

Direct Tax Provisions of Finance (No.2) Bill, 2019



CA. N.C. Hegde

Joint Workshop of CTC and WIRC of ICAI

13 July 2019

Glossary

AO	Assessing Officer
AOP	Association of Persons
ARE	Alternate Reporting Entity
AY	Assessment Year
BOI	Body of Individuals
DDT	Dividend Distribution Tax
CbCR	Country-by-Country Report
DTAA	Double Taxation Avoidance Agreement
ESOP	Employee Stock Option Plan
Finmin	Finance Ministry
FPI	Foreign Portfolio Investor
FTC	Foreign Tax Credit
FTS	Fees for Technical Services
FY	Financial Year
GST	Goods and Services Tax
HUF	Hindu Undivided Family
IFSC	International Financial Services Centre
INR	Indian National Rupee
the IT Act	Income-tax Act, 1961
the IT Rules	Income-tax Rules, 1962
LTCG/L	Long Term Capital Gain/ Loss
MAT	Minimum Alternate Tax
NR	Non-resident
PAN	Permanent Account Number
PE	Permanent Establishment
ROI	Return of Income
STCG/L	Short Term Capital Gain/ Loss
STT	Securities Transaction Tax
TDS	Tax deducted at source
TP	Transfer Pricing
TRC	Tax Residence Certificate
WHT	Withholding Tax

Corporate tax rate card

Corporate tax rate card

Types of companies	Income up to INR 1 crore		Above INR 1 crore up to INR 10 crore		Above INR 10 crore	
	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Domestic with turnover not exceeding INR 400 crore in FY 2017-18	Nil (Nil)	26.00% (26.00%)#	7% (7%)	27.82% (27.82%)	12% (12%)	29.12% (29.12%)
New domestic manufacturing (set up and registered on or after 1 March 2016)*	Nil (Nil)	26.00% (26.00%)	7% (7%)	27.82% (27.82%)	12% (12%)	29.12% (29.12%)
Other domestic	Nil (Nil)	31.20% (31.20%)	7% (7%)	33.38% (33.38%)	12% (12%)	34.94% (34.94%)
Foreign	Nil (Nil)	41.60% (41.60%)	2% (2%)	42.43% (42.43%)	5% (5%)	43.68% (43.68%)

*Compliant with prescribed conditions u/s 115BA

For AY 2019-20, the reduced rate of 25% was applicable upto turnover of INR 250 crore

Note:

- Health and Education Cess of 4% has been considered for determining the tax rates above
- Figures in bracket represent existing tax rates

Corporate tax rate card

No changes in effective MAT rate

Types of companies	Income up to INR 1 crore		Above INR 1 crore up to INR 10 crore		Above INR 10 crore	
	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate	Surcharge rate	Effective tax rate
Domestic	Nil	19.24%	7%	20.59%	12%	21.55%
	(Nil)	(19.24%)	(7%)	(20.59%)	(12%)	(21.55%)
Foreign	Nil	19.24%	2%	19.62%	5%	20.20%
	(Nil)	(19.24%)	(2%)	(19.62%)	(5%)	(20.20%)
IFSC	Nil	9.36%	7%	10.02%	12%	10.48%
	(Nil)	(9.36%)	(7%)	(10.02%)	(12%)	(10.48%)

Notes:

- Health and Education Cess of 4% has been considered for determining the tax rates above
- Figures in bracket represent existing tax rates

Higher surcharge on super rich

(1/2)

- 1 Appl
- 2 The
- 3 The
- 4 Maxi



Higher surcharge on super rich

(2/2)

Issues:

- Higher surcharge to impact 40% FPIs, that have opted for the trust route to invest in India
 - Backlash that FPIs are being targeted & demand made for a special dispensation
 - Finmin has ruled out an immediate clarification & is trying to ascertain why these FPIs mostly coming in through tax havens, are using the trust structure
- Higher capital gains tax would also spook start-up investors, founders, ESOP holders
- Would impact expat hiring by companies, particularly where the employer is picking up tax liability
 - Expats are an important source of senior talent

National Pension System (NPS)

[sections 10(12A), 80C, 80CCD]

Withdrawal / Closure of NPS applicable to all employees

Existing

40% of the total amount payable at the time of closure of NPS account or on opting out of NPS scheme is exempt from tax

Proposed

Exemption limit to be enhanced from 40% to 60%

Benefits to the Central Government (CG) employees

Existing

Employer contribution to NPS allowed as deduction to the extent of 10% of salary
No deduction is available for contribution made to Tier II accounts

Proposed

Deduction for employer contribution to be enhanced from 10% to 14%
Deduction u/s 80C for CG employee's contribution to NPS Tier II account with lock in period of 3 years

Credit of relief provided u/s

Existing

Currently, tax relief is provided u/s 89 for salary paid in arrears; Further, credit for prepaid taxes & other reliefs are considered while computing tax liability including interest; However, the relief u/s 89 is not specifically provided for in computing tax liability

Prop

To amend the provisions relating to computation of tax liability u/s 140A, interest on assessment u/s 140B, to consider relief u/s 89 while computing tax liability

Amendment to apply retrospectively from 1 April 2007 i.e. AY 2007-08 and onwards

Taxation of gifts made to NR

[section 9(1)(viii)]

- Currently, gifts made by residents to NR are claimed to be non-taxable in India as the income does not accrue or arise in India
- It is proposed that money or Indian property received by NR on or after 5 July 2019 from a resident without or for inadequate consideration, will be deemed to accrue or arise in India
- The existing exemption u/s 56(2)(x) shall continue to apply
- The benefits available under the relevant Article of applicable Indian DTAA shall also continue to apply to such gifts
- Applicable from AY 2020-21 onwards

Comments:

- The origin of the gift (in India) would determine taxability & not the overseas destination of the recipient
- Narrower definition of 'relative' under FEMA; FEMA provisions also to be analyzed as though a transaction may seem tax efficient, the same may not be permitted at all from a FEMA perspective

Deduction for interest on loan

[sections 80EEA, 80EEB]

Loan for affordable housing - Section 80EEA

- Interest on loan sanctioned by specified financial institution during the period 1 April 2019 to 31 March 2020 for the acquisition of residential house property is eligible for an additional deduction of upto INR 1,50,000
- The stamp duty value of the residential house property should not exceed INR 45 lakh
- Tax payer should not own any other residential house property on the date of sanction of the loan
- This benefit is available over & above existing deduction available u/s 24 for interest on housing of upto INR. 2 lakh (refer Slide 30); The benefit is however not available to an individual availing the deduction u/s 80EE
- The terms stamp duty value and financial institution have been defined
- Effective from AY 2020-2021 and onwards
- **Issue:** Whether acquisition will include construction?

Loan for purchase of Electric Vehicle - new Section 80EEB

- Deduction of interest up to an amount of INR 1,50,000 allowable to individual taxpayers, on loan for the purchase of an Electric Vehicle sanctioned by financial institution during the period 1 April 2019 to 31 March 2023
- Deduction is subject to the condition that the assessee does not own any other electric vehicle on the date of sanction of loan
- The terms electric vehicle and financial institution have been defined
- Effective from AY 2020-2021 and onwards

Tax incentive for affordable housing extended [section 80-IBA]

Background

- Currently, section 80-IBA applies to the projects approved on or after 1 June 2016 to 31 March 2019
- The existing provisions provide for a deduction of an amount equal to 100% of the profits and gains derived from the business of developing and building affordable housing projects

Proposed amendment

- The above tax incentive has now been extended to projects approved on or after 1 September 2019
- With a view to align the definition of "affordable housing" u/s 80-IBA with the definition under GST Act, it is proposed to modify certain conditions amongst others as under:

a) Cities	Existing threshold (upto square meters)	Proposed threshold (upto square meters)
Mumbai, Delhi, Chennai and Kolkata	30	60
Bengaluru, Hyderabad, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad	60	60
Other than above	60	90

- Various existing provisions restricting cash receipts / payments refer to only certain electronic modes of payment i.e. account payee cheque, account payee bank draft and electronic clearing system through a bank account; In order to encourage other electronic modes of payment, it is proposed to amend the following sections to include such other electronic mode as may be prescribed:

Section	Particulars	Effective date
13A	Income of political parties	1 April 2020
35AD	Deduction in respect of expenditure on specified business	
40A	Payments not deductible under certain circumstances	
43(1)	Determination of actual cost of an asset	
43CA	Full value of consideration for transfer of assets other than capital assets in certain cases	
44AD	Computing profits & gains of business on presumptive basis	
50C	Full value of consideration in certain cases	
56(2)(x)	Income from receipt of immovable property	
80JJAA	Deduction for cost incurred for an additional employee	
269SS	Mode of taking/ accepting loans, deposits and specified sums	1 September 2019
269ST	Mode of undertaking transactions	
269T	Mode of repayment of certain loans or deposits	

New sections 269SU, 271DB (effective from 1 November 2019)

- New section 269SU mandates every person carrying on business having turnover, sales or gross receipts in excess of INR 50 crore in the immediately preceding previous year, to provide facility for accepting payments through prescribed electronic modes
- In case of non-compliance, section 271DB provides for a penalty of INR 5,000 for every day during which failure continues; However, no penalty if there were good & sufficient reasons for non-compliance
- Corresponding changes proposed to the Payment and Settlement Systems Act, 2007 stating that no charge shall be collected from anyone by bank or system provider either directly or indirectly, for using the modes of electronic payment prescribed u/s 269SU

New section 194N (effective from 1 September 2019)

- TDS at 2% to be applied by a banking company or cooperative bank or post office on cash withdrawals by an account holder in excess of INR 1 crore in aggregate during the year
 - Certain recipients (Government, banks, post office, etc.) to be exempted from the proposed TDS

Issues:

- Is section 194N unconstitutional? Can there be TDS on a withdrawal which is not income?

Concessional rate of STCG tax to certain equity oriented funds [section 111A]

Rationale

In order to incentivise fund of funds set up for disinvestment of Central Public Sector Enterprises, the previous budget had provided a concessional rate of LTCG tax u/s 112A on the transfer of units of funds that invest in other funds. However, a similar benefit of lower rate of tax on STCG was not available

Proposed amendment

- It is proposed to amend section 111A to extend the concessional STCG tax rate of 15% o transfer of units of fund of funds
- The aforesaid amendment is proposed to be applicable from AY 2020-21 and onwards

Tax on income distributed to shareholders in case of listed companies [section 115QA]

- Under the existing provisions, proceeds from the buyback of shares by listed companies are taxable in the hands of shareholders as capital gains at applicable tax rates depending on period of holding; Whereas unlisted companies undertaking a buyback of shares are liable to pay additional income tax on the “distributed income”
- It is now proposed to extend applicability of section 115QA to the buyback of shares by a company listed on a recognised stock exchange as well: Accordingly, listed companies undertaking a buyback of shares will now have to pay additional income tax on “distributed income”
- “Distributed income” has been defined to mean consideration paid by the company as reduced by the amount that was received by the company for issuing such shares, determined in the manner as prescribed under IT Rules
- Consequentially, shareholders of such listed companies, shall be exempt from tax on proceeds received pursuant to such a buyback
- The above amendment is proposed to take effect from 5 July 2019

Impact:

All major Indian IT services companies which have opted for repurchase of shares in order to return

Rationalisation of STT on sale of options in securities

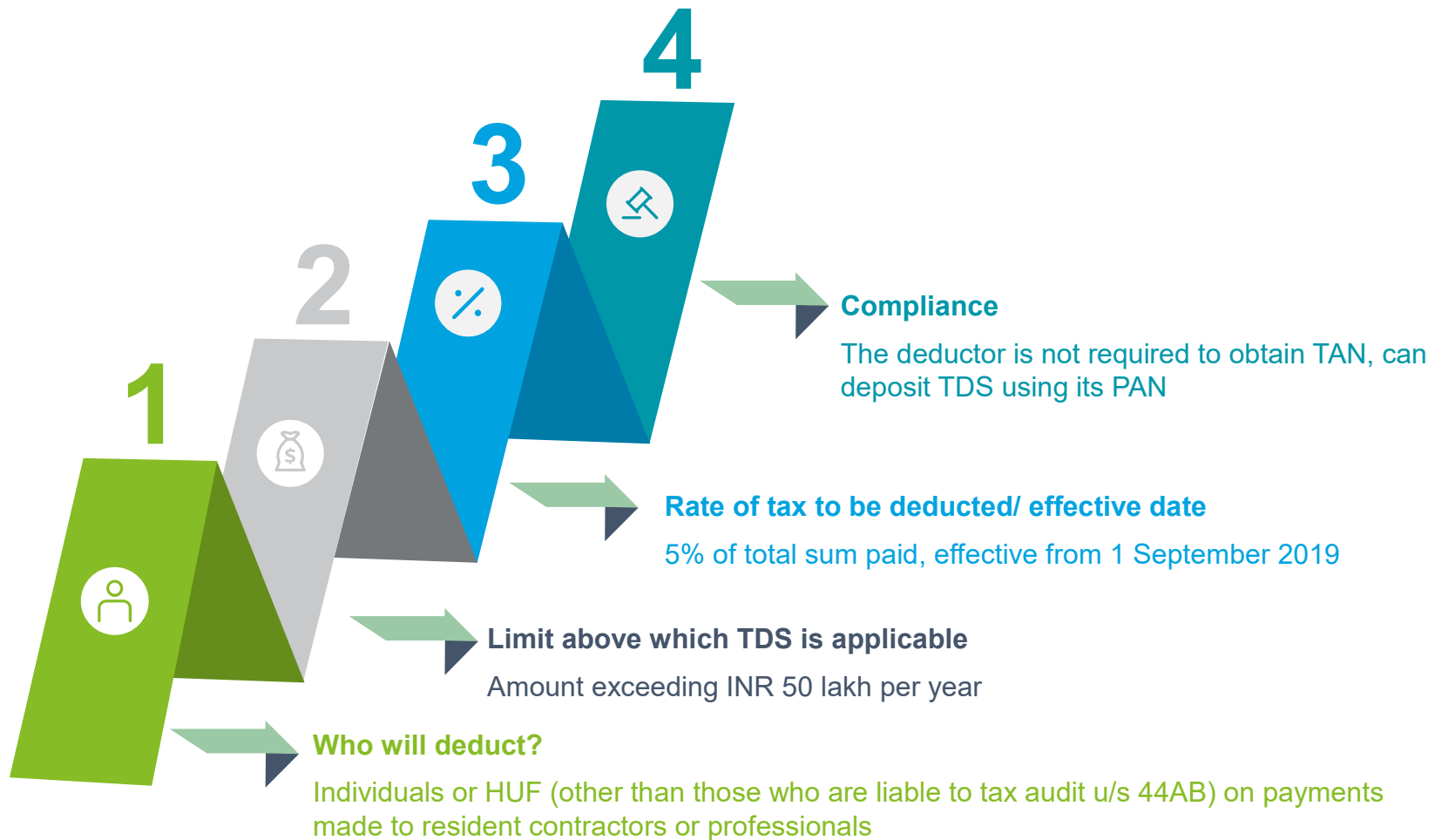
- Currently, in the case of sale of an option in securities, where the option is exercised, the settlement price is taken as the value of taxable securities transaction for the purpose of STT levy
- It is proposed that on such transactions, STT will be levied on the difference between the strike price and the settlement price
- The proposed amendment shall be effective from 1 September 2019

'Accounting year' for CbCR filing

[section 286]

- Section 286 of the Act provides that when the parent entity or ARE are resident in India, they are required to file the CbCR in India for the accounting year, which was defined to mean the previous year. The CbCR, which is also part of the BEPS Action Plan 13 requirement, includes country-wide details of revenue, profit, employees, etc., for an international group
- Concerns were raised that in case of an ARE resident in India whose ultimate parent entity is not resident in India, the accounting year would always be the accounting year applicable in the country where such ultimate parent entity is resident and cannot be the previous year of the entity resident in India
- To address such concerns & to bring clarity in law, it is proposed to suitably amend section 286 so as to provide that the accounting year in case of the ARE of an international group, the parent entity of which is not resident in India, the reporting accounting year shall be the one applicable to such parent entity
- The above amendment shall take effect retrospectively from AY 2017-18 and onwards

TDS on contractual / professional payments by Individuals/ HUF [new section 194M]



Consequential amendment to section 197 to also allow a payee to seek a lower/nil withholding tax certificate for sums covered under the proposed section 194M

TDS on consideration for immovable property

[section 194-IA]

Existing provision

A person is required to withhold tax @ 1% from consideration paid to a resident transferor for immovable property (other than agricultural land), if the consideration for immovable property exceeds INR 50 lakhs; The term "consideration for immovable property" is currently not defined

Proposed provision effective from 1 September 2019

"*consideration for immovable property*" defined to include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature which are incidental to transfer of the immovable property; Accordingly, such additional consideration is proposed to be covered by TDS

TDS on non exempt portion of life insurance pay-out on net basis

[section 194DA]

- At present, u/s 194DA, a person is obliged to deduct tax at source at 1%, if it pays any sum to a resident under a life insurance policy, which is not exempt u/s 10(10D) of the Act
- It is proposed that section 194DA be amended to restrict the tax deduction at source on the income component of the sum as against gross sum at the time of payment
- Further, the rate of tax deduction at source increased from 1% to 5%
- The proposed amendment will be effective from 1 September 2019

Relaxation of provisions in respect of payments to NR [sections 201, 40]

- Currently, section 201 of the Act provides for consequences for failure to deduct or pay taxes. However, a taxpayer who fails to deduct taxes while making payments, is not treated as a “taxpayer in default”, if the recipient of income has duly filed its ROI, disclosing such sum and has furnished an accountant’s certificate to this effect. However, till now, such exception was only provided in the case of payments to residents and not in the case of payments to NR
- It is proposed to amend section 201 in order to extend above relief on failure to deduct taxes while making payments to NR; Further section 201(1A) to be amended to provide for levy of interest till the date of filing of return by the NR payee - These amendments will take effect from 1 September 2019
- Further, a consequential amendment is proposed to section 40(a)(i) to provide that where a payer is not treated as an “assessee in default” as above, no disallowance will be made in respect of subject payments made to NR even where tax has not been deducted - This amendment will take effect from 1 April 2020 and accordingly, will apply from AY 2020-21 and onwards

Improving effectiveness of tax administration

[Sections 195, 206A]

Online filing of application for NIL or lower withholding tax certificate – section 195

- Currently, applications filed u/s 195 for seeking NIL or lower withholding certificates in relation to the payments to be made to non-residents, are processed manually
- In order to use technology to streamline such processing & to reduce the time involved, it is proposed that with effect from 1 November 2019, section 195 be amended to allow the CBDT to prescribe the:
 - Form and manner of making such application to the tax officer
 - Manner in which such application would be disposed by the tax officer

E-filing of statement of transactions on which tax has not been deducted – section 206A

- Currently, statement in respect of interest payments to residents where no tax has been deducted can be furnished on a floppy, diskette, magnetic tape, CD ROM or any other computer readable media
- With effect from 1 September 2019, it is proposed that section 206A will be substituted to provide form and manner in order to enable online filing of such statements or to furnish correction statement for rectification of any mistake or to add, delete or update information already furnished

Rationalization of penalty provisions relating to under-reported income [section 270A]

- Section 270A provides for various situations for levy of penalty for under-reporting and misreporting of income. However, it does not contain the mechanism for determining under-reporting of income and quantum of penalty to be levied when a person has under-reported income and furnished the return of income for the first time in response to a notice u/s 148 of the Act
- To provide for manner of computing the quantum of penalty in the above-mentioned case, it is proposed to suitably amend the provisions of section 270A
- This amendment is proposed with a retrospective effect from AY 2017-18

Rationalization of provisions relating to prosecution [section 276CC]

- Section 276CC currently provides for prosecution in case of willful failure to furnish ROI in due time
- Immunity from prosecution is granted inter alia where the tax payable, as reduced by advance tax & TDS does not exceed INR 3,000 in respect of persons (other than companies). The present provisions do not provide for reduction of self assessment tax paid or tax collected at source while determining the tax payable
- To clarify the legislative intent, it is proposed to amend the said section to include the self-assessment tax, if any, paid before the expiry of the AY, and tax collected at source for the purpose of determining tax liability
- Further, to rationalise the existing threshold limit of tax payable, it is also proposed to amend the said section to increase the threshold of tax payable from INR 3,000 to INR 10,000

Rationalization of provisions relating to claim of refund [section 239]

- Currently, a taxpayer can file for claim of refund u/s 239 in the prescribed form and verified in the prescribed manner within two years from the end of the relevant FY
- It is proposed to amend the said section to provide that claim for refund shall be made only in the ROI filed in accordance with section 139 of the Act, i.e. one year from the end of the relevant FY
- The proposed amendment will be effective from 1 September 2019

Recovery of tax in pursuance of agreements with foreign countries [section 228A]

- Section 228A currently provides for assistance in tax recovery as a part of treaty obligations pursuant to an agreement between the Indian Government & the Government of any foreign country, from a person with any property in India, by a TRO having jurisdiction over such property, on receipt of a certificate of tax recovery from such foreign country under a corresponding law
- To provide tax recovery assistance per treaty obligations with the other country, the scope of section 228A has been proposed to be amended to provide for tax recovery even where:
 - Details of property of the person are not available, but the said person is a resident in India
 - Details of property of an assessee in default or assessee deemed to be in default are not available, but the said assessee is a resident in a foreign country
- The TRO proceeding to recover the amount specified in the certificate is proposed to include any TRO who has jurisdiction over the resident as well
- The above amendments will take effect from 1 September 2019

Enhanced time limit for sale of attached property under rule 68B of the Second Schedule of the Act

- At present, the sale of immovable property attached towards the recovery of tax, penalty, etc., shall not be made after the expiry of three years from the end of the FY in which the order in consequence of which any tax, penalty, etc. becomes final
- To protect the interest of revenue, it is proposed to extend the period of limitation from three years to seven years. It is also proposed that the said period can be further extended by three years by the Board, for reasons to be recorded in writing
- The amendment will take effect from 1 September 2019

House Property related
amendments introduced by the
Interim Budget vide the
Finance Act, 2019

Relief on second self occupied property

[sections 23, 24]

- Earlier, an individual owning more than one self occupied property was required to offer to tax the notional rent in respect of such additional property/properties
- The Finance Act, 2019 has exempted the notional rent on a second self-occupied / vacant property with effect from 1 April 2020
- Further, the limit to claim house property loss in respect of interest on loan taken for both the properties in aggregate will continue to be INR 2 lakh. Hence, maximum INR 2 lakh loss can be claimed in respect of such properties in one FY

LTCG exemption extended to investment in two house properties [section 54]

- Earlier, exemption u/s 54 in respect of LTCG arising on sale of residential property was available where the individual invested such capital gains to purchase/construct one residential property in India (subject to other conditions)
- The Finance Act, 2019 has provided that with effect from 1 April 2020, the said exemption will be available even if such capital gain is invested to purchase/ construct two residential properties provided that the capital gains do not exceed INR 2 crore
- This exemption can be claimed by the individual taxpayer once in a lifetime



Thank You

Insert sponsorship
mark here