

# Major Direct Tax Proposals

## Finance Act 2020

### Financial Year 2020-21 (Assessment Year 2021-22)

#### Personal tax

##### 1. Optional new tax regime for individuals and HUF

The FA 2020 has brought in place a new tax regime with effect from AY 2021-22. It is optional for taxpayers and provides lower tax rates. However, it does not permit the following:

- o Specified deduction under section 80C (except 80 CCD (2)) and section 80D
- o Specified exemptions like Standard deduction, House Rent Allowance (HRA) and Leave Travel Allowance (LTA)
- o Additional depreciation, interest on self-occupied house property, donations, etc.
- o Set-off of carry forward of losses and unabsorbed depreciation
- o Inter-head set-off of loss from rented house property
- o No exemption in respect of free coupon/meal vouchers (i.e. taxable in the hands of employee as perquisite)

For individuals having Income from Business or profession, reduced tax rates once exercised will be applicable for all subsequent years; also, Alternate Minimum Tax (AMT) provisions will not be applicable.

Individuals having no business or profession income can exercise the option for reduced tax rates on a year-to-year basis.

Analysis of tax rates under the new tax regime vis-à-vis the old tax regime:

Income level	Existing tax rates	New tax rates
Rs. 2,50,000/-	0%	0%
Rs. 2,50,000 to Rs. 5,00,000	5%	5%
Rs. 5,00,000 to Rs. 7,50,000	20%	10%
Rs. 7,50,000 to Rs. 10,00,000	20%	15%
Rs. 10,00,000 to Rs. 12,50,000	30%	20%
Rs. 12,50,000 to Rs 15,00,000	30%	25%
Above Rs 15,00,000	30%	30%

\*Excluding exemptions and deductions

No change in rebate available for taxable income up to RS. 500,000

No change in rate of surcharge and Health and Education Cess.

## **2. Surcharge:**

Income (Rs)	Assessment Year	
		2021-22
Up to 50 Lacs		Nil
50 Lacs - 1 Crore	10%	10%
1 Crore - 2 Crore	15%	15%
2 Crore - 5 Crore	25%	25%
Above 5 Crore	37%	37%

### 3. Residential status

**New Residency Rules for Individuals** It is proposed to amend Section 6 of Income Tax Act so as to provide that – (i) the exception provided in clause (b) of Explanation 1 of subsection (1) to section 6 for visiting India in that year be decreased to 120 days from existing 182 days (i.e. a Citizen of India or PIO who came on visit to India now has to spend less than 120 days ). (ii) an individual or an HUF shall be said to be “not ordinarily resident” in India in a previous year, if the individual or the manager of the HUF has been a nonresident in India in 7 out of 10 previous years preceding that year. (Earlier it was 9 out of 10). (iii) an Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India.

#### i. Period of stay for Indian citizens visiting India

The Budget proposes to reduce the period of stay criteria for Indian citizens/PIO visiting India to determine their residential status. They will now qualify as residents if their stay in India is:

- o more than 120 days (earlier limit was 182 days), and
- o more than 365 days during the preceding four previous years.

#### ii. Deemed residency criteria for citizens of India

The Finance Act has introduced the concept of citizenship-based taxation in a limited manner.

Indian citizens, who are not liable to tax in any other country by virtue of residency, domicile or any other similar criteria would be deemed tax residents of India.

Also, explanation 1a has been inserted vide which Act has clearly stated that such persons who become resident due to this deeming provision will qualify to be NOR directly without any criteria.

**Exempting non-resident from filing of Income-tax return in certain conditions** The current provisions of section 115A of the Act provide relief to non-residents from filing of return of income where the nonresident is not liable to pay tax other than the TDS which has been deducted on the dividend or interest income, the same relief was not been available to non-residents whose total income consists of the income by way of royalty or FTS. Now, the benefit has been extended to royalty and FTS income as well.

#### 4. **Employee stock option plan (ESOP)**

ESOPs have been a significant component of the compensation for the employees of start-ups, as it allows the founders and start-ups to employ highly talented employees at a relatively low salary amount with balance being made up via ESOPs. Currently, ESOPs are taxed as perquisites under section 17(2) of the Act read with Rule 3(8)(iii) of the Rules. The taxation of ESOPs is split into two components:

The existing law provides for two points of taxation: As a perquisite in the year of exercise and as capital gains in the year of sale of shares.

In order to ease the cash flow burden on employees of eligible start-ups, the Eligible start-ups would now be required to deduct and pay TDS within 14 days from:

- o expiry of 48 months from the end of the relevant AY
- o date of sale of such securities, or
- o date on which an individual ceases to be an employee

Whichever occurs earlier, at the rates in force in the FY when the option was exercised.

Similar amendments have been carried out in section 191 (for assessee to pay the tax direct in case of no TDS) and in section 156 (for notice of demand) and in section 140A (for calculating self assessment).

#### 5. **PF Contribution restriction**

**Restriction on Employer Contribution to PF** Under the existing provisions of the Act, the contribution by the employer to the account of an employee in a recognized provident fund exceeding 12% of salary is taxable. Further, the amount of any contribution to an approved superannuation fund by the employer exceeding Rs. 1,50,000 is treated as perquisite in the hands of the employee. Similarly, the assessee is allowed a deduction under National Pension Scheme (NPS) for 14% of the salary contributed by the Central Government and 10% of the salary contributed by any other employer. Presently, there is no combined upper limit for the purpose of deduction on the amount of contribution made by the employer. Now, it is proposed to provide a combined upper limit of Rs. 7,50,000 in respect of employer's contribution in a year to NPS, superannuation fund and recognised provident fund and any excess contribution is proposed to be taxable. Consequently, it is also proposed that any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the fund or scheme may be treated as perquisite to the extent it relates to the employer's contribution which is included in total income

## 6. Foreign remittances

Tax collection at source (TCS) at the rate of 5% is introduced on the following transactions:

- o Remittances of RS. 7,00,000/- or more in an FY under the Liberalized Remittance Scheme (LRS) route through an authorized dealer.
- o Purchase of overseas tour programme package.

**The above will be made effective from 01.10.2020. Also, in case where remittance is made for Loan taken for educational purpose the rate of TCS shall be 0.5%.**

## Corporate tax

**The Tax rates for corporate are as under: -**

<b>Income</b>	<b>Proposed rate of tax (A.Y.2021-22)</b>
Domestic Company having total income less than 1 Crore	30%* / 22%** / 15%***

Domestic Company having total income more than 1 Crore but less than 10 Crore	30%* plus surcharge of 7%
Domestic Company having total income more than 10 Crore	30%* plus surcharge of 12%
Other Company having total income less than 1 Crore	40%
Other Company having total income more than 1 Crore but less than 10 Crore	40% plus 2%
Other Company having total income more than 10 Crore	40% plus 5%

**Note:** Cess of 4% shall be levied over and above the above taxes.

\*Reduced rate of 25% shall be applicable where total turnover/receipts in the last P.Y. does not exceed Rs 400 Cr

Further reduced tax rate of 22% plus 10% surcharge applicable for companies opting for section 115BAA

\*\*\*Further reduced tax rate of 15% plus 10% surcharge applicable for manufacturing and power generating companies opting for section 115BAB

## **DDT (dividend distribution tax)**

Currently, companies are required to pay DDT on the dividend declared/distributed/paid to shareholders at the rate of 15% plus applicable surcharge and cess.

The Act has abolished DDT for dividends declared, distributed or paid on or after 1 April 2020. Consequently, dividends will be subjected to tax in the hands of the shareholders in all cases. Earlier, dividend distributed to the shareholders was after the effect of DDT, now it will be before DDT and the personal slabs of the individuals will determine the tax impact on such individuals.

Also, the interest expenditure will now be allowed as deduction from dividend income, subject to a cap of 20% of such income.

A relief has been provided to the companies by introduction of sec 80M and allowing for deduction of dividends received by a company from any domestic or foreign company or a business trust. Deduction shall be lower of dividends received by the company or the dividends distributed by the company before the due date.

## **Start-ups**

FA 2020 has increased the turnover cap for eligible start-ups claiming tax holiday from Rs. 25 crores to R. 100 crore.

The window for claiming tax holiday is proposed to be expanded to three consecutive years in a block of 10 years from the current block of seven years.

## **Business connection**

In a major expansion of the definition of 'business connection', the Act has been amended to include, within its ambit, the income attributable to the following activities from AY 2021-22: Enlarging the scope of Source Rule A new explanation 3A has been inserted to provide that the income attributable to the operations carried out in India, as referred to in Explanation 1 to Section 9, shall include income from—

- o Advertisements targeted at residents or through an Indian IP address
- o Sale of data collected from a resident or through an Indian IP address
- o Sale of goods/services from data collected from residents or through an Indian IP address

## **Modification of concessional tax scheme**

Currently, companies opting for concessional tax rates are not eligible for specified deductions under Chapter VI-A.

The FA 2020 denies deductions under all the provisions of Chapter VI-A except the deductions in respect of expenditure incurred for employment of new employees under section 80 JJAA and inter corporate dividends under section 80M.

## **Capital gains**

Currently, it is provided that the difference between the stamp duty value and the sales consideration is considered as taxable income in case the stamp duty value exceeds the sales consideration by 5%. The same is now being increased to 10%. Thus, the present provisions of section 43CA, 50C and 56 of the Act provide for safe harbour of 5%. It is, now, increased to 10%

The existing provisions of section 55 of the Act provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 1st April, 2001, the assessee has been allowed an

option of either to take the fair market value of the asset as on 1st April, 2001 or the actual cost of the asset as cost of acquisition. The Act has been amended as to provide that the cost of immovable property acquired prior to 1 April 2001 shall not exceed the stamp duty value, if available, to compute capital gains.

Currently, there is no guidance for determining the cost of segregated portfolios as directed by the Securities and Exchange Board of India (SEBI).

- o It is now proposed that the cost of acquisition of units in the segregated portfolio shall be determined based on respective net asset values (NAVs).
- o The period of holding will be computed for the segregated units as per the period of holding of the original units.

## **Mutual funds**

Income from units of a mutual fund, currently exempt and subject to distribution tax, is to be taxed in the hands of the unit holder with effect from 01 April 2020.

The payer shall withhold taxes at the rate of 10% on such income if it exceeds Rs. 5,000 and the unit holder is a **resident in India**.

In the case of a **non-resident unit holder**, the payer shall deduct tax at the rate of 20%.

## **E-commerce transactions**

The FA 2020 has imposed withholding tax u/s 194O at the rate of 1% on the gross amount of sales or service by an e-commerce operator on payments made to a **resident** e-commerce participant (i.e. a person who is seller of goods and/or supplier of services on electronic or digital platform).

Payments made to an individual or HUF e-commerce participant are exempt from withholding tax if the gross amount does not exceed RS. 500,000 subjects to furnishing of PAN/Aadhaar.

In the absence of PAN/Aadhaar of the e-commerce participant, withholding tax rate at the rate of 5% shall be levied.

Payment includes payment made by the customer to supplier

Services include fees for technical services and fees for professional

E-commerce participants shall be entitled to obtain lower tax deduction certificate in respect of proceeds receivable from e-commerce operators.

**This amendment will take effect from 01.10.2020.**



## Penalty provisions widened

The FA has introduced a penalty of 100% of the value of fake invoices/false entries or invoices where services rendered/goods supplied cannot be substantiated.

Further, penalty is proposed to be levied on non-furnishing of statements, and certificates by a research association, university, college, company or other institution, as prescribed applicable w.e.f 01.04.2020.

False entry includes use or intention to use— False invoice; or GST Invoice without actual supply or receipt of such goods or services or both; or GST invoice to or from a person who does not exist.

It is provided that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry.

## Withholding Tax/TCS

The has introduced withholding tax on dividend payouts to **residents** exceeding RS. 5,000 by any mode at the rate of 10%. Dividend paid to a **non-resident** would also be subject to withholding tax at the rate of 20%.

With a view to reduce litigation on account of short deduction of tax under 194 C and 194 J, fees for technical services (other than professional services) paid to resident will now attract withholding at a reduced rate of 2% under 194 J w.e.f 01.04.2020. However, rate of TDS on professional services, royalty etc., shall continue to apply 10%. However, litigation still continues to apply for those transactions if the payee is an Individual/HUF because as per section 194C, rate of TDS is 1% but u/s 194J it is 2%.

Amendment in Definition of “work” under section 194C to provide that in a contract manufacturing, the raw material provided by the assessee or its associate shall fall within the purview of the ‘work’ under section 194C. An Associate is defined to mean a person who is placed similarly in relation to the customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of subsection (2) of section 40A of the Act.

A seller of goods shall collect tax on payments in excess of Rs. 5 million (50 lacs) at the rate of 0.1% (1% in case of no PAN/Aadhaar) provided the seller’s turnover exceeds RS. 100 million (10 crores) in previous year. Point to be noted is the act states consideration received in a year in excess of Rs. 50 lakhs for sale of goods (excluding export), i.e. even if sales have been affected in a previous year but the consideration is received in excess of limit as mentioned in section TCS provisions shall get attracted.

**The assessee needs to check the applicability on year on year as well as specific to each buyer basis on PAN India not GSTIN Basis.** There has been **no corresponding amendment** into the provision of TCS for making an application for collection of tax at such lower rate than the relevant rate specified in section

**The said amendment is made effective from 01.10.2020.**

Amendment made to 194 N introduced vide union budget 2019. The old section is applicable till 30.06.2020 and new section will be made applicable from 01.07.2020. Changes to be made in sec 194N **w.e.f 1st July 2020:**

In case person has not filed ITR for 3 Previous Years preceding the current year and cash withdrawn exceeds 20 lacs up to 1 crore TDS @2% to be deducted. However above 1 crore, TDS 5% to be deducted.

However, classes of persons to whom the same will not be applicable to be announced by a notification through official gazette.