



BHUJ BRANCH OF WIRC OF ICAI

E-Newsletter For The Month Of February-2020

(FOR PRIVATE CIRCULATION ONLY)

CA. Hardik P. Thacker
Chairman

+91 98258 58580

CA. Jitendra Thacker
Vice Chairman

+91 98255 37937

CA. Ramesh Pindolia
Secretary

+91 98256 62808

CA. Ashish Gadhvi
Treasurer

+91 99257 38543

CA. Purvi Mehta
WICASA Chairperson

+91 93743 38587

RCM CA. Hitesh Pomal
Branch Nominee

+91 98240 49402

CA Jagrut Anjaria
Newsletter Co-ordinator

+91 94267 88728

Address:-

311, Balram Complex,
3rd Floor

Near ICICI Bank, Station Road,
Bhuj – Kachchh.

Phone: +91 2832 258580

E-mail:

bhujbranch.wirc@gmail.com

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Chairman's Communication

Dear Professional Colleague,

It is rightly said that **“strength and growth come only through continuous effort and struggle”**. With the strong vision, faith and support from all members and seniors of the profession-the pillars of Bhuj branch, we have inaugurated new premises of the Bhuj Branch by Central Council Member CA. Aniket Talati. By moving forward for betterment of members and students, the branch has added one more feather in its success story. Our branch has marked the new beginning with the better facilities for members and students.

We were fortunate enough to have the presence of Member of Parliament Shri. Vinod Chavda as our Guest of Honour, CCM CA. Jay Chhaira, CA, Priti Savla, Chairperson WIRC, RCM CA. Hitesh Pomal, Branch Nominee, RCM CA. Vikas Jain and RCM CA. Chintan Patel. Also, Bhuj branch has welcomed new members of the fraternity by facilitating them. Presence of leaders and seniors of the profession and members of Bhuj branch in large number has made the inauguration ceremony more successful.

In the coming years, we will continue to remain committed to working closely with members and students and will undertake new initiatives in the form of academic and non-academic programmes and events and to enable the members to learn and grow together with the help of enhanced facilities.

The month of February remains a standout month of the year as the major event of presenting the Union Budget took place in this month. Bhuj

branch is glad to publish the finance bill special edition of the newsletter. I am sure this edition will help all members of the fraternity to enhance and update their knowledge of the subject. I acknowledge the efforts done by all writers under the guidance of CA. Jagrut Anjaria Sir and Congratulate whole team for coming so fast on Budget edition of newsletter.

Platform to perform is now ready in form of new Branch premise for all, I request all members to actively participate in all academic and non-academic branch activities to make best use of available facilities and to share their knowledge by writing articles in branch newsletter. Let me invoke following quote of George Elliot before signing off the communiqué.

“Turn your thought into action as you can't hold water, but can hold ice”.

Yours in Professional Service
CA. Hardik P. Thacker
Chairman

STUDY OF SELECTED CLAUSES OF FINANCE BILL 2020

CA JEEL DINESH SHAH
B.Com., ACA

SECTION 115BAC: WHETHER TO OPT OR NOT TO OPT?

- **Applicability** : Individuals and HUFs
- **Applicable From**: A.Y. 2021-22 and onwards
- New optional **tax rates** are as follows:

		Rate of Tax under old regime	Rate of Tax under new regime
1.	Upto Rs 2,50,000	NIL	NIL
2.	From Rs 2,50,001 to Rs 5,00,000	5%	5%
3.	From Rs 5,00,001 to Rs 7,50,000	20%	10%
4.	From Rs 7,50,001 to Rs 10,00,000	20%	15%
5.	From Rs 10,00,001 to Rs 12,50,000	30%	20%
6.	From Rs 12,50,001 to Rs 15,00,000	30%	25%
7.	Above Rs 15,00,000	30%	30%

- Upon mentioned rates can only applied if individual/ HUF follows following **conditions as mentioned in 115BAC(2)**:

1. Not to take **exemptions** as under:

- (i) Leave travel concession as contained in clause (5) of section 10;
- (ii) House rent allowance as contained in clause (13A) of section 10;
- (iii) Allowances as contained in clause (14) of section 10 except specifically allowed under this section ;
- (iv) Allowances to MPs/MLAs as contained in clause (17) of section 10;
- (v) Allowance for income of minor(Rs. 1500) as contained in clause (32) of section 10;
- (vi) Exemption for SEZ unit contained in section 10AA;
- (vii) Standard deduction(of 50%), deduction for entertainment allowance and employment/professional tax as contained in section 16;
- (viii) **Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23.(Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);**
- (ix) Additional depreciation under clause (iia) of sub-section (1) of section 32;
- (x) Deductions under section 32AD, 33AB, 33ABA;
- (xi) Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause(iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;

- (xii) Deduction under section 35AD or section 35CCC;
- (xiii) Deduction from family pension under clause (ia) of section 57;
- (xiv) **Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub-section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme) and section 80JJAA (for new employment) can be claimed.**

2. No Set off Any loss:

- (a) carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);
- (b) under the head "Income from house property" with any other head of income;

- 3. by claiming the depreciation, if any, under any provision of section 32, except clause (ia) of sub-section (1) of the said section, determined in such manner as may be prescribed; and
- 4. without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.

- If the conditions as mentioned in 115BAC(2) are not followed then option of concessional rate shall become invalid for the same assessment year and other provisions of the act shall apply as if the option was not exercised. Also when option is once exercised by the assessee having business income and he fails to comply with the conditions then the option shall become invalid for subsequent assessment years and other provisions of the act shall apply.
- The loss and depreciation referred to in point 2 shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year:

Provided that where there is a depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year beginning on the 1st day of April 2021, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2020 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2021.

- In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfillment of the conditions contained in the said section.
- **Manner of opting for the option:**

1. Having business income	2. Having any other income
Exercise only once on or after A.Y.2021-22 and it is automatically applied for following years(by exercising on or before due date of 139(1))	Can choose to opt for every year (along with the return u/s 139(1))
If withdrawn once after availment , this scheme can't be availed for lifetime as long as assessee is having business income. If assessee ceases to have business income he falls under point no 2 automatically.	

➤ **Other points:**

1. Section 115JC(Related to AMT provisions) will not be applicable to assessee who exercises the option referred to in section 115BAC.
2. Section 115JC(Related to AMT provisions) will not be applicable to assessee who exercises the option referred to in section 115BAC.

➤ **Comparison of Assessment of Benefits under two regimes under most common conditions:**

Nature of deduction available in the current tax regime	Breakeven point	When it is beneficial to opt for new regime of Section 115BAC?
No deduction is allowable	-	Always
Deduction allowable under Section 80C	8,50,000	Income in excess of Breakeven
Deduction allowable under: - Sections 80C - Section 80D	12,25,000	Income in excess of Breakeven
Deduction allowable under: - Sections 80C - Section 80D -Section 24 (Interest on housing loan)	-	Never
Deduction allowable under: - Sections 80C - Section 80D -Section 16 (Standard	15,00,000	Never

Deduction)		
Deduction allowable under: - Sections 80C - Section 80D -Section 16 (Standard Deduction) -Section 24 (Interest on housing loan)	-	Never

Important points in brief when opting new scheme:

- 1. Effect of housing loan interest, house property loss and housing loan repayment:**
 - Housing loan interest in case of self occupied property-not allowed
 - House property loss of let out property- not to be set off against other head but to be carried forwarded.
 - Housing loan repayment: not allowed

- 2. Effects of depreciation and carried forward losses:**
 - Carried forward losses and depreciation related to forgone exemptions- Not allowed to be carry forwarded and deemed to already effected.
 - Additional depreciation u/s 32(1)(ia)- Not allowed
 - Normal depreciation u/s 32- Allowed

- 3. Effects on deductions wide chapter VI-A:**
 - All the deductions foregone except the following
 - 80CCD(2): Investment in Notified Pension Yojna by employer- Allowed
 - 80JJAA: Deduction to employer on new employments- Allowed

- 4. Effects on salaried persons:**
 - Section 10(5)- Leave Travel Concession- Not allowed
 - Section 10(13A)- House rent allowance- Not allowed
 - Section 10(14) : All exemptions foregone except specifically included in this section such as Transport allowance to divyang employee, conveyance allowance, Any allowance to meet the cost of travel, Daily allowance for expenses incurred away from the normal place of duty.
 - Standard deduction of 50%, entertainment allowance and employment tax- Not allowed.

STUDY OF SELECTED CLAUSES OF FINANCE BILL 2020

CA CHUNAUTI H. DHOLAKIA
B.Com.,FCA,DISA(ICAI)

Implications of changes in process of tax administration in Finance Bill, 2020

In the recent years, government has moved from traditional system of assessment to technology driven system. However, this system was implemented in phased manner and still there were human interface in it. In the budget 2020, the government has taken one more step towards optimum utilization of technology, time and resources. Moreover, some measures have been taken to prevent unnecessary harassment to the assessee during the course of assessment. Some of such measures are discussed herein.

Modification of e-assessment scheme

Assessment procedure has been a topic of discussion since years due to its complexity, transparency and approach. Moving ahead with assessment, Government has proposed and introduced e-assessment scheme in the Union Budget, 2019. This scheme is notified under section 143(3A) of the Income Tax Act w.e.f. 12th September, 2019. This faceless assessment scheme in electronic mode was introduced with a view to eliminate human interface between the tax department and the tax payer in any manner during the scrutiny assessment and to impart greater, efficiency, transparency and accountability to the assessment procedure. This scheme was launched in the year 2019 in phased manner. CBDT has also notified relevant directions. In this scheme, all communication with the taxpayers and assessment centres are issued through electronic mode with digital authentication and no personal appearance at centres is required.

However, this scheme was applicable only to selected scrutiny cases. Following cases were out of the ambit of this scheme

- (1) Assessment of non-PAN cases.*
- (2) Where ITR is filed manually and the assessee does not have e-filing account,*
- (3) Where the existing assessment is set aside and fresh one ordered,*
- (4) Best judgment assessment u/s. 144*
- (5) Income escaping assessment u/s. 147.*
- (6) Where complexities or administrative difficulties may arise in conducting such faceless assessment.*

To widen the scope of this section and to include best judgment assessment u/s. 144 of the Act under the e-assessment scheme, it is proposed to include reference of section 144 in this e-assessment scheme.

Moreover, existing Section 143(3B) of the Act provides that the Central Government may for the purpose of giving effect to this scheme by the notification in official gazette, direct before 31st March, 2020 that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. To empower CBDT to issue more such directions due to widened scope of the scheme, cut-off date for issuing such directions has been extended up to 31st March, 2022.

Provision for e-appeal

Presently, most of the functions of the Income Tax Department starting from filing of return, processing of returns, issuances of refunds and assessment are performed in the electronic mode without any human interface. Moreover, filing of appeals before Commissioner (Appeals) has already enabled in electronic mode w.e.f. 30.12.2015. However, the major process after filing first appeal before CIT(A) is not faceless. In the present system, after e-filing of an appeal, paper documents should be submitted within 30 days, failing which the e-filing expires and the acknowledgment becomes invalid. In order to take the reformed initiated by the Department to next level and to eliminate human interface to the extent technologically feasible, a new faceless appeal is introduced on the lines of faceless assessment by amending section 250 of the Act. A new sub-section (6B), (6C) and (6D) has been inserted in the section 250 so as to empower the Central Government to notify an e-appeal scheme for disposal of appeal. This appellate system is introduced for optimizing utilization of resources through economies of scale and functional specializations. In this system with dynamic jurisdiction, appeal shall be disposed of by one or more Commissioner (Appeals).

It is also proposed to empower the Central Government for the purpose of giving effect to this scheme by notification in the official gazette on or before 31st March, 2022 to direct that any provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall apply or shall not apply with such exceptions, modifications and adaptations as may be specified in the notification. Moreover, it is also provided that every such notification shall be required to be laid before each house of parliament.

Provision for e-penalty

Chapter XXI of the Income Tax Act provides details of penalty imposable in various cases. It covers penalty imposable under section 270 to 275 of the Act. Section 274 of the Act provides for the procedure for imposing penalty under chapter XXI of the

Act. This procedure prescribes that no order imposing a penalty under this chapter shall be made unless the assessee shall be heard or has been given a reasonable opportunity of being heard.

However, there were human interface in such hearing procedure. In response to a show cause notice issued by the AO, assessee or his authorized representative were required to visit the office of the AO. Hence with the advent of e-assessment scheme-2019 and in order to ensure that the reforms initiated by the department to eliminate human interface from the system reaches to next level, sub-section (2A), (2B) and (2C) has been inserted to section 274 w.e.f. 1st April, 2020 so as to provide for a new e-scheme by notification in the official gazette for imposing penalty. This e-scheme aims to impart greater efficiency, transparency and accountability by introducing a mechanism for imposing penalty with the dynamic jurisdiction in which penalty shall be imposed by one or more income tax authorities.

It is also proposed to empower the Central Government for the purpose of giving effect to the scheme made under this proposed sub-section for issuing notification in the official gazette on or before 31st March, 2022 to direct that any of the provisions of this Act relating to jurisdiction and procedure of imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. It is also proposed that every notification issued shall be required to be laid before each house of parliament.

Check on survey operations u/s.133A

Section 133A of the Income Tax Act empowers the Income Tax Authority to conduct survey at the business premises of the assessee under his jurisdiction. This section provides that if a person is required to afford facility to the Income Tax Authority to inspect books of accounts or other documents or to check or verify any cash, stock or other valuable article or thing or furnish any information or to have his statement recorded either refuses or evades to do so, the Income Tax Authority shall have all the powers u/s.131 (1) for enforcing compliance with the requirement made. In some matters, they had same powers as are vested in the Court under Code of Civil Procedure. In some cases, such powers were misused by the Income Tax Authority. Hence to prevent such possible misuse of powers, an amendment was made vide Finance Act, 2003 by inserting proviso to sub-section (6) of section 133A of the Act providing that no Income Tax Authority below the rank of Joint Director or Joint Commissioner shall conduct any survey under this section without prior approval of the Joint Director or Joint Commissioner, as the case may be.

However, such amendment was not able to prevent misuse of power completely. In some cases, survey was conducted u/s.133A and summons was issued by exercising power u/s.131 (1) without receiving information from the prescribed authority. In some cases, such survey was converted only for data gathering and the

income tax authority were dealing with the assessee as wealth creator. Hence to prevent such misuse of powers, sub-section (6) of section 133A has been substituted w.e.f. 1st April, 2020 by providing that

- (A) In a case where the information has been received from the prescribed authority, 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 any the Joint Director or Joint Commissioner, as the case may be; and*
- (B) In any other case, no income tax authority below the rank of Commissioner or Director shall conduct any survey under the said section without prior approval of the Commissioner or the Director, as the case may be.*

Taxpayer's Charter

Any tax administration system requires trust between taxpayer and the tax administrators. This will be possible only when rights of the taxpayer are clearly enumerated. In Canada, US and Australia, concept of tax payer's charter is implemented to ensure rights of the taxpayer. But such concept was not there in India. The government felt necessity to enumerate rights and responsibility of taxpayer. Hence to implement fair and efficient tax administration system and to remove any kind of harassment of the taxpayer, a new section 119A has been inserted w.e.f. 1st April, 2020 to empower the CBDT to introduce a taxpayer's charter and issue such orders, instructions, directions or guidelines to other income tax authorities as it may deem fit for the administration of the chapter. The details of content of the charter shall be notified soon.

Clarity on stay by the Income Tax Appellate Tribunal (ITAT)

Having received the Assessment order, a tax payer can first challenge the order before CIT (A) and is required to deposit 20% amount of tax on obtaining a stay. If the appeal is dismissed, the assessee can file appeal before ITAT u/s.253. In every appeal, the Appellate Tribunal, where it is possible may head and decide such appeal within four years from the end of the financial year in which such appeal is filed u/s. 253(1) or 253(2). It was provided that ITAT after considering the merits of the application made by the assessee pass an order of stay for a maximum period of 180 days in any proceedings against the order of the CIT(A). It was also provided that where the appeal is not so disposed of, the ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the period originally allowed and the period so extended shall not, in any case exceed 365 days and the Appellate Tribunal shall dispose of the appeal within period or periods of stay so extended or allowed. It was provided further that if such appeal is not disposed of within the period allowed or periods extended not beyond 365 days, the order of stay shall stand vacated after

the expiry of such period or periods, even if delay in disposing of appeal is not attributable to the assessee.

For pre-deposit of disputed demand, CBDT has issued office memorandum dated 31st July, 2017, which directs to deposit 20% of disputed demand for stay, where the demand is contested before CIT(A). Such requirement of pre-deposit of demand was not implemented for granting of stay by ITAT. Hence for fairer and more reasonable assessment, similar requirement to pre-deposit of 20% of demand has been implemented for the appeal filed before ITAT. It is provided w.e.f. 1st April, 2020 that ITAT may grant stay under the first proviso or may grant extension under second proviso subject to the condition that assessee deposits not less than 20% of the amount of tax, interest, fees, penalty or any other sum payable under provisions of this Act, or furnishes security of equal amount in respect thereof.

Amendment in Dispute Resolution Panel (DRP)

Section 144C was inserted by the Finance Act, 2009 and came into force w.e.f. 1st October, 2009 in order to address the concern of multi-national companies and to provide speedy disposal of disputes related to Transfer Pricing in international transactions. The Dispute Resolution Panel is a collegium of three Principal Commissioner or commissioners of Income Tax. The panel hears the disputes between assessee and the AO related to transfer pricing taxation matters. DRP is alternate dispute resolution mechanism, where AO is required to forward a draft assessment order to the foreign companies if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of the assessee. Such eligible assessee has an option either to accept the order or to file his objection with the DRP within 30 days from the date of receipt of order. DRP provides opportunity of hearing to assessee and AO and issues directions within nine months from the end of the month in which the draft order of AO is forwarded to the assessee. This directions issued by DRP are binding on the AO, who has to complete the assessment within one month from the end of the month in which such directions are received.

The proceedings before DRP is not an appeal proceedings but a correcting mechanism in the nature of a second look at the proposed assessment order keeping in mind the interest of the assessee. The idea behind implementation of section 144C was that there shall not be any type of undue harassment to the assessee. However before amendment to section 144C, scope of the section was restricted only for cases related to variation in the income or loss returned. Other variations made by the AO were not covered u/s.144C. Hence to stop any type of undue harassment to the assessee, the words "income or loss returned" has been omitted from sub-section (1) of section 144C. Hence now for all variations made by AO, which is prejudicial to the interest of the assessee within ambit of section 144C, he is required to forward draft assessment order to the eligible assessee.

Moreover, before amendment u/s. 144C, “eligible assessee” was defined as

- (1) Any person in whose case variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed u/s. 92CA(3);
and
- (2) Any foreign company.

However, non-residents other than company were not eligible to file appeal before DRP u/s. 144C. Hence to provide benefit of this section to more assesseees, scope of this section has been expanded with effect from 1st April, 2020 by including “non-resident, not being a company” in the eligible assessee.

STUDY OF SELECTED CLAUSES OF FINANCE BILL 2020

CA FALGUNI H. KATARMAL
M.Com, ACA, DISA(ICAI)

**Section 194O (Newly Added section) and
Amendment in calculation of Cost of acquisition.**

Clause 84 of Finance Bill, 2020.
Insertion of new section 194O.
Effective from 1st April 2020.

With insertion of section 194O, new levy of TDS on ecommerce transactions has been introduced.

Before getting into provisions of the newly added section 194O, lets us go through basic three terms we must know.

1) E-COMMERCE or ELECTRONIC COMMERCE:

Means supply of goods or services or both over a digital or electronic network. It includes supply of digital products. And Services shall include Technical and Professional Services as explained in section 194J.

2) E-COMMERCE OPERATOR:

Means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is responsible for paying to e-commerce participant.

3) E-COMMERCE PARTICIPANT:

Means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.

Let us understand Provision of section 194O:

-What transaction to attract TDS under section 194O?

Payment of an amount by e-commerce operator to e-commerce participant for Sale of Goods or provision of service through an electronic or digital Platform.

-Who has to deduct TDS ?

E-Commerce operator to deduct TDS.

-When to Deduct TDS ?

At the time of Credit of amount to the account or payment by any mode to e-commerce participant by e-commerce operator for sale of goods or service or both whichever is earlier.

-What is the rate of TDS?

1% of Gross amount of such sales or services or both paid by e-commerce operator to e-commerce participant.

Gross amount of sale or service or both shall include any amount directly paid by buyer of goods to service or both to e-commerce participant.

-Any Exemption from deduction of TDS ?

TDS shall not be deducted from any sum paid or amount credited to the account of e-commerce participant who is either an individual or an HUF whose gross amount of such sale or services or both during previous year has not exceeded 5 Lakh rupees. Also such E-commerce participant must furnish his PAN or Aadhar number to the e-commerce operator.

-Also once TDS for a transaction has been deducted under section 194O , or for transaction which are exempt from deduction of TDS under this section, such transaction shall not be liable for deduction of TDS under any other sections of Chapter XVII-B of the ACT.(to avoid same transaction being subjected to deduction of TDS more than once).

However this exemption shall not apply to any amount received or receivable by an ecommerce operator for hosting advertisements or providing any other services which are not in connection with sale of goods or provision of services of the e-commerce participant through e-commerce operator.

-Higher rate of TDS:

If e-commerce participant does not provides his PAN or Aadhar Number, E-commerce Operator shall deduct TDS @5% as per section 206AA.

-In case a seller of goods or provider of service being e-commerce participant desires that TDS on gross sales shall be deducted at a lower rate under this section or no TDS to be deducted ,then he shall apply for Certificate of Lower or No deduction under section 194.

-In case of E-commerce Operator being nonresident in India, the person himself or any person authorized by such person or agent of such person in India including any person who is treated as his agent under section 163, shall be the person responsible for such payment and deduction of TDS.

*Clause 28 of Finance Bill, 2020.
Amendment in Section 55.
Effective from for A.Y. 2021-2022.*

Section 55 provides for meaning of terms important in computation of capital gains on capital assets :Cost of acquisition, Cost of Improvement.

*Prior to amendment by finance bill 2020,
For Capital assets which became property of the assessee prior to 1st April 2001,
Cost of acquisition was to be taken as
(I)Fair market value of such capital asset as on 1st April 2001
Or
(II)Actual cost of acquisition to assessee, at his option.*

Or

*In case capital asset is acquired by assessee by any mode specified in section 49(1)
(by way of gift /will /or that modes specified)
Cost of acquisition was to be taken as
(I)Fair market value of such capital asset as on 1st April 2001
Or
(II)Actual cost of acquisition to the previous owner, at the option of assessee.*

*By finance bill 2020 proviso to clause (b) sub-clause (ii) has been added,
Which provides that in case of capital asset being land or building or both, the fair
market value of such asset as on 1st April 2001 shall not exceed the stamp duty
value, wherever available of such asset on 1st April 2001.*

Explanation to said proviso has also been added.

*“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
payment of stamp duty in respect of an immovable property.*

*Hence cost of acquisition in case of capital asset being land or building or both shall
be taken as,*

(I)Fair market value of such capital asset as on 1st April 2001

Or

Stamp duty value of such capital asset as on 1st April 2001, whichever is lower

Or

(II)Actual cost of acquisition to assessee, at his option.

STUDY OF SELECTED CLAUSES OF FINANCE BILL 2020

CA KHUSHBU MORBIA
M.Com. FCA

~~DIVIDEND DISTRIBUTION TAX~~

In Union Budget, Finance Minister Nirmala Sitharaman granted the stock market a long-pending wish, **scrapping of dividend distribution tax (DDT)**. Currently, no other country in the world has a DDT regime. Even in India, it was only in 1997 that DDT was made a part of income tax laws. The tax was scrapped in 2002, but was brought back in the very next year on the pretext of ease of tax administration.

According to industry and markets, dividend distribution tax is a surrogate tax and it obstructs the flow of foreign direct investment. Therefore, doing away with this tax can give a major push to investment. The abolition of this tax can also boost market sentiment and make Indian equities more attractive.

However, the measure came with a twist, leaving a bitter taste on investors, particularly those liable to pay tax less than the rate of DDT if the dividend is included in their income. While the Centre abolished DDT, dividends will now be taxed in the hands of recipients at their applicable rate — which can be as high as 43 per cent for the ultra-rich.

Besides companies, DDT removal will benefit foreign investors, multinational companies (MNCs), holding companies and investors in the lower income tax bracket. On the other hand, it will end up hurting domestic promoters and individuals falling in the 30 per cent-plus tax bracket. While dividend payouts by companies will go up, the net realisation for these investors could be lower. The current regime pinched foreign investors, particularly due to non-availability of DDT credit, which led to multiple tax incidence. Interestingly, MNCs will end up making higher return on their investments than domestic promoters under the new tax structure.

Clause 7 of the Bill seeks to amend **section 10** of the Income-tax Act relating to incomes not included in total income.

These amendments will take effect from 1st June, 2020.

Clause (23D) of the said section exempts the income of **Mutual Fund** registered under the Securities and Exchange Board of India Act, 1992 or such other Mutual Funds. This exemption is subject to the provisions of Chapter XII-E relating to special provision relating to tax on distributed income. It is proposed to omit the

reference of the said Chapter in the said clause so that Mutual Funds are **not required to pay additional tax** under that Chapter.

Clause (23FC) of the said section exempts certain income of business trust including income by way of dividend referred to in sub-section (7) of section 115-O. It is proposed to amend the said clause so as to **exempt all dividend received or receivable by business trust from a special purpose vehicle** under the said clause.

Clause (23FD) of the said section exempts income distributed by **business trust** to a unit holder except the interest and rental income. It is proposed to amend the said clause so as to **exclude dividend** income received by a unit holder from business trust **from such exemption**.

Clause(34) of the said section exempts income by way of dividends referred to in **section 115-O** except the income by way of dividend chargeable to tax in accordance with the provisions of section 115BBDA. It is proposed to amend the said clause so as to provide that the provisions of the said clause shall **not apply** to any income, by way of dividend, received on or after the 1st April, 2020.

Clause(35) of the said section exempts income received in respect of the units of a **Mutual Fund**, units from the Administrator of the specified undertaking and units from the specified company. It is proposed to amend this clause to provide that the provisions of the said clause shall **not apply** to any income, in respect of units, received on or after the 1st April, 2020.

Following amendments will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Clause 54 of the Bill seeks to amend **section 115BBDA** of the Income-tax Act relating to tax on certain **dividends received from domestic companies**. The said section provides for taxation of dividend **exceeding ten lakh** rupees in the hands of specified assessee resident in India **at the rate of ten per cent**. It is proposed to amend the said section so as to **restrict** the applicability of the provisions of that section to dividend declared, distributed or paid by a domestic company or companies on or before the 31st day of March, 2020.

Clause 30 of the Bill seeks to amend **section 57** of the Income-tax Act relating to deductions.

The said section allows deduction of any reasonable sum for the purpose of realising such dividend except the dividend referred to in section 115-O. It is proposed to omit the reference of dividend referred to in section 115-O.

It is further proposed to insert a proviso to the said section so as to provide that **no deduction** shall be allowed **from the dividend income**, or income in respect of units of a Mutual Fund specified under clause (23D) of section 10 or income in respect of units from a specified company defined in the Explanation to clause (35) of section 10, other than deduction on account of interest expense and in any previous year such deduction shall not exceed twenty per cent. of the dividend income, or income in respect of such units, included in the total income for that year without deduction under that section.

Clause 47 of the Bill seeks to amend **section 115A** of the Income-tax Act relating to **tax on dividends, royalty and technical service fees in the case of foreign companies**.

Clause 48 of the Bill seeks to amend **section 115AC** of the Income-tax Act relating to **tax on income from bonds or Global Depository Receipts** purchased in foreign currency or capital gains arising from their transfer.

Clause 49 of the Bill seeks to amend **section 115ACA** of the Income-tax Act relating to **tax on income from Global Depository Receipts** purchased in foreign currency or capital gains arising from their transfer.

Clause 50 of the Bill seeks to amend **section 115AD** of the Income-tax Act relating to **tax on income of Foreign Institutional Investors** from securities or capital gains arising from their transfer.

The said sections, inter alia, provides for taxation of dividend excluding dividends referred to in section 115-O. It is proposed to omit the reference of dividends referred to in section 115-O so that all **dividend income is taxed in the hands of non-resident** (not being a company) or a foreign company or Foreign Institutional Investors.

Clause 59 of the Bill seeks to amend **section 115-O** of the Income-tax Act relating tax on distributed profits of **domestic companies**. The said section provides for **levy of additional income tax** on any amount declared, distributed or paid by a domestic company by way of **dividend** (whether interim or otherwise), whether out of current or accumulated profits. The dividend declared, distributed or paid on or after the 1st day of April, 2003 is covered under the provisions of the said section. It is proposed to amend the section so as to provide that dividend declared, distributed or paid on or after the 1st day of April, 2003 but on or **before the 31st day of March, 2020** shall be covered under the provisions of the said section.

Clause 60 of the Bill seeks to amend **section 115R** of the Income-tax Act relating to tax on distributed income to unit holders. The said section, inter alia, provides for levy of additional income-tax on any **income distributed by** the specified company or a **Mutual Fund** to its unit holders. It is proposed to amend the section so as to provide that the income distributed on or **before the 31st day of March, 2020** shall only be covered under the provisions of that section.

Clause 62 of the Bill seeks to amend **section 115UA** of the Income-tax Act relating to tax on income of unit holder and **business trust**.

The said section enables pass through of the income of certain nature from business trust to its unit holders. Section provides that if in any previous year, the distributed income or any part thereof, received by a unit holder from the business trust is of the nature as referred to in clause (23FC) or clause (23FCA), of section 10, then, such distributed income or part thereof shall be deemed to be the income of such unit holder and shall be charged to tax as income of the previous year.

It is proposed to omit the reference of sub-clause (a) of clause (23FC) of section 10 from the said sub-section so as to provide that the **distributed income** of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 **shall be deemed to be income of unit holder** and shall be charged to tax as income of the previous year.

Clause 74 of the Bill seeks to amend **section 194** of the Income-tax Act relating to **dividends**. The said section, inter alia, provides that the principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment in cash or before issuing any cheque or warranty to a shareholder, who is resident in India, deduct from the amount of such dividend, income-tax at the rates in force.

It is proposed to amend the said section so as to bring the **payment by any mode** within the ambit of that section and also to provide for **deduction at the rate of ten per cent**. instead of the rates in force.

It is further proposed to amend the first proviso to the said section so as to provide for payment of dividend by the company by any mode and to **increase the threshold limit** thereof from two thousand five hundred rupees **to five thousand rupees**.

Clause 81 of the Bill seeks to amend **section 194LBA** of the Income-tax Act relating to certain income from units of a **business trust**.

The said section, inter alia, requires business trust to deduct tax on distribution of income, referred to in section 115UA, being of the nature referred to in sub-clause

(a) of clause (23FC) or clause (23FCA) of section 10, at the rate of ten per cent. to a resident and at the rate of five per cent. to a non-resident (not being a company) or a foreign company, respectively.

It is proposed to amend and provide for **tax deduction** by business trust **on dividend** income paid to unit holder, at the rate of **ten per cent. for resident**. For **non-resident**, it would be **5 per cent for interest** and **ten per cent. for dividend**.

Clause 85 of the Bill seeks to amend **section 195** of the Income-tax Act and proposed to **omit** the proviso that provides **no deduction** in respect of any **dividends** referred to in **section 115-O**.

Clause 86 of the Bill seeks to amend **section 196A** of the Income-tax Act relating to income in respect of **units of non-residents**.

The said section provides that any person responsible for paying to a non-resident, not being a company, or to a foreign company, any income in respect of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, **deduct income-tax** thereon at the **rate of twenty per cent**.

It is proposed to amend the said section to substitute the expression "Unit Trust of India" referred to in the said section with "**specified company** referred to in the Explanation to clause (35) of section 10"; and to **enable credit** of income or payment thereof **by any mode**.

Clause 40 of the Bill seeks to **INSERT NEW SECTION 80M** relating to deduction in respect of certain inter-corporate dividends.

Sub-section (1) of the said new section provides that where the gross total **income of a domestic company in any previous year includes** any income by way of **dividends from any other domestic company**, there shall, in accordance with and subject to the provisions of this section, be **allowed in computing the total income** of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends received from such other domestic company as does not exceed the amount of dividend distributed by the first mentioned domestic company on or before the due date.

Sub-section (2) of the said section provides that where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

It is further proposed to clarify the expression “due date” to mean the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139.

Clause 80 of the Bill seeks to insert a **NEW SECTION 194K** relating to income in respect of units.

The said section, inter alia, provides that any person responsible for paying to a resident any income in respect of—

- (i) units of a Mutual Fund specified under clause (23D) of section 10; or
- (ii) units from the Administrator of the specified undertaking; or
- (iii) units from the specified company,

shall, at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, **deduct income-tax thereon at the rate of ten per cent.**

It is further proposed to provide that the provisions of the said section shall **not apply where** the **amount** of such income or, as the case may be, in aggregate during the financial year by the person responsible for making the payment to the account of, or to, the payee **does not exceed five thousand rupees.**

STUDY OF SELECTED CLAUSES OF FINANCE BILL 2020

CA SONALI ASODIYA
B.Com., ACA

Rationalisation of provisions relating to trust, institution and funds.

1) Amendment of sub-section (7) of section 11 to allow entities holding registration under section 12A/12AA to apply for notification under clause (46) of section 10.

Section 11 of the Act provides for grant of exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act.

Sub-section (7) of section 11 of the Act provides that where a trust or an institution has obtained registration under section 12AA or under section 12A and said registration is in force for any previous year, then, exemption under section 10 [except under clauses (1) and (23C)] shall not be allowed. The base of this sub section that if any trust or institution has voluntarily registered under this section for exemption of income, it should comply with all the conditions for claiming exemptions and if fails to do so, income or part thereof becomes ineligible for exemption. No other provision of the Act should operate so as to exclude such income or part thereof from total income. The only exclusion is given to section 10(23C).

Now by amending sub-section 7 of section 11, one more exclusion is added i.e. Clause 46 of section 10. Before this amendment, entities holding registration under section 12A/12AA not able to get notified under clause (46) of section 10. After this amendment, entities get an option to switch to this exemption after obtaining the requisite registration. But the option of switching should be regulated.

2) Rationalising the process of registration of trusts, institutions, funds, university, hospital etc and approval in the case of association, university, college, institution or company etc.

The present process of registration of trusts, institutions, funds, university, hospital etc under section 12AA or under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, and approval of association, university, college, institution or company etc need improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/ approval/ notification before actually starting the activities.

It is also felt that the approval or registration or notification for exemption should also be for a limited period, say for a period not exceeding five years at one time, which would act as check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption. This would in fact also be a reason for having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis, in general, as in any case they would be revisiting the concerned authorities for new registration before expiry of the period of exemption. This new process needs to be provided for both existing and new exempt entities.

3) Filing of statement of donation by donee to cross-check claim of donation by donor: Cross-Checking of donation.

Section 80G is proposed to be amended to provide that entities receiving donation shall be required to file a statement of the donation received and issue a certificate to donor.

At present, there is no reporting obligation by the exempt entity receiving donation/ any sum in respect of such donation/ sum. With the advancement in technology, it is now feasible to standardise the process

through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. Deduction in respect of donation given is allowed only on the basis of certificate issued by exempt entity.

This standardisation may be similar to the provisions relating to the tax collection/ deduction at source, which already exist in the Act. In order to ensure proper filing of the statement, levy of a fee and penalty may also be provided in cases where there is failure to furnish the statement.

Enlarging the scope for tax deduction on interest income under section 194A of the Act.

Section 194A of the Act governs interest other than interest on securities. Sub-section (1) thereof provides that any person not being individual or HUF who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall deduct income-tax at the rates in force.

Sub-section (3) of said section provides for circumstances in which the provisions of sub-section (1) shall not apply.

Clause (i) thereof provides the circumstance where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person to the account of, or to, the payee, does not exceed a certain threshold.

Clause (v) provides circumstance to be the income credited or paid by a co-operative society (other than a co-operative bank) to a member or to income credited or paid by a co-operative society to any other co-operative society.

Clause (vii) provides circumstance to be the income credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank and deposits (other than time deposits) with a co-operative

bank other than a co-operative society or bank engaged in carrying on the business of banking.

In order to extend the scope of this section to interest paid by large co-operative society, it is proposed to amend sub-section (3) and insert proviso to provide that a co-operative society referred to in clause (v) or clause (viia) of said sub-section (3) shall be liable to deduct income-tax in accordance with the provisions of sub-section (1), if-

(a) the total sales, gross receipts or turnover of the co-operative society exceeds fifty crore rupees during the financial year immediately preceding the financial year in which the interest referred to in sub-section (1) is credited or paid; and

(b) the amount of interest, or the aggregate of the amount of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than fifty thousand rupees in case of payee being a senior citizen and forty thousand rupees, in any other case. This amendment will take effect from 1st April, 2020

STUDY OF SELECTED CLAUSES OF FINANCE BILL 2020

CA HARDIK KETANBHAI THACKER
B.Com, ACA

The Finance Minister Nirmala Sitharaman presented Union Budget 2020 in Parliament on Saturday, February 1st, 2020. She stated that the government shall work towards taking the country forward so that we can leapfrog to the next level of health, prosperity and well-being.

This budget is woven around 3 prominent themes:

1. Aspirational India in which all sections of the society seek better standards of living, with access to health, education and better jobs.

2. Economic development for all, indicated in the Prime Minister's exhortation of "SabkaSaath, SabkaVikas, SabkaVishwas". This would entail reforms across swathes of the economy. Simultaneously, it would mean yielding more space for the private sector. Together, they would ensure higher productivity and greater efficiency.

3. Ours shall be a Caring Society that is both humane and compassionate. Antyodaya is an article of faith.

Let us Start and discuss about Changes made in real estate transactions in Budget 2020. Before we start discussion let us know what actually finance minister talk about real estate transactions.

Concession to real estate transactions

- Currently, while taxing income from capital gains, business profits and other sources in respect of transactions in real estate, if the consideration value is less than circle rate by more than 5 percent, the difference is counted as income both in the hands of the purchaser and seller. In order to minimize hardship in real estate transaction and provide relief to the sector, I propose to increase the limit of 5% to 10%.

Above changes will directly related to Sec-50C,43CA,56(2)(x)

Section 43CA for Builders & developers Vs Section 50C applicable to capital assets.

Section 50C is applicable only to land or building or both. Section 50C uses value adopted by the Stamp Valuation Authority (SVA) for the purpose of levying stamp duty on registration of properties, as guidance value to determine undervaluation of

land or building if any in the sale agreement. In case sale consideration received or claimed to be received by seller on sale of land or building or both is less than value adopted by stamp valuation authority, such value adopted by SVA would become actual sale consideration received or accruing to the seller. Therefore, capital gain would be Valuation as per stamp valuation authority reduced by cost/indexed cost of acquisition.

Whereas Finance Act, 2013 has introduced a new section 43CA in the Income Tax Act, 1961. Section 43CA is applicable from Financial Year 2013-14 & is applicable for taxing the sale of immovable property held in the nature of stock in trade, in the same way as applicable for immovable property held in the nature of "capital asset" under section 50C of the Act.

In budget 2018 has brought about an amendment in section 50C , 43CA,56(2)(x) whereby no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five percent of the sale consideration. This has been introduced in order to minimize hardship in case of genuine transactions in the real estate sector

In budget 2020 variation percentage increase from 5 to 10%.

Let us understand with example:

1. Suppose SDV=Rs. 10 Lakhs

Sale Consideration=Rs 9 Lakhs ,then 110% of 9 lakhs=9.90 lakhs which is within limit of SDV so actual sale consideration will be taken Which is 9 lakhs.

2. Suppose SDV=Rs. 15 lakhs

Sale consideration =Rs 11 lakhs,then 110% of 11lakhs=12.1 lakhs which is not within the limit so SDV will be taken as full value of consideration.

Above same will also applicable to 56(2)(x).

Reducing the rate of TDS on fees for technical services (other than professional services).

Section 194J breaks in two different rates 2% and 10% for fees for technical services and fees for professional services respectively

Section 194J of the Act provides that any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of fees for professional services, or fees for technical services, or any remuneration or fees or commission by whatever name called (other than those on which tax is deductible under section 192 of the Act, to a director), or royalty or any sum referred to in clause (va) of

section 28, shall, at the time of payment or credit of such sum to the account of the payee, deduct an amount equal to ten per cent as income-tax.

Section 194C of the Act provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of payment or credit of such sum deduct an amount equal to one per cent in case payment is made to an individual or a HUF and two per cent in other cases.

It is noticed that there are large number of litigations on the issue of short deduction of tax treating assessee in default where the assessee deducts tax under section 194C, while the tax officers claim that tax should have been deducted under section 194J of the Act.

Therefore 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.

STUDY OF SELECTED CLAUSES OF FINANCE BILL 2020

CA EKTA THACKER
B.Com. ACA

Provisions relating to tax audit u/s 44AB

This year, the rumour was that Budget 2020 would remove the provisions regarding tax audit under Section 44AB of the Income Tax Act but fortunately it was rumour only. **Earlier Under section 44AB** of the Act, every person carrying on business is required to get his accounts audited, **if his total sales, turnover or gross receipts, in business exceed or exceeds one crore rupees in any previous year.** In case of a person carrying on profession he is required to get his accounts audited, **if his gross receipt in profession exceeds, fifty lakh rupees in any previous year.** However, persons having turnover lower than the two crores are also required **to mandatorily get their books of accounts audited if the income offered for taxation is lower than the specified percentage (6 per cent, 8 per cent, 50 per cent) of its turnover.**

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

So now, if assessee is having business turnover **up to two crore** than **AND** declare income for taxation **equal or more than** (6 per cent, 8 per cent, 50 per cent) of its turnover **AND** aggregate of all receipts and payment in cash does not exceed five per cent of such receipt and payment, **shall not be liable for Tax Audit.**

And if business turnover **exceeds the two crore AND** declare income for taxation is **less than** (6 per cent, 8 per cent, 50 per cent) of its turnover **AND** aggregate of all receipts and payment in cash does not exceed five per cent of such receipt and payment, **shall also not be liable for Tax Audit.**

Further, to enable pre-filing 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 assessee at least one month prior to the due date of filing of return of income. This requires amendments in all the sections of the Act which mandates filing of audit report along with the return of income or by the due date of filing of return of income. Thus, provisions of section 10, section 10A, section 12A, section 32AB, section 33AB, section 33ABA, section 35D, section 35E, section 44AB, section

44DA, section 50B, section 80-IA, section 80-IB, section 80JJAA, section 92F, section 115JB, section 115JC and section 115VW of the Act are proposed to be amended accordingly.

So, amended due dates of Audit and Income Tax Return Filing are,

Due date of Income Tax Return of Audited Tax Payers (Section 44AB, 44ADA, 115JB etc)	31st October
Due date of Tax Audit	One month prior to due date of Income Tax Return Filing i.e. 30th September

Ceiling Limit of turnover for TDS / TCS compliance under sections 194A, 194C, 194H, 194I, 194J and 206C also amended as per new threshold for getting books of accounts audited, and the same applicable from assessment year 2020-21 and subsequent assessment years.

26AS Sec 285BB:

Now 26AS is not only about tax deducted and collected at source, a new **section 285BB regarding annual financial statement** introduced in the Act to include real estate transactions as well as transactions in shares.

FM in her budget speech said with the advancement in technology and enhancement in the capacity of the system, multiple information in respect of a person such as sale/purchase of immovable property, share transactions etc. are being captured or proposed to be captured.

This section proposes to mandate the prescribed income tax authority or person authorised by such authority to upload in registered account of the assessee a statement in such form and manner and setting forth such information, which is in possession of an income tax authority, so the same can be used by assessee for the filing of income tax return.

Section 288 verification of return:

From 1st April, 2020 any person, as may **be prescribed by the Board to appear as an authorised representative to verify the return as per amended sub-section (2) of section 288**, as earlier it has been reported that lack of explicit reference in section 288 of the Act for an Insolvency Professional to act as an authorised representative of the corporate debtor has been raising certain practical difficulties.