# Finance Act 2020
# Major amendments

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| 1 | 4,105 | 6, 295 | Changes in Non Resident's Definition | 01/04/2020, AY 2021-22 |
| 2 | 13 | 17 | Taxation on Contribution to Funds | 01/04/2020, AY 2021-22 |
| 3 | 22,27,29 | 43CA, 50C, 56(2) | Stamp duty value vs. Actual Consideration | 01/04/2020, AY 2021-22 |
| 4 | 23 | 44AB | Tax Audit | FY 2019-20, AY 2020-21 |
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## 1. Changes in Non Resident's Definition

### 1. Relevant for

All NRI Individuals having any source of Income.

### 2. Legal Clauses/Sections

FAS-4,103
ITA-6, 295

### 3. Effective from

WEF 01/04/2020, AY 2021-22

The provisions are applicable from the FY 2020-21.

### 4. Amendment

Following amendments are made to reconstitute and redefine the NRI status for the purpose of tax.

i) COI/POI visiting India-

Presently an individual who is Person of Indian Origin (PIO) or Citizen of India (COI) but stays out of India and comes to India for a visit then the 60 days in the alternative condition of this section shall be read as 180 days. In other words such person shall not be treated as Resident in India (RI) unless he stayed in India for 180 days or more or more precisely it means that the alternative condition is not applicable to such person.

FB 2020 reduces the said period of 180 days to 120 days, thus now if such person stays in India for 120 days or more and also was in India for 365 days or more during preceding four previous years then such person shall be considered as Resident in India.

*However FB as passed restricted application of reduced period to such persons having total income (other than foreign income) more than 15 Lacs.*

ii) New Category, Deemed Resident added-

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.
Therefore in case of a COI who is not subject to income tax anywhere in world due to residential status then such person shall be deemed to be a Resident in India.

*<u>However FB as passed further amends to apply this provision to persons having total income (other than foreign income) more than Rs. 15 Lacs</u>*

iii)NOR-
Presently an individual is Not Ordinarily Resident (NRI) if he is Non Resident (NR) in 9 out of 10 preceding PY or has been in India for 730 days or less during 7 preceding PY. The condition is proposed to be relaxed and thus an individual shall now be considered as NOR if, he is NR in 7 out 10 preceding PY.

*<u>However FB as passed withdrawan above amendment to NOR status but added following two more situations where a person can be said to be NOR-</u>*
*<u>a) An Indian Citizen or a person of Indian origin whose total income (other than income from foreign sources) exceeds Rs. 15 lakhs during the previous year and who has been in India for a period of 120 days or more but less than 182 days;</u>*
*<u>b) An Indian Citizen who is deemed to be resident in India as per new Section 6(1A).</u>*

**5. Impact**
a) Presently there are broadly two circumstances under which an individual becomes Resident in India (RI)-
i) If he is in India for 180 days or more during a PY.
ii) If he is India for 60 days or during a PY and was in India for 365 days or more during preceding four PY, (180 days instead of 60 days except for COI and POI in certain circumstances).

After amendment there shall be fivesuchcircumstances-
i) If he is in India for 180 days or more during a PY.
ii) If he is India for 60 days or during a PY and was in India for 365 days or more during preceding four PY.(180 days instead of 60 days except for COI in certain circumstances).
iii) A COI/POI who lives outside and visits India for a period of 180 days or more during the PY and was in India for 365 days or more during preceding four PY, if his total Indian income is less than or equal to 15 Lacs.
iv) A COI/POI who lives outside and visits India for a period of 120 days (presently 180 days) or more during the PY and was in India for 365 days or more during preceding four PY, if his Indian total income exceeds Rs. 15 Lacs.
v) A COI who is nowhere resident irrespective of his stay in India, i.e. even if stayed for NIL days in a PY, if his Indian total income exceeds Rs. 15 Lacs.

b) Individuals becoming residents by virtue of above amendments shall be considered NOR.The relaxation is provided due to proposed amendments in residential status and to avoid litigation and undue hardships.

**6. Tax Impact**

i) The COI/POIsstaying abroad and having Indian total Income above Rs. 15 Lacs, presently can visit India for up to 180 days in a year, such days of visit are reduced and

hence either they have to offer global income to be taxed here or have to reduce their stay in India. No impact on such persons whose Indian total income is equal to or less than Rs. 15 Lacs and thus they can stay in India upto 180 day without making their global income liable to tax in India.
ii) The COI who is non-resident all over worldand having Indian total income above Rs. 15 Lacs shall be deemed to be resident in India irrespective of his stay in India and thus have to offer global income to be taxed here. This includes a case where he even does not stay in India for a single day. However in case of RNOR the income which accrue or arise outside shall be made taxable here if it is accrued from a business controlled or profession set up in India.

**7. Tax Planning**
i. Reduce number of days in India or manage in such a manner that 119 days fall in one year and balance period of stay in next year and thus total stay then may be more than 120 days but divided in two years.
ii. Leave Indian Citizenship.
iii. Maintain Indian income below Rs. 15 lakh.

**8. Reasoning for amendment**

i) Instances have come to notice where period of 182 days specified in respect of an Indian citizen or person of Indian origin visiting India during the year, is being misused. Individuals, who are actually carrying out substantial economic activities from India, manage their period of stay in India, so as to remain a non-resident in perpetuity and not be required to declare their global income in India.

ii) The issue of stateless persons has been bothering the tax world for quite some time. It is entirely possible for an individual to arrange his affairs in such a fashion that he is not liable to tax in any country or jurisdiction during a year. This arrangement is typically employed by high net worth individuals (HNWI) to avoid paying taxes to any country/ jurisdiction on income they earn. Tax laws should not encourage a situation where a person is not liable to tax in any country. The current rules governingtax residence make it possible for HNWIs and other individuals, who may be Indian citizen to not to be liable for tax anywhere in the world. Such a circumstance is certainly not desirable; particularly in the light of current development in the global tax environment where avenues for double non-taxation are being systematically closed.

**9. Comments and issues**
i) The yearly forex contributionto India by the NRI staying abroad is apprx 80 billion USD and these amendments will adversely affect such inflow because such NRIs will curtail their stay in India or manage in such a manner that though total stay may have more than 120 days but splitted in two years.
ii) The amendments will hurt the sentiments of such NRIs.
iii) It will be a tedious job on the part of Govt. and Dept to find such COIs who are not resident anywhere in world, to obtain details of his foreign income and then finally to assess them if they do not come forward to declare their income themselves.
iv) Flood of litigation will arise.
v) There may be confusion regarding the application of the first condition of NOR status i.e. non-resident in 9 out of 10 years or 730 days stay in 7 years on persons who are to

be considered resident by virtue of these amendments, that whether such condition applies or not.

The provisions of S. 6(6) starts with the phrase-

*A person is said to be "not ordinarily resident" in India in any previous year if such person is-*

*(a), or*

*(c), or*

*(d)*

The conditions (a), (b) or (c) are mutually exclusive and the phrase specifies that a person shall be NOR if he fulfills any of the condition, thus where a person fulfills any of the conditions he shall be considered NOR.

The individuals who are treated Residents in India by virtue of two amendments then they shall be permanently considered as NOR because of the inclusion clauses i.e. (c) and (d) in NOR status and thus no outside India income shall be taxable in India except as provided in proviso to Section 5(1)(c).

Here it is to be understood that business or profession referred in proviso to Section 5(1)(c) may not necessarily be so controlled or set up by assesse himself.

Further where such income as referred to in proviso to Section 5(1)(c) is taxable, the taxability shall be subject to the applicable DTAA or Section 91 as the case may be.

vi) Further there shall be dispute to the determination of Rs. 15 lakh threshold, whether such threshold amount includes the income from profession or business referred to in proviso to Section 5(1)(c).

## 2. Taxation on Contribution to Funds

### 1. Relevant for

Salaried Assesses

### 2. Legal Clauses/Sections

FAS 13,
ITA 17(2)(vii)

### 3. Effective from

WEF 01/04/2020, AY 2021-22

The amendment provisions are applicable from the FY 2020-21.

### 4. Amendment

Presently contribution made by the employer in excess of Rs. 1.5 lac in superannuation fund (SF) is taxable.

It is proposed to-
i) raise the threshold limit from 1.5 lac to 7.5 lac, and
ii) Apart from superannuation fund employer contribution to Provident fund (PF) and National Pension Scheme (NPF)are also included.
iii) The raised limit of Rs. 7.5 lac is overall and combined limit for all the three contributions.
iv) To tax annual accretion to PF, SF and NPS in r/o of taxed amount under proposed amount.

### 5. Tax Impact

i)Presently, any contribution by an employer to PF is taxable in the hands of employee if such contribution exceeds 12% of salary therefore contribution below this shall be exemptwhatever the amount be and thus there is no taxation if contribution remains within specified 12% irrespective of the amount contributed.
Theproposed amendment provides the monetary limit of exemption in respect of employer contribution to PF to Rs. 7.5 Lacs p.a. Thus where the employer contribution to PF is though below 12% but exceeds Rs. 7.5 Lac together with other two contributions, then such excess shall be taxable in hands of employee.
ii) Presently, the whole of employer contribution in NPS is included in income u/s 17(1) but employee gets deduction u/s 80CCD(2) upto 14% (Govt. Employees) or 10% (Other Employees) of his salary as the case may be. Amendment proposed to include this also u/s 17(2)(vii), and thus made taxable if it exceeds Rs. 7,50,000/- together withother two contributions.

iii) Thus where an employee has no PF and NPF but has SF he may gain as exemption limit is increased to 7.5. Lacs, however rule 87 and 88 restricts the employer contribution to SF to 27% (after reducing employer contribution to PF) of salary.
iv) How the taxable interest or accretion to PF, SF or NPS shall be determined is not clear.

**6. Tax Planning**

i) An employee presently gets the following benefits-

a. Exempted Rs. 150000 employer contribution to SF u/s 17(2)(vii),
b. Exempted employer contribution upto NPF 14% or 10% of salary as the case may be,
c. Exempted employer contribution to PF upto 12% of salary.
Thus presently the monetary limit is in regard to SF only and the rest of the amounts are unlimited.

However, the amendment restricts the overall exemption of all the above three to Rs. 7,50,000/- alongwith the specific limits i.e. 12% in case of PF and 14% or 10% limit in case of NPF.
Thussuch employees may get benefited who does not have PF contribution by getting employer contribution raised to avail the raised exempted amount or otherwise also may shift part of their salary to SF through employer contribution and avail the higher exemption to save tax.

**7. Reasoning for amendment**

Under the existing provisions of the Act, the contribution by the employer to the account of an employee in a recognized provident fund exceeding twelve per cent. of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding one lakh fifty thousand rupees is treated as perquisite in the hands of the employee. Similarly, the assessee is allowed a deduction under National Pension Scheme (NPS) for the fourteen per cent. of the salary contributed by the Central Government and ten per cent. of the salary contributed by any other employer. However, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer. This is giving undue benefit to employees earning high salary income. While an employee with low salary income is not able to let employer contribute a large part of his salary to all these three funds, employees with high salary income are able to design their salary package in a manner where a large part of their salary is paid by the employer in these three funds. Thus, this portion of salary does not suffer taxation at any point of time, since Exempt-Exempt-Exempt (EEE) regime is followed for these three funds. Thus, not having a combined upper cap is iniquitous and hence, not desirable.

**8. Comments and issues**

i) In many cases salary packages would have to re-designed to avail the benefit of higher threshold limit.
ii) How the taxable interest or accretion to PF, SF or NPS shall be determined is not clear.

## 3. Stamp duty value vs. Actual Consideration

### 1. Relevant for

All assesses having real estate selling business, capital gain on sale of immovable property and buyers of immovable property

### 2. Legal Clauses/Sections

FAS-22,27,29
ITA-43CA, 50C, 56(2)(x)

### 3. Effective from

WEF- 01/04/2020, AY 2021-22

### 4. Amendment

Presently when the stamp duty value (SDV) is more than the 105% of actual sale consideration (ASC) of an immovable property then the SDV shall be deemed to the sale consideration and accordingly profit (PGBP) or gain (Capital Gain) is taxed in the hands of seller. The buyer is also taxed by considering this GAP as his deemed income.

Amendment proposed to increase such non- income GAP or safe harbor from 5% to 10%.

### 5. Tax Impact

It shall bring further relief to the buyer and seller as where the SDV is upto 110% of the ASC the ASC shall be the sale consideration and thus no tax shall be payable on deemed sale consideration.

### 6. Tax Planning

To keep the ASC in such a manner that SDV shall not exceed 110% of ASC otherwise whole of the SDV shall be considered as sale consideration and tax on deemed sale value shall be payable by both, the seller and buyer.

### 7. Reasoning

Representations have been received in this regard requesting that the said safe harbour of five per cent may be increased. It is, therefore, proposed to increase the limit to ten per cent..

### 8. Comments and Issue

NIL

# 4. Tax Audit

## 1. Relevant for

All assesse having business income

## 2. Legal Clauses/Sections

FBC-23
ITA-44AB

## 3. Effective from

WEF –FY 2019-20, AY 2020-21

Since the amendment provisions are applicable form FY 2019-20 thus audit for FY 2019-20 shall be done in accordance with these amended provisions.

## 4. Amendment

a) Threshold Limit-
Presently the threshold limit for tax audit is Rs. 1 cr. Thus where turnover exceeds Rs. 1cr tax audit is mandatory however subject to provisions of section 44AD.

Amendment proposed to increase the said 1cr. limit to 5cr. if the following two conditions are satisfied-
i) The amount received in cash does not exceed the 5% of total amount received, and
ii) The amount paid in cash does not exceed the 5% of total amount paid.

Here Total amount received or paid includes all types of amount received or paid whether capital or revenue.
Both the above conditions are required to be fulfilled, if any of the condition fails then this relaxation is not available.

b) Filing of TAR-
Presently TAR is to obtained and filed on or before the due date of filing of ITR, it is proposed to reduce this time and thus now TAR is required to be obtained and filed on or before one month prior to due date of filing of ITR i.e. by 30$^{th}$ September.

## 5. Impact

I. Turnover based impact-
The proposed amendment has to be analyzed reading with provisions of Section 44AD as applicable to different categories of assesses.

a) For assesses other than Individual, HUF, and Firm/LLP:-
Such assesses are not eligible to avail the provisions of section 44AD and thus are covered only under the provisions of section 44AB.
Presently section 44AB mandates audit of such assesses if their turnover exceeds Rs. 1cr and if the turnover falls below Rs. 1 cr then profit can be declared on the books maintained without any tax audit.
Amendment further increases the threshold limit from 1 cr, to 5 cr. if the above conditions are fulfilled. Thus in case of a Company if the turnover is Rs. 4 cr. and cash transaction upto 5% is entered as required above then taxable profit can declared on the basis of non tax audit books.It is worth to note that in case of Company however audit is required under Companies Act 2013, still it provides relief from a second audit and to prepare and submit Form 3CD.

b) For assesses being Individual, HUF, and Firm/LLP:-
Such assesses are eligible to avail the provisions of section 44AD and thus are covered by the provisions of section 44AB subject to provisions of section 44AD.

These assesse are further sub divided into followings to understand the applicability-

i) Assessee having turnover below or upto Rs. 1 cr.-
Such assesse either have to audit his books u/s 44AD or to declare profit minimum at 6% of cash and 8% of non cash sale. The proposed relaxation u/s 44AB shall not be available due to the mandatory provisions of 44AD.

ii) Assessee having turnover above Rs. 1 cr. upto 2 Cr.-
Such assesse either have to audit his books u/s 44AD or to declare profit minimum at 6% of cash and 8% of non cash sale. The proposed relaxation u/s 44AB shall not be available due to the mandatory provisions of 44AD.

iii) Assessee having turnover above Rs. 2 cr. but below Rs. 5 Cr-
Such assesse are not covered by the provisions of Section 44AD but are eligible for the proposed relaxed provisions of Section 44AB and thus if they fulfill the cash transaction limit of 5% then they can declare taxable profit without getting accounts audited under Income Tax Act. If they fail to fulfill the said condition then they are mandatorily required to get their accounts audited.

iv) Assessee having turnover above Rs. 5 Cr.-
Such assesses are essentially and mandatorily required to get their books audited u/s 44AB.

II. Pre-filled ITR
Since one of the reason behind the proposed filing of TAR one month prior to ITR is to enable the pre-filled ITR. It seems the adjustments based upon TAR shall also be given effect in such pre-filled ITR, thus adjustment of disallowance u/s 143(1)(a)may be intimated in advance.

## 6. Tax Planning

The tax audit can be avoided in a few cases.

## 7. Reasoning

In order to reduce compliance burden on small and medium enterprises, it is proposed to increase the threshold limit for a person carrying on business from one crore rupees to five crore rupees in cases where,-

(i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and

(ii) (ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

Further, to enable pre-filling of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assessees at least one month prior to the due date of filing of return of income.

## 8. Comments and Issue

Received and paid not defined hence ambiguous, however fit to cash system of accounting.

## 5. FMV of immovable property

### 1. Relevant for

All assesses having immovable property in the nature of capital asset owned before 01/04/200.

### 2. Legal Clauses/Sections

FAS-28
ITA-55

### 3. Effective from

WEF 01/04/2020 AY 2021-22

The amendment is applicable on capital gain arising on sale of such properties executed on or after 01/04/2020.

### 4. Amendment

Presently when any immovable property was acquired before 01/04/2001 and is sold the cost of acquisition is to be taken at higher of original cost or FMV as on 01/04/2001. Such FMV is determined either by market estimate or by registered valuers applying recognised methods. However there is no upper bar to the FMV so determined.
Amendment proposed to put limitation on the FMV so determined, thus where the FMV is more than the stamp duty value (SDV) as on 01/04/2001, if available and applicable then, then the FMV shall be the amount of SDV.

### 5. Tax Impact

Since FMV is restricted to the amount of SDV the taxable LTCG shall be derived at a higher amount which will end up with higher capital gain tax. In other words the deemed cost of acquisition shall be lower of FMV or SDV and since SDV being lower than FMV is considered as deemed cost of acquisition it shall result into higher tax.

### 6. Tax Planning

NIL

### 7. Reasoning

It is proposed to rationalise the provision to provide that in case of a capital asset, being land or building or both, the fair market value of such an asset on 1st April, 2001 shall not exceed the stamp duty value of such asset as on 1st April, 2001 where such stamp duty value is available. It is also proposed to insert an Explanation so as to provide "stamp duty value" shall mean the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

## 8. Comment and Issue

Presently the assesse needs to obtain the FMV and now alongwith FMV he needs to obtain the SDV also as on 01/04/2001, if applicable then. This will lead to do an extra exercise.
Further no mechanism is provided to claim higher FMV in comparison to SDV in any case, thus SDV shall be the upper cap for the cost of acquisition in all cases.
However on the crucial date i.e. 01/04/2001 the circle rates were applicable in a few districts in India, thus it may not much effect the present situation of tax liability in most of the cases.

e.g.
The circle rates were first introduced and notified under the provisions of the Delhi Stamp (Prevention of Undervaluation of Instruments) Rules, 2007 on July 18, 2007in Delhi, dividing the capital into eight categories and since before that no circle rates were applicable in Delhi the amendment shall not affect the capital gain arised on such sale of such capital assets in Delhi.

## 6.Dividends& Mutual Fund income

**1. Relevant for**

All assesses having dividend income from shares and income distributed by mutual funds.

**2. Legal Clauses/Sections**
FAS-7, 30, 59, 60
ITA-10(34),10(35), 57, 115O,115R

**3. Effective from**
WEF- 01/04/2020, AY 2021-22

Thus any dividend or MF income declared and received on or after 01/04/2020 shall be taxable in the hands of receiver.

**4. Amendment**

i) Presently dividend from shares and income from MF(except income from sale of units) are exempt in hands of shareholder/unit-holderinstead company or MF pays tax on distribution of such income, it is now proposed to reverse the system i.e. adopting the classical system of taxing such income and thus such incomes shall be now taxable in the hands of shareholder or unit holder.

ii) Since dividend and MF incomes were exempt in the hands of receiver no effective deduction u/s 57 in regard to expenses incurred to earn such income was provided. Now since it is proposed to tax such income therefore a deduction of interest ('Only') expense incurred to earn such income is provided that too upto 20% of dividend and MF income. No other deductiontowards any expenses of any nature is allowed.

*FB as passed has further amended the Section 10(34) to provide that dividend received on or after 01/04/2020 but declared on or before 31/03/2020 shall remain exempt as it attracted DDT and thus shall not be re-taxed.*

**5. Procedural Impact**

i. Companies/MF will not be required to pay DDT/IDT any more.
ii. Share/Unit holder shall declare such income and pay tax according to slab applicable.
iii. Companies/MF to deduct TDS on distribution of such income.
iv. Share/Unit holder to pay advance tax on income estimated after considering such incomes.

**6. Tax Impact**

The assesses who are subject to tax rate higher than DDT/MFI tax rate shall end up paying higher taxes. It will adversely impact the sentiments of large investors and the promoters of companies. They are already burdened with higher surcharge if dividend exceeds Rs. 10 lacs in their hand.

However those who are subject to tax at lower rates or whose income is below maximum exempted amount may end up paying less tax or no tax and having more income remained at their hand provided Company outlay equal of gross dividend and does not hold the saved DDT in its own hand.

**7. Tax Planning**

i. Since no deduction other than interest expense that too upto 20% of such income is allowable u/s 57, it is better to declare such income as business Income to claim expenses and convert share and units into stock in trade, so that deduction of all normal business expenses can be availed.

ii. Distribute Dividend before 31/03/2020 to avail lower taxation of DDT in applicable cases.

iii. Transfer share/MF to such family members who attract lower slab rate, if Capital gain tax is NIL or negligible.

iv. Buy back of shares- Companies are required to pay tax @ 20% on differential amount (Amount paid for buy back *minus*Amount received on issue). The said differential income is capital gain income or business income in the hands of shareholder which is exempt u/s 10(34A) and thus where the promoters are taxed at higher rate of tax instead of distributing dividend this route can be adopted.

v. In this case of MF instead distributing income the reinvestment option should be exercises and unit holder may sell the new units if wishes so as the capital gain on sale of such new units may be taxed at lower rate than normal tax rate depending upon facts.

vi. To sell the equity before the record date where material amount of dividend is expected, pay lower tax on capital gains and re-purchase the equity after the record date

**8. Reasoning**

The incidence of tax is, thus, on the payer company/Mutual Fund and not on the recipient, where it should normally be. The dividend is income in the hands of the shareholders and not in the hands of the company. The incidence of the tax should therefore, be on the recipient.

Moreover, the present provisions levy tax at a flat rate on the distributed profits, across the board irrespective of the marginal rate at which the recipient is otherwise taxed. The provisions are hence, considered, iniquitous and regressive. The present system of taxation of dividend in the hands of company/ mutual funds was reintroduced by the Finance Act, 2003 (with effect from the assessment year 2004-05) since it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself.

## 9. Comments and Issues

i. The restricted allowances of expenditure incurred to earn such income shall be subject to heavy litigations and it is illogical too.

ii. Foreign promoters and investors will at advantageous stage where they are liable to pay tax on dividends at lower rates according to applicable DTAAs.

# 7. Redistribution of Dividend

## 1. Relevant for

All shareholders and Companies having dividend income and dividend distribution.

## 2. Legal Clauses/Sections

FAS-40
ITA-80M (Revived)

## 3. Effective from

WEF 01/04/2020 AY 2021-22

Thus the amendment is applicable from 01/04/2020.

## 4. Amendment

Presently a company has to pay tax on dividend distributed even if such dividend is distributed out of its own dividend income, except where such dividend is received from domestic subsidiary company.

Now, it is proposed to provide a deduction to a domestic company in respect of dividend income received from other domestic company provided if first company also distributes dividend. The deduction shall be the dividend received or distributed whichever is less. Further such distribution shall be required to be made on or before one month prior to due date of furnishing ITR.

*FB as passed has extended the scope and included deduction to dividend received from foreign companies and business trust.*
*FB as passed further provides that deduction for inter-corporate dividend shall also be available to companies who opted for taxation u/s 115BAB or 115BAC,*

## 5. Tax Impact

The above provision avoids the double taxation or cascading effect firstly in the hand of first company and then in hands of shareholders of such company. Thus where a Company which receives dividend income from another company shall get a deduction if such dividend income is further distributed to its shareholders by first company, in crux the shareholder of first company shall be liable to pay tax.

## 6. Tax Planning

NIL

## 7. Reasoning

Revived section 80M as it existed before its removal by the Finance Act, 2003 to remove the cascading affect, with a change that set off will be allowed only for dividend distributed by the company one month prior to the due date of filing of return, in place of due date of filing return earlier.

## 8. Comment and Issues

i) It is not clear that whether both the dividend received and paid has to happen in the same year or dividend received in any earlier year which was not distributed till the year of distribution can be deducted.
ii) if answer to above is yes, then what will happen to dividend received during DDT era which is now being distributed, can deduction be claimed?

## 8. Alternate tax slab rates

### 1. Relevant for

All individuals and HUF assessee.

### 2. Legal Clauses/Sections

FAS- 53
ITA-115BAC (Insertion)

### 3. Effective from

WEF 01/04/2020, AY 2021-22

Thus the option under this section can be exercised for the FY 2020-21 onwards.

### 4. Amendment

This section provides alternate method to compute total income and tax by applying alternate tax slab rates in case of an individual or HUF.

i. Alternate total income computation-
This section provides total taxable income shall be computed without availing various following deductions/exemptions/Set off-

| Section | Exemption/Deduction/Set off |
|---|---|
| 10(5) | Leave Travel Concession |
| 10(13A) | House Rent Allowance |
| 10(14) | Other Perquisites |
| 10(17) | MP allowances |
| 10(32) | Minor child Income of Rs. 1500 p.a. |
| 10AA | New unit in SEZ |
| 16 | Salary Standard Deduction |
| 24(b) | Interest on loan of Self occupied house property |
| 32(1)(iia) | Additional Depreciation on new Plant & Machinery |
| 32AD | Investment in Backward Area |
| 33AB | Tea Development Account |
| 33ABA | Site Restoration Fund |
| 35 | Scientific Research |
| 35AD | Preliminary Capital Expenditure |
| 35CCC | Agriculture Extension Project |
| 57(iia) | Family Pension |
| Chapter VI-A | 80C, 80CCD, 80D, 80G,80TTA and all others except 80CCD(2) and 80JJAA |
| Set off | Of carry forward loss or depreciation of any earlier AY, if such loss or |

| | |
|---|---|
| | depreciation is attributable to any of the above deduction |
| Set off | Of current year loss from house property |
| Other | Any other exemption or deduction for allowance or perquisites provided under any other law |

However normal depreciation, determined in the manner as may be prescribed, may be claimed. Thus for the purpose of this section depreciation shall be calculated in a different method which shall be prescribed separately.

Further where there is unabsorbed depreciation b/f from earlier years and option is exercised under this section then the WDV of particular block shall be increased by the amount of unabsorbed depreciation in the manner prescribed.

Other Conditions-
a. The c/f loss or depreciation referred above shall be deemed to be exhausted and cannot be claimed in any subsequentAY.
b. The above alternative method of total income and tax slab rates are optional and not mandatory.
c. To choose, the option must be exercised on or before the due date of ITR if there is business income or alongwith ITR if there is no business income. Thus for non-business incomes option can be exercised even after the due but at the time of filing of ITR.
d. For Business incomes, option once exercised shall be automatically applicable for subsequent AY and thus no need for exercising option every year, whereas for non-business income the option has to be exercised every year.
e. For Business incomes option so exercised in one year can be withdrawn in any subsequent year and thereafter there will a bar to re-entry into this scheme. However after being opted out if there is no business income in any subsequent AY then option again can be exercised for non-business income category.
f. If conditions are not complied with then option shall become invalid and normal provision will apply.

ii. Alternate Slab Rates are-

| Total Income | Rate |
|---|---|
| UptoRs. 2.5 Lakh | NIL |
| Above Rs. 2.5 to Rs. 5 Lakh | 5% |
| Above Rs. 5 Lakh to Rs. 7.5 Lakh | 10% |
| Above Rs. 7.5 Lakh to Rs. 10 Lakh | 15% |
| Above 10 Lakh to Rs. 12.5 Lakh | 20% |
| Above 12.5 Lakh to Rs. 15 Lakh | 25% |
| Above 15 Lakh | 30% |

*FB as passed has included professional income at par with business income and thus only one time option is available to that income too.*

### 5. Tax Impact

This alternate tax system may be beneficial for a few number of cases and not to a large number of assesse, thus most of the assesse may continue to pay tax under the regular system and not under this system. This can be understood with the following example-

The tax saving under this system on an income of Rs. 15 Lac is Rs. 78000/-, considering no deduction. Now if such an assesse has Rs. 50000/- salary standard deduction, Rs. 150000/- 80C deduction, Rs. 200000/- house loan interest and Rs. 25000 mediclaim deduction the total deduction shall amount to Rs. 425000/- and the tax saved on this will amount to Rs. 1,27,500 which will be much higher than tax saving under the proposed alternative mode.

However NRI individuals may be benefited because many of them may not be having such deductions in India.

### 6. Tax Planning

Every year has to evaluate the tax liability under both the methods to ascertain which one is beneficial.

### 7. Reasoning

In line with options provided to domestic companies under the TLAA and proposed to be provided to resident co-operative societies under this Bill, it is also proposed to provide similar option to individual and HUF by insertion of section 115BAC in the Act,

### 8. Comments and Issues

NIL

### 9. Clarification

Circular dated 13/04/2020 issued to clarify that in case of TDS to be deducted by employer the employee may intimate his intention to opting the provision of this section before deduction of TDS and employer accordingly shall deduct the TDS. However Employee may not opt the provision while filing the ITR.

## 9. MAT Report

**1. Relevant for**
Company, Firm/LLP

**2. Legal Clauses/Sections**
FAS-56,57
ITA-115JB/JC

**3. Effective from**

WEF- FY 2019-20, AY 2020-21

Thus MAT report for the FY 2019-20 is to be filed on or before 30th September

**4. Amendment**

Presently MAT reportcan be furnished alongwith the ITR, now it is proposed that it must be filed one month prior to due date of ITR.

**5. Reasoning**

To enable pre-filling of returns in case of persons having income from business or profession, it is required that the tax audit report may be furnished by the said assessees at least one month prior to the due date of filing of return of income.

**6. Comments and Issue**

From FY 2019-20 there are some changes which have been made in compliances related to ITR, Audit report and MAT certificate. The ITR filing date is extended to 31st October and TAR and related certificates are now required to be filed on or before 30th September which is also the time barring date for regular assessments under Income Tax Act, compelling professionals to re-schedule their work plan according to this.

## 10. Tax Payer Charter

### 1. Relevant for

All

### 2. Effective from

Yet to be notified

### 3. Legal Clauses/Sections

FAS-64
ITA-119A (Insertion)

### 4. Amendment

Board shall make a tax payer charter and issue the instructions, guidelines, orders and directions to income tax authorities.

### 5. Comments

The charter is to be made and issued by CBDT and not by Govt. so it may have some bureaucracy touch. Further it has already a charter in existence and thus it is to be seen how the new charter will be different from the existing one and how effectively it will be implemented.

## 11. Survey

### 1. Relevant for

All

### 2. Legal Clauses/Sections

FBC- 65
ITA-133A

### 3. Effective from

WEF- 01/04/2020

Thus any survey conducted on or after 01/04/2020 shall be in accordance with the amended provision.

### 4. Amendment

Though an Income tax authority (ITA) includes Inspector, TRO, ITO, ACIT, ADIT, DCIT, DDIT, JCIT, JDIT, Add.CIT, Add.DIT, Add. CIT(Appeals), DIT, CIT, CIT(Apeals), PDIT, PCIT, DGIT,CCIT, PDGIT, PCCIT, But for this section it does not include CIT (Appeals), Add. CIT (Appeals), DGIT, CCIT, PDGIT, PCCIT.

Section 133A(1) empowers every above ITA to exercise survey powers provided therein. However an ITA being ADIT,DDIT,AO (ACIT, DCIT, ITO, Add.CIT, Add.DIT),TRO or inspector can do survey only after obtaining approval of JDIT or JCIT. (Since approval of JDIT or JCIT is required the same authority is excluded from AO for this purpose.)Thus a survey can be conducted by other higher authorities on their own motion.

Amendment is proposed to stringent more the approval mechanism to survey as under-
i. Where the survey is required to be done on the basis of information received from ‘specified authority’ then no authority below the rank of JDIT or JCIT shall conduct survey without approval of JDIT or JCIT.

ii. In other cases no action shall be taken without approval by DIT or CIT.

### 5. Reasoning

Under the existing provisions of section 133A of the Act, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction. To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso to sub-section (6) in the said section was inserted to provide that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be. It is proposed to substitute the proviso to sub-section (6) of section 133A to provide more check on use of such powers.

## 6. Comments

The step is a welcome step as any survey without any information cannot be conducted unless approved by more higher authority i.e. CIT or DIT.

However the ‘specified authority’ and the ‘information’ are not specified yet and if the ‘information’ is not amply and precisely defined then any action of survey on any bit of information may be litigated.

## 12. ITR Filing Date

**1. Relevant for**

All

**3. Legal Clauses/Sections**
Fas-66
ITA-139

**4. Effective from**
WEF- FY 2019-20, AY 2020-21

Thus ITR for FY 2019-20 shall be filed by the due date as prescribed under this amendment.

**5. Amendment**

i. Presently only 'working' partner is eligible to file ITR on or before date applicable for audit returns, now 'all' partner are given the benefit.
ii. The due date for audit returns is now $31^{st}$ Oct, presently which is $30^{th}$ Sept.

**6. Reasoning**

To enable pre-filled filing of ITR the due date is kept one month after the date filing of TAR and related certificates.

**7. Comments and Issue**

The TAR and other related certificates are now required to be filed on or before the $30^{th}$ day of September i.e. one month prior to due date of ITR to enable the pre-filled ITR forms for the convenience of the assesse.

This may also lead to disallowance raised in 3CD will to be reflected as pre-filled in ITR form i.e. advance intimation.

## 13. ITR to be Signed

**1. Relevant for**

Company, firm and LLP

**2. Legal Clauses/Sections**
FAS-67
ITA-140

**3. Effective from**

WEF-FY 2019-20, AY 2020-21

Thus ITR for FY 2019-20 can be signed with amended provision.

**4. Amendment**
Apart from directors/partner etc. any other authorized person can also sign and verify the ITR in case of a Company and Firm/LLP.

**5. Reasoning**
Section 140 of the Act provides that in case of company the return is required to be verified by the managing director (MD) thereof. Where the MD is not able to verify for any unavoidable reason or where there is no MD, any director of the company can verify the return. It is also provided that in case of a company in whose case application for insolvency resolution process has been admitted by the Adjudicating Authority (AA) under the Insolvency and Bankruptcy Code, 2016 (IBC), the return has to be verified by the insolvency professional appointed by such AA. Similarly, in case of a limited liability partnership (LLP), the return has to be verified by the designated partner of the LLP or by any partner, in case there is no such designated partner.
Therefore, it is proposed to amend clause (c) and (cd) of section 140 of the Act so as to enable any other person, as may be prescribed by the Board to verify the return of income in the cases of a company and a limited liability partnership.

## 14. TDS on Dividend

### 1. Relevant for

Person having dividend income and Company declaring dividend

### 2. Legal Clauses/Sections

FAS-74
ITA-194

### 3. Effective from

WEF-01/04/2020

Thus TDS shall be deducted on any dividend declared on or after 01/04/2020.

### 4. Amendment

Since Dividend exemption in the hand of shareholder is withdrawn, TDS on dividend is required, thus-

i. TDS on dividend is provided @ 10% of Dividend declared
ii. No TDS if dividend is paid if it does not exceed Rs. 5000/- in aggregate for a financial year.

### 5. Impact

Dividend shall be received by the shareholder net of TDS and the said TDS shall either be adjusted against tax liability or refunded as the case may be.

### 6. Tax Planning

NIL

### 7. Reasoning

Since Dividend tax mechanism is changed as now Dividend is taxable in the hands of shareholder and Company is not required to pay any DDT, thus in order to trace the Dividend declared and to make it liable to be taxed the TDS is provided.

### 8. Comments and Issue

Presently since dividend is exempt in the hands of shareholder therefore where no ITR is filed by such shareholder and if he does not have any other suspected taxable income or does not enter the reportable transaction he is not called for any information on his income or not noticed to file his ITR.
However such assesse, since TDS is deducted on such income,may face notices to file ITR if he failed to file ITR himself.

## 15.TDS on Interest other than interest on securities

**1. Relevant for**

Individual, HUF and Co-op. Societies, notified person

**2. Legal Clauses/Sections**
FBC-75
ITA-194A

**3. Effective from**
WEF-01/04/2020

Thus any interest paid/credited on or after 01/04/2020 shall be subject to amended provisions.

**4. Amendment**

i. Towards Individual and HUF-
Presently provisions of this section applies to an Individual or HUF if their turnover exceeds monetary limit prescribed u/s 44AB i.e. Rs. 1 cr for business and 50 lac for profession during the previous financial year.

However in eligible cases since threshold turnover for tax audit u/s 44AB is proposed to increase to Rs. 5 Cr. in case of a business, the reference to monetary limit u/s 44AB is removed and monetary limit is now prescribed in the body of section itself.

Thus section 194A itself now provides that where the turnover in previous financial year exceeds Rs. 1 Cr. in case of business and Rs. 50 lac in case of profession then individual or HUF shall be liable to deduct tax under this section whether or not tax audit is required or done.

ii. Towards Co-op Society-
2. A Co-op society is presently does not required to deduct TDS except on interest on time deposits paid to non-members, thus it is proposed to deduct TDS by a Co-op Society if-
a. The T/o of Co-op Society exceeds Rs. 50 Cr. in previous FY, and
b. Interest payable exceeds Rs. 40k(Other person)/50K(senior citizen).

iii. Notified institutions etc.
Presently Govt. notifies institutions etc. on which no TDS is required be deducted on interest paid to them.
Now, no notification in this regard shall be issued on or after 01/04/2020, thus those already notified shall remain to be exempted.

iv. Power to notify for no TDS or TDS at lower rate
FB as passed includes that Govt may notify such person or class of person where either no TDS or Lower rate is required to deducted on interest paid to such person or class of person.

**5. Impact**

i. Individual/HUF shall continue to be liable to deduct TDS if their t/o increases 1 cr or 50 Lacs as the case may in the previous financial year even if such individual or HUF is not required to tax audit due to enhancement of turnover to Rs. 5 Cr.
Thus Individual/HUF whose t/o during FY 2019-20 exceeds 1 cr or 50 lac as the case may be he/it will be required to deduct TDS.

ii. The Co-op. Societies shall be required to deduct TDS on interest paid above the threshold limit if their turnover exceeds Rs. 50 Cr. in FY 2019-20.

iii. Earlier only institution, association or bodies may be notified for receiving interest without TDS but now any person or class of person may be notified as such.

**6. Tax Planning**

NIL

**7. Reasoning**

i. Since the auditable turnover is increased in certain circumstances u/s 44AB the amendment is made in order to make individual or HUF continue to liable to deduct TDS as before.
ii. In regard to co-op societies to extend the scopeof this section.

**8. Comments and Issue**

NIL

## 16. TDS on Contractual payments

### 1. Relevant for

All

### 2. Legal Clauses/Sections

FAS-76
ITA-194C

### 3. Effective from

WEF-01/04/2020
Thus TDS on covered expenses incurred on or after 01/04/2020 shall be deducted in accordance with this amendment.

### 4. Amendment

i)Amendment akin to amendment made in section 194A in r/o of TDS on payments to be deducted by Individual/HUF.

ii)The scope of meaning of ‘work’ does not include and thus TDS not attracted where product is manufactured according to the specification of customer with the material purchased from third parties or in other words ‘work’ includes where such product manufactured out of the material purchased from ordering customer and thus TDS is attracted. The parties take advantage of this escape route by purchasing material through related parties of the customer. To stop thisabuse now material purchased from person associatesin a manner provided u/s 40A(2)(b) of customer shall be taken at par with material purchased from customer and thus TDS will required to be deducted if such specification based product is manufactured out of the material purchased from customer or associate of customer.

### 5. Impact

i) Individual/HUF shall continue to be required to deduct TDS as before.
ii) Contractee to deduct TDS if material is supplied by the relative/associate of contractee or be contractee itself.
iii) The TDS shall be deducted on gross value of invoice (excld indirect tax) if value of material is not separately declared in Invoice or net value if material value is separately declared.

### 6. Tax Planning

NIL

## 7. Reasoning

i. Since the auditable turnover is increased in certain circumstances u/s 44AB the amendment is made in order to make individual or HUF continue to liable to deduct TDS as before.

ii. It has been noted that some assessees are using the escape clause of the section by getting the contract manufacturer to procure the raw material supplied through its related parties. As a result, a substantial amount of income escapes the tax net. Therefore, to bring clarity in the section and plug the leakage, it is proposed to amend the definition of “work” under section 194C.

## 8. Comments and Issue

It will be difficult for tax auditor to find such vendors to be relative of the contractee or not. Further deductor may also be kept in dark and thus unaware of any such covered relation between the party and vendor.

## 17. TDS on Commission and Rent

**1. Relevant for**

Individual and HUF

**2. Legal Clauses/Sections**

FBC-77,78,
ITA-194H, 194I,

**3. Effective from**
WEF-01/04/2020
Thus TDS on covered expenses incurred on or after 01/04/2020 shall be deducted in accordance with this amendment.

**4. Amendment**

Amendment akin to amendment made in section 194A in r/o of TDS on payments to be deducted by Individual/HUF.

**5. Impact**

Individual and HUF shall continue to be required to deduct TDS as before.

**6. Tax Planning**

NIL

**7. Reasoning**

Since the auditable turnover is increased in certain circumstances u/s 44AB the amendment is made in order to make individual or HUF continue to liable to deduct TDS as before.

**8. Comments and Issue**

NIL

## 18. TDS on P & T Fees

### 1. Relevant for

All

### 2. Legal Clauses/Sections

FBC-79
ITA-194J

### 3. Effective from

WEF-01/04/2020
Thus TDS on covered expenses incurred on or after 01/04/2020 shall be deducted in accordance with this amendment.

### 4. Amendment

i).Amendment akin to amendment made in section 194A in r/o of TDS on payments to be deducted by Individual/HUF.

ii). It is proposed to change rate of TDS from 10% to 2% in r/o amount towards fees for technical services i.e. bringing rate equal to rate prescribed u/s 194C.

### 5. Impact

i). Individual and HUF shall continue to be required to deduct TDS as before.

ii). A lot of exercise will be saved in determining whether a particular service is technical service u/s 194J or work service u/s 194C, however professional service is continued to liable to TDS @ 10%.

### 6. Tax Planning

Nil

### 7. Reasoning

To reduce litigation, it is proposed to reduce rate for TDS in section 194J in case of fees for technical services (other than professional services) to two per cent from existing ten per cent. The TDS rate in other cases under section 194J would remain same at ten per cent.

## 8. Comments and Issue

A welcome step by the Govt as it shall avoid the unnecessary litigations and it shall also retain more funds with the deductee and also there shall be a reduction in number of applications u/s 197.

However a new litigation may start whether a service is a technical service or professional service.

## 19. TDS on Income From Units

**1. Relevant for**

All

**2. Legal Clauses/Sections**
FAS-80
ITA-194K (Insertion)

**3. Effective From**

WEF-01/04/2020
Thus TDS on covered expenses incurred on or after 01/04/2020 shall be deducted in accordance with this amendment.

**4. Amendment**

Since it is proposed to withdraw exemption of MF income in the hands of unit-holder, it is therefore proposed to provide TDS on income distributed on MF unit, if such income exceeds Rs. 5000 for a year.

*FB as passed further provides no TDS on capital gains occurred on transfer or maturity*

**5. Tax Impact**

Already discussed

**6. Tax Planning**

Nil

**7. Reasoning**

Since MF income tax mechanism is changed as now such income is taxable in the hands of unit holder and MF is not required to pay any IDT, thus in order to trace the such income declared and to make it liable to be taxed the TDS is provided.

**8. Comments and Issue**

Presently since such income is exempt in the hands of unit holder therefore where no ITR is filed by such unit holder and if he does not have any other suspected taxable income or does not enter the reportable transaction he is not called for any information on his income or not noticed to file his ITR.

However such assesse since TDS is deducted on such income may face notices to file ITR if they failed to file themselves.

## 20. TDS on Payment of certain amounts in cash.
## Inserted via amendment to Finance Bill

**1. Relevant for**

All

**2. Legal Clauses/Sections**

FAS- 84
ITA-194N (Substitution)

**3. Effective from**

WEF 01/07/2020
Thus TDS on covered payment made on or after 01/07/2020 shall be deducted in accordance with this amendment.

**4. Amendment**

i) Where a banking company or Co-op Bank or Post office makes payment to any person out of any or all of account(s) maintained by such person with it then it shall deduct TDS @ 2% if such payment exceeds Rs. 1 cr in cash during the FY.

ii) It is further provided that if such person has not filed ITR for all of the three preceding FYs upto the due date u/s 139(1) then TDS shall be @ 10% on such amount above Rs. 20 Lac but upto Rs. 1 Cr. and and thereafter 5%.

iii) It is also provided that TDS at NIL rate or at lower rate shall be made in case of person/class of personwho is/are conditionally notified by Govt and the conditions are fulfilled by it.

**5. Impact**

TDS shall be deducted on cash withdrawals if withdrawn above limits. It shall disturb such assesse who withdraws cash for genuine expenditure commensuratingto their businesses. However such assesse may make an application under the proviso of this section for lower or NIL TDS rate.
The benefit of Nil or lower TDS u/s 197 is not available for transaction covered under this section.

**6. Tax Planning**

Only having accounts in multiple banks and withdrawing cash in a manner that provisions of this section not attracted.

**7. Reasoning**

To more stringently control the cash transaction and unscrupulous transactions.

**8. Comments and Issue**

It shall adversely affect a large number of organizations who withdraws cash for genuine purposes and moreover it is beyond understanding when high cash deposits and withdrawals are separately reportable u/r 114E then what is the need for such a negatively affecting provision.

Further the provisions of the section are substituted and made effective from 1st July, till then the existing provisions are applicable thus this may lead to confusions regarding threshold limits.

## 21. TDS on payments by e-commerce operator to sellers

**1. Relevant for**

All

**2. Legal Clauses/Sections**
FAS-85
ITA-194-O (Insertion)

**3. Effective from**
WEF-01/10/2020
Thus TDS on covered payments incurred on or after 01/10/2020 shall be deducted in accordance with this amendment.

**4. Amendment**

i) An e-commerce operator(ECO) shall deduct TDS @ 1% on gross amount paid/payable to seller (ECP) in r/o of sale of goods or services, if the payment/credittowards such sale exceeds Rs. 5 Lac in a financial year. Further amount directly paid by customer to seller shall also be included in gross amount.

ii) It is also provided that no TDS to be deducted if such amount of paymentdoes not exceed Rs. 5 Lac and PAN or AADHAR is given by seller to ECO and the seller is either individual or HUF.

iii) It is also provided where TDS under this section is deducted or if not liable to be deducted due to threshold of Rs. 5 Lakh then no TDS shall be deducted under any of the other sections.

iv) “services” includes ‘‘fees for technical services’’ and fees for ‘‘professional services’’, as defined in the Explanation to section 194J.’

v) Board may issue guideline to remove the difficulties arised, if any, in implementation. any

**5. Impact**

The vendors shall be subject to TDS under this section alongwith TDS @ 2% under GST and thus in total 3% TDS shall be deducted out of gross amount.

**6. Tax Planning**

To sellgoods and services under multiple PAN and firms.

## 7. Reasoning

In order to widen and deepen the tax net by bringing participants of e-commerce within tax net, it is proposed to insert a new section 194-O in the Act so as to provide for a new levy of TDS at the rate of one per cent.

## 8. Comments and issues

1. What is meaning of 'Gross Amount' is not made clear, whether it is inclusive of indirect taxes and incidental expenses.
2. What about the adjustment of sales return, penalty and transport deductions etc.
3. Whether sales promotion incentives paid by ECO to seller are subject to TDS under this section.
4. If PAN is not provided by any person then TDS shall be deducted @ 5% and not @ 1% as provided u/s 206AA by consequent amendment. However because the section starts with the phrase ‘notwithstanding anything contained contrary in any provision of Part B of this chapter’ and Section 206AA falls in this Part thus it may lead to ambiguity and disputes.
5. The provisions of this section overrides the provisions of other applicable sections by providing that where TDS is deducted under this section or not deductible due to threshold limit of Rs. 5 Lakh then no TDS shall be deducted in any other provision. It is also explained that ‘services’ includes ‘professional and technical services’ specified u/s 194J. Thus no TDS shall be deducted if such services are provided through ECO and the gross payment is less than Rs. 5 Lakh (venue for avoiding TDS). This should not be the intention of the legislature.
6. There is no threshold for sellers other than individual and HUF.

## 22. TDS on Dividend or Income of MF payable to NRs

**1. Relevant for**

All Assessee

**2. Legal Clauses/Sections**
FBC-86,87
ITA-195,196A

**3. Effective from**

WEF-01/04/2020
Thus TDS on covered payments made on or after 01/04/2020 shall be deducted in accordance with this amendment.

**4. Amendment**

Presently the dividend and income from MF are subject to tax in the hand of companies and exempt in the hands of recipient shareholder or unit holder as the case may be. The said system is reversed and thus from FY 2020-21 any such income shall be taxable in the hands of recipient and companies shall not be liable to pay distribution tax.

Accordingly section 195 which covers the dividend paid to NR shareholder and section 196A which covers the income from MF paid to NR unit holder are amended to provide for deduction of tax at source.

Where dividend shall be subject TDS at the rates in force the income form MF is subject to a deduction of 20% tax.

**5. Tax Impact**

Thus dividend or MF income shall be paid or credited to shareholder or unit holder after deducting the TDS.

**6. Tax Planning**

NIL

**7. Reasoning**
Since Dividend/MF Income tax mechanism is changed and now Dividend is taxable in the hands of shareholder/unit holder and Company is no more required to pay any DDT/IDT, thus in order to trace the Dividend/MF Income declared and to make it liable to be taxed the TDS is provided.

**8. Comments and Issues**

It may adversely impact such shareholder/unit holder who are large investors and subject to a higher rate of tax. However various section and DTAA provides a lower rate of tax therefore it may not affect the masses of such investors, such as-

Section 115AD- Also amended to tax dividend income @ 20%.
Section 115E- Section 115C amended to include dividend income and this section provides tax @ 20%
DTAAs generally provides tax @ 10%.

## 23. Form 26AS

**1. Relevant for**

All

**2. Legal Clauses/Sections**
FAS-92, 103
ITA-203AA, 285BB

**3. Effective from**
WEF-1st June 2020

Form 26AS is made available under section 203AA, the section is proposed to be omitted but 26AS or a similar statement shall continue to be made available u/s 285BB which is proposed to be inserted in this regard u/c 101.

## 24. TCS on certain transactions

**1. Relevant for**

All

**2. Legal Clauses/Sections**
FAS-95
ITA-206C

**3. Effective from-**

WEF-01/10/2020
Thus TCS on covered receipts received on or after 01/10/2020 shall be collected in accordance with this amendment.

**4. Amendment**

i. Related to remittance under LBRS-
TCS @ 5% to be collected by a person (AD) who receives/debit an amount exceeding Rs. 7 Lac in a FY for remittance out of India under Liberalised Remittance Scheme.

ii. Related to sale of overseas tour package-
TCS @ 5% to be collected by a tour operator seller on sale of overseas tour package at the time of receipt/debit. NIL threshold limit.

iii. Related to sale of goods-
TCS @ 0.1% by a seller (whose t/o exceeds 10 Cr. in immediate preceding FY) on sale of any goods (other than already covered) exceeding Rs. 50 Lac in a FY to any person at the time of RECEIPT of money. TCS @ 1% instead of 5% u/s 206CC if buyer has not provided PAN. Buyer excludes Govt. etc. and notified persons.

iv. However, if buyer is liable to deduct TDS and deducted TDS then no TCS is required in above.

v. In case of an Individual/HUF seller, amendment akin to amendment u/s 194A is also proposed to make them continuously liable to collect TCS if their t/o exceeds Rs. 1 Cr. or Rs. 50 Lac as the case may be in the previous FY.

*FB as passed made following changes in above-*
*i) Applicability of above changes WEF 01/10/2020 instead of 01/04/2020*
*ii) Threshold limit provided for LBRS scheme at 7 Lacs, thus TCS only after 7 lacs of payment (except in case of remittances for overseas tour package).*
*iii) TCS @ 5% even if remittance is made under LBRS for overseas tour package in line with non LBRS route. Further AD shall not collect TCS if seller has collected TCS.*
*iv) TCS @ 0.5% if remittance is made to repay the loan taken u/s 80E.*

*v) Buyer also excludes person importing goods into India*

**5. Impact**

i. Extra burden on person making remittance under LBRS which is otherwise well regulated and is done with genuine sources.

ii. The traders, manufacturers whose turnover exceeds Rs. 10 Cr. during FY 2019-20 shall be made subject to more compliances to maintain the PAN of buyers, collect tax, file quarterly TCS returns and issue TCS certificates.

**6. Tax Planning**

Only, to bifurcate the subjected amounts in different PANs.

**7. Reasoning**

In order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on overseas remittance and for sale of overseas tour package.
Further, in order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on sale of goods above specified limit.
It is felt that many person undertaking such transaction of remittance and tour package are not filing ITR and thus to bound them to file ITR through this mechanism.

**8. Comments and Issues**

i. There is no threshold limit for overseas tour packages, in many cases employees spends their vacations outside India out of their taxed salary and also many other persons go on tour packages for the business purposes and out of their taxed money. This will adversely affect them and also TCS rate is also very high.

ii. Remittances under LBRS are as under-

Resident Individuals can avail of foreign exchange facility for the following purposes within the LRS limit of USD 2,50,000 on financial year basis:

i. Private visits to any country (except Nepal and Bhutan)
i. Gift or donation
ii. Going abroad for employment
iii. Emigration
iv. Maintenance of close relatives abroad
v. Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up
vi. Expenses in connection with medical treatment abroad
vii. Studies abroad

viii. Any other current account transaction which is not covered under the definition of current account in FEMA 1999.

The AD bank may undertake the remittance transaction without RBI's permission for all residual current account transactions which are not prohibited/ restricted transactions under Schedule I, II or III of FEM (CAT) Rules, 2000, as amended or are defined in FEMA 1999. It is for the AD to satisfy themselves about the genuineness of the transaction, as hitherto.

Thus it can be seen that though RBI approval is not required but it is very well regulated at AD level. It would have been better to include remittances above Rs. 7 Lacs to be reported by AD u/r 114E u/s 285BA and to enquire the relevant cases instead of charging TCS.

iii. A seller is required to collect TCS if his turnover exceeds Rs. 10 cr. in previous financial year (PFY) and for the first charging year i.e. 2020-21 the PFY is 2019-20. Though TCS is to be collected on sale of goods only there is no such specification in case of PY turnover, in other words the PY turnover can be from sale of goods, service, immovable property, rentals, share and securities or any other source.

Further since the provisions are applicable from 1st October, the following queries may arise-

a. Whether the sale executed before 1st October is to be considered for calculating the threshold sale of Rs. 50 Lacs?

b. Where the sale already exceeds Rs. 50 Lacs in first half of the year and is to be considered then whether immediately on 1st October the TCS is to be collected on such sale?

c. The TCS is to be collected at the time of RECEIPT of consideration of sale, thus-

i. Where the first Rs. 50 Lacs is to be ignored for the purpose of TCS then if the receipts are in ad hoc amounts, Whether the first Rs. 50 lacs received also to be ignored?

ii. What if the sale is made in one FY and receipts are received in advance or next year?

iii. What if the amount receivable is adjusted against purchase or any other account and no money is actually received?

It appear illogical introducing such provision because most of the transactions are already covered under GST and the information network of Income Tax and GST are integrated for sharing information to detect any such tax escaped transactions.

Further it will also adversely affect the agriculture sector in India.

## 25. Compulsory Deposit for stay of proceedings

### 1. Relevant for

All

### 2. Legal Clauses/Sections

FAS-99
ITA-254

### 3. Effective from

WEF-01/04/2020

### 4. Amendment

Presently Tribunal has complete and absolute power to stay any proceeding of recovery or penalty upto 180 days in all matters or extended period of 365 days if delay in deciding appeal is not attributable to assesseein relation to matter in appeal. The stay can be granted without requisite of any minimum deposit at present.
It is now proposed that such stays can only be granted by Tribunal if assese has deposited minimum 20% of amount 'demanded' or provided security thereof.

### 5. Effect

Appellant assessees in every case on or after 01/04/2020 have to deposit or give security equal to 20% of amount demanded to apply before the ITAT for stay of recovery proceedings.

### 6. Reasoning

It is proposed to provide that ITAT may grant stay under the first proviso subject to the 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 furnish security of equal amount in respect thereof.

### 7. Comments and issues

It appears the provision has been introduced to compel appellant assessee to opt for VSVDTA scheme because the compulsory deposit is 20% of amount demand which may in most of the cases would be less than the tax quantum in total demand.
However it shall adversely affect the judicial mechanism and negative to right to have free and proper justice.

## 26. Penalty for false entry

### 1. Relevant for

All

### 2. Legal Clauses/Sections

FAS-100
ITA-271AAD (Insertion)

### 3. Effective from

WEF-01/04/2020
The provisions of this section that is initiation of proceedings and imposition of penalty shall be held on or after 01/04/2020.

### 4. Amendment/Change

If it is found in books of account, that-

i) there is a false entry, or
ii) omission ofany relevant entry to evade tax
then a penalty equal to the amount of false entry or omitted entry may be levied upon assesse and any other person who indulged with assesse.
False entry includes-
i) false invoice
ii) Invoice without actual supply of goods or services
iii) Invoice from or to a non-existent person

### 5. Impact

Equal amount of penalty may be leviable on above default.

### 6. Reasoning

In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act

### 7. Comments and Issues

i) It is to be noted that-

a. False invoice includes invoice issued or received and also invoices related to non-current transactions, thus such invoices related to expense, revenue and non-current transactions all are subject to penalty.
b. False entry whether evades tax or not, is covered
c. Entry amount not defined thus it may be including GST or other taxes levied.

ii) The section begun with the phrase 'Without prejudice to any other provision of the Act' i.e. where an invoice is found to be false and expenditure is disallowed u/s 37 then the penalty may be levied alongwith such disallowance.

iii) The penalty can be levied if such falseness or omission is found during any proceedings carried under this Act, whereas the reasoning referred such false invoices found during GST proceedings.
Thus if any penalty is levied on the basis of information received from GST department where no relevant proceedings are pending before receiving of such information, then such levy of penalty by instituting fresh proceedings may also institute litigations to held such penalty illegal.

iv) The equivalent penalty shall also be levied to any and all such persons who caused assesse to do the above defaults. However how such other person shall be adjudicated to causing assesse to do so is neither explained nor defined. This may lead to plethora of litigations.

v) The sections does not contain the date of effecting the applicability of the provisions of this section. It means that though the section shall be in operation on date of notification of Finance Act, but the section may cover the transaction entered even before the commencement of Finance Act. In simple words the proceedings may be initiated for expired AYs on the basis of information received from GST department, however the same may be subject to litigation on account of reason as discussed in iii) above.

vi) Even a genuine omission of entry which have effect of reducing tax liability e.g. Omission of application of ICDS may be treated by the AO coverable under this section, because 'evasion' also is neither explained nor defined. Thus here also plethora of litigation may arise.