COMMENTS ON INDIAN DIRECT TAX AMENDMENTS VIDE UNION BUDGET 2020-21

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TABLE OF CONTENTS

S. No.	Description	Page No.s
	Prologue	1
	Proposed Amendments in the Act	2
1	Rates of Income Tax for Tax Year 2020-21	2
2	Surcharge on Income Tax	2
3	Education Cess	2
4	Certain Incomes other than Salary	2
5	Certain Concessions Offered in the Bill	2
6	Tax Incentives	3
7	Deductions for Eligible Start-Ups	3
8	Eligible Investment Fund (Section 9A of the Act)	4
9	Electricity Generation Companies to be Manufacturers	4
10	Removing Difficulties faced by Taxpayers	4
11	Measure for Widening of Tax Base	6
12	Rationalization Measures	7
13	Measures for Improvement in Tax Administration	7
14	Measures for Preventing Tax Abuse	8
15	Other Rationalization Measures	9

➢ PROLOGUE

The Parliament of India (hereafter "the legislature") has sought to amend provisions related to direct taxes (hereafter "the proposed amendments") in the Income Tax Act 1961 (hereafter "the Act"), the Prohibition of Benami Transactions Act 1988, and the Finance Act 2013, by virtue of the Finance Bill 2020 (hereafter "the said Bill"). We have presented our comments in respect of the proposed amendments along with a comparison of the proposed amendments with the Income Tax Laws of Pakistan. The purpose of this comparison is to identify areas of improvement in Pakistan's Income Tax Laws.

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1. https://goo.gl/QDM4ZM **(iOS)**

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Lastly, we request our readers to circulate this e-copy within their circle, as our primary aim is to benefit the masses. Feedback is always welcomed.

➢ PROPOSED AMENDMENTS IN THE ACT:

1. RATES OF INCOME TAX FOR TAX YEAR 2020-21:

For senior citizens, the limits of exempt income have been proposed as under:

Age in Years	Income Exemption limit in INR
Below 60	250,000
60 to 80	300,000
80 and above	500,000

2. SURCHARGE ON INCOME TAX:

A surcharge has been proposed to be levied at the rates ranging from 2% to 37% on the types of persons and nature of income earned by them.

Marginal Relief has also been proposed in all instances where the taxpayer is liable to incur a surcharge on its income tax. A marginal relief is a relief given to the taxpayer for incurring extra tax liability in the form of a surcharge. It is the difference between the extra income earned due to which the taxpayer falls within a tax bracket liable to surcharge, and the excess tax paid due to falling within the tax bracket on which a surcharge is levied.

3. EDUCATION CESS:

The proposed amendment seeks to levy an Education Cess at the rate of 4% of the income tax computed (inclusive of surcharge) for both, resident and non-resident. It may be noted that no Marginal Relief shall be available in such a situation.

➢ PAKISTANI PARITY

Currently in Pakistan, there is a super tax levied for rehabilitation of displaced persons due to military operations in Tribal areas of Pakistan. Moreover, before this, Pakistan had levied a surcharge at 15% of the taxable income of every taxpayer. This was done through the Finance Act 2011 for a year only. Nonetheless, this was removed in 2014 by virtue of the Finance Act 2014.

4. CERTAIN INCOMES OTHER THAN SALARY:

The rates for these have been mentioned in Part II of the First Schedule of the proposed amendment. The rates remain similar to the ones in 2019. Moreover, the rate of income tax levied on dividends (**Section 194** of the Act), has been proposed to be amended to 10%. Furthermore, the proposed amendment seeks to insert two new Sections; 194-K and 194-O, whereby the payer of an income to a resident, in relation to;

a) Units of a mutual fund under Section 10 (23D) of the Act;
b) Units of the Administrator of the specified undertaking; or
c) Units from the specified company;

Shall deduct income tax at the rate of 10% on an amount, or aggregates of such amounts, credited/paid or likely to be paid, not exceeding Rs. 5,000.

Section 194-O: An income tax at the rate of 1% is also proposed to be deducted on a transaction pertaining to sale of goods or provision of services, provided it is facilitated by an e-commerce operator through its digital or electronic facility/forum. The said tax shall be deducted on the gross amount of sales/services made.

➢ PAKISTANI PARITY

A similar provision can be found with regards to online market places in Pakistan. A 0.75% tax is imposed on turnover which shall be minimum tax.

5. CERTAIN CONCESSIONS OFFERED IN THE BILL

a) Concessional rate to co-operative societies: A concessional rate of 22%, similar to the one already offered to domestic companies by virtue of the Tax Laws Amendment Act 2019, has been proposed

for co-operative societies, provided they meet certain conditions. This will be an option, and not an obligation.

b) A similar concessional benefit has been provided to Hindu Undivided families, provided they meet certain conditions. This is also an option, and not an obligation. Moreover, where the HUF has no business income, this option shall be exercised every year for the previous year. Whereas, if there is business income, then the option exercised for that previous year shall remain valid for the same, and subsequent years too. The rates are as follows;

Total Income (Rs)	Rate
Up to 2,50,000	**Nil**
From 2,50,001 to 5,00,000	**5 per cent.**
From 5,00,001 to 7,50,000	**10 per cent.**
From 7,50,001 to 10,00,000	**15 per cent.**
From 10,00,001 to 12,50,000	**20 per cent.**
From 12,50,001 to 15,00,000	**25 per cent.**
Above 15,00,000	**30 per cent.**

c) The same benefit applicable to HUF, in terms of (b), is proposed for Individuals. However, in both cases, if the beneficiaries of the concession opt for the same, then certain deductions such as leave travel allowance, house rent allowance, and allowance for income of minor, shall be disallowed for the purposes of reaching the taxable income.

6. TAX INCENTIVES:

a) **Income of a wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Funds (Section 10 (23FE) :** Income arising from Dividends, interest, and long-term capital gains by 'specified persons', due to an investment made in India, be it in the form of equity, or debt, has been proposed to be exempt from tax.

However, certain conditions need to be met before the aforementioned persons are to fall within the ambit of the same. A specified person can only be;

i. A wholly owned subsidiary of the Abu Dhabi Investment Authority which is a resident of the UAE and invests directly or indirectly, out of the funds owned by the Government of UAE; or

ii. A sovereign wealth fund which fulfills certain conditions, including not undertaking any commercial activity within or outside of India.

This amendment will be effective from 1st April 2021, hence will be applicable for Tax Year 2021-2022.

- **PAKISTANI PARITY**

Currently, there are certain exemptions for companies under project of China Pakistan Economic Corridor. Moreover, recently a concession has been provided to foreign investors investing in T-Bills and Government Securities. The tax deduction on profits of these instruments have been specified at 10%.

7. DEDUCTIONS FOR ELIGIBLE START-UPS:

The Act provided for a deduction equivalent to 100% of the profits and gains derived by an eligible start up, from its gross total income. This is subject to the fact that these profits and gains are derived from an eligible business. This deduction is available for any 3 consecutive years out of 7 years, from the date of its incorporation. However, the Bill seeks to increase that limit from 7 to 10 years giving the start-up more time to avail such deductions. Moreover, there is a limit on the turnover of a start-up, which seeks to claim this deduction, in so much so, that the definition of an eligible start-up includes a limit of its total business turnover to be Rs. 25 Crore for the previous year.

The Bill proposes to increase that limit to Rs. 100 Crore. However, this amendment will come into place on 1st April 2021, hence will be applicable for Tax Year 2021/22 and onwards. An eligible business is defined as a business carried out by an eligible start-up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.

An issue with this is that an eligible start-up, as per its definition has to be incorporated before 1st April 2021. Hence, no new eligible start-ups will be able to avail this benefit, unless the abovementioned date is removed or extended, and that only the previous start-ups, that too from April 2021 onwards, will be able to avail the benefit of the pertinent amendment.

- **PAKISTANI PARITY**

Pakistan has also offered incentives to start-ups by introducing an amendment through the Finance Act 2017. A start-up has been defined in the Income Tax Ordinance as;

> *"A business of a resident individual, AOP or a company that commenced on or after first day of July, 2012 and the person is engaged in or intends to offer technology driven products or services to any sector of the economy provided that the person is registered with and duly certified by the Pakistan Software Export Board (PSEB) and has turnover of less than one hundred million in each of the last five tax years; or*
>
> *Any business of a person or class of persons, subject to the conditions as the Federal Government may, by notification in the official Gazette, specify."*

Even though, the Federal Government still retains the power to classify any business as a start-up subject to the conditions imposed by the Federal Government, they have not done so as yet. Moreover, the first leg of the aforementioned definition, narrows down start-ups to only technology driven products or services. Whereas, the exemption in India is very broad and applies to innovation, development and improvement of products and services in India.

8. ELIGIBLE INVESTMENT FUND (SECTION 9A OF THE ACT):

Certain conditions in the said Section have sought to be amended by the Bill.

9. ELECTRICITY GENERATION COMPANIES TO BE MANUFACTURERS:

For the purposes of Section 115BAB of the Act, it has been proposed through the Bill to include generation of electricity within the ambit of manufacturing. This will allow newly incorporated domestic companies involved in the business of electricity generation, to avail the benefit of being taxed at a concessional rate of 15% subject to all other conditions in the said Section being fulfilled.

10. REMOVING DIFFICULTIES FACED BY TAXPAYERS:

a) **Amendment of Section 94B of the Act:** By virtue of this Section, the deduction of interest paid or payable, to an Associated Enterprise (hereafter "AE"), by an Indian Company, or a PE of a foreign company in India, is limited to the lower of; a) 30% of the earnings of the borrower before interest, taxes, depreciation and amortization; or b) 30% of interest paid or payable to the AE. The Bill seeks to amend the said Section, by providing that the interest restriction shall not be applicable to interest paid for a debt issued by a lender which is a PE of a non-resident, being a person engaged in the business of banking in India.

b) **Giving an option to the assessee to not avail the deduction under Section 35AD:** An assessee pursuing a specified business is allowed to claim a full 100% deduction in respect of any expenditure of capital nature incurred, except for that which was incurred on land, goodwill, and financial assets. However, by virtue of the Bill, an option has been proposed to be given to the assessee to claim the said benefit. Moreover, it has been further proposed to disallow the assessee from claiming deduction for the said expenditure in any other Section of the Act, if he has already done so in this Section.

c) **Non-Residents earning only Income from royalty or from fee for technical services:** The Bill has proposed to amend Section 115A of the Act. This will exempt non-residents which earn a total income comprising of only Fee for technical services, or, Royalty, from filing their return of income (provided the tax deductible at source has been deducted in the prescribed manner.

d) **Tax from employment stock option plans ("ESOP") or tax-deductible at source thereon can now be deferred:** The Bill has sought to amend Section 192 of the Act by inserting a sub-section (1C) in it. Through the said amendment, an eligible start up can now defer collecting/paying tax on ESOPS, as

the same was taxable at the time of its exercise. The amendment suggests to bind the eligible start-up (or employee thereof where no tax is deductible at source) to pay income tax on the aforementioned perquisite within 14 days, of the earlier of, either:

i. After the expiry of forty-eight months from the end of the relevant assessment year; or
ii. From the date of the sale of such specified security or sweat equity share by the assessee; or
iii. From the date of which the assessee ceases to be the employee of the person.

- **PAKISTANI PARITY**

A similar regime for employees can be found under the Income Tax Ordinance 2001, whereby, the exercise of the employment share scheme option will be a taxable event under the head "income from salary". However, the proposed amendment is a welcome benefit for the employer and employee, as the benefit of the shares is in kind, and the tax is obviously in monetary terms. This will give ample time to both parties (whoever is under obligation to pay/deduct tax) to comply with the said provisions. Moreover, this will also provide the responsible individual with some breathing space with regards to cash flow.

e) **Losses or unabsorbed depreciation can now be carried forward by new banks and government companies involved in insurance business in case of amalgamation:** Section 72AA of the Act allowed for accumulated losses and unabsorbed depreciation, in the case of amalgamation (under a Governmental Scheme prescribed therein) of a banking company with any other banking institution, to be carried forward. The Bill has sought to amend the said Section, and add new banking companies, and governmental insurance companies (subject to certain conditions) within the purview of this carry forward scheme.

- **PAKISTANI PARITY**

A similar provision is present in the Pakistani jurisdiction in the form of Section 97A of the Income Tax Ordinance 2001.

f) The Securities and Exchange Board of India, through a Notification, has withdrawn the compulsion for an Infrastructure Investment Trust to be registered. Hence, it has been proposed to amend Section 115UA of the Act. The special tax regime applicable to business trusts (the definition of which, inter-alia, includes the units of the trusts to be listed on a recognized stock exchange), provides for the total income of a trust, except for income from capital gains, is levied at the maximum marginal rate. Also, any rent or income from interest received through a Special Purpose Vehicle (hereafter "SPV") shall not be taxed in the hands of the trust, and not be subject to withholding tax in the hands of the SPV. The Bill seeks to add private business trusts within the ambit of the aforementioned tax regime, in light of the Notification referred to above.

g) The Bill seeks to amend Sections 92CB and Section 92CC of the Act. The purpose of this amendment is to include attributable profits of a non-resident to the Permanent Establishment, to be covered by Sections 92C and 92CB (relating to Safe Harbour Agreements and Advance Pricing Agreements). Through this amendment, the Government will be able to determine the rules regarding such attributable profits and will be able to enter into agreements so as to determine the profits attributable.

- **PAKISTANI PARITY**

This is a good measure taken by the Indian Government, as it brings certainty with regards to how they will be taxing profits of a non-resident attributable to Permanent Establishments. In Pakistan, as per Section 101(3), Business income of a non-resident person shall be Pakistan-source income to the extent, to which, it is directly or indirectly attributable to a permanent establishment of the non-resident person in Pakistan or, other business activities carried on in Pakistan of the same or similar kind as those effected by the non-resident through a permanent establishment in Pakistan or, any business connection in Pakistan. However, Pakistan needs to introduce such supplementary provisions which empower the Government to specify circumstances, and agree with individuals as to the taxation of the above.

11. MEASURE FOR WIDENING OF TAX BASE

a) **Tax Deduction at Source on Interest**: Section 194A of the Act contains provisions regarding Tax Deductible at Source (hereafter "TDS") on interest payable to a resident person, like interest on fixed deposit and interest on an unsecured loan. However, an exemption is available if the interest is paid by a large cooperative society. The Bill now seeks to enlarge the scope of TDS, by proposing to withdraw the exemption provided to cooperative societies;

   i. With total sales, gross receipts or a turnover exceeding INR 50 Crore in the previous financial year; and
   ii. Where the Interest amount exceeds
      - INR 50,000 (payee being senior citizen); or
      - INR 40,000 (in other cases)

   w.e.f. 1st April 2020.

➢ **PAKISTANI PARITY**

In Pakistan, there is a provision for TDS in respect of interest payments to a resident person, in the form of Section 151 of the Income Tax Ordinance 2001. However, certain exemptions in relation to the TDS on interest payments, are available to non-residents under clause 78 and 79 of Part 1 of Second Schedule and under Section 46 of the Income Tax Ordinance 2001. Moreover, a nonprofit organization may also apply to the commissioner for a specific exemption from the application of Section 151.

b) A new Section 194-O is proposed to be inserted in the Act, which seeks to include resident e-commerce participants in the tax net. The pertinent amendment seeks to introduce a new levy of TDS @1% on gross receipts by E- commerce operators, with exemption on transaction (for hosting advertisements or providing services other than sale of goods or services) up to INR 500,000 by an Individual or Hindu Undivided Family having Permanent Account Number (hereafter "PAN") or Aadhar number (5% for non-PAN/Aadhar cases).

➢ **PAKISTANI PARITY**

In Pakistan, no such provision is available in the Income Tax Ordinance 2001.

c) The Bill seeks to amend Section 206A of the Act which deals in Tax Collection at Source (hereafter "TCS"), to levy a TCS on following:
   i. remittance out of India if it is INR 700,000 or more in a financial year @5% in non-PAN/Aadhar cases;
   ii. On sale of overseas tour package outside India @5% (10% non-PAN/Aadhar cases);
   iii. Exemption available to Central Government, State Government, an Embassy etc.

➢ **PAKISTANI PARITY**

In Pakistan, payments to non-residents are made after withholding under Section 152 of the Income Tax Ordinance 2001, subject to Double Taxation Treaties if available. Sale of overseas tour package outside Pakistan is subject to the normal tax rates specified in Division of Part 1 of First Schedule of the Income Tax Ordinance 2001.

d) Section 206C of the Act has sought to be amended by virtue of the Bill. The said Section deals in TCS on the sale of goods. The amendment has been proposed so as to expand the tax net, and will apply on the following:

   i. A seller whose last financial year total sale exceeds INR 10 Crore, is liable to collect TCS @ 0.1% (1% for non-PAN/Aadhar cases) from buyer if, last year sales to that buyer exceed INR 50 lakhs.
   ii. However, an exemption is available to the Central Government, State Government, and an Embassy etc.

➢ **PAKISTANI PARITY**

In Pakistan, no such provisions are available for sellers to collect tax as above. However, for certain specified industries, manufacturers(sellers) are liable to collect tax from distributors, dealers and wholesalers under Section 236G and from retailers under Section 236H.

12. RATIONALIZATION MEASURES

a) Currently, there is a limit only in terms of percentage on the contribution of the Employer towards retirement funds such as Employees Provident Fund (12% of salary), and National Pension System (14% of salary by Central Government, and 10% by the employer), above which it will be taxable. It has been proposed that employers' contribution exceeding INR 7.5 lakhs in a financial year to a EPF, NPS or superannuation fund will now be taxable. This will have an impact on higher basic salary earners.

- **PAKISTANI PARITY**

Contribution of the employer towards an unrecognized provident fund is not taxable. However, an employer's contribution towards a recognized provident fund will be taxable if it, and to the extent, it exceeds the lower of: i) Rs 150,000; or ii) 10% of (basic salary + dearness allowance).

b) Interest earned on employer's contribution is also proposed to be taxable which was previously exempt subject to certain conditions.

- **PAKISTANI PARITY**

For an unrecognized provident fund, this is not taxable. However, where the provident fund is a recognized one, the interest credited exceeds will be taxable if it, and to the extent, it exceeds the lower of: i) 16% of the accumulated balance; or ii) 1/3rd of (basic salary + dearness allowance).

c) Commodity transaction Tax (hereafter "CTT") on the sale of non-agriculture commodity derivatives on over the counter contract was introduced in FA 2013, with inclusion of option in FA 2018. Now, necessary changes are proposed to align provisions of CTT with the changes in derivative markets.

- **PAKISTANI PARITY**

In Pakistan, Capital value tax is applicable on individuals, firms, and companies which acquire an asset by purchase or a right to use for more than 20 years.

13. MEASURES FOR IMPROVEMENT IN TAX ADMINISTRATION

a) All filed income tax returns are assessed preliminarily under Section 143 of the Act, through a computerized assessment, and without any human intervention to determine the tax liability of the taxpayer. The Bill has proposed to amend the provision e-assessment under Section 143(3A) of the Act, to include "best judgment assessment" within its ambit, with the Central Government empowered to issue direction in this regard up to 31st March 2022. Now, the human officers can concentrate on hardcore tax activities.

- **PAKISTANI PARITY**

No such provision is available in the Income Tax Ordinance 2001.

b) Section 144C of the Act deals with the Dispute Resolution Panel (hereafter" DRP"). This has been proposed to be amended to widen its scope, to include;

  - Cases where assessment is amended prejudicial to interest of assessee.
  - Non-resident (not being a company), or a foreign company to be an eligible assessee to apply for DRP.

- **PAKISTANI PARITY**

In Pakistan, the Alternative Dispute Resolution mechanism, covered under Section 134A, is a system that operates side by side with the existing conventional appellate system, but with simple procedures, and lesser technicalities. If any taxpayer decides to opt for the ADR regime, instead of the appellate regime, then the recommendations of ADRC will be binding on both the parties. An aggrieved person may use this forum for (a) the liability of tax against the aggrieved person or admissibility of refunds; or (b) the extent of waiver of default surcharge and penalty; or (c) any other specific relief required to resolve the dispute.

c) The Taxpayer can file an appeal with the Commissioner (Appeals) though his registered account on e-filling portal, but the subsequent procedure is manual. The Bill seeks to propose, and add, Section 250(6A) into the Act, to empower the Central Government to notify an e-appeal scheme for the disposal of appeal, to 31st March 2022.

➢ **PAKISTANI PARITY**

No mechanism of an e-appeal is provided for in the Income Tax Ordinance 2001.

d) The authority given under Section 133A of the Act, to the tax officials to conduct a survey at the business premises is further rationalized to have a check on the misuse thereof.

➢ **PAKISTANI PARITY**

In Pakistan, officials of the Federal Board of Revenue can enter and search premises under Section 174 of the Income Tax Ordinance 2001, subject to certain conditions.

e) At present, the Appellate Tribunal under Section 254(2A) can, after considering merits of case, give a stay of maximum 180 days, which may further be extended to a maximum 365 days subject to the condition that delay in disposal is not due to the assessee. Now, an additional condition has been proposed to be added by virtue of the Bill, whereby deposit of 25% of the amount of tax, interest, fee, penalty in cash or security is required for the grant of stay. Further, a fresh application will now have to be filed by the assessee along with payment of the above, to get the stay extended beyond 180 days.

➢ **PAKISTANI PARITY**

In Pakistan, the Appellate Tribunal may grant stay of demand up to 180 days in aggregate under Section 133 of the Income Tax Ordinance 2001. However, in light of decisions of the superior courts, the Appellate Tribunal can extend the stay beyond 180 days, in cases where delay is beyond the control of the appellant.

f) After the successful provision of e-assessment, the Central Government has been, by virtue of a proposed amendment in Section 274(2A) of the Act, empowered to notify an e-scheme for imposing penalty thereby eliminating the interface between an Assessing Officer and the assessee.

➢ **PAKISTANI PARITY**

No such provision is available in Pakistan under the Income Tax Ordinance 2001.

14. MEASURES FOR PREVENTING TAX ABUSE

a) Section 6(1) of the Act, which prescribes the rules for determination of residency status, has been amended (w.e.f from 1st April 2021), as follows:
   - The stay period in India for declaring person as resident has been reduced to 120 from 182 days;
   - Individual/Manager of Hindu Undivided Family shall be "not ordinarily resident" in previous years, if non-resident in nine (now proposed to be seven) out of ten previous years, or has been in India before previous year in last 7 years for an overall 729 days or less;
   - An Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India.

➢ **PAKISTANI PARITY**

In Pakistan, an individual is considered resident if he is present in Pakistan for; 183 days or more in a tax year; or for 120 days or more in a tax year and also present for total 365 days in last 4 tax years; or is an employee of the Government whether physically present in Pakistan or not.

b) Section 194C of the Act deals with TDS on payments against work done by contractors on Toll manufacturing basis. 'A contractor purchasing goods other than from a customer' was excluded from "work" definition. This resulted in some revenue leakages were observed when contract manufacturer got the goods supplied through related parties of the customer, in order to exploit the loophole in the definition of work. Now it is proposed to amend definition of "work" to bring raw material provided by the assessee or its associates within the purview of "work".

- **PAKISTANI PARITY**

In Pakistan, the TDS on Toll Manufacturing services is covered under Section 153(1)(b) of the Income Tax Ordinance 2001 as minimum tax with no exclusion as above.

15. OTHER RATIONALIZATION MEASURES

a) India has signed the Multilateral Convention with the OECD (hereafter "MLI") to implement tax-treaty related measures to prevent base erosion and profit shifting (hereafter "BEPS"). Resultantly. the MLI has been enforced in India from 1st October 2019, and its' provisions will be applicable on India's Double Taxation Avoidance Agreements (hereafter "DTAA") from FY 2020-21, and onwards. The MLI will modify DTAAs in order to implement BEPS measures particularly ensuring curbing of reliefs provided in DTAAs for indirect benefit of residents of third jurisdiction. Now, amendments are proposed to be made in Section 90(1)(b) which deals with DTAAs and Section 90A(1)(b) which, deals with agreement between association in India as well as outside India for avoidance of double taxation and exchange information etc. to make these sections are aligned with the MLI. These will be effective from 1st April 2021.

- **PAKISTANI PARITY**

In Pakistan, the provisions related to double taxation treaties are covered under Section 107 of ITO 2001. Pakistan also became signatory with MLI at OECD on 14th September 2016, with Rules on Country-by-Country reporting covered in Chapter VIA of Income Tax Rules 2002. The DTAAs are also subject to the provisions of MLI, and from Tax Year 2018 and onwards the Commissioner is empowered to disregard an entity or a corporate structure that does not have an economic or commercial substance or was created as part of the tax avoidance scheme under Section 109(1)(d) of ITO 2001 notwithstanding any relief available in DTAA.

b) Section 9 of the Act deals with determining geographical source of income, and through FA 2018 an Explanation 2A was added whereby "significant economic presence" (hereafter "SEP") of a non-resident through digital means shall constitute "business connection" (hereafter "BC") in India if, it meets the minimum criteria to be prescribed later. Hence, income should be Indian Source of income even without any agreement for transaction or activities entered in India, or without non-resident having a residence or place of business in India, or even non-resident rendering no services in India. This explanation is proposed to be deferred till 1st April 2022. BC is the Indian equivalent of Permanent Establishment. It is much wider in connotation and has been very effectively used by the revenue authorities to tax the income of non-residents in India.

- **PAKISTANI PARITY**

In Pakistan, as per Section 101(3), Business income of a non-resident person shall be Pakistan-source income to the extent, to which, it is directly or indirectly attributable to a permanent establishment of the non-resident person in Pakistan or, other business activities carried on in Pakistan of the same or similar kind as those effected by the non-resident through a permanent establishment in Pakistan or, any business connection in Pakistan.

c) It is proposed to make necessary amendments in Section 9(1)(i) of the Act, to the effect that income from advertisement that targets Indian customers, or income from sale of data collected from India, or income from sale of goods and services using such data collected from Indians will now be considered as Indian Source income w.e.f. from 1st April 2021

- **PAKISTANI PARITY**

No such provision is available in the ITO 2001 with respect to income from usage of data of Pakistanis.

d) Explanation to Section 9(1)(i) of the Act clarifies that any share or interest in a foreign company that derives its value substantially from assets located in India, will be deemed to be situated in India. However, it will not apply to non-residents which fall in Category I or II of foreign portfolio investor

under SEBI(FPI) Regulations, 2014. SEBI has promulgated SEBI(FPI) Regulations, 2019 while repealing the 2014 Regulations. Now, it has been proposed to make amendments in this regard, to make it aligned with the changes made in the SEBI Regulations.

- **PAKISTANI PARITY**

In Pakistan, as per Section 101A. "Gain on disposal of assets outside Pakistan" of the ITO 2001, any gain from the disposal or alienation outside Pakistan of an asset located in Pakistan of a non-resident company shall be Pakistan-source.

e) Section 9(1(vi) treats certain royalty income to be Indian Source income, excluding consideration for the sale, distribution or exhibition of cinematographic films, even if DTAA gives right to India to tax it. This exclusion is proposed to be omitted w.e.f. 1st April 2021.

- **PAKISTANI PARITY**

In Pakistan, As per Section 101(8) of the ITO 2001, a royalty shall be Pakistan-source income if it is (a) paid by a resident person, except where the royalty is payable in respect of any right, property, or information used, or services utilized for the purposes of a business carried on by the resident outside Pakistan through a permanent establishment; or (b) borne by a permanent establishment in Pakistan of a non-resident person. Consideration for the sale, distribution or exhibition of cinematographic films will be Pakistan source income if fulfils (a) or (b).

f) Section 295 of the Act gives Board the power to make rules for various matters. An amendment thereto, is proposed, which will empower Board to make further Rules regarding:

  i. Operations carried out in India by a Non-resident w.e.f. 1st April 2021.
  ii. Transaction or activities of a non-resident w.e.f. 1st April 2022.

- **PAKISTANI PARITY**

In Pakistan, the specific provisions for taxation of non-residents relating to income from royalty, fee for technical service, fee for offshore digital services etc. are provided in Section 6 of the ITO 2001, and in Chapter V of the Income Tax Rules 2002. These are enacted through an Act of Parliament, and the legislature is entrusted with power to amend them.

g) The Section 115-O of the Act levies an additional tax @15% on a company when it declares and distributes its income as dividends called Dividend Distribution Tax ("DDT"). The recipients of dividend have exemption on such income. Similarly, Mutual Funds are also liable to pay DDT on income distributed by them to its Unit holder's under Section 115R of the Act. It has now been proposed that dividend income or income from units are taxable in the hands of shareholders or unit holders at the applicable rate (as against the current flat rate) while Companies/Mutual fund are not required to pay DDT. It is also proposed to provide deduction for expenses under Section 57 of the Act, up to maximum 20% of income, majority of amendments will be effective from 1st April 2021 with some will take effect from 1st April 2020.

- **PAKISTANI PARITY**

In Pakistan, companies deduct tax on dividend at various rates u/s 151 as under:

Rate of Tax	Industry
7.5%	Independent Power Purchasers where such dividend is a pass-through item under an Implementation Agreement or Power Purchase Agreement or Energy Purchase Agreement and is required to be re-imbursed by Central Power Purchasing Agency (CPPA-G) or its predecessor or successor entity.
15%	Dividend received from Mutual Fund and other cases not mentioned above and below
25%	dividend from a company where no tax is payable by such company, due to exemption of income or carry forward of business losses under Part VIII of Chapter III or claim of tax credits under Part X of Chapter III

h) Section 55 of the Act deals with determination of the cost of acquisition of capital assets to compute capital gain, whereby an assessee can chose between the market value or actual cost of asset to be cost of acquisition for assets acquired before 1st April 2001. Now, it is proposed, that if the fair market value is opted for, it shall not exceed the stamp duty value, if available and notified by Central or State Governments w.e.f. from 1st April 2021.

- **PAKISTANI PARITY**

The cost of an asset purchased by a person shall be the sum of; (a) The total consideration given by the person for the asset, including the fair market value of any consideration in kind determined at the time the asset is acquired; and (b) any incidental expenditure incurred by the person in acquiring and disposing of the asset; and (c) any expenditure incurred by the person to alter or improve the asset. However, in case of immovable property, the value shall not be less than rates notified by the FBR.

i) Some anomalies relating to the exemption of income for Trust or funds constituted under the Central or State Act has been proposed to be removed by amendment in Section 11(7) of the Act.

j) The process of registration of trusts, institution, funds, university, hospital etc. are proposed to be rationalized. The entities receiving donation are required to report the donations and issue certificate of receiving of donation to donor to be used by them to claim deductions. Further, the cash donation is restricted to Rs 2,000/- only w.e.f. 1st June 2020.

- **PAKISTANI PARITY**

In Pakistan the process of registration and e-enrolment of trust, institution etc. is prescribed in Chapter XIII of Income Tax Rules, 2002. Further cash donations are allowed as deduction to some institutions mentioned in Clause 61 of Part 1 of 2nd Schedule of the ITO 2001, subject to a limit of 30% of the taxable income (in case of an individual or an AOP) and 20% of the taxable income (in case of a company).

k) An amendment in Section 9 of Prohibition of Benami Property Transaction Act 1988 is proposed, to make a District Judge eligible to be appointed as a Member of the Adjudication Authority w.e.f. 1st April 2020.

- **PAKISTANI PARITY**

In Pakistan, as per Section 6(3) of Benami Transactions (Prohibition) Act 2017, only member of the Inland Revenue Services who has held the post of Chief Commissioner Inland Revenue or an equivalent post in that service or, is/has been a member of any Federal service and has held the post of Additional Secretary or equivalent post in that service, will qualify for appointment as Chairperson or member of the adjudicating authority.

l) If total sales, turnover or gross receipts of a person carrying on business exceed INR 1 Crore in previous year, or the gross receipts exceed INR 50 lakhs, he is required to get his accounts audited under Section 44AB of the Act. Now in order to reduce the burden in, the threshold is proposed to increase from INR 1 Crore to INR 5 Crore in case of business where cash receipts and cash payments are less than 5% of total receipts and payments. Accordingly, amendments are proposed in Sections 194A, 194C, 194H,194I, 194J, and 206C of the Act, which are related to TDS/TCS that is dependent on the monetary limit under section 44AB w.e.f. 1st April 2020.

- **PAKISTANI PARITY**

In Pakistan, provisions of Audit are covered under Section 177 of the ITO 2001, in which selection by the Commissioner is subject to some risk criteria, or due for selection by FBR under Section 214C of ITO 2001 with no mandatory audit requirement each year. However, if the company is a large import house under clause 57A of Part IV of 2nd Schedule of ITO 2001 and availing exemption under Section 153, it is required to present its accounts each year for the purposes of audit.

m) Section 203AA of the Act requires every withholding agent to furnish statement of tax collected or deducted to assessee in Form 26AS. Now, the Bill seeks to omit this Section. Moreover, a new Section 285BB is proposed to be inserted, which requires the withholding agent to upload, in the registered account of assessee, a statement, in such form, manner and setting forth such information as he is in possession of, w.e.f. 1st June 2020, so that this information can be easily used by assessee to file its income tax returns.

➢ **PAKISTANI PARITY**

In Pakistan, the withholding agent is required to submit biannual withholding statement under Section 165 of ITO 2001, which entails all particulars of amount deducted/collected under various withholding provisions of ITO. However, this information is directly submitted to the FBR, and not in the account of the assessee on IRIS. However, the withholding agent is required to issue a certificate of collection/deduction to the assessee, under Rule 42 of Income Tax Rules 2002.

n) In pursuance of SEBI circular permitting creation of segregated portfolio of debt and money market instruments by Mutual Fund Schemes from total portfolio, proposed amendments are made in Section 49 of the Act, in relation to the holding period of capital assets, and cost of acquisition of a segregated portfolio w.e.f. from 1st April 2020.

➢ **PAKISTANI PARITY**

In Pakistan, capital gain on capital assets is charged under Section 37A of the ITO 2001, with rates according to holding periods provided for in Division VII of Part 1 of the Second Schedule. Mutual funds are charged at a flat rate of tax irrespective of holding period.

o) Section 140 of Act provides for the Company return to be verified by the Managing Director or Director in his absence/inability, and in case of a LLP, the designated partner or other partner if not the designated partner. Now it is proposed to empower the Board to prescribe any other person to verify such Returns.

➢ **PAKISTANI PARITY**

In Pakistan, the return of income shall be verified in the manner specified in the form.

p) Section 288 of the Act deals with the provisions of an authorized representative to represent assessee before the department or appellate forums, with persons prescribed to be AR. Now, an amendment is proposed to empower Board to specify any other persons to be AR.

➢ **PAKISTANI PARITY**

In Pakistan, the provisions related to AR are covered under Section 223 of the ITO 2001, which empowers the FBR to make rules under Section 237 for the registration of income tax practitioners and related matters, including establishing a code of conduct for such practitioners.

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