



Real Estate/Private Equity
Detailed analysis

February 2020

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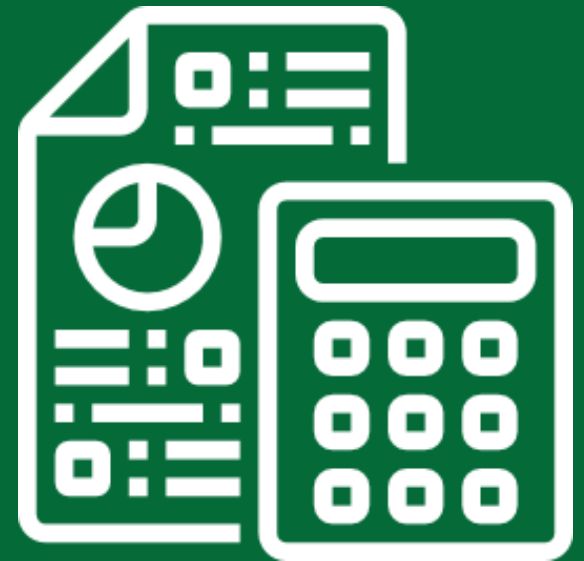
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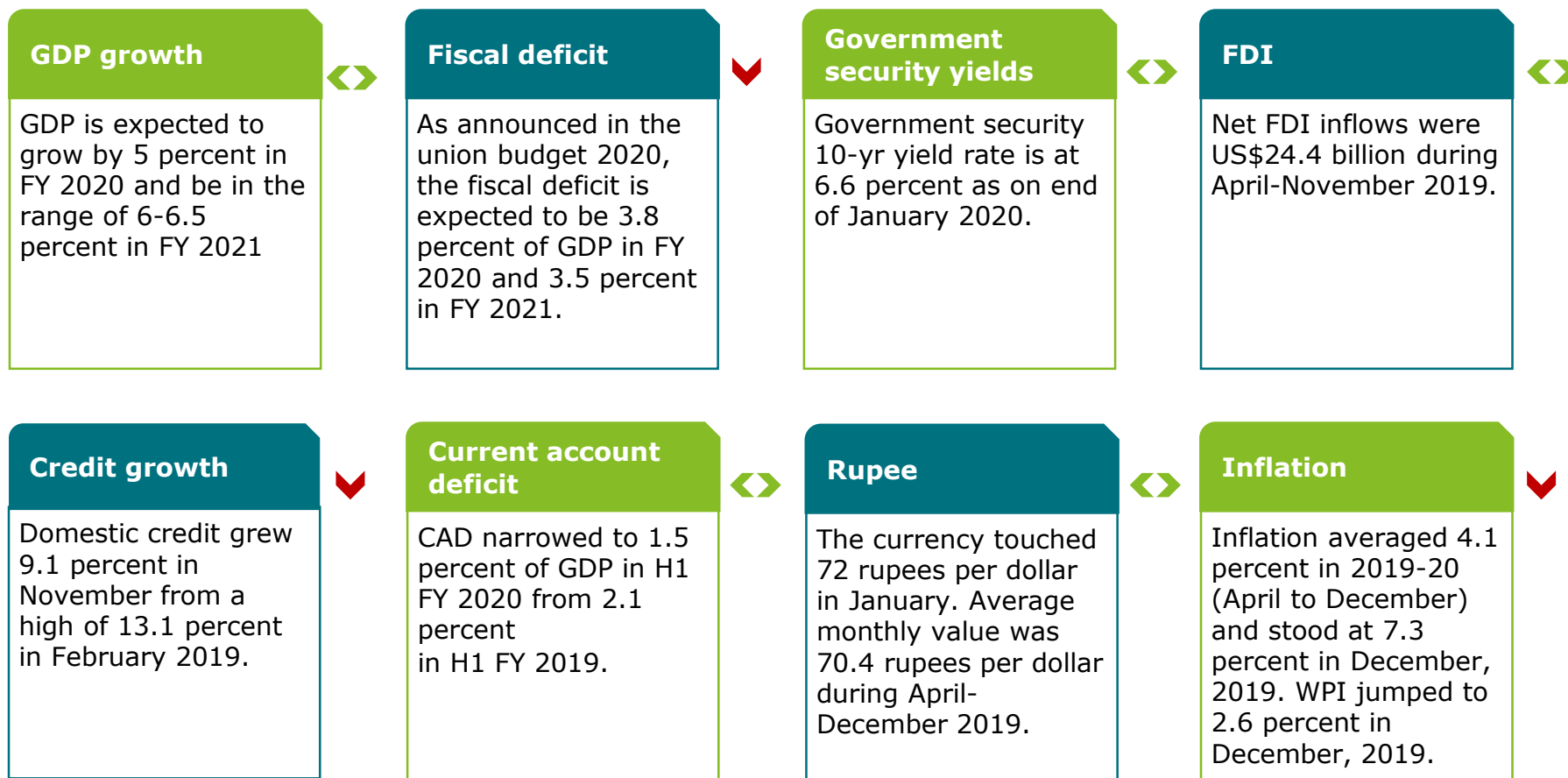


State of the Economy



Economy snapshot

Economic growth projected at 5 percent in FY2020

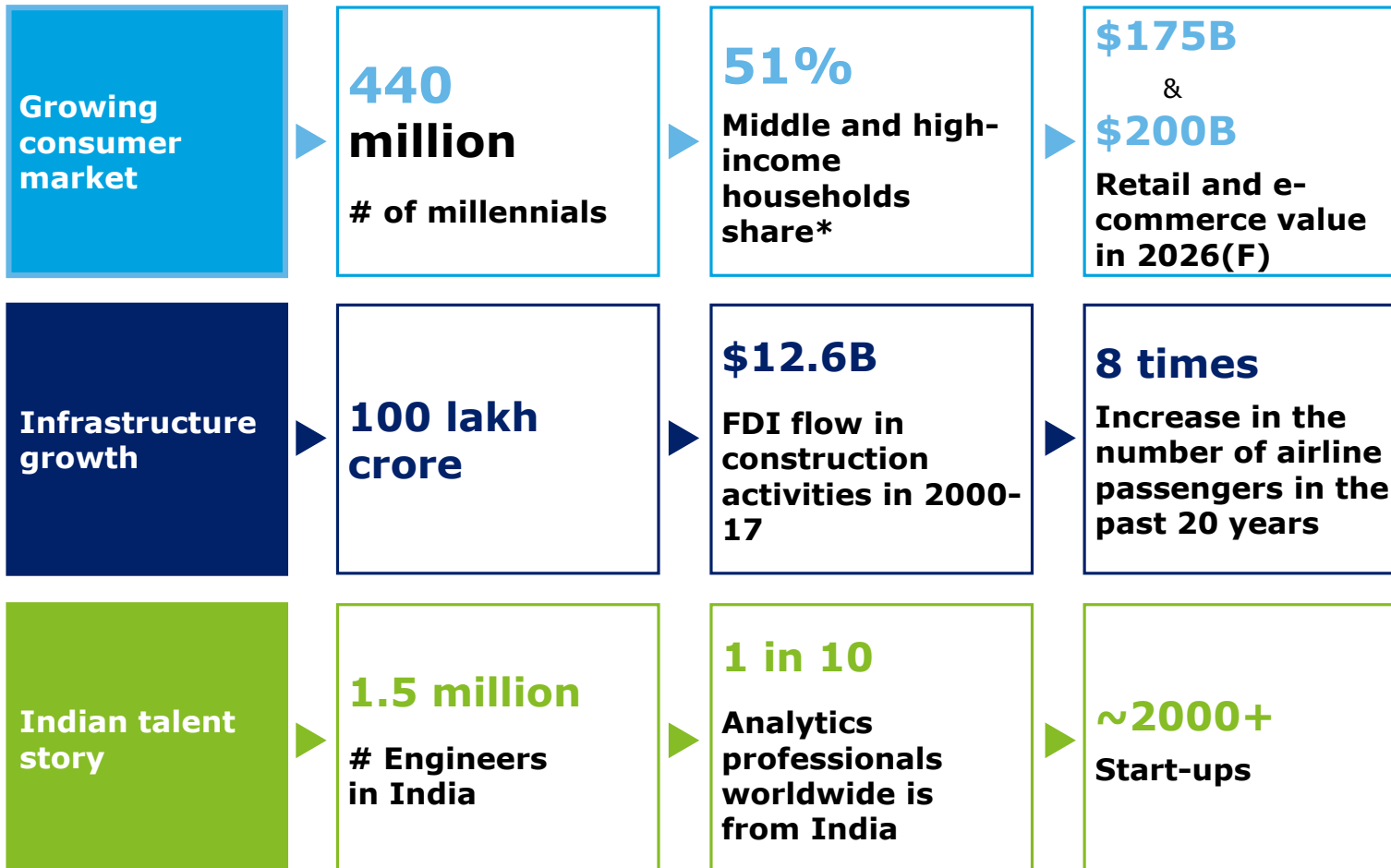


Source: CMIE, RBI

Notes: 1. The FY 2020 numbers are as announced during budget for FY 2021. All percentage growth measures are in year on year unless specified otherwise.

India continues to have a strong growth potential

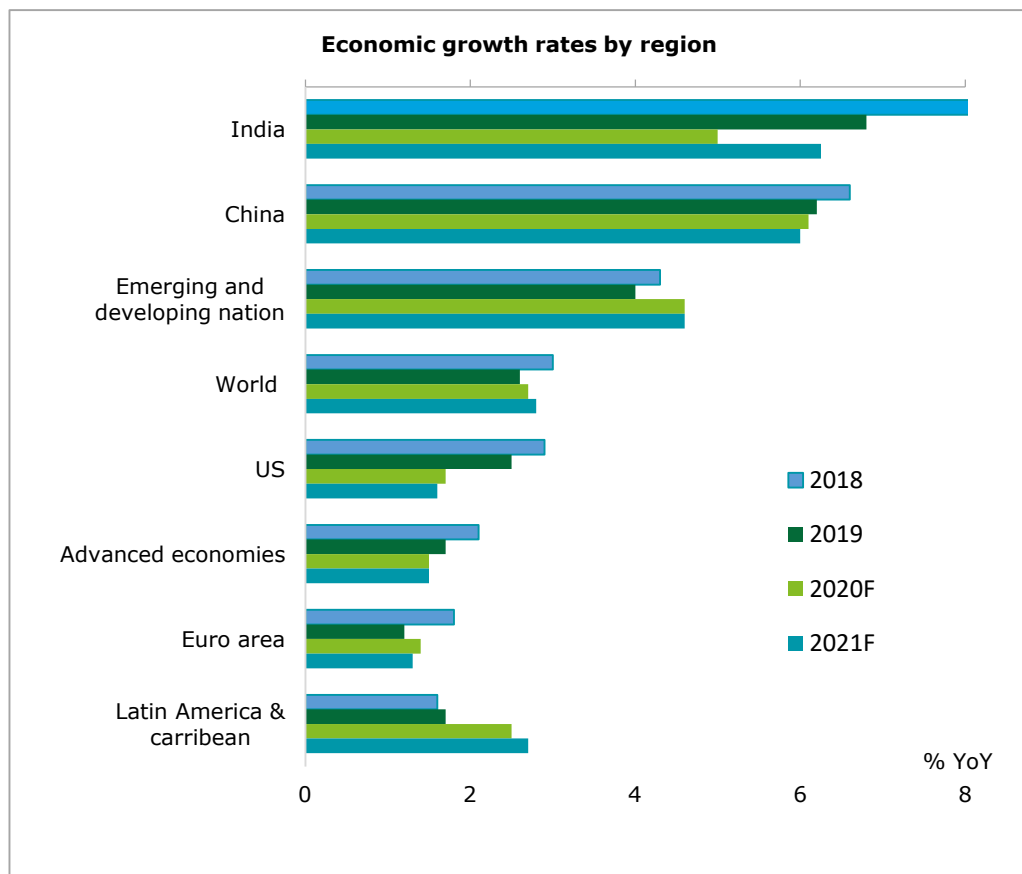
Three drivers that will make India an attractive investment destination



Source: *WEF report, 2019; **Steel consumption data from World Steel Association, as reported by Business Standard

Growing with strong fundamentals

India aspiring to be a US\$ 10 trillion economy by 2030



Source: Oxford economics, RBI, MOSPI
 Note: *The budget estimate as per Union Budget 2020.
 CAGR stands for cumulative aggregate growth rate between the years mentioned.

Economic fundamentals have been the strongest pillars

FDI increased at a CAGR of **18.4 percent** in the past 15 years.

The equity market's capitalisation increased more than **10 times** in the past 15 years.

India's ranking surged in the **World Bank's Ease of Doing Business Index** by **67 spots** to 63rd position in three years.

Foreign exchange reserves touched a **record high of US\$ 437.6 billion** from US\$ 5.8 billion in March 1991.

India's fiscal deficit fell from **-7.2 percent in FY 2010** to **-3.8 percent in FY 2020***.

The current account deficit fell from **-5.0 percent in FY 2013** during taper tantrum to **2.1 percent in FY 2019**.

Direct Tax proposals

Impact on RE

Real Estate - Developers

Incentive to affordable housing extended

Background for section 80-IBA

- Per section 80-IBA, the profits and gains derived from the business of developing and building affordable housing projects is eligible for deduction of an amount equal to 100 percent of the profits and gains derived from such business, subject to fulfilment of certain conditions
- Currently, the tax holiday provisions of section 80-IBA relating to affordable housing apply to the projects approved by competent authority during the period from 1 June 2016 to 31 March 2020

Proposed amendments

To incentivise building affordable housing, the date before which the competent authority approves the project is proposed to be extended to 31 March 2021

*In the memorandum, it is mentioned that the **stamp duty** does not exceed INR 4,500,000. However, as per the provisions of the Act and notes on clauses, the **stamp duty value** of the property should not exceed INR 4,500,000.

Real Estate - Individuals

Deduction for interest on loan

Loan for affordable housing - Section 80EEA

- Currently 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 150,000

Proposed Amendment

This deduction is now extended for one year in the case of loans sanctioned upto 31 March 2021.

Other conditions (no change)

- The stamp duty value of the residential house property should not exceed INR 4,500,000
- Tax payer should not own any other residential house property on the date of sanction of the loan
- This benefit is available over and above existing deduction available under section 24 for interest on housing of upto INR 200,000 and is available.

The memorandum refers to limit of 4,500,000 for stamp duty instead of stamp duty value

Real Estate – Base cost

Amendment to section 55

Cost of acquisition of real estate acquired prior to 1 April 2001

Background

Under existing provisions of Section 55, in respect of asset acquired before 1 April, 2001, an option has been given to the assessee either to taking the 'fair market value' of the asset (as on 1 April, 2001) or the actual cost as his 'cost of acquisition'.

Proposed amendment

- It is proposed that in case the capital asset is land or building, its 'fair market value' as on 1 April 2001 shall not exceed its 'stamp duty value' as on 1 April, 2001.
- The aforesaid amendment is proposed to be applicable from assessment year 2021-22 and onwards.

Real Estate – Safe harbor limits

Amendment to section 43CA, section 50C and section 56(2)(x)

Safe harbor limit for real estate transactions

Rationale

- The current provisions of section 43CA and 50C (sellers) and 56(2)(x) (purchaser) provide that the consideration on transfer of land or building should be in accordance with stamp duty valuation and allow a safe harbor of five percent of consideration
- Considering that both the seller and the buyer could pay tax on this difference, it is proposed to provide a broader safe harbor for such transaction

Proposed amendment

- The Finance Bill proposes to enhance the safe harbor limit described above to ten percent of consideration.
- The aforesaid amendment is proposed to be applicable from assessment year 2021-22 and onwards.

Real Estate - Safe harbor limits

Illustration

Particulars	Case I		Case II		Case III	
	Current	Proposed	Current	Proposed	Current	Proposed
Consideration	100.0	100.0	100.0	100.0	100.0	100.0
Stamp Duty Value	104.0	104.0	106.0	106.0	111.0	111.0
Difference > 5% of consideration (Existing)	No		Yes		Yes	
Difference > 10% of consideration (Proposed)		No		No		Yes
Deemed consideration for seller (Capital Gains/Business Income)	100.0	100.0	106.0	100.0	111.0	111.0
Buyer (Other income)	-	-	6.0	-	11.0	11.0
Impact	No		Yes*		No	

*An extra safe harbour of 5% of consideration available to both the Sellers and Buyers against the current scenario

Dividends are now taxable to the recipients – even through REITs / InvITs

Amendment to section 10(23FC), 10(23FD), 115UA, 194LBA

Rationale

- Under the current provisions of the Act, dividend is exempt in the hands of the unitholders of a business trust
- It is now proposed to tax the dividends received by the unitholders of a business trust.

Proposed amendment

- Dividends distributed by companies are proposed to be made taxable in the hands of the shareholders
- REITs / InvITs as shareholders continue to remain exempt from tax on such dividends. It is proposed to amend section 10(23FC) wherein dividend income received or receivable from a special purpose vehicle by a business trust is exempt. The reference to section 115-O(7) is proposed to be deleted. However, investors in such REITs / InvITs are proposed to be taxed on such dividends directly
- It is also proposed to amend section 10(23FD) and section 115UA thereby removing exemption available for dividend income in the hands of unit holder.
- Additionally, it is proposed that the REIT / InvIT will withhold tax at 10 percent on dividends it distributes

The aforesaid amendments (except amendment to section 194LBA) is proposed to be applicable from 1 April, 2021. Amendment under section 194LBA will take effect from 1 April, 2020.

Impact on PE

Corporate taxation

Abolition of DDT

Background

- Currently, a domestic company is required to pay DDT at the rate of 15 percent (plus applicable surcharge and EC) on the dividend declared, distributed or paid. Similarly, mutual funds and business trusts are also liable to pay tax at the specified rate on the income distributed to the unit-holders. Such dividend is exempt in the hands of shareholders / unit-holders
- Prior to 1997, dividend was taxable in the hands of the shareholders. In 1997, DDT was introduced to shift the levy of tax to the company distributing the dividend. In 2002, DDT was replaced with the earlier system of taxing the dividends in the hands of the shareholder. However in 2003, DDT was re-introduced as it was easier to collect tax at single point and mitigate the compliance burden
- Since dividend is income in the hands of shareholders, the incidence of the tax will devolve on the shareholders based on applicable rate at which the shareholder is taxed

Proposed amendment

- It is proposed to tax the dividend income in the hands of the shareholder / unit-holders respectively. Domestic companies / mutual funds / business trusts will no longer be required to pay DDT but will be required to withhold taxes

Corporate taxation

Abolition of DDT

Rationale

- DDT was introduced as it was easier to collect tax from the company rather than from the numerous shareholders
- Non-availability of credit of DDT to most of the foreign investors in their home country results in reduction of rate of return on equity capital for them. In order to increase the attractiveness of the Indian Equity Market and to provide relief to a large class of investors, DDT is proposed to be abolished
- With the advent of technology and easy tracking systems available, it is proposed to move to classical system of taxing dividend in the hands of the shareholders / unit-holders

Consequence of the proposed amendment

- Dividend income shall be taxable in the hands of shareholders / unit-holders
- Domestic company / mutual funds / business trust shall be liable to withhold tax on dividend
- Lower rate of withholding tax can be availed under the tax treaties for NR including foreign company. Such lower rate would be subject to satisfying conditions relating to treaty eligibility including beneficial ownership
- Interest expenses, if any, up to 20 percent of the dividend shall be allowed as a deduction. No other expense shall be allowed as a deduction
- Exemption from tax on dividend in the hands of the shareholders leads to a disallowance under section 14A of the expenditure incurred by the shareholder to earn such exempt dividend. This results in litigation regarding the quantum of disallowable expenditure . Abolition of DDT and making dividends taxable in the hands of the shareholders would reduce such litigation

Corporate taxation

Abolition of DDT

- Currently, section 115BBDA taxes dividend income in excess of INR 1 million in the hands of specified shareholders at a rate of ten per cent. This provision will now apply only to dividends declared, distributed or paid by a domestic company on or before 31 March, 2020

Illustration

Comparison of taxation between company, branch and LLP

Scenario	Particulars		LLP*	Company			
				25%* (Turnover based)	30%* (Not opting for section 115BAA /115BAB)	22%* (Section 115BAA of the Act)	15%* (Section 115BAB of the Act)
Existing Scenario	Taxable income	A	100.0	100.0	100.0	100.0	100.0
	Less: Indian tax liability(A)	B	34.9	29.1	34.9	25.2	17.2
	Profit after tax	C	65.1	70.9	65.1	74.8	82.8
	Less: DDT	D	-	12.1	11.1	12.8	14.1
	Amount distributed	E	65.1	58.8	54.0	62.1	68.7
	Additional tax** on dividend (Indian HNIs)	F	-	8.4	7.7	8.8	9.8
	Net Amount in the hands of Indian HNIs	G	65.1	50.4	46.3	53.2	58.9
	Total tax cost	H=B+D+F	34.9	49.6	53.7	46.8	41.1
Proposed Scenario	Taxable Income	I	100.0	100.0	100.0	100.0	100.0
	Less: Indian tax	J	34.9	29.1	34.9	25.2	17.2
	Profit after tax	K	65.1	70.9	65.1	74.8	82.8
	Less: DDT	L	-	-	-	-	-
	Amount distributed	M	65.1	70.9	65.1	74.8	82.8
	Additional tax** on dividend (Indian HNIs)	N	-	30.3	27.8	32.0	35.4
	Net Amount in the hands of Indian HNIs	O	65.1	40.6	37.3	42.8	47.4
	Total tax cost	P=J+L+N	34.9	59.4	62.7	57.2	52.6
Incremental tax cost/reduction in cash flow for HNIs		P-H	-	9.8	9.0	10.4	11.5

*Tax rates increased by surcharge and education cess

** Tax computed at highest applicable surcharge and cess

Corporate taxation

Abolition of DDT

Withholding tax applicable on dividends

Payer	Recipient	Nature of dividend income	Withholding rate under the Act*
Domestic company	Resident shareholders (in excess of INR5,000)	Dividend on shares	10 percent
	NR including foreign company	Dividend on shares	20 percent
	NR including foreign company	Dividend on foreign currency bonds	10 percent
	FII	Dividend on shares	20 percent
	Individual being a NR	Dividend on specified foreign currency bonds	10 percent

*Subject to benefits of a lower rate under tax treaties for NR including foreign company. Such lower rate would be subject to satisfying conditions relating to treaty eligibility including beneficial ownership

Corporate taxation

Abolition of DDT

Introduction of section 80M of the Act

- Section 80M has been introduced to remove the cascading effect of taxes on inter-corporate dividend.
- A domestic company shall be eligible to deduct the amount of dividend paid by it from its dividend income received from any other domestic company.
- Such deduction shall be restricted to the amount of dividend distributed in turn by the shareholder company.
- The deduction will be available in respect of dividend distributed on or before the due date. Due date means the date one month prior to date of filing the return of income
- The benefit available under section 80M of the Act is illustrated below:

Particulars	Scenario I	Scenario II
Dividend received by the company (A)	100	100
Dividend paid by the company	70	130
Deduction under section 80M of the Act (B)	70	100
Dividend income taxable in the hands of the company (A-B)	30	Nil

Ambiguity on deduction under section 80M of the Act if the dividend is distributed after the 'due date' as per section 80M

Amendment to source rules

Amendments pursuant to change in FPI Regulations

Rationale

- Explanation 5 to section 9(1)(i) provides exemption from indirect transfer provisions for investment by non-resident in Category-I or Category-II FPI under the SEBI (FPI) Regulations, 2014.
- SEBI (FPI) Regulations, 2019 have repealed the aforesaid Regulations, vide which the broad basing criteria for the purposes of categorization of portfolios has been done away with and has reduced the categories from three to two.

Proposed amendments

- It is proposed to grandfather the exemption from indirect transfer provisions for investments by non-resident in erstwhile Category I and II FPIs.
- The exception as per Explanation 5 is proposed to be provided in respect of investment in Category-I FPI under the SEBI (FPI) Regulations, 2019.

The proposed amendments to be effective from assessment year 2020-21.

Corporate taxation

Rationalization of withholding tax rates on certain incomes of NRs

Rationale

- The Act provides for a reduced withholding tax rate of five percent under section 194LC of the Act on interest on loans raised by a specified company / business trust from NR before 1 July 2020
- Similar reduced withholding tax rate of five percent under section 194LD of the Act was provided on interest payments to FII and QFI on their investment in rupee denominated bonds of an Indian company or government securities before 1 July 2020
- To attract more foreign investment in India, the following amendments are proposed

Proposed amendments

- It is proposed that the period for applying the concessional withholding tax rate under section 194LC and 194LD of the Act be extended from 1 July 2020 to 1 July 2023
- Further, it is proposed that a lower withholding tax rate of four percent will be applicable on monies borrowed by a specified company / business trust from a source outside India by way of issue of any long-term bonds/ rupee denominated bonds after 1 April 2020 and before 1 July 2023, which is listed on a recognized stock exchange in an IFSC

This amendment will take effect from 1 April 2020

The corresponding amendment to the section 115A of the Act pertaining to the taxability of interest income has not been introduced – continues at five percent

Corporate taxation

India based Fund Manager regime

Background

- Section 9A of the Act lays down the taxation framework for offshore funds to appoint an IBFM, subject to satisfaction of conditions by the offshore fund.

Existing Provision

- One of the conditions for eligibility of the fund requires that the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund.
- Another condition requires that the monthly average of the corpus of the fund shall not be less than INR 1000 million. Where the fund has been established/incorporated in the previous year, the corpus of fund shall not be less than INR 1000 million at the end of six months from the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later.

Proposed relaxation in the above conditions

- It is proposed:
 - that for the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during first three years up to INR 250 million shall not be taken into account;
 - to allow the offshore fund to satisfy the aforesaid corpus condition where the fund has been established/incorporated in the previous year, within twelve months from the last day of the month of its establishment/incorporation.

Incentives for investments by Sovereign Wealth Funds (1/2)

Amendment to section 10

Rationale

- There is a need to attract investment into key infrastructure projects and sovereign wealth funds could potentially be significant investors.
- In order to encourage such funds to invest into Indian infrastructure projects, it is proposed to exempt certain income, arising from investments made in the form of debt or equity for these funds

Proposed amendments

- The Finance Bill proposes to insert a new clause to provide exemption in respect of any income being in the nature of dividend, interest or long-term capital gains, arising from investments made by a “specified person” in India, in the form of debt or equity, subject to the following conditions :
 - The investment should be made on or before 31 March 2024;
 - The investment should be held for a period of at least three years;
 - The investment is in a company or enterprise which carries on the business of (a) developing, or (b) operating and maintaining, or (c) developing, operating or maintaining any infrastructure facility as defined under the Act or such other business as may be notified by the CGT in this behalf.

Incentives for investments by Sovereign Wealth Funds (1/2)

Amendment to section 10

Proposed amendments

- For the purpose of availing this exemption, “specified person” is proposed to be defined to mean –
 - A wholly owned subsidiary of the Abu Dhabi Investment Authority which is a resident of the United Arab Emirates and which makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates;
 - a sovereign wealth fund which satisfies the following conditions:
 - It is wholly owned and controlled, directly or indirectly, by Government of a foreign country;
 - It is set up and regulated under the law of the foreign country;
 - Its earnings are credited either to the account of the Government of the foreign country or to any other account designated by that Government such that no portion of the earnings inures any benefit to any private person;
 - Its asset vest in the Government of the foreign country upon dissolution;
 - It does not undertake any commercial activity whether within or outside India; and
 - It is notified by the Central Government in the Official Gazette for this purpose.

PSU – bank and insurance mergers

Amendment to section 72AA (Loss carry forward on mergers)

Rationale

- Currently [under section 72AA of the Act], business loss and unabsorbed depreciation of an amalgamating banking company is allowed to be carried forward to the amalgamated banking company / banking institution / nationalized public sector bank etc.

Proposed amendment

- It is proposed to also extend the above benefit to:
 - Amalgamation of the nationalized public sector banks with each other
 - Amalgamation of nationalized public sector general insurance companies with each other
- The aforesaid amendment is proposed to be applicable from assessment year 2020-21.

Corporate taxation

Incentives for start-ups

Background

Currently, section 80-IAC provides for deduction of an amount equal to 100% of the profits and gains derived by an eligible start-up from an eligible business for three consecutive assessment years out of seven years

The total turnover of 'eligible start-ups' should not exceed INR 250 million in the previous year for which the deduction is claimed

Proposed Amendment:

It is now proposed to:

- Extend the period of benefit of deduction to start-ups for three consecutive years out of ten years
- Increase the threshold of turnover of the startups to INR 1 billion for being eligible for the deduction

Amendment to source rules

Significant Economic Presence

Background

- The scope of business connection of a non-resident in India was expanded through the introduction of the concept of “Significant Economic Presence” (SEP) in section 9(1)(i) of the Act.
- The monetary and number of users thresholds which were to be prescribed for applicability of SEP provision have not been notified till date in light of on-going discussions on the subject in G20-OECD BEPS project.

SEP provisions deferred and amended

- In view of the on-going discussion, the applicability of SEP provision is proposed to be deferred to AY 2022-23 and onwards.
- SEP definition is also proposed to be revised to mean –
 - transaction in respect of any goods, services or property carried out by a non-resident **with any person** in India including provision of download of data or software in India, provided the revenue therefrom exceeds monetary threshold as may be prescribed; or
 - systematic and continuous soliciting of business activities or engaging in interaction with users (exceeding the number as may be prescribed) in India.

Revised definition is proposed to be applicable from AY 2022-23 and onwards.

Corporate taxation

Exemption for a non-resident from filing an income tax return

Background

- The existing provisions of section 115A of the Act provide for determination of tax for a non-resident whose total income consists of dividend, specified interest income, royalty or fees for technical services referred to therein
- A non-resident is not required to file a return of income if the total income consists only of dividend or specified interest income referred to above and tax deductible at source has been deducted from such income
- Currently, there is no such exemption for income from royalty or fees for technical services

Proposed amendments

- It is proposed to amend section 115A of the Act to provide that a non-resident shall not be required to file return of income if-
 - The total income consists of only dividend, specified interest income, royalty or fees for technical services referred to section 115A; and
 - Tax has been deducted on such income at the rate which is not lower than the rates prescribed under section 115A(1)
- The amendment is proposed to be effective from assessment year 2020-21

Exemption not available where treaty rate is lower and treaty benefits are availed

Corporate taxation

Other amendments relating to NRs

Meaning of “person responsible for paying” for the purpose of TDS provisions expanded

- In the case of a NR, it would mean -
 - the person himself; or
 - any person authorized by such NR; or
 - the agent of such NR in India including any person treated as an agent under section of the Act

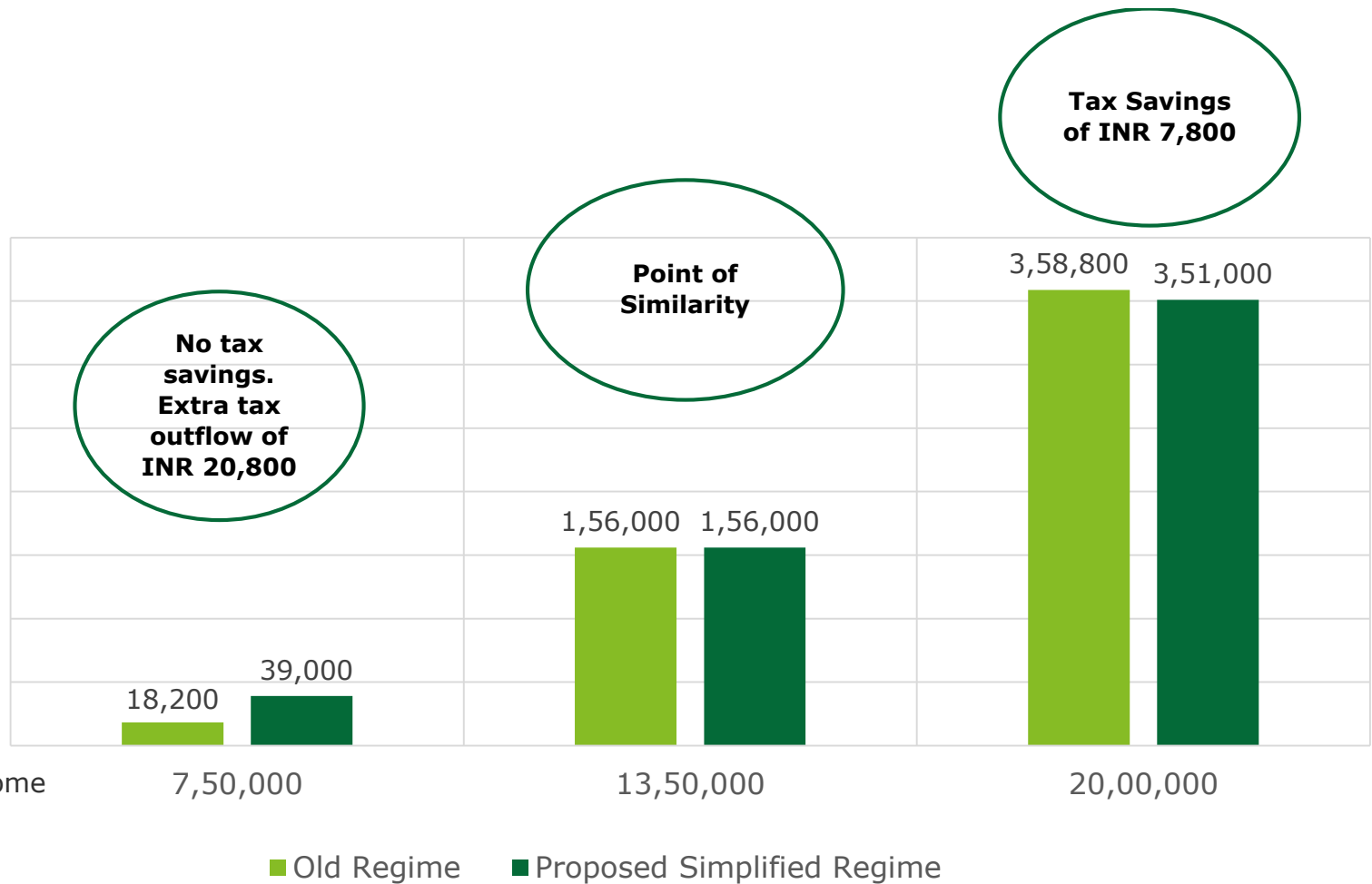
Simplified personal tax regime

The new tax slabs as compared to the earlier slab rates are

Income slabs (in INR)	Rate of Tax (percent) (under proposed simplified regime)	Rate of Tax (percent) (under the old regime)
Upto 250,000	NIL	NIL
250,000 to 500,000	5	5
500,000 to 750,000	10	20
750,000 to 1,000,000	15	20
1,000,000 to 1,250,000	20	30
1,250,000 to 1,500,000	25	30
Above 1,500,000	30	30

- It may be noted that the regular surcharge would be applicable based on the income levels.
- AMT shall not apply if this option is exercised

Tax impact



For the above tax impact, we have assumed claim of standard deduction (INR 50,000) and Chapter VIA deduction (INR 1,75,000) totaling to INR 2,25,000 were claimed under old regime.

Miscellaneous Proposals

Determination of residential status

Existing

- Indian citizens or Person of Indian Origin visiting India are considered as resident if their stay is 182 days or more in current year.
- Individual or HUF is considered as 'Not Ordinarily Resident' if the following conditions are satisfied –
 - he has been a non-resident in India in nine out of ten previous year, or
 - he has been in India for 729 days or less in seven previous years

Residential Status

Proposed

- Indian citizens or Person of Indian Origin visiting India will be considered as resident if their stay is 120 days or more in the current year.
- A person would be considered as 'Not Ordinarily Resident' if he has been non-resident in India in seven out of ten previous years.

Additionally, Indian citizen shall be deemed to be resident in India if they are not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature

Corporate taxation

Scope of section 206C widened

Proposed amendment

- Following amounts to be subject to TCS at five percent:
 - Amount received by an Authorised dealer exceeding INR 700,000 in a financial year for remittance out of India under the RBI's LRS.
 - Amount received by seller of an overseas tour program package.
- Above provisions not to apply to a buyer:
 - who is liable to TDS and has deducted such tax at source;
 - being the Central Government, a State Government , an embassy, etc. as defined in Explanation to section 10(20) of the Act or any other person to be notified.
- Every seller, who receives sale consideration of any goods exceeding INR 5 million in any previous year, other than specified goods* shall collect from the buyer TCS of 0.1 percent of the sale consideration exceeding INR 5 million.
- Where the buyer does not furnishes his PAN or Aadhaar number to the seller, then the tax shall be collected by the seller at the rate of one per cent. This provision not to apply if the buyer is liable to TDS and has deducted such tax at source.
- "Seller" to mean a person whose total sales, gross receipts or turnover from the business carried on by him exceed INR 100 million during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person to be notified.
- Whether non-resident buyer or seller covered?

**Alcoholic Liquor for human consumption, tendu leaves, timber obtained under forest lease or any other mode, any other forest produce, scrap, coal, lignite, iron ore, motor vehicle of value exceeding INR 1 million, remittance under LRS or overseas tour program package*

The proposed amendment is effective from 1 April 2020.

Tax laws extended to unlisted / private InvITs

Amendment to section 2(13A)

Rationale

- Section 2(13A) of the Act currently defines “business trust” as a trust registered as an InvIT or REIT (under the relevant SEBI regulations of 2014), and the units of such trust are also required to be listed on a recognised stock exchange.
- SEBI has amended the 2014 Regulations (in 2019), and done away with the requirement of mandatory stock exchange listing of InvIT units.

Proposed amendments

- It is proposed to amend the definition of “business trust” to exclude reference to mandatory listing of units of the business trust on the stock exchange.

Mutual funds: Period of holding and cost of acquisition for segregated portfolios

Amendment to section 2(42A) and 49

Rationale

- SEBI now permits creation of segregated portfolios within debt and money market Mutual Fund schemes. All the unit holders in the main scheme are allotted the same number of units in the segregated portfolio.

Proposed amendment

- For taxation purposes, the period of holding of the units in the segregated portfolio is proposed to include the earlier period of holding of the units in the main scheme. Further, it is proposed that for computing the “cost of acquisition” of the units in the segregated portfolio, the “cost of acquisition” of the units in the main scheme will be pro-rated in the ratio of the NAV of the assets transferred to the segregated portfolio. The “cost of acquisition” of the units in the main scheme will simultaneously be reduced by the “cost of acquisition” of the units in segregated portfolio.
- These amendments will apply in relation to the assessment year 2020-21 and subsequent years.

Indirect tax proposals

Goods and Services Tax

Legislative amendments

- Proposal to restrict service providers under composition scheme to make inter-state supplies or supplies through e-commerce operators, from a date of enactment of the Finance Bill
 - The amendment will have substantial impact on restaurants supplying services through online aggregators
- Time limit for availment of input tax credit on debit notes to be determined based on the date of issue of such debit note
- Penal provisions expanded to cover persons who have retained the benefit and at whose instance fraudulent transactions of input tax credit have been conducted.
- Punishment for prescribed offences now extended to person who causes to commit such offence or retains the benefit arising out of such offence.
- Fraudulent availment of input tax credit without an invoice or bill is now prescribed to be cognizable and non-bailable offence.
- Availment of transitional credit within prescribed timelines incorporated retrospectively with effect from 1 July 2017.
- Retrospective amendment made with effect from 1 July 2017 to exclude transfer or permitting use of business assets without consideration from the ambit of Schedule II

Goods and Services Tax

Key concerns remain unaddressed

- Construction related credit restriction for commercial projects
 - Credit base for residential projects higher than for commercial projects
 - Blockage of credit leads to a significant increase in the cost of rentals
- Reduction in rate of GST for commercial projects from 18% to 12%
- Revision in standard 1/3rd deduction for sale of units towards underlying interest in land
 - In many Tier I cities, the land value as a proportion of the total transaction value is much higher
- Clarity on reverse charge on JDA/ TDR for commercial projects
 - TDR/ FSI/ leasehold rights are effectively benefits arising out of land are therefore should ideally not be liable to GST at all
 - Even otherwise, while GST in case of residential projects is payable on the date of completion or first occupation, in case of commercial projects the point of taxation is not well defined
- Treatment of cancellation of bookings
 - Time limit for issuance for issuance of GST credit notes is 6 months from the end of the FY of the original invoice
 - Projects in this sector have a long gestation period of 3-5 years and cancellations are common
 - Time limit for issuance of GST credit notes for real estate projects to be increased to at least 5 years from the date of original invoice

Customs – Legislative changes

Changes in Customs Law

- A new Chapter incorporated in the Customs Act with the following enabling provisions to administer the procedure regarding claim of preferential rate of duty under Trade Agreements.
 - Impose obligations on the importer with regard to –
 - the origin criteria, including regional content and product specific criteria, specified under rules of origin as per respective Trade Agreements.
 - Furnish information in a time bound manner
 - Officers empowered to seek additional information to satisfy whether country of origin criteria has been met and temporarily suspend of preferential rate of duty, pending verification
 - On suspension, goods may be released subject to furnishing of security equivalent to differential rate of duty or deposit of differential duty in cash ledger
 - Preferential rate of tax could be denied even without verification on specified conditions
 - Goods imported on claim of preferential rate of duty in contravention of the new Chapter are liable for confiscation
 - Government empowered to make rules in this regard

Note: Changes effective from the date of enactment of Finance Bill 2020

Customs – Legislative changes (Contd.)

Changes in Customs Law

- Powers to prohibit importation or exportation of goods expanded to include within its ambit 'any other goods' in addition to gold or silver with an objective to prevent injury to the economy against uncontrolled imports.
- New provision has been introduced to facilitate creation of electronic duty credit ledger in Customs automated system
 - Duty credit may be issued in lieu of remission of duty for export of goods or other financial benefits available to exporters
 - It shall be maintained in the automated system for the recipient of such duty credit
 - It may be used by the person to whom it is issued or by the person to whom it is transferred, to be used towards payment of duty payable
 - Provision has been inserted for recovery of duties in case Electronic Duty Credit has been obtained through fraudulent means

Note: Changes effective from the date of enactment of Finance Bill 2020

Customs – Legislative changes (Contd.)

Changes in Customs Tariff Law

- Section 8B of Customs Tariff Act, 1975, is being substituted to empower Central Government to apply safeguard measures with regard to any article imported into India causing or with a potential to cause serious injury to domestic industry.
 - Safeguard measures to include imposition of Safeguard Duty or application of Tariff Quota or other measures to curb increased quantity of imports of an article
 - Safeguard Measures to be valid for four years, unless revoked earlier
 - Provisional Safeguard measures may be imposed based on preliminary determination and shall be valid for two hundred days
 - Provisions would not apply to 100% export-oriented undertakings or unit in a Special Economic Zone, subject to prescribed conditions
 - Refund of Safeguard duty would be made on final determination by Central Government in the event it is established that the imports have not caused or threatened to cause serious injury to domestic industry

Note: Changes effective from the date of enactment of Finance Bill 2020

Customs

Rate movement

Increase in effective BCD rate on account of withdrawal of exemptions and concessions*

Description of goods	Up to 1 Feb 2020	From 2 Feb 2020
Lead bars, rods, profiles, and wires	5%	10%
Zinc tubes, pipes and tube, or pipe fittings	7.5%	10%
Tin plates, sheets, and strip of specified thickness; tin powder and flakes	5%	10%

Amendment in Social Welfare Surcharge for the following products*

Description of goods	Up to 1 Feb 2020	From 2 Feb 2020
Tiles, cubes of specified dimension; monumental or building stone simply cut sawn with a flat surface	10%	Nil
Marble, marble block/tile, travertine, and alabaster	10%	Nil

**Only key rate amendments have been captured*

Glossary

AMT	Alternate Minimum Tax	OECD	Organization for Economic Cooperation and Development
BCD	Basic Customs Duty	PAN	Permanent Account Number
BEPS	Base Erosion and Profit Shifting	QFI	Qualified Foreign Investors
CAD	Current account deficit	RBI	Reserve Bank of India
CGT	Central Government	REIT	Real Estate Investment Trust
CMIE	Centre for Monitoring Indian Economy	SEP	Significant Economic Presence
DDT	Dividend distribution tax	TCS	Tax collected at source
FDI	Foreign direct investment	TDR	Transfer of development rights
FII	Foreign Institutional Investors	TDS	Tax deducted at source
FPI	Foreign Portfolio Investors	US\$	United States Dollar
FSI	Floor Space Index	WEF	World Economic Forum
FY	Financial Year	WPI	Wholesale Price Index
FY20XX	Financial year ending 31 March 20XX		
GDP	Gross Domestic Product		
GST	Goods and Services Tax		
HNIIs	High net worth Individuals		
HUF	Hindu Undivided Family		
IBFM	India based Fund Managers		
IFSC	International Financial Services Centre		
INR	Indian Rupees		
InvIT	Infrastructure investment Trust		
JDA	Joint Development Agreement		
LRS	Liberalised Remittance Scheme		
NAV	Net Asset Value		
NR	Non-resident		



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