

***INDIA BUDGET***

***2021 – 22***

***Reset...Realign...Restart***



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## Foreword

It would be an understatement to say that the last fiscal year was an unprecedented year shrouded with huge uncertainty. The COVID-19 pandemic has subdued economies globally and the Indian economy, which was already facing headwinds before the onset of the pandemic, was no exception to this. The pandemic and the ensuing nationwide lockdown resulted in the Indian economy almost coming to a grinding halt and the Indian Government was forced to do a tightrope walk between safeguarding lives and livelihoods. Against this backdrop, the Indian Finance Minister ('FM') had an unenviable task cut out before her to present the blueprint for economic revival.

On the positive side, India had a Current Account Surplus at 2% of its Gross Domestic Product ('GDP') and remained a preferred investment destination, witnessing a significant inflow of Foreign Direct Investment ('FDI'). The GDP is expected to contract by 7.7% in Financial Year ('FY') 2020-21. While the Fiscal Responsibility and Budget Management Act, 2003 ('FRBM Act') mandates fiscal deficit of 3% of GDP to be achieved by 31 March 2021, the fiscal deficit as per the revised estimate for FY 2020-21 has been pegged at 9.5% of GDP due to the unprecedented circumstances of this year, with a commitment to reach a sub 4.5% level by FY 2025-26. Overall, it appears that the Indian economy is poised for a V-shaped recovery.

The Budget has significant allocations of funds to various initiatives, a high degree of transparency and several welcome policy announcements such as investment in infrastructure including flagship road, rail and metro projects, debt financing for the infra sector, divestments and strategic sale of Public Sector Enterprises ('PSEs'), recapitalisation of public sector banks, further liberalisation of Foreign Direct Investment ('FDI') in the insurance sector, promoting competition in the power sector and asset monetisation among others. On the tax front, Budget 2021-22 contains additional incentives for IFSC units and liberalisation of provisions for fund managers and

sovereign wealth funds with a view to encourage foreign investment. There is also a sense of relief among taxpayers that no COVID cess or any other additional tax has been introduced in the wake of the pandemic. The proposal to tax certain Provident Fund contributions, extension of time limit to reopen certain scrutiny matters, non-allowability of depreciation on goodwill and withdrawal of tax exemption in case of certain Unit Linked Insurance Plans ('ULIP') may however be a cause for disappointment.

Overall, Budget 2021-22 brings several much required reforms which could help to transition the economy from the pause mode to the restart and strong growth mode.

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## Key policy announcements

*Shifting gears for a growth drive*



## Key policy announcements

Budget 2021-22 lays down a vision for Atmanirbhar Bharat. To resonate with this vision, Budget 2021-22 is focused on six pillars of Health and Wellbeing, Physical and Financial Capital and Infrastructure, Inclusive Development for Aspirational India, Reinvigorating Human Capital, Innovation and Research & Development ('R & D') and Minimum Government and Maximum Governance. This section summarises significant policy proposals announced in the Budget in each of the above areas.

### 1. Health and Wellbeing

- i. It is proposed to launch a new centrally sponsored scheme PM Atmanirbhar Swasth Bharat Yojana with an outlay of INR 641.80 billion (~USD 8.8 billion) over a period of 6 years for health and wellbeing to focus on strengthening three areas: Preventive, Curative and Wellbeing.
- ii. It is proposed to provide support to 17,788 rural and 11,024 urban Health and Wellness Centres, integrated public health labs in all districts and 3,382 'block' public health units in 11 states.
- iii. It is proposed to introduce a voluntary vehicle scrappage policy whereby personal vehicles and commercial vehicles would undergo fitness tests in automated fitness centres after 20 years and 15 years respectively.

## 2. Physical and Financial Capital and infrastructure

- i. To achieve manufacturing growth, Production Linked Incentive ('PLI') Schemes had been announced for various sectors. For this, an outlay of INR 1,970 billion (~USD 27 billion) has been committed over 5 years.
- ii. It is proposed to increase funding for the National Infrastructure Pipeline ('NIP') which includes 7,400 projects by creating institutional structures, monetising assets and enhancing the share of capital expenditure in central and state budgets.
- iii. It is proposed to set up a professionally managed Development Financial Institution ('DFI') to act as a provider, enabler and catalyst for long term infrastructure debt financing. The DFI would target to lend INR 5 trillion (~USD 70 billion) over 3 years.
- iv. A National Monetisation Pipeline of brownfield infrastructure assets will be launched for monetising operating public infrastructure assets. Further, it is proposed to monetise surplus lands available with Government Ministries and Public Sector Enterprises.
- v. It is proposed to allocate INR 5.54 trillion (~USD 76 billion) for capital expenditure in FY 2021-22 which is a steep increase of 34.5% over the estimated spend for FY 2020-21. Further, it is proposed

to allocate INR 2 trillion (~USD 27 billion) to States and Autonomous Bodies for their capital expenditure.

- vi. It is proposed to award another 8,500 kms and complete an additional 11,000 kms of national highway corridors by March 2022. It is proposed to provide a capex outlay of INR 1.08 trillion (~USD 15 billion).
- vii. It is proposed to prepare a National Rail Plan wherein the mission is to create a 'future ready' railway system by 2030. It is proposed to provide a capex outlay of INR 1.07 trillion (~USD 14.6 billion).
- viii. It is proposed to deploy 2 new technologies i.e. 'MetroLite' and 'MetroNeo' to provide metro rail systems at lesser cost with the same experience, convenience and safety in Tier-2 and peripheral areas of Tier-1 cities.
- ix. To prevent monopoly and provide fair and healthy competition, it is proposed to put in place a framework to give alternatives to consumers to choose from available Power Distribution Companies.
- x. It is proposed that 7 projects worth more than INR 20 billion (~USD 0.3 billion) will be offered by Major Ports in Public Private Partnership mode in FY 2021-22.

- xi. It is proposed to provide subsidy support to Indian shipping companies in global tenders floated by Ministries and Central Public Sector Enterprises ('CPSEs').
- xii. It is proposed to have a gas pipeline project for the Union Territory of Jammu & Kashmir.
- xiii. It is proposed to increase the permissible Foreign Direct Investment ('FDI') limit from 49% to 74% in Insurance Companies and allow foreign control with certain safeguards.
- xiv. It is proposed to consolidate the provisions of securities laws i.e. Securities and Exchange Board of India ('SEBI') Act, 1992, Depositories Act, 1996, Securities Contracts (Regulation) Act, 1956 and Government Securities Act, 2007 into one umbrella code i.e. Securities Market Code. It is also proposed to introduce an investor charter as a right of all financial investors across all financial products.
- xv. It is proposed to regulate gold exchanges in the country through SEBI. Further, Warehousing Development and Regulatory Authority is proposed to be strengthened to set up a commodity market eco-system arrangement.
- xvi. It is proposed to support the development of a world class Fin-Tech hub at the Gift City – International Financial Services Centre ('IFSC').

- xvii. It is proposed to decriminalise several provisions of the Limited Liability Partnership ('LLP') Act, 2008.
- xviii. To reduce the compliance burden for small companies, it is proposed to revise the definition of small companies under the Companies Act, 2013 increasing their threshold for paid up capital from INR 5 million (~USD 70,000) to INR 20 million (~USD 0.3 million) and turnover from INR 20 million (~USD 0.3 million) to INR 200 million (~USD 3 million).
- xix. It is proposed to allow a One Person Company ('OPC') to be incorporated without any limit on minimum paid-up share capital and turnover. An OPC may switch to any other type of company at any time post incorporation. Further, it is proposed to allow Non-Resident Indians ('NRIs') and Indian citizens who reside in India for at least 120 days in a FY to incorporate an OPC in India.
- xx. It is proposed to free up the public sector banks from stressed assets by setting up an Asset Reconstruction Company Limited and an Asset Management Company. Further, to strengthen the financial position of Public Sector Banks, it is proposed to recapitalise them by an amount of INR 200 billion (~USD 3 billion) in FY 2021-22.
- xxi. It is proposed to launch the Initial Public Offer of Life Insurance Corporation in FY 2021-22.

- xxii. It is proposed to complete the strategic divestment of a number of Public Sector Undertakings ('PSUs') like BPCL, Air India, IDBI Bank, Pawan Hans, etc. in FY 2021-22. It is also proposed to privatise two public sector banks and one general insurance company in FY 2021-22.

### **3. Inclusive Development for Agriculture**

- i. It is proposed to ensure Minimum Support Price ('MSP') of 1.5 times the cost of production across all commodities.
- ii. It is proposed that substantial investments be made in development of modern fishing harbours and fish landing centres; to start with 5 major fishing harbours will be developed.
- iii. The benefit of the One Nation One Ration Scheme for providing rations to migrant workers anywhere in the country which is under implementation by 32 of the states and Union Territories ('UTs'), is proposed to be extended to the remaining four states.

### **4. Reinvigorating Human Capital**

- i. It is proposed to introduce legislation to set up the Higher Education Commission of India which will be responsible for standard-setting, accreditation, regulation and funding.
- ii. It is proposed to set up a central university in Leh to make higher education accessible in Ladakh.

- iii. Initiatives are underway, in partnership with the United Arab Emirates and Japan for a comprehensive benchmarking, training and skill development program. It is proposed to extend this initiative to other countries.

## **5. Innovation and R & D**

It is proposed that the New Space India Limited ('NSIL'), under Department of Space will launch Brazil's Amazonia Satellite along with a few smaller Indian satellites.

## **6. Minimum Government, Maximum Governance**

- i. It is proposed to rationalise the functioning of tribunals to ensure that justice is delivered on time.
- ii. It is proposed to allocate INR 37.68 billion (~USD 0.5 billion) for the first digital census in the history of India.
- iii. It is proposed to set up a Conciliation Mechanism and mandate its use for quick resolution of contractual disputes for those persons who undertake contracts with Government or CPSEs.

## Key tax proposals

*Simplify...Streamline...Strengthen*



## Direct taxes

This section summarises the significant direct tax proposals announced in Budget 2021-22. These proposals are subject to enactment of the Finance Bill, 2021. Further, the direct tax proposals in the Finance Bill, 2021 are effective from FY 2021-22 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***

There is no revision in tax rates.

### ***II. Provisions relating to International Financial Services Centre ('IFSC')***

#### **1. Tax incentives for units located in an IFSC [Section 9A]**

- i. An eligible offshore fund or its fund manager do not constitute a business connection in India on fulfilment of specified conditions.
- ii. It is proposed that the Central Government may by a notification in the Official Gazette, specify that any one or more of the aforesaid conditions relating to an eligible investment fund or its fund

manager shall not apply or shall apply with modifications to be specified, if the eligible fund manager is located in an IFSC and has commenced operations by 31 March 2024.

**2. Exemption from income tax on transfer of specified capital assets on a recognized stock exchange located in an IFSC [Section 10(4D)]**

It is proposed that to extend the existing tax exemption to any income accruing or arising to, or received by the investment division of an offshore banking unit located in an IFSC, from the transfer of specified capital assets on a recognized stock exchange located in an IFSC, which has commenced operations by 31 March 2024, to the extent attributable to it.

**3. Exemption from income tax on transfer of non-deliverable forward contracts [New Section 10(4E)]**

It is proposed to provide tax exemption to any income accruing or arising to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit located in an IFSC which has commenced operations by 31 March 2024.

#### **4. Exemption from income tax on leasing of aircrafts [*New Section 10(4F)*]**

It is proposed that the income of a non-resident by way of royalty on the lease of aircrafts paid by a unit of an IFSC which has commenced operations by 31 March 2024, would be exempt for the non-resident.

#### **5. Transaction not regarded as transfer in case of relocation of shares/units of resultant fund [*Sections 47 and 10(23FF)*]**

- i. It is proposed to insert a new provision wherein relocation of a capital asset by an Original Fund to a Resultant Fund, will not be taxable in the hands of the Original Fund as well as the Resultant Fund.
- ii. Similarly, transfer of shares or units or interest by a shareholder or unit holder or interest holder of an Original Fund to a Resultant Fund upon relocation to an IFSC, will not be regarded as transfer in the hands of Original Fund.
- iii. Subsequently, any income in the nature of capital gains in the hands of a non resident on account of transfer of shares of a company resident in India, by the Resultant Fund, which were originally transferred by the Original Fund to the Resultant Rund on relocation, will be exempt. The exemption will be available only if capital gains on such shares would not have been chargeable to tax if the relocation had not taken place.

- iv. The cost of acquisition and period of holding of the Original Fund will be available to the Resultant Fund.
- v. 'Original Fund' means any fund established outside India which collects funds from its members for investing and fulfills the following conditions:
  - a. The fund is not a person resident in India, and
  - b. The fund is a resident of a country with which India has a Double Taxation Avoidance Agreement ('DTAA') or is established in a country or specified territory notified by the Central Government, and
  - c. The fund and its activities are subject to applicable investor protection regulations in the country or territory where it is established, and
  - d. The fund fulfils conditions as may be prescribed
- vi. 'Relocation' means the transfer of the assets of the Original Fund to a Resultant Fund by 31 March 2023, where consideration for such transfer is discharged in the form of a share or a unit or interest in Resulting Fund to the shareholder, unit holder or interest holder of the Original Fund in the same proportion as held in the Original Fund.
- vii. 'Resultant Fund' means a fund established in India in the form of a trust or a company or an LLP which has been granted a certificate of registration as a Category I, II or III of Alternative Investment Funds ('AIFs') by SEBI and is located in any IFSC.

## 6. Tax holiday for units located in an IFSC [Section 80LA]

- i. Section 80LA provides a tax holiday to a unit set up in an IFSC, inter alia, subject to the condition that the IFSC unit has obtained appropriate approvals / registrations under the Banking Regulation Act, 1949, the SEBI Act, 1992 or any other relevant law.
- ii. It is proposed to substitute the term 'any other relevant law' with 'The IFSC Authority Act, 2019'. In such a case, a copy of the registration under the International Financial Services Centre Authority Act, 2019 shall be considered as a valid registration.
- iii. It is further proposed that the capital gains arising on the transfer of an aircraft or aircraft engine by an IFSC unit, where the aircraft or the aircraft engine was previously leased to a domestic company engaged in the business of operation of aircrafts, would be exempt, provided the IFSC unit has commenced operations by 31 March 2024.
- iv. It is proposed to extend the concessional rate of tax of 10% on income arising on securities for a specified fund under section 115AD to the investment division of an offshore banking unit located in an IFSC (to the extent attributable and computed in a prescribed manner) if the said unit has commenced operations by 31 March 2024.

### ***III. Provisions relating to profits and gains of business or profession***

#### **1. Depreciation and cost of acquisition on goodwill of business or profession [Sections 32, 50 and 55]**

- i. It is proposed that going forward no depreciation will be allowed on goodwill of a business or profession.
- ii. Where depreciation on goodwill has been allowed, the manner of computation of written down value of that block of assets and short term capital gains, if any, will be prescribed.
- iii. It is proposed to allow the cost of acquisition of goodwill as deduction from the sale proceeds of such goodwill. It is further proposed that if depreciation is claimed on goodwill till 31 March 2020, then it will be reduced from such cost of acquisition.
- iv. The proposed amendment will be effective from 1 April 2020.

#### **2. Denial of deduction for delayed deposit of employees' contributions [Sections 36 and 43B]**

- i. It is proposed to clarify that deposits of employees' contributions towards various welfare funds delayed beyond the specified due dates in the respective labour law legislations will be considered as a permanent disallowance for the employer.

- ii. The proposed amendment will be effective from 1 April 2020.

### **3. Boost to Real Estate Sector [Sections 43CA and 56(2)(x)]**

- i. In case of primary sale of residential units by developers, it is proposed to increase the safe harbour threshold from 10% to 20% provided that the transfer is effected between 12 November 2020 and 30 June 2021 and the consideration received does not exceed INR 20 million (~USD 0.3 million).
- ii. It is further proposed to provide a corresponding relief to homebuyers of such residential units by increasing the safe harbour limit from 10% to 20%.
- iii. The proposed amendment will be effective from 1 April 2020.

### **4. Amendment in tax audit threshold [Section 44AB]**

- i. It is proposed to enhance the threshold for applicability of tax audit for businesses from INR 50 million (~USD 0.7 million) to INR 100 million (~USD 1.4 million) if the aggregate cash receipts and cash payments do not exceed 5% of the total gross receipts and payments respectively.
- ii. The proposed amendment will be effective from 1 April 2020.

## **5. Rationalisation of the provisions of presumptive taxation scheme for notified professions [Section 44ADA]**

- i. It is proposed to exclude LLPs from the provisions for computing profits and gains of profession on a presumptive basis without maintaining books of account, since an LLP is required to maintain books of account as per the LLP Act, 2008. Therefore, only a resident individual, Hindu Undivided Family or partnership firm excluding LLP will be allowed to avail the provisions under the presumptive taxation scheme for notified professions.
- ii. The proposed amendment will be effective from 1 April 2020.

## **6. Amendment in the computation book profits [Section 115JB]**

- i. It is proposed that the dividend income of foreign companies is not to be included while computing book profits as it is taxed at a lower rate than the Minimum Alternate Tax ('MAT') rate due to the beneficial provisions of the DTAA.
- ii. Similar provisions for computation of book profits already exist for capital gains, royalty, interest and fees for technical services received by foreign companies and this proposal will harmonise the treatment of dividend income under the beneficial provisions of the DTAA vis-à-vis MAT.

- iii. It is further proposed to align MAT provisions with the year of taxability of income in the year of repatriation on account of Advance Pricing Agreement ('APA') or secondary adjustment. An application can be made to the tax officer to re-compute the book profit to give effect to the APA or secondary adjustment. The tax officer can pass a rectification order within 4 years from the end of the FY in which such application was received.
- iv. The proposed amendment will be effective from 1 April 2020.

#### ***IV. Capital gains***

##### **1. Slump sale includes slump exchange liable to tax [Section 2(42C)]**

- i. Currently, a slump sale is defined to mean the transfer of one or more undertakings for a lump sum consideration without values being assigned to individual assets and liabilities.
- ii. It is proposed to amend the definition of the term 'slump sale' to include all types of 'transfer' as defined under the Act, including an exchange. The amendment aims to tax slump sale 'in effect and substance' and accordingly, all types of transfer including exchange are now included within its scope.

- iii. This is a significant proposal which overrides rulings of Income Tax Appellate Tribunals ('ITATs') and High Courts where it has been held that a slump exchange is not a sale and no capital gains tax can be attributed to such a transaction.
- iv. The proposed amendment will be effective from 1 April 2020.

## **2. Taxation of proceeds of high premium ULIP [Sections 45, 112A and 10(10D)]**

- i. It is proposed to expand the scope of a life insurance policy to include ULIP wherein any sum received at the time of maturity or withdrawal of the ULIP on or after 1 February 2021 will be exempt provided the premium payable during the year does not exceed INR 250,000 (~USD 3,500). In case the premium is paid for multiple plans, the limit of INR 250,000 (~USD 3,500) shall apply on an aggregate basis. However, this monetary limit does not apply when the proceeds are received on the death of a person.
- ii. It is proposed that a ULIP with premium exceeding the threshold eligible for exemption shall be considered as a capital asset and any surplus arising from redemption of such a ULIP shall be chargeable as capital gains in the hands of the taxpayer.
- iii. The proposed amendment will be effective from 1 April 2020.

- iv. It is further proposed to include such ULIPs in the definition of equity oriented funds and taxation of such ULIPs would be the same as that of equity-oriented funds. Accordingly, it is proposed to levy Securities Transaction Tax ('STT') at the time of maturity or withdrawal of ULIP to bring it at par with equity oriented funds from 1 February 2021.

### **3. Taxability on transfer of capital asset to specified person (partner, member) on dissolution or reconstitution of specified entity (Firm, AOP and BOI) [Sections 45(4) and 45(4A)]**

- i. The scope of taxability on transfer of a capital asset to the extent of balance in the capital account to a specified person is proposed to be expanded to include transfer of money or other asset in excess of the balance in his capital account in the books of account of such specified entity at the time of dissolution or reconstitution of the specified entity.
- ii. The fair market value of the capital asset will be considered as the full value of consideration and the cost of acquisition for capital asset will be computed as per the Act and cost of acquisition for other asset and money will be the balance in the capital account of the specified person in the books of specified entity at the time of dissolution or reconstitution of the specified entity.
- iii. The balance in the capital account of the specified person is to be calculated without taking into account any increase in the capital account of the specified person in the books of the specified entity due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

- iv. The surplus arising from the receipt of the capital asset, money or other asset by the specified person, in excess of the capital account balance will be taxed in the hands of the specified entity as capital gains in the year in which the capital asset, money or other asset is received by the specified person.
- v. The proposed amendment will be effective from 1 April 2020.

#### **4. Amendment in the definition of cost of acquisition of intangible assets [Section 55]**

- i. Cost of acquisition of goodwill of a business or profession or trade mark or brand name associated with a business or profession or a right to manufacture, produce or process any article or thing or right to carry on any business or profession or tenancy rights or stage carriage permits or loom hours will be –
  - a. In a case where the consideration is paid by the taxpayer, the amount actually paid
  - b. In certain cases where the aforementioned assets are acquired from a previous owner, the amount actually paid by the previous owner
  - c. In any other case, the cost of acquisition shall be taken as NIL
- ii. The proposed amendment will be effective from 1 April 2020.

## ***V. Tax reliefs and incentives***

### **1. Alternative relief in place of Leave Travel Concession ('LTC') [Section 10(5)]**

- i. It is proposed to provide an alternate exemption in lieu of the exemption currently available for LTC in view of the fact that most individuals would not have been able to avail LTC benefits due to COVID-19.
- ii. It is proposed that an employee may claim an exemption for expenditure incurred during the period 12 October 2020 to 31 March 2021 on goods or services falling under the Goods and Services Tax ('GST') rate bracket of 12% or more, provided the payment is made through a bank or electronic mode against a tax invoice.
- iii. The amount of exemption shall be one-third of the expenditure incurred and shall not exceed INR 36,000 (~USD 500) per person.
- iv. The proposed amendment will be effective for FY 2020-21 only.

**2. Conditions for claiming exemption on investment in provident fund [Sections 10(11) and 10(12)]**

It is proposed to withdraw the exemption for the interest paid to an employee on a Provident Fund to which the Provident Fund Act, 1925 applies or from a Recognised Provident Fund, to the extent of interest on contribution exceeding INR 250,000 (~ USD 3,500) made by the employee in the aggregate during the relevant FY in the said provident fund.

**3. Elimination of double deduction while calculating application or accumulation of income for Charitable Trust and Institution [Sections 10(23C) and 11]**

- i. It is proposed to increase the limit of annual receipts from INR 10 million (~USD 0.14 million) to INR 50 million (~USD 0.7 million) for claiming exemption by specified universities, educational institutions or other institutions).
- ii. It is proposed that application of amounts received as corpus donations by registered charitable or religious trust shall not be considered as application of income of the trust unless and it is invested in the prescribed mode.
- iii. It is proposed that application of money received from loans and borrowings will not be considered as an application towards charitable or religious purposes. However, when the loan or borrowing is repaid, such repayment will be allowed as an application in the FY in which it is repaid.

- iv. It is clarified that in computing the amount of income to be applied or accumulated, no set off or deduction will be allowed for any excess application of the prior years.

#### **4. Exemptions to Sovereign Wealth Funds ('SWF') and Pension Funds ('PF') [Section 10(23FE)]**

- i. Section 10(23FE) exempts the income of SWFs and PFs from their investment, inter alia, in Category-I or Category-II AIFs having 100% investment in an eligible infrastructure company, subject to certain conditions.
- ii. It is proposed to exempt the income of SWFs and PFs from their investment in Category-I and Category-II AIFs which have at least 50% investment in an eligible infrastructure company, instead of the existing requirement of 100%.
- iii. It is further proposed to exempt the income of SWFs and PFs in respect of their investments in the following:
  - a. An Infrastructure Investment Trust ('InvITs')
  - b. A domestic company set up on or after 1 April 2021 and having at least 75% investment in a company engaged in developing, operating or maintaining an eligible infrastructure facility or in an Infrastructure Investment Trust

- c. A Non-Banking Finance Company ('NBFC') registered as an Infrastructure Finance Company or an Infrastructure Debt Fund or an NBFC having at least 90% lending to a company engaged in developing, operating or maintaining an eligible infrastructure facility or to an Infrastructure Investment Trust
- iv. If the investment in the eligible infrastructure companies by the AIFs or the domestic companies or NBFCs referred to above is less than 100%, the exemption for the income of the SWFs and PFs shall be computed proportionately.
- v. It is also proposed to provide that if the SWFs or PFs have borrowed funds, directly or indirectly, for investing in India, the said funds would not be eligible for an exemption under this section.
- vi. It is proposed to relax the condition denying the exemption under this section to SWFs which undertake any commercial activity within or outside India. Instead, it is proposed to prohibit the SWFs from participating in the day to day operations of the investee. In this connection, the monitoring mechanism to protect the investment including the right to appoint directors or executive directors shall not be considered as participation in the day to day operations of the investee.
- vii. It is also proposed to amend the condition denying the exemption under this section to PFs which are not liable to tax in their home country. Instead the exemption is proposed to be allowed to PFs which are liable to tax in their home country and an exemption from tax for all the incomes of such PFs has been provided in their home country.

viii. The proposed amendment will be effective from 1 April 2020.

**5. Relaxation for taxability of income from notified overseas retirement fund [Section 89A]**

- i. Several residents were facing issues relating to the timing of withdrawals from a retirement fund maintained overseas. It is proposed to introduce a new section 89A to address this difficulty.
- ii. As per this section, withdrawal from a retirement fund maintained overseas which is subject to tax in a foreign country on receipt basis shall be taxable in the hands of such person in the manner and as the income of a particular FY as may be prescribed.

**6. Extension of timeline for borrowings to acquire affordable housing [Section 80EEA]**

A deduction is available to individuals in respect of interest on money borrowed for the acquisition of a residential house property, if such loan is taken on or before 31 March 2021, subject to certain conditions. It is proposed to extend the date for availing the loan in this regard to 31 March 2022.

## **7. Provisions relating to eligible Start-ups [Sections 80-IAC and 54GB]**

- i. Section 80-IAC provides 100% deduction for the profits of eligible Start-ups, which are incorporated before 1 April 2021, subject to specified conditions. It is proposed to extend the said tax holiday to Start-ups incorporated by 1 April 2022.
- ii. Section 54GB provides for a deduction from the long term capital gains arising on the transfer of a residential house property made by 31 March 2021, if the said long-term capital gains are invested in an eligible Start-up. It is also proposed to extend this deduction to the residential house properties transferred by 31 March 2022.

## **8. Incentives affordable housing and rental housing projects [Section 80-IBA]**

- i. A 100% deduction for profits from affordable housing projects is available if such projects are approved on or before 31 March 2021, subject to specified conditions. It is proposed to extend the last date of approval for such projects to 31 March 2022.
- ii. Further, in order to enable migrant workers to obtain affordable rental housing, it is proposed to extend the deduction under this section to such affordable rental housing projects as may be notified by the Central Government in the Official Gazette.

## **VI. Withholding taxes**

### **1. Zero coupon bonds [Sections 2(48) and 194A]**

- i. It is proposed to amend the definition of zero coupon bonds to include notified bonds issued by an infrastructure debt fund.
- ii. A consequential amendment is proposed to be made to exclude withholding of taxes on the income of such zero coupon bonds issued by a notified infrastructure debt fund.

### **2. Withholding tax on dividend [Section 194]**

- iii. It is proposed to provide that withholding taxes will not apply to the payment of dividend by a Special Purpose Vehicle to a Business Trust or to any other person, as may be notified by the Central Government in the Official Gazette.
- iv. The proposed amendment will be effective from 1 April 2020.

### **3. Withholding tax on certain incomes of certain resident senior citizens [New Section 194P]**

- i. It is proposed that the specified banks to be notified by the Central Government shall, after giving effect to certain deductions and a specific rebate, compute the total income of specified senior citizens and withhold tax on such income at the rates in force. Once the tax is so withheld, the specified senior citizens would not be required to file the return of income for the relevant FY.
- ii. Senior citizens mentioned above should fulfill the following criteria:
  - a. Should be 75 years of age or more at any time during the relevant FY, and
  - b. Should earn only pension and interest from the same bank account where the pension is deposited, and
  - c. Should furnish a declaration as specified by the bank in a form to be prescribed

### **4. Withholding tax on certain purchases of goods [Section 206AA and New Section 194Q]**

- i. It is proposed that tax is to be withheld at 0.1% by a buyer on the purchase of goods exceeding INR 5 million (~ USD 70,000) during a FY, if the total sales, gross receipts or turnover from business of the buyer exceed INR 100 million (~ USD 1.4 million) during the FY immediately preceding the relevant FY.

- ii. In case of non availability of PAN and Aadhar of the seller, the buyer will have to withhold tax at 5%
- iii. The above provision will not apply to the transactions which are already subject to withholding tax or tax collection at source.
- iv. The proposed ammendment will be effective from 1 July 2021.

**5. Withholding tax on income of Foreign Insitutional Investors ('FIIs') from securities [Section 196D]**

- i. In case of income arising on securities to FIIs, other than capital gains and specified interest, it is proposed that tax will be withheld at the lower of 20% or the rate specified in the relevant DTAA applicable to the FII, subject to furnishing the Tax Residency Certificate of such country by the FIIs.
- ii. The proposed amendment will be effective from 1 April 2020.

**6. Withholding/collection of taxes on payments made to non-filers of income tax returns at a higher rate [New Sections 206AB and 206CCA]**

- i. It is proposed to insert a new section to provide for withholding/collection of tax at a higher rate for persons who have not filed their return of income for the 2 FYs immediately preceding the relevant

FY where the time for filing the return of income has expired and the aggregate amount of withholding tax and tax collected at source is at least INR 50,000 (~USD 700) in each of the preceding 2 FYs.

- ii. The proposed rate of withholding tax in such cases would be the highest of the following rates:
  - a. Twice the rate specified in the relevant section for withholding /collection of tax or
  - b. Twice the rate or rates in force or
  - c. At the rate of 5% or
  - d. At the rate of 20% in case the PAN of the specified person is not available
  
- iii. The proposed rate of collection of tax in such cases would be the highest of the following rates:
  - a. Twice the rate specified in the relevant section for withholding /collection of tax or
  - b. Twice the rate or rates in force or
  - c. At the rate of 5%
  
- iv. The above provisions will not be applicable where the full amount of tax is required to be deducted/collected at source e.g. salary income, payment to non-residents not having a Permanent Establishment in India.
  
- v. The proposed amendment will be effective from 1 July 2021.

## ***VII. Other key proposals***

### **1. Inclusion of restructuring of public sector companies in the provisions relating to set off and carry forward of accumulated loss and unabsorbed depreciation in amalgamation, demerger, etc. [Sections 2(19AA) and 72A]**

- i. It is proposed to amend section 2(19AA) of the Act to include the reconstruction or splitting up of a public sector company into separate companies within the definition of demerger, if such reconstruction or splitting has been made to transfer any asset of the demerged company to the resulting company, which is also a public sector company. This amendment has been proposed to facilitate disinvestment of public sector companies by the Central/State Government.
- ii. It is proposed to include the following in the list of eligible amalgamations where the accumulated loss or unabsorbed depreciation of the amalgamating company is permitted to be availed by the amalgamated company for the FY in which the amalgamation was effected:
  - a. Amalgamation of one or more public sector companies
  - b. Amalgamation of an erstwhile public sector company with one or more companies pursuant to a “strategic disinvestment plan” of the Central/State Government, where the Government reduces its holding in the public sector company to below 51% alongwith transfer of the control to the buyer, and where the share purchase agreement entered into restricted the immediate

amalgamation of the said public sector company and the amalgamation is carried out within five years from the end of the year in which the restriction ends.

iii All other conditions already specified in this regard would continue to apply.

## **2. Definition of the term 'liable to tax' [Section 2(29A)]**

i. The term 'liable to tax' is used in various sections including in the provisions relating to residential status as amended by Finance Act, 2020, provisions relating to foreign Pension Funds and in DTAAAs. However, this term is not defined in the Act.

ii. It is proposed to insert section 2(29A) to define the term 'liable to tax' as a liability of tax under any law for the time being in force in any country. It is also proposed to include in this term, a case where an exemption is granted subsequent to imposition of a tax liability.

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

## **3. Provisions relating to filing return of income [Section 139]**

i. It is proposed that the due date of filing the return of income of a partner of a partnership firm liable to Transfer Pricing audit would be 30 November following the end of the FY, so as to be in line with the due date of filing the return of income of the partnership firm.

- ii. With a view to accelerate the completion of processing of returns under the faceless and jurisdiction-less regime, the due dates for filing belated returns and revised returns are proposed to be amended from 12 months following the end of the relevant FY to 9 months following the end of the relevant FY.
- iii. The proposed amendment will be effective from 1 April 2020.

#### **4. Rationalisation of provisions relating to processing the return of income [Section 143]**

The time limit for sending an intimation to the taxpayer after adjustments to the return of income is proposed to be amended from 12 months following the end of the FY to 9 months following the end of the FY. Similarly, the time limit for issuance of notice asking the taxpayer to furnish evidence in support of the income disclosed in the return of income is proposed to be amended from 30 September following the end of the FY in which the return is filed to 30 June following the end of the FY in which the return is filed.

#### **5. Revised timeline for reopening of scrutiny proceedings [Section 149]**

It is proposed to amend the provisions relating to time limit for issuance of notices for reopening of scrutiny proceedings to be amended as under:

- a. In specific cases where the tax officer has books/other documents/evidence which reveal that escaped income exceeds INR 5 million (~USD 70,000): 11 years from the end of the relevant FY
- b. In all other cases: 4 years from the end of the relevant FY

#### **6. Interest for deferment of advance tax instalments [Section 234C]**

- i. It is proposed to provide that no interest would be levied for the deferral of advance tax instalments on dividend income prior to date of declaration, except in case of deemed dividend under section 2(22)(e).
- ii. The proposed amendment will be effective from 1 April 2020.

#### **7. Discontinuance of Income Tax Settlement Commission ('ITSC') and the Authority for Advance Rulings ('AAR')**

- i. It is proposed to discontinue the ITSC from 1 February 2021 and constitute one or more Interim Boards for the settlement of applications which are pending before the ITSC.
- ii. It is also proposed to replace the Authority for Advance Rulings with a Board for Advance Rulings from a date to be notified by the Central Government.

## **8. Attachment of property in case of fake entries in the books of account [Section 281B]**

- i. Section 281B provides that a tax officer may provisionally attach the property of a taxpayer, with adequate prior approvals, to protect the interests of the Revenue. Section 271AAD provides for a penalty for persons who make or facilitate false entries or omission of entries in books of account.
- ii. It is proposed to amend the provisions relating to attachment of property to authorise a tax officer to attach the property of a taxpayer in whose case the penalty chargeable for making or facilitating false entries or wilful omissions of entries in the books of account exceeds INR 20 million (~USD 0.3 million).

## **9. Rationalisation of the provisions of Equalisation Levy ('EL') [Sections 164 and 165A of the Finance Act, 2016, Section 10(50)]**

- i. It is proposed that the consideration which is taxable as Royalty or Fees for Technical Services in India under the Act read with the respective DTAA would not be subject to EL.
- ii. It is proposed to clarify that the definition of e-commerce supply or services for the purpose of EL would include one or more of the following activities taking place online:
  - a. acceptance of offer for sale

- b. placing of purchase order
  - c. acceptance of the purchase order
  - d. payment of consideration
  - e. supply of goods or provision of services, partly or wholly
- iii. It is further proposed that EL would apply irrespective of whether or not the e-commerce operator owns the goods or provides or facilitates the services.
- iv. Further, it is proposed to correctly apply the income tax exemption from 1 April 2020 instead of 1 April 2021, in case of the income which has been subject to EL.
- v. The proposed amendment will be effective from 1 April 2020.

## Indirect taxes

This section summarises some of the significant indirect tax proposals announced in Budget 2021-22.

### ***I. Customs Duty (effective from 2 February 2021)***

- i. To finance the agriculture infrastructure and other development expenditure, Agriculture and Infrastructure Development Cess ('AIDC') as a duty of customs at a rate not exceeding the rate of customs duty is proposed to be imposed on specified goods imported into India.
- ii. Some of the major items for which the basic customs duty rates have been changed are as follows:
  - a. To create a level playing field for the benefit of farmers, Micro, Small and Medium Enterprises and other domestic manufacturers

Name of Item	Existing rate (%)	Proposed rate (%)
Cotton	Nil	5 (+5 % AIDC)
Maize and Deoiled bran cakes	Nil	15
Leather	Nil	10
Raw silk & silk yarn	10	15

Name of Item	Existing rate (%)	Proposed rate (%)
Chemicals	0-5	7.5
Plastics	5-10	7.5-15

b. To create value addition in the electronics sector

Name of Item	Existing rate (%)	Proposed rate (%)
Mobile parts	Nil	2.5
Solar inverters/lamps	5	15-20
Electronic components (Polychlorinated Biphenyls, moulded plastics)	0-10	2.5-15
Specified insulated wires and cables	7.5	10
Inputs and parts for manufacturing accessories of cellular mobile phones	Nil	2.5-10
Light-emitting Diode ('LED') lights and parts	5	10

c. To reduce the cost of inputs for domestic manufacturers and correct inverted duty structure

Name of Item	Existing rate (%)	Proposed rate (%)
Naphtha	4	2.5
Nylon (chips, fibre, yarn) and Caprolactum	7.5	5
Iron and steel scrap	2.5	Nil
Ferrous metal flats, longs and alloy steels	10-12.5	7.5
Gold and Silver	12.5	7.5% (+ 2.5% AIDC)

d. Basic Custom Duty rates are proposed to be reduced in order that the imposition of additional AIDC will not impact the consumer

Name of Item	Existing rate (%)
Crude Palm Oil	15
Specified Fertilisers	Nil

e. Rationalisation of exemptions

Name of Item	Existing rate (%)	Proposed rate (%)
Minerals	0-5	2.5
Chemicals	Nil	7.5

- iii. Mandatory advance filing of Bill of Entry ('BOE') before the end of the day preceding the day (including holidays) of arrival of goods. The Central Board of Indirect Taxes and Customs to notify the time period to present the BOE in certain cases.
- iv. After eliminating outdated exemptions in the last budget, it is proposed to review more than 400 old exemptions this year. All conditional exemptions currently in force to come to an end after 2 years unless withdrawn earlier. New conditional exemptions to be valid for a period of 2 years from the end of the year during which these have been enacted.
- v. In order to improve tax compliance, it is proposed to enable confiscation of goods meant for exports in case of wrongful claims of remission or refund and also levy penalty in cases of refund claim using fraudulent invoices on export of goods.
- vi. Levy of Social Welfare Surcharge on various items is being reviewed. Social Welfare Surcharge on AIDC is being exempted for gold and silver.

- vii. A Common Customs Electronic Portal to be notified for facilitating registration, filing BOE, shipping bills and other documents and forms.
- viii. The First Schedule of the Customs Tariff Act, 1975 is proposed to be amended in line with Harmonised System of Nomenclature and certain new tariff lines are proposed to be created with effect from 1 January 2022.

## **II. Excise Duty**

AIDC has been imposed with immediate effect on Petrol at INR 2.50 per litre and on Diesel at INR 4 per litre. Consequently, Basic Excise Duty & Special Additional Excise Duty rates have been reduced on petrol and diesel, so that the consumer would not be required to bear any additional burden.

## **III. GST**

The following amendments will come into effect from a date to be notified, unless otherwise specified:

- i. The FM has referred to certain measures already taken towards simplification and improving compliances as under:
  - a. 'Nil' return through SMS and facility of quarterly return/monthly payment for small taxpayers

- b. Electronic invoice system, validated input tax statement and pre-filled editable GST return
  - c. Staggering of returns filing and enhancing the capacity of Goods and Service Tax Network
  - d. Deploying deep analytics and Artificial Intelligence to identify tax evaders and fake billers and launched special drives against them
- ii. Scope of 'Supply' under the Central Goods and Services Tax Act, 2017 has been widened retrospectively from 1 July 2017 to include activities or transactions involving goods or services by any person, other than an individual (like clubs, associations or societies) to its members or vice-versa, for cash, deferred payment or other valuable consideration. The principle of mutuality shall not be applicable.
- iii. With a view to ensure better compliance, one more condition has been added for availing Input Tax Credit on an invoice or debit note, details of which should have been furnished by the supplier in his GST return for outward supplies and should have been communicated to the recipient.
- iv. Mandatory requirement of getting the annual accounts audited along with reconciliation statement by specified professional is proposed to be deleted.
- v. Annual return including self-certified reconciliation statement needs to be filed by a taxpayer. However, the Commissioner may notify exemption for any class of taxpayers from filing the annual return.

- vi. Interest for delayed payment of tax shall be payable on the net liability and not on the gross liability with retrospective effect from 1 July 2017.
- vii. Self Assessment Tax will now be required to include the excess tax liability declared in the return of outward supply (GSTR-1) over that declared in the summary return (GSTR-3B) for recovery proceedings.
- viii. It is proposed to insert a requirement to deposit 25% of the penalty for filing an appeal against any order for detention or seizure of goods.
- ix. Provisions relating to 'Zero-rated Supply' under the Integrated Goods and Services Tax Act, 2017 ('IGST Act') are proposed to be amended as under:
  - a. Zero rated supply of goods or services to a Special Economic Zone ('SEZ') developer or SEZ unit only in case of supplies for authorized operations
  - b. Restrict the zero-rated supply on payment of IGST only to notified class of taxpayers or notified supplies of goods or services
  - c. Link foreign exchange remittance with refunds in case of export of goods

## Abbreviations

AOP	: Association of Persons	GST	: Goods and Services Tax
AIDC	: Agriculture and Infrastructure Development Cess	IFSC	: International Financial Services Centre
AIF	: Alternative Investment Fund	IGST	: Integrated Goods and Services Tax
BOI	: Body of Individuals	InvITs	: Infrastructure Investment Trust
BOE	: Bill of Entry	ITAT	: Income Tax Appellate Tribunal
CPSE	: Central Public Sector Enterprise	ITSC	: Income Tax Settlement Commission
DTAA	: Double Taxation Avoidance Agreement	MAT	: Minimum Alternate Tax
EL	: Equalisation Levy	PF	: Pension Funds
FDI	: Foreign Direct Investment	SEBI	: Securities and Exchange Board of India
FII	: Foreign Institutional Investor	SWF	: Sovereign Wealth Fund
FM	: Finance Minister	The IT Act	: The Income Tax Act, 1961
FY	: Financial Year	ULIP	: Unit Linked Insurance Plan

## About JMP Advisors

JMP Advisors is a leading professional services firm that offers advisory, tax and regulatory services. The vision of JMP Advisors is to be 'The Most Admired Professional Services Firm in India'. It aims to be the best as measured by the quality of its people and service to clients. The firm has a merit based culture and operates to the highest standards of professionalism, ethics and integrity. Jairaj (Jai) Purandare, the Founder Chairman has over three and a half decades of experience in tax and business advisory matters and is an authority on tax and regulation in India. Jai was Regional Managing Partner, Chairman-Tax and Country Leader-Markets & Industries of PricewaterhouseCoopers India. Earlier, Jai was Chairman of Ernst & Young India and Country Head of the Tax & Business Advisory practice of Andersen India.

JMP Advisors offers advice in international taxation, domestic taxation, transfer pricing, mergers and acquisitions, Goods and Services Tax (GST), business laws and exchange control regulations and foreign investment consulting. We specialize in fiscal strategy and policy foresight and are trusted advisors to high networth families. Our team at JMP Advisors takes pride in being the best at what matters most to clients-technical expertise, innovative solutions, consistent, high quality service, reliability and ease of doing business.

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