JMP Advisors®

INDIA BUDGET
2020 - 21

Reaching for the USD 5 Trillion economy

For private circulation only

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Foreword

The first year of the Modi 2.0 Government was witness to a medley of events both globally and on the domestic front, some of which led to the Government being at the receiving end of criticism. In such an environment, to say that the Indian Finance Minister ('FM') faced a daunting task in presenting Budget 2020-21 would be an understatement. Budget 2020-21 was presented on 1 February 2020 in the milieu of a global slowdown and an economy characterised by tepid growth, a fragile job market, lacklustre consumer demand and low investor sentiment. Radical measures were required to help move out of this phase of gloom.

The fiscal deficit target for Financial Year ('FY')2019-20 has been revised to 3.8% of the Gross Domestic Product ('GDP') from 3.3% pegged earlier, with an estimate of 3.5% for FY 2020-21. The nominal GDP growth for FY 2020-21 is estimated at 10%. Forex reserves are significiantly higher at USD 457 billion.

In her previous budget, the FM chose the investment route over consumption led growth. Several interim measures have also been implemented in order to revive growth, as a result of which some initial green shoots of recovery are visible. In this Budget, the FM was truly required to focus on creating a virtuous cycle by providing a surge to consumption by increasing Government expenditure, especially investment in infrastructure and to propel labour intensive industries. This would speed up job creation, which would fuel demand and in turn increase manufacturing, thereby accelerating growth and providing long term sustainability.

Contrary to expectations, Budget 2020-21 does not bring any immediate ‘big bang’ measures. However, Budget 2020-21, which talks of a New India, provides the necessary stimulus to pave the way for the revival of the economy such as an impetus to the infrastructure sector, focus on education and entrepreneurship including beneficial measures for Start-ups, revitalising the financial services sector and renewed focus on agriculture and rural development. A simplified tax regime for individuals is expected to appease the smaller taxpayers. While abolishing Dividend Distirbution Tax will be a welcome move for corporates and foreign investors, it may adversely impact promoters and large domestic investors. The amendments in the residential status of individuals may be a bitter pill for non-resident Indians.

While the Prime Minister still maintains that the goal of a USD 5 trillion economy will be achieved by 2025, it has certainly turned into a challenging task. If the USD 5 trillion mark is to be reached, it will be important to set in motion the twin enginess of growth and consumption to uplift the economy.

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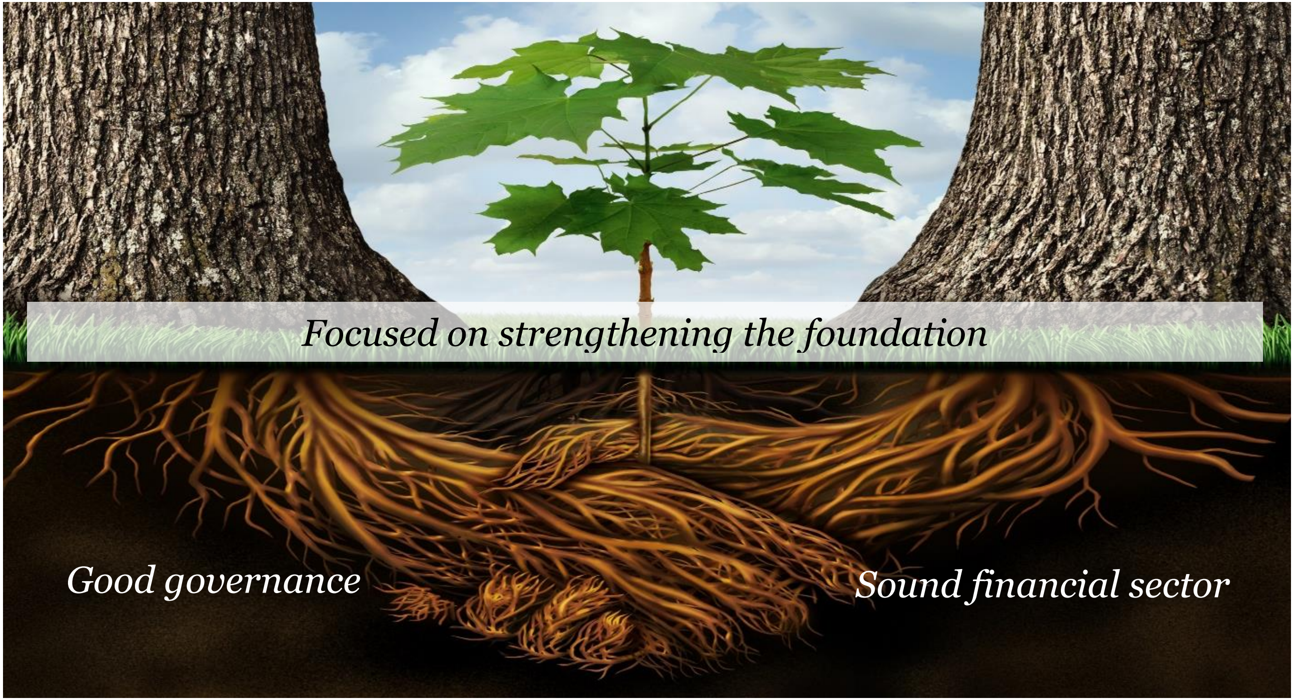
Key policy announcements



Key policy announcements

Budget 2020-21 focuses on providing Ease of Living to all citizens. To this end, Budget 2020-21 is focused on the three themes of Aspirational India, Economic Development and Caring Society. This section summarizes significant policy proposals announced in the Budget under each of the above themes.

1. Infrastructure

i. It is proposed to set up a project preparation facility for infrastructure projects. This programme would actively involve young engineers, management graduates and economists from Indian Universities.

ii. It is proposed to accelerate development of highways which will include development of 2,500 Km access control highways, 9,000 Km of economic corridors, 2,000 Km of coastal and land port roads and 2,000 Km of strategic highways.

iii. It is proposed to set up a large solar power capacity alongside the rail tracks on the land owned by railways.

iv. In order to make sea ports more efficient, it is proposed to corporatize at least one major port and subsequently list it on the stock exchanges.

v. It is proposed to allocate INR 1,700 Billion (~USD 24 Billion) for Transport infrastructure and INR 220 Billion (~USD 3 Billion) towards power and renewable energy sector.

vi. It is proposed to expand the national gas grid from the present 16,200 km to 27,000 km.

vii. It is proposed to set up an Investment Clearance Cell that will provide “end to end” facilitation and support, including pre-investment advisory and facilitate clearances at the Central and State level governments.

viii. It is proposed to develop five new smart cities in collaboration with State Governments in Public Private Partnership (‘PPP’) mode.

ix. In order to boost domestic manufacturing and attract large investments in the electronics value chain, a scheme is proposed to be launched with a focus on encouraging manufacture of mobile phones, electronic equipment and semi-conductor packaging. The details of the scheme would be announced later.

x. To position India as a global leader in Technical Textiles, a National Technical Textiles Mission is proposed with a 4 year implementation period from FY 2020-21 to 2023-24 with an estimated allocation of INR 15 Billion (~USD 0.2 Billion)

xi. It is proposed to monetise at least 12 lots of highway bundles of 6,000 km before the year 2024 by encouraging FASTag mechanism.

xii. It is proposed to allocate INR 273 Billion (~USD 4 Billion) for development and promotion of Industry and Commerce.

xiii. New frontiers are opening up in computing, communications, cyber security with wide-spread applications with the use of Quantum technology. It is therefore proposed to allocate INR 80 Billion (~USD 1.1 Billion) over a period 5 years for the National Mission on Quantum Technologies and Applications.

2. Start-ups

i. It is proposed to direct all infrastructure agencies of the government to involve youth power in start-ups which will help in rolling out value added services in public infrastructure.

ii. A digital platform is proposed to be promoted that would facilitate seamless application and capture of Intellectual Property Rights ('IPR'). It is also proposed to establish, in an Institute of Excellence, a Centre that would work on the complexity and innovation in the field of Intellectual Property.

iii. It is proposed to provide early life funding, including a seed fund to support ideation and development of early stage Start-ups.

3. Banking and Financial services

i. The Deposit Insurance and Credit Guarantee Corporation has been permitted to increase Deposit Insurance Coverage for a depositor from INR 100,000 to INR 500,000 per depositor.

ii. In order to strengthen Cooperative Banks, it is proposed to amend the Banking Regulation Act for increasing professionalism, enabling access to capital and improving governance and oversight for sound banking through the Reserve Bank of India.

iii. In order to include more Non-Banking Financial Companies ('NBFC') for debt recovery under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, it is proposed to reduce the eligibility limit of asset size from INR 5 Billion (~USD 71 Million) to INR 1 Billion (~USD 14 Million) and limit of loan size from INR 10 Million (~USD 140,000) to INR 5 Million (~USD 71,000).

4. Financial Markets and Foreign investment

i. It is proposed to increase the limit for Foreign Portfolio Investment ('FPI') in corporate bonds from 9% of outstanding stock to 15% of the outstanding stock of corporate bonds.

ii. After the big success of floating the Debt based Exchange Traded Fund ('ETF'), it is proposed to float new Debt-ETF consisting primarily of government securities.

iii. It is targeted to raise INR 2,100 Billion (~USD 30 Billion) from disinvestments. As a step towards meeting this target, it is proposed to sell a part of government's holding in LIC by way of an Initial Public Offer.

iv. Certain specified categories of Government securities are proposed to be opened for non-resident investors, in addition to being available to domestic investors.

v. It is proposed to set up an international bullion exchange in the International Financial Services Centre ('IFSC') at GIFT city as an additional option for trade by global market participants. This will create jobs and will lead to better price discovery of gold.

5. Micro, Small and Medium Enterprises ('MSMEs')

i. It is proposed to amend the Factor Regulation Act, 2011 to enable NBFCs to extend invoice financing to the MSMEs through TReDS, thereby enhancing their economic and financial sustainability.

ii. An app-based invoice financing loan product is proposed to be launched to avoid the problem of delayed payments and consequential cash flow mismatches for MSMEs.

iii. It is proposed to introduce a scheme to provide subordinate debt for entrepreneurs of MSMEs.The subordinate debt is proposed to be provided by banks which would count as quasi-equity and would be fully guaranteed through the Credit Guarantee Trust for Medium and Small Entrepreneurs (CGTMSE).

iv. It is proposed to release a National Logistics Policy to create a single window e-logistics market and focus on generation of employment, skills and making MSMEs competitive.

6. Agriculture and Rural sector

i. It is proposed to expand PM-KUSUM scheme to provide 2 million farmers for setting up stand-alone solar pumps. It is also proposed to help 1.5 million farmers to solarise their grid-connected pump sets. In addition, a scheme is proposed to enable farmers to set up solar generation capacity on their barren lands.

ii. Village Storage scheme is proposed to be run by the Self Help Groups ('SHG') to provide farmers with good holding capacity and reduce their logistics cost.

iii. Agriculture credit target has been set at INR 15,000 Billion (~USD 210 Billion).

iv. It is proposed to set up a 'Kisan Rail' thorugh PPP mode to ensure a seamless, national supply cold chain for perishable products. Refrigerated coaches are proposed to be set up in Express and Freight trains as well.

v. It is proposed to raise fish production to 20 million tonnes by FY 2022-23 by involving youth in fishery extension through 3,477 SagarMitras and 500 Fish Farmer Producer Organisations.

vi. It is proposed to allocate INR 1,600 Billion (~USD 23 Billion) for Agriculture, Irrigation and Allied activities and INR 1,230 Billion (~USD 18 Billion) for rural development.

vii. With a vision to provide digital connectivity to all public institutions at Gram Panchayat level, Fibre to the Home (FTTH) connections through Bharatnet will link 100,000 gram panchayats this year. For this purpose, it is proposed to allocate INR 60 Billion (~USD 0.8 Billion) to Bharatnet programme.

7. Health, Water and Sanitation

i. It is proposed to set up Viability Gap funding window for setting up hospitals in the PPP mode.

ii. It is proposed to provide INR 690 Billion (~USD 10 Billion) towards health sector which includes INR 64 Billion (~USD 0.9 Billion) for Prime Minister Jan Arogya Yojana (PMJAY).

iii. It is proposed to allocate INR 123 Billion (~USD 1.5 Billion) for Swachh Bharat Mission.

iv. The Jal Jeevan Mission announced by the Prime Minister which emphasises on augmenting local water sources, recharging existing sources and promoting water harvesting and de-salination is proposed to be allocated INR 115 Billion (~USD 1.5 Billion).

8. Education and Skill development

i. A new education policy is proposed to be announced shortly after obtaining inputs from State Education Ministries, Members of Parliament and other stakeholders.

ii. Measures will be put in place to enable sourcing of External Commercial Borrowings (‘ECB’) and Foreign Direct Investment to enable a high quality of education.

iii. With a view to tap overseas employment opportunities for teachers, nurses, para-medical staff and care givers in overseas countries, it is proposed to design special courses including for skill development, together with professional bodies to meet overseas employers’ requirements and also to include language requirements of various countries.

iv. It is proposed to start a programme whereby urban local bodies across the country would provide internship opportunities to fresh engineers for a period up to one year.

v. To make India the preferred destination for higher education under Study in India programme, it is proposed to hold Ind-SAT in Asian and African countries.

9. Culture and tourism

i. It is proposed to establish an Indian Institute of Heritage and Conservation under the Ministry of Culture.

ii. Five archaeological sites are proposed to be developed as iconic sites with on-site museums.

10. Environment and climate change

i. The utilities running Thermal power plants that are old and with high carbon emission levels are proposed to be advised to close if their emission is above the pre-set norms.

ii. To ensure cleaner air in cities above one million, it is proposed to encourage State governments that are formulating and implementing plans for cleaner air. Parameters for the incentives would be notified by the Ministry of Environment, Forests and Climate change. It is proposed to allocate INR 44 billion (~USD 0.6 billion).

11. Others

i. It is proposed to amend the corporate law to correct certain cases where criminal liability exists for acts that are civil in nature. It is also proposed to examine other laws to incorporate similar amendments.

ii. It is proposed to introduce a policy to enable private sector to build Data Centre parks throughout the country to enable entities to skilfully incorporate data in every step of their value chains.

iii. It is proposed to allocate INR 356 billion (~USD 5 billion) for nutrition related programmes to improve the health of mothers and children.

iv. A task force is proposed to be appointed to determine whether the minimum age of marriage for women needs to be reviewed in light of the fact that higher opportunities for education and career are opening up for women.

Key tax proposals

Direct taxes

This section summarises the significant direct tax proposals announced in Budget 2020-21. These proposals are subject to enactment of the Finance Bill, 2020. Further, the direct tax proposals in the Finance Bill 2020 are effective from FY 2020-21 unless otherwise specifically stated. References to sections are to sections in the Income-tax Act, 1961 ('the IT Act') unless otherwise stated.

I. Tax rates

1. New simplified income tax regime for Individuals and Hindu Undivided Family ('HUF') [*New Section 115BAC*]

i. Individual/HUF taxpayers can opt for a new simplified personal tax regime provided no deductions or exemptions are availed.

ii. Below is a comparison of the existing rate of tax vis-à-vis proposed rate of tax under the simplified tax regime:

Aggregate Income	Existing rate of tax (%)	New rate of tax under simplified tax regime (%)
Upto INR 0.25 million	NIL	NIL
More than INR 0.25 million but upto INR 0.50 million	5	5
More than INR 0.50 million but upto INR 0.75 million	20	10
More than INR 0.75 million but upto INR 1 million	20	15
More than INR 1 million but upto INR 1.25 million	30	20
More than INR 1.25 million but upto INR 1.50 million	30	25
More than INR 1.50 million	30	30

iii. If the proposed conditions laid down in the new regime are not complied with in any Financial Year ('FY'), the benefit of lower rate of tax will not be available for that FY and the existing rate of tax shall apply.

iv. In case of Individual/HUF taxpayers having no business income, the option can be exercised for every FY. In case of Individual/HUF taxpayers having business income, the option once exercised for a FY shall be valid for that FY as well as subsequent FYs. Once the option for lower rate of tax under the simplified regime for taxpayers having business income is availed, it is allowed to be withdrawn only once. After such first withdrawal of the option, it cannot be exercised again in any subsequent FY, except in cases where there is no business income earned by the taxpayer.

v. It is proposed that the provisions of Alternate Minimum Tax ('AMT') will no longer be applicable if the option under the simplified tax regime is exercised.

2. Change in tax rate and surcharge for Co-operative Societies resident in India [*New Section 115BAD*]

i. It is proposed that co-operative societies can opt for the reduced rate of tax at 22% and reduced surcharge of 10% and health and education cess of 4% (effective rate of tax 25.168%) provided they comply with the prescribed conditions under the new section 115BAD.

ii. If the proposed conditions laid down in the simplified tax regime are not complied with in any FY, the benefit of lower rate of tax will not be available for that FY and the existing rate of tax shall apply. Once the option for lower rate of tax is availed, it cannot be withdrawn in any subsequent FY.

iii. It is proposed that the provisions of AMT will no longer be applicable if the option under simplified tax regime is exercised.

3. Boost to Manufacturing sector [*Section 115BAB*]

i. Currently, any domestic company set up and registered on or after 1 October 2019 and which commences manufacturing or production of any article or thing on or before 31 March 2023 is eligible to opt for a concessional rate of tax at 15% plus applicable surcharge and health and education cess.

ii. It is proposed that the benefit of such concessional rate of tax be extended to domestic companies engaged in the business of generation of electricity.

II. Provisions relating to non-residents

1. Deferral of the provisions relating to Significant Economic Presence [*Section 9*]

i. It is proposed to defer the applicability of provisions relating to Significant Economic Presence for determining whether a non-resident has a business connection in India till FY 2021-22.

2. Clarification of income attributable to operations in India [*Section 9*]

It is proposed to clarify that income attributable to operations carried out by a non-resident in India will include:

a. Income from advertisements targeted at customers residing in India or customers accessing the advertisements using an Internet Protocol (‘IP’) address located in India.
b. Sale of data collected from a person residing in India or from a person using an IP address located in India.
c. Sale of goods or services using data collected from a person residing in India or from a person using an IP address located in India.

3. Relaxation of rules for fund management in India [*Section 9A*]

i. Fund managers acting on behalf of eligible funds in India are not considered as constituting a business connection in India if they fulfil certain conditions.

ii. It is proposed that the condition regarding maintaining minimum corpus of the fund of INR 1 billion (~USD 14.3 million) should be met within twelve months from establishment or incorporation of the fund, instead of the existing time limit of six months.

iii. It is also proposed that in determining the aggregate participation cap of 5% by residents in India, the contribution made by the eligible fund manager up to INR 250 million (~USD 3.6 million) should not be considered during the first 3 years of operation.

4. **Amendment in the definition of royalty [*Section 9(i)(vi)*]**

The definition of 'royalty' is proposed to be amended to include consideration for sale, distribution or exhibition of cinematographic films.

5. **Purpose of Double Taxation Avoidance Agreement ('DTAA') aligned with Multilateral Instrument ('MLI') [Section 90 and 90A]**

i. India had ratified and deposited the MLI on 25 June 2019, as a result of which the MLI has come into force for India on 1 October 2019.

ii. Article 6 of the MLI provides for modification of the Covered Tax Agreements (i.e. DTAA covered by MLI) to include the intention of eliminating double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance including treaty shopping arrangements.

iii. It is proposed to extend the purpose to provide that DTAAs should not create opportunities for non-taxation or reduced taxation including through treaty shopping in order to align the purpose of DTAAs with the MLI.

6. No requirement of filing return of income by non-residents [*Section 115A*]

It is proposed to provide that non-resident taxpayers will not be required to file a return of income in India if their total income comprises of royalty or fees for technical services on which tax has been withheld at 10% plus applicable surcharge and health and education cess. Currently, this concession is available only to income derived by way of interest and dividend.

7. Exemption to FPIs from applicability of indirect transfer of assets *[Section 9]*

It is proposed to clarify that the existing exemption from the applicability of indirect transfer provisions is available to Category I and Category II FPIs as per SEBI (FPI) Regulations, 2014, prior to their repeal. Further, the said exemption is proposed to be made applicable to an asset or a capital asset held by a non-resident by way of investment in Category-I Foreign Portfolio Investor under the SEBI (FPI) Regulations, 2019 made under SEBI Act, 1992.

III. Provisions relating to transfer pricing

1. Benefit of Safe Harbour Rules and Advance Pricing Agreements extended to attribution of profit to Permanent Establishment [*Section 92CB and 92CC*]

i. Safe Harbour Rules ('SHR') and Advance Pricing Agreements ('APA') are tools to provide certainty in determination of the Arm's Length Price and reduction of disputes.

ii. Attribution of income in India to the Permanent Establishment ('PE') of a non-resident has been for long, a subject matter of litigation. In order to provide certainty and reduce litigation, it is proposed to apply the provisions of SHR and APA to the determination of income to be attributed to the PE of a non-resident in India.

2. Interest paid or payable to certain persons to be excluded from Thin Capitalisation norms *[Section 94B]*

i. Thin capitalisation norms were introduced to curb base erosion and profit shifting by restricting the deduction for interest expenditure on debts issued by a non-resident Associated Enterprise of the borrower.

ii. Since the PE of a non-resident bank is subject to the rates of tax applicable to a non-resident in India, base erosion and profit shifting would not arise. Therefore, thin capitalisation provisions are proposed to be amended to exclude interest on debt paid or payable to an Indian PE of a non-resident bank.

IV. Provisions relating to profits and gains of business or profession

1. Deduction for insurance companies carrying on non-life insurance business *[Section 43B and Rule 5 of First Schedule]*

It is proposed to allow deduction of expenditure incurred (which was disallowed earlier under section 43B) by an insurance company carrying on non-life insurance business in the FY in which the amount is actually paid.

2. Amendment in tax audit threshold and filing of return of income in tax audit cases *[Section 44AB]*

i. For the purpose of tax audit applicability, it is proposed to enhance the gross receipts/turnover threshold limit for a business taxpayer from existing INR 10 million (~USD 0.14 million) to INR 50 million (~USD 0.70 million) in cases where cash receipts and payments during the FY do not exceed 5% of the total receipts and payments respectively.

ii. In order to facilitate pre-filled returns for taxpayers liable to tax audit and transfer pricing audit, it is proposed to advance the due date of submission of tax audit report, transfer pricing audit report and other reports/certificates required for claiming specific exemptions/deductions under the IT Act, by one month of the respective due date for filing return of income.

iii. All companies, persons (other than companies) whose accounts are required to be audited and partners of a firm whose accounts are liable to tax audit will be required to file their returns by 31 October (instead of 30 September) of the year following the relevant FY.

V. Capital gains

1. Increase in safe harbour for deriving full value of consideration for capital gains/ income from other sources *[Section 43CA, 50C and 56(2)(x)]*

i. For the purpose of computing capital gains or business income or income from other sources where the consideration declared to be received or accrued as a result of the transfer of land or building is less than the value adopted or assessed by the stamp valuation authority, the value so adopted or assessed shall be deemed to be the full value of consideration, provided such difference is more than 5% of consideration received.

ii. It is now proposed to increase the limit of such difference from 5% to 10%.

2. Cost of acquisition in case of capital assets acquired before 1 April 2001 *[Section 55]*

i. Currently, for the purpose of computing long term capital gains, the taxpayer has an option to consider the actual cost or the Fair Market Value ('FMV') as on 1 April 2001 as the cost of acquisition in case of capital assets acquired before 1 April 2001.

ii. It is proposed that such FMV shall not exceed "stamp duty value" of the assets as on 1 April 2001.

VI. Tax reliefs and incentives

1. Affordable housing *[Section 80EEA and 80-IBA]*

i. It is proposed to extend the time limit for sanction of loan for the purpose of claiming deduction for payment of interest upto INR 0.15 million (~USD 2,150) availed for affordable housing projects by one year from 31 March 2020 to 31 March 2021.

ii. The tax holiday on profits and gains of developers involved in affordable housing projects is proposed to be extended by one year from 31 March 2020 to 31 March 2021.

2. Conditions specified for claiming deduction for donations *[Section 80G, 80GGA, 234G and 271K]*

i. It is proposed that the institution or fund receiving donations exempt under section 80G and 80GGA in the hands of the donor shall prepare and furnish a statement to the prescribed income-tax authority in respect of donations received.

ii. In case where there is a failure to furnish the statement, it is proposed to levy a late filing fee of INR 200 (~USD 3) per day upto the date of furnishing the statement and the tax officer may also levy a penalty between INR 10,000 (~USD 150) to INR 100,000 (~USD 1,500).

iii. It is also proposed that the institution or fund shall furnish a certificate to the donor specifying the amount of donation.

iv. Deduction shall be allowed to the donor only on the basis of specified information furnished by the institution or fund to the prescribed authority.

v. It is proposed to restrict the deduction for donations in cash for scientific research or rural development to INR 2,000 (~USD 30).

vi. The proposed amendment will be effective from 1 June 2020.

3. Rationalisation of provisions of start-ups *[Section 80-IAC]*

i. Currently, an eligible start-up can claim a 100% deduction of the profits and gains derived from an eligible business for a period of 3 consecutive FYs out of the first 7 FYs, if it is incorporated between 1 April 2016 and 31 March 2021.

ii. It is proposed to allow the deduction for 3 consecutive FYs out of the first 10 FYs instead of 7 FYs.

iii. The turnover limit specified by the Department of Promotion of Industry and Internal Trade to qualify as a 'Start-up' is INR 1 billion (~USD 14.3 million). However, deduction of profits is available under the IT Act only to an eligible Start-up having total turnover upto INR 250 million (~USD 3.6 million).

iv. In order to rationalise the provisions relating to the turnover criterion, it is proposed to increase the threshold of turnover from INR 250 million to INR 1 billion.

VII. Withholding taxes

1. Withholding on payment of dividend by a company *[Section 194]*

Withholding tax at 10% is proposed to be levied on dividends declared/paid by an Indian company. Further, the threshold for applicability of withholding tax on dividend payments to the shareholder during the FY is proposed to be raised from INR 2,500 (~USD 35) to INR 5,000 (~USD 71).

2. Withholding on payment of income by co-operative societies [*Section 194A*]

It is proposed to provide that a co-operative society is required to withthold tax at the time of payment or credit of interest income to its deposit holders if both the following conditions are fulfilled:

a. The total sales, gross receipts or turnover of such co-operative society exceeds INR 500 million (~USD 7.15 million) in the preceding FY; and

b. The amount of interest paid or credited exceeds INR 50,000 (~USD 710) in case of payment to a senior citizen and INR 40,000 (~USD 571) in any other case

3. Scope of ‘Work’ to include procuring materials from associates *[Section 194C]*

Currently, tax is required to be withtheld from payments made to a contractor where the contractor manufactures or supplies a product according to the specifications of the customer by procuring materials from the said customer. It is proposed to extend the levy of tax to such transactions where materials are procured from a specified associate of such customer.

4. Withholding on fees for technical services *[Section 194J]*

It is proposed to reduce the rate of withholding tax on fees for technical services (other than professional services) paid to a resident to 2% from the existing rate of 10%.

5. Withholding on payment of income by mutual funds and other specified companies *[Section 194K]*

i. It is proposed that any person who is responsible for paying to a resident any income in respect of units of a mutual fund/specified undertaking/specified company is required to withhold tax at 10%.

ii. No tax will be required to be withheld if the amount of income payable is less than INR 5,000 (~USD 71) during the FY.

6. Withholding on payments by e-commerce operators to e-commerce participants *[New Section 194-O, 206AA]*

i. It is proposed that an e-commerce operator is required to withhold tax on sale of goods or services on the payments to an e-commerce participant who is a resident of India at 1% at the time of payment or credit, whichever is earlier. If the e-commerce participant does not have Permanent Account Number (‘PAN’) or Aadhar number, then the rate of withholding tax is proposed at 5%.

ii. No tax will be required to be withheld if all the following conditions are satisfied:

a. The e-commerce participant is an invidual or HUF.
b. The amount of sale does not exceed INR 0.5 million (~ USD 7,000) in FY.
c. The e-commerce participant has furnished its PAN or Aadhar number to the e-commerce operator.

iii. The terms e-commerce operator, e-commerce participant, services and electronic commerce have been defined for this purpose.

7. Withholding tax on income by way of interest from an Indian company [*Section 194LC*]

i. The time limit for applicability of concessional rate of withholding tax on interest payable on monies borrowed from non-residents in foreign currency under a loan agreement or long term bonds is proposed to be extended to 1 July 2023.

ii. A concessional rate of withholding tax of 4% is proposed on interest payable to a non-resident on a long term bond/ Rupee Denominated Bond which is listed on a recognised stock exchange in an IFSC.

8. Withholding tax on income by way of interest on certain bonds and Government Securities *[New Section 194LD]*

i. The time limit for applicability of concessional rate of withholding tax on interest payable on monies borrowed from non-residents and on Rupee Denominated Bonds/Government Securities payable to FPIs is proposed to be extended to 1 July 2023.

ii. It is proposed that the concessional rate of withholding tax of 5% applicable to interest payable on or after 1 April 2020 but before 1 July 2023 to FPIs and Qualified Foreign Investors ('QFI') shall be extended to investments made in municipal debt securities.

9. Withholding of taxes in case of certain income by individuals *[Section 194A,194C,194H,194I, 194J and 206C]*

Individuals and HUFs are liable to withhold tax from certain incomes if the sales, gross receipts or turnover of business of such individual or HUF exceeds INR 10 million (~USD 140,000) or in case of professionals, exceeds INR 5 million (~USD 70,000), irrespective of the applicable thresholds for tax audit.

10. Withholding of taxes on income in respect of units held by non-resident *[Section 196A]*

It is proposed that any person responsible for paying to a non resident (not being a company) or foreign company, any income in respect of units of a mutual fund or a specified company, by any any mode of payment, shall withhold tax at 20%.

11. Tax collection at source [*Section 206C*]

i. It is proposed to collect tax at source at 5% at the time of receipt/debiting the account of the buyer whichever is earlier by the following persons:

   a. An authorised dealer who receives, in aggregate, an amount exceeding INR 0.7 million (~USD 10,000) for remittance out of India from a buyer under the Liberalised Remittance Scheme;
   b. A seller of an overseas tour package while receiving amounts from the buyer of such package.

ii. Further, it is proposed to amend section 206C to collect tax at source on sale of goods above the specified limit as under:

   a. A seller whose total sales, gross receipts or turnover exceeds INR 100 million (~USD 1.4 million) during the preceding FY is liable to collect tax at source at 0.1% on consideration received from a buyer in excess of INR 5 million (~USD 70,000), other than on sale of motor cars and foreign tour packages.

   b. In case of non availability of PAN and Aadhar, the seller will have to collect tax at 1%.

VIII. Other key proposals

1. Residential status of individuals and HUFs [*Section 6*]

i. The minimum period of stay to qualify as a Resident of India is proposed to be reduced from 182 to 120 days during the relevant FY, in case of a citizen of India or a Person of Indian Origin, who comes on a visit to India.

ii. It is proposed to provide that an Indian citizen who is not subject to tax in any other country by reason of his domicile, residence or any other criterion of similar nature would be deemed to be a resident of India and consequentially, subject to tax on his global income in India.

iii. It is proposed that an individual or an HUF shall be said to be 'Not ordinarily Resident' in India in a FY, if the individual or manager of the HUF is non-resident in India in seven out of ten FYs preceding the relevant FY, instead of nine out of ten FYs. The other condition regarding stay in India for less than 730 days during the preceding seven FYs is proposed to be deleted.

2. Provisions relating to Business Trusts *[Section 2(13A), 10(23FC), 10(23FD), 194LBA and 115UA]*

i. In order to align the definition of business trust under the IT Act with the Securities and Exchange Board of India (Infrastructure Investment Trust) [hereinafter referred to as 'SEBI (InvITs)'] Regulations where mandatory listing requirement for InvITs is done away, it is proposed to provide a similar status to private unlisted InvITs and Real Estate Investment Trust ('REIT') as public listed InvITs and REITs with regard to the tax treatment as per section 115UA of the IT Act.

ii. Due to the proposed abolition of Dividend Distribution Tax ('DDT'), any distribution of income in the form of dividend by the business trust is proposed to get 'pass through' treatment in the hands of such business trust and the same shall be liable to tax in the hands of unitholders.

iii. It is proposed to introduce withholding tax at 10% on income distributed by way of dividend to all unit holders of a business trust.

3. Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund *[Section 10(23FE)]*

It is proposed to provide 100% exemption for income in the nature of dividend, interest or long-term capital gains from equity/debt investments made by a wholly owned subsidiary of Abu Dhabi

Investment Authority and Sovereign Wealth Fund in a company or enterprise engaged in specified infrastructure projects, on or before 31 March 2024 and held for atleast 3 years.

4. Provision for e-appeal *[New Section 250(6B)]* / e-penalty *[New Section 274(2A)]*

i. It is proposed that the Central Government may notify an e-scheme for the purposes of disposal of an appeal by the Commissioner (Appeals), as well as imposition of penalty by the tax officer in order to impart greater efficiency, transparency and accountability by-

   a. Eliminating the interface between tax officer and taxpayer in the course of appellate proceedings to the extent technologically feasible;
   b. Optimizing utilization of the resources through economies of scale and functional specialization;
   c. Introducing an appellate system with dynamic jurisdiction in which an appeal shall be disposed of by a specified Commissioner (Appeals);
   d. Introducing a mechanism for imposing penalty with dynamic jurisdiction in which penalty shall be imposed by an income-tax authority.

ii. It is also proposed that the Central Government will be empowered for issuing notification in the Official Gazette regarding such schemes on or before 31 March 2022 and every notification issued shall be required to be laid before each House of Parliament.

5. Clarity on stay by the Income Tax Appellate Tribunal *[Section 254]*

i. It is proposed to provide that the second level Appellate Authority i.e. the Income Tax Appellate Tribunal ('ITAT') may grant an order to stay tax demand for a period not exceeding 180 days subject to the condition that the taxpayer deposits at least 20% of the amount of tax, interest, fee, penalty or any other sum payable, or furnishes security of an equal amount in respect thereof.

ii. It is also proposed that where the appeal is not disposed within the said period of stay as specified in the stay order, no extension of stay shall be granted by the ITAT. However, a further stay can be granted on an application made by the taxpayer if the delay in disposing the appeal is not attributable to the taxpayer and the taxpayer has deposited at least 20% of the amount of tax, interest, fee, penalty or any other sum payable, or furnish security of an equal amount in respect thereof.

6. Penalty for false entry, etc. in books of account *[New Section 271AAD]*

i. It is proposed to levy penalty for any false entry/omission of entry found during the proceedings in the books of account maintained by any person. The penalty payable by such person shall be equal to the aggregate amount of false/omitted entry.

ii. It is also proposed to levy penalty of a sum which is equal to the aggregate amounts of false/omitted entries, on a person who causes another person to make a false entry/omit any entry in any manner.

7. Adoption of a Taxpayers' Charter [*New Section 119A*]

A Taxpayers' Charter is proposed to be incorporated in the statute, of which details are awaited.

8. Scheme to grant relief from vexatious litigation process under the direct taxes

i. Owing to 483,000 cases of direct taxes litigation pending in various appellate forums, the FM proposes to introduce a 'Vivad se Vishwas' Scheme for reducing litigation in direct taxes.

ii. Under this scheme, a taxpayer would be required to pay the amount of disputed tax on or before 31 March 2020 and get a waiver of interest and penalty. Taxpayers availing the scheme after 31 March 2020 will have to pay an additional amount. The scheme is proposed to be kept open till 30 June 2020.

iii. Taxpayers whose appeals are pending at any level may avail of this scheme.

iv. There is no proposed amendment in the Finance Bill to this effect and details are awaited.

9. **Rationalising the process of registration of trusts, institutions, funds, universities, hospitals etc. *[Section 12A, Insertion of new Section 12AB, Section 10(23C)]***

i. Similar to the exemption under section 10(23C), it is proposed to allow exemption under section 10(46) of the IT Act, to an entity, even if it is registered under section 12AA, subject to the condition that the registration under section 12AA will become inoperative. If such entity wishes to register under section 12AA/12AB, it will have to file an application and it will not be entitled for exemption under section 10(46) from the date on which the registration becomes operative.

ii. It is proposed to bring a new process of approval for registration of trusts, institutions, funds, universities, hospitals etc. It is also proposed that registration/exemption will be given only for a limited period of time, not more than 5 years at a time. This new process will be applicable to existing as well as.

iii. The proposed amendment will be effective from 1 June 2020.

10. Modification of e-assessment scheme *[Section 143]*

In order to enhance efficiency, transparency and accountability in the e-assessment scheme, the scope of the scheme is proposed to be extended to best judgement assessment cases.

11. Amendment in the scope of the Dispute Resolution Panel *[Section 144C]*

i. The scope of the Dispute Resolution Panel is proposed to be expanded to include cases where the Tax Officer proposes to make any variation which is prejudicial to the interest of the taxpayer, irrespective of whether there is a variation in the income or loss as per the return of income.

ii. The definition of eligible taxpayer is proposed to be expanded to include all non-resident taxpayers, including non-corporate taxpayers.

12. Deduction of the amount of contribution by the employer [*Section 17(2)*]

i. In order to bring parity amongst all the classes of employees on the deduction from salary, it is proposed to provide an aggregate limit of INR 0.75 million (~USD 10,700) for an employer's contribution in a year to a recognized Provident Fund, approved Superannuation Fund and National Pension Scheme.

ii. Any contribution in excess of the aforesaid limit is proposed to be taxed in the hands of the employee.

iii. Any annual income accreted in relation to such contribution by the employer exceeding INR 0.75 million p.a shall be taxed in the hands of the employee.

13. Taxation of dividend [*Section 57, Section 80M, Section 115BBDA and Section 115-O*]

i. DDT on dividends payable by domestic companies/income from units of mutual funds is proposed to be abolished.

ii. Tax on dividend distributed by domestic companies and income from units of mutual funds will be borne by the recipient of dividend/income at his respective slab rate.

iii. Only interest on funds borrowed for investment in shares/ units of mutual funds will be allowable as deduction against the dividend income/income from mutual funds, subject to a maximum deduction of 20% of the dividend income/income from units of mutual funds.

iv. To avoid double taxation of dividend, dividend paid by a subsidiary company will be exempt in the hands of the holding company, provided the dividend is distributed at least one month prior to the due date of filing a return under Section 139(1).

v. The aforesaid amendment will be applicable to dividend declared, distributed or paid on or after 1 April 2020.

14. Deferral of tax on stock options/sweat equity shares issued by Start ups *[Sections 191 and 192]*

i. It is proposed to defer the payment of tax by an employee when specified securities i.e. Employee Stock Option Plan/sweat equity shares are allotted or transfered by an employer (eligible Start up) to within 14 days from the earliest of the following:

   a. Expiry of 60 months from the end of the FY in which such specified security is allotted or transferred.
   b. Date of sale of such specified security/sweat equity shares.
   c. Date on which the employee ceases to be an employee of the Start up which issued the securities/sweat equity shares.

ii. Although the income by way of perquisite accrues in the hands of the employee in the FY in which he excersises such option, the tax liability on such perquisite is proposed to be deferred to the future event as mentioned above. Such Start up shall withhold tax on such perquisite on the basis of rates in force of the FY in which the said specified securities or sweat equity shares were alloted or transferred.

iii. It is proposed that, in case the tax on such perquisite is not withheld by the employer, the tax liability will be discharged by the employee.

Indirect taxes

This section summarises some of the significant indirect tax proposals announced in Budget 2020-21.

I. Customs duty

1. The FM has continued with the impetus to the "Make in India" policy by increasing customs duty on a slew of items manufactured in India.

2. A health care cess of 5% has been proposed on imports of healthcare equipment, the rationale being to disincentivize imports of such equipment which is also manufactured in India.

3. Some of the major items for which customs duties have changed are as follows.

Name of item	Existing rate (%)	Proposed rate (%)
Certain household goods like tableware, kitchenware, brooms, vacuum flasks etc.	10	20
Electrical appliances	10	20
Footwear	15-25	20-35

Stationery items	10	20
Furniture	20	60
Toys	20	60
Components for Complete Knock-Down ('CKD') & Semi Knock Down ('SKD') under phased manufacture of Electric Vehicles	10-25	15-40
Mobile phones and components	Varying rates	15-20
Shelled walnuts	30	100
Auto parts	5-30	10-40
Certain fuel/oil and input chemicals	10	0
Newsprint and lightweight coated paper	10	5
Willow used in sports goods	Varying rates based on 3% of Free on Board	0

4. The concept of an Electronic Duty Credit register is proposed to be introduced and several redundant exemptions have been withdrawn.

5. Certain rules for procedure and levy are proposed to be formulated for imports from Free Trade Agreement countries.

II. Excise duty and Service tax

1. The most significant change in excise duty is that duties have been increased across the board for all tobacco products, except bidis.

2. Given that most items are now covered under GST, there are no other significant changes in excise duties.

III. Goods and Services Tax ('GST')

1. The FM has referred to certain measures to simplify compliance with GST law, especially for small taxpayers.

2. The following significant measures are proposed:

   i. Simplification of filing procedures, extension of time limits and pre filling of GST returns.

ii. An Aadhar based system of verification along with a dynamic coding structure.

iii. Claiming Input Tax Credit ('ITC') on date of debit note rather than on date of original invoice as earlier.

iv. Addressing issues of inverted duty structure.

3. However, in order to discourage frauds in claiming ITC and rasing of fake invoices, the FM has proposed using Artificial Intelligence tools to track such frauds and has proposed a 100% penalty for fake invoices leviable both on the creator as well as the beneficiary of such fake invoices.

IV. Stamp Duty

It is proposed to exempt stamp duty under the Indian Stamp Act, 1899 on instruments of transaction on Stock Exchanges and Depositories established within any IFSC set up under the provisions of the Special Economic Zones Act, 2005.

V. Commodities Transaction Tax

As per an amendment proposed in the Finance Act, 2013, all commodity derivatives based on prices or indices or options on goods other than agricultural commodities are proposed to be covered under the ambit of Commodities Transaction Tax ('CTT'), both on set off as well as delivery basis. Different rates of CTT are specified and whether the tax would be borne by the seller or purchaser.

Abbreviations

APA	: Advanced Pricing Agreements	IP	: Internet Protocol
AMT	: Alternate Minimum Tax	MSME	: Micro, Small and Medium Enterprise
CKD	: Complete Knock-Down	MLI	: Multilateral Instrument
DTAA	: Double Taxation Avoidance Agreement	NBFC	: Non-Banking Finance Company
DDT	: Dividend Distribution Tax	PAN	: Permanent Account Number
ETF	: Exchange Traded Fund	PE	: Permanent Establishment
FM	: Finance Minister	PPP	: Public-Private Partnership
FY	: Financial Year	REIT	: Real Estate Investment Trust
GST	: Goods and Services Tax	SHR	: Safe Harbour Rules
GDP	: Gross Domestic Product	SKD	: Semi Knock Down
HUF	: Hindu Undivided Family	SHG	: Self Help Group
INR	: Indian Rupee	SEBI	: Securities and Exchange Board of India
IFSC	: International Financial Services Centre	IT Act	: The Income-tax Act,1961
ITC	: Input Tax Credit	QFI	: Qualified Foreign Investors

InvIT	: Infrastructure Investment Trust	USD	: United States Dollar
ITAT	: Income Tax Appellate Tribunal		

About JMP Advisors

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