a LLP
- S.288(2) amended to enable any other person, as may be prescribed by the Board, to appear as an authorized representative
 - Mainly for enabling Insolvency Professional to act as authorized representative.

G. Preventing Tax Abuse

Residency provisions

- Section 6(1) of the ITA provides that an individual qualifies as a resident in India in a previous year if he
 - (i) is in India during that year for a total of 182 days or more (“T1”); or
 - (ii) is in India during that year for 60 days or more and has been in India for a total of 365 days over the course of the 4-year period preceding that year (“T2”).
- Explanation 1 further clarifies that with regard to T2, where the taxpayer is an Indian citizen or PIO who was visiting India during the previous year, requirement of having to spend 60 days or more in the previous year shall be extended to 182 days.
 - extension of time was specifically provided to Indian citizens and PIOs to allow them to visit India

G. Preventing Tax Abuse

Residency provisions

- Govt feels many Indian citizens / PIOs have taken advantage of the extension of time to carry on substantial economic activities in India without qualifying as residents, so now extension of time limited from 182 days to 120 days.
- In other words, pursuant to T2, an Indian citizen or PIO will qualify as a tax resident of India if he is in India during that year for 120 days or more and has been in India for a total of 365 days over the course of the 4-year period preceding that year.
- *Points to ponder: 120 is an arbitrary choice!*

G. Preventing Tax Abuse

S.6(1A) – Hello, Brother Mark?

- S.6(1A): *“Notwithstanding anything contained in clause (1), 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”*
- **New section causing much controversy!**
- Would it imply that even if a person is not subject to tax, but is still within the scope of taxation in a foreign country or jurisdiction, or if a foreign country exempts its residents from taxation, India’s right under S.6(1A) would come into play?
- Remember ***In Re: Mohsinally Alimohammed ... vs Unknown (AAR)*** on 23.12.1994

G. Preventing Tax Abuse

Press Release

The Finance Bill, 2020 has proposed that an Indian citizen shall be deemed to be resident in India, if he is not liable to be taxed in any country or jurisdiction. This is an anti-abuse provision since it is noticed that some Indian citizens shift their stay in low or no tax jurisdiction to avoid payment of tax in India.

The new provision is not intended to include in tax net those Indian citizens who are bonafide workers in other countries. In some section of the media the new provision is being interpreted to create an impression that those Indians who are bonafide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India on the income that they have earned there. This interpretation is not correct.

In order to avoid any misinterpretation, it is clarified that in case of an Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession. Necessary clarification, if required, shall be incorporated in the relevant provision of the law.

G. Preventing Tax Abuse

RNOR test

- Resident but not Ordinarily Resident (“RNOR”) test streamlined if such individual has been a non-resident in India for 7 out of the 10 years preceding the relevant previous year. The same amendment has also been proposed with respect to HUFs as well.
 - S.6(6)(a) & (b) replaced; 729 day test removed
- Simpler test and makes it easier for an individual to qualify as an RNOR.

G. Preventing Tax Abuse

What is Work?

- S.194C Explanation (iv) defines work and sub-clause (e) to read:
 - *“manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a persona placed similarly in relation to such customer as is the person placed in relation to the assessee, under the provisions contained in clause (b) of sub-section (2) of section 40A”*

G. Preventing Tax Abuse

What is Work?

- S.194C Explanation (iv) defines work and sub-clause (e) currently reads:

“(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such 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.”

- Subject to lot of litigation:
 - CIT vs. Silver Oak Laboratories (SLP 18012/2009)
 - CIT vs. Reebok India (306 ITR 124 Delhi HC)
 - East India Hotels Ltd. Vs CBDT 320 ITR 526.

G. Preventing Tax Abuse

Penalty for fake invoices

- **S.271AAD** to be inserted : Several cases of fraudulent ITC claims have been caught by GST authorities. Issued by racketeers who do not actually carry on any business

“271AAD. (1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—

- (i) a false entry; or*
- (ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.*

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the

H. Revenue Mobilization

Employer's contribution cap

- Existing scheme:
 - contribution of employer to **recognized PF** exceeding 12% of salary is taxable
 - Contribution to **superannuation fund** by employer exceeding 1.5 lakhs treated as perquisite
 - Deduction under **NPS** of 10% salary by non-govt employer
 - No cap for purpose of deduction on amount of contribution made by employer
 - “giving undue benefits to employees earning high salary income” with the EEE regime for the 3 funds
- **Combined upper limit of Rs.7.5 lakhs** in respect of employers contribution in a year to NPS, superannuation and recognized PF and any excess contribution is taxable **u/S. 17(2)(vii)**
- Consequently annual accretion of interest, dividend or similar amount during previous year to the balance at credit of the fund may be treated as perquisite to extent it relates to employers contribution which is included in total income

H. Revenue Mobilization

Widening Commodity Transaction Tax

- FCRA -> SCRA
 - Forward Contracts Regulation Act, 1952 repealed in 2015
 - Forward Markets Commission (FMC) merged with SEBI
 - Now under Securities Contract Regulation Act, 1956
- Recognized association -> recognized stock exchange
- CTT on new commodity derivative products announced
- Definition of taxable commodities transactions in S.116(7) amended to include transactions of “sale of option in goods” and “sale of commodity derivatives based on prices or indices of prices of commodity derivatives”

I. Improving tax administration

E-everything!

- S.144: E-Best judgment assessment
- S.250(6A) : E-appeal
CIT(A) coming
 - e-CIT(A) and e-DRP are the same black box.
How do you know how many are sitting behind the computer?![^]
- S.274(2A): E-Penalty

I. Improving tax administration

DRP

- Any non-resident not being a company, or any foreign company
 - Expands scope of DRP
- “in the income or loss return” omitted
 - so it include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of section 144C.

I. Improving tax administration

ITAT stay – Pay 20%!

- S.254(2A) Proviso currently is: *Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order....*
 - “subject to condition that the assessee deposits not less than twenty per cent, of the amount of tax, interest, fee, penalty or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof” is inserted

I. Improving tax administration

ITAT stay – Pay 20%!

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I. Improving tax administration

ITAT stay – Pay 20%!

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

I. Improving tax administration

Vivaad se Vishwas

- Under proposed scheme, a taxpayer who pays the disputed taxes before March 31, 2020, would get complete waiver of interest and penalty.
- The scheme will remain open till June 30, 2020, and those who avail of it after March 31 will have to pay some additional amount (10%?)
- "In cases, where litigation is over interest and penalty, the matter could be settled by paying 25% of the amount by March 31 and 30% after the cut-off date." – source HT
- "Taxpayers in whose cases appeals are pending at any level can benefit from this scheme"
- If assessee pay's tax, would Dept appeals also abate? Compare to KVSS....details awaited :pray:

I. Improving tax administration

Taxpayer charter

Thanks!

vvikram@saprlaw.com

vvikram@gmail.com

Sources:

Google, Twitter, Moneycontrol, ET,

Nishith Desai

Tenor, Vadivelu!