



ANALYSIS OF DIRECT TAX PROPOSALS

DISCLAIMER

This analysis lists some of the important direct tax proposals made by the Honourable Finance Minister in the Lok Sabha on February 01, 2021. While care has been taken in the preparation of this document it might contain errors for which we should not be held responsible. The information as given in this document provides summarised direct tax proposals and thus should not be relied upon for the purposes of decision making and expert advice should be sought.

Personal Income Tax

- No change is proposed in the basic exemption limit which will remain as under:

Category	Exemption Limit
Senior Citizen above age of 80 years	Rs. 5,00,000
Senior Citizen (in age group of 60-80 Years)	Rs. 3,00,000
General	Rs. 2,50,000

- No change is proposed in the rate of income tax for individual and HUF (excepting cases where the assessee opts for option under Section 115BAC) which will remain as under:

Income range	Rate of Tax
Up to respective exemption limit	NIL
Amount in excess of respective exemption limit up to Rs 5,00,000	5%
Rs 5,00,001 - Rs 10,00,000	20%
Above Rs 10,00,000	30%

- No change is proposed in the rate of income tax for individuals and HUF exercising the option under Section 115BAC, which will remain as under:

Income range	Rate of Tax
Up to Rs 2,50,000	NIL
Rs 2,50,001 – Rs 5,00,000	5%
Rs 5,00,001 - Rs 7,50,000	10%
Rs 7,50,001 – Rs 10,00,000	15%
Rs 10,00,001 – Rs 12,50,000	20%
Rs 12,50,001 – Rs. 15,00,000	25%
Above Rs 15,00,000	30%

- Surcharge is proposed to be levied as under:
In case of income including capital gains and dividend

Income including Capital Gains and Dividend (Range)	Rate of Surcharge
Rs 50,00,001 - Rs 1,00,00,000	10%
Above Rs 1,00,00,000	15%

In case of income excluding capital gains and dividend

Income excluding Capital Gains and Dividend (Range)	Rate of Surcharge
Rs 2,00,00,001 - Rs 5,00,00,000	25%
Above Rs 5,00,00,000	37%

- No change is proposed in Health & Education Cess which will be levied @ 4%.

Corporate Taxation

- No change is proposed in the tax rate for domestic and foreign companies. The proposed rate of tax is as under:

Category	Rate of Tax
Domestic company having total turnover or gross receipt up to Rs 400 crores during previous year 2018-19	25%
Other Domestic Companies	30%
Foreign Companies	40%

- The surcharge and education cess is proposed to remain at the same level, as under:
In the case of domestic company whose income is chargeable to tax under Section 115BAA OR 115BAB, the rate of surcharge shall remain same at 10%. In other cases, it will remain same, as under:

Category	Total income between Rs 1crore to Rs 10 crores	Total income exceeding Rs 10 crores
Domestic	7%	12%
Foreign	2%	5%

- No change is proposed in Health & Education Cess which will be levied @ 4%.
- No change is proposed in the rate of tax in case of the domestic companies exercising option under Section 115BAA (22%) and Section 115BAB (15%) after complying with various conditions as prescribed in the respective sections.

Firms

- No change is proposed in the tax rate for firms which will remain @ 30%. The surcharge also remains unchanged @ 12% in case the income exceeding Rs one crore.

Co-operative Societies

- No change is proposed in the tax rate of co-operative societies including those co-operative societies exercising option under Section 115BAD.

Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT)

- No change is proposed in the tax rate under MAT & AMT.
- It is proposed that in case of increase in the book profit of a company for the year due to inclusion of income of earlier years arising out of advance pricing adjustments under Section 92CC or secondary transfer pricing adjustment under Section 92CE, the Assessing Officer shall, on application by the assessee recompute the book profits of the earlier years and the tax payable, if any, in such a manner as may be prescribed. It is further proposed that period of 4 years under Section 154 (rectification of mistake) shall be reckoned from the end of financial year in which the application is received by the Assessing Officer.
- It is proposed that dividend income shall be reduced and expenses incurred thereof shall be increased while computing book profits in case of foreign company.

Capital gains

- It is proposed that where a specified person (partner of a firm or member of AOP /BOI) receives during the previous year any capital asset at the time of its dissolution or reconstitution of the specified entity, which represents the balance in his capital account in the books of accounts of such specified entity (Firm or certain AOP or BOI) at the time of dissolution or reconstitution, then any profits or gains arising from receipt of such capital asset by the specified person shall be chargeable to income-tax as income of such specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which such capital asset was received by the specified person. It is further proposed that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the that person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.
- It is proposed that where a specified person (as defined above) receives during the previous year any money or other asset at the time of dissolution or reconstitution of the specified entity (as defined above), which is in excess of the balance in his capital account in the books of accounts of such specified entity at the time of its dissolution or reconstitution, then any profits or gains arising from receipt of such money or other asset by the specified person shall be chargeable to income-tax as income of such specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which such money or other asset was received by the specified person. It is further proposed that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the that person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

- At present “slump sale” is defined as the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. It is proposed to expand the scope of the definition of the term. “As a result of the sale” is proposed to be replaced by “by any means”. Thus the scope of capital gain under Section 50B will be widened.

Deductions, exemption and incentives

- At present, the deduction under Section 80EEA towards interest paid on housing loan taken for residential house property, having stamp duty value not exceeding Rs 45 lacs by an individual from a bank or housing finance company is allowed provided the loan is sanctioned by 31st March, 2021. It is proposed to date of sanction of loan to 31st March, 2022.
- At present, under section 80-IAC a deduction of 100% of the profits and gains derived from an eligible business by an eligible start-up is available for 3 consecutive assessment years out of ten years, at the option of the assessee, provided that the eligible start-up is incorporated on or after 1st April, 2016 but before 1st April, 2021 and the total turnover of its business does not exceed Rs. 100 crore. It is proposed to extend the date of incorporation to before 1st April 2022.

Further, exemption under Section 54GB from capital gain is available on transfer of long term residential property, on or before 31st March 2021, if the net consideration is utilised by assessee for subscription of equity shares in eligible start up before the due date of furnishing of ITR. It is proposed to amend Section 54GB to extend the outer date of transfer of residential property to 31st March 2022.

These amendments will apply from 1st April 2021.

- The time limit for approval of affordable housing project for claiming deduction of 100% of profits derived from business of developing and building affordable housing projects under Section 80-IBA is proposed to be extended to 31st March, 2022.
- It is proposed to allow 100% deduction under Section 80-IBA in respect of profits and gains derived from the business of developing and building rental housing projects which is notified by the Central Government on or before 31st March 2022.
- It is proposed to provide that, for the assessment year beginning on the 1st day of April, 2021, the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt subject to fulfilment of conditions to be prescribed. The amount of exemption shall not exceed Rs 36,000 per person or one-third of specified expenditure, whichever is less. Specified expenditure to be incurred for the purpose of claiming the exemption and the specified period shall be prescribed under Rules.
- Presently exemption under Section 10(23) is available to university or educational institution or hospital etc provided that the annual receipt of such university or educational institution or hospital etc does not exceed Rs 1 crore. It is proposed to enhance the limit to Rs 5 crores in order to provide benefit to small trust or institutions.

- Exemption under Section 10(11) and Section 10(12) on income by way of interest is proposed to be restricted up to the aggregate contribution of Rs 2.5 lacs in that fund.

Tax Deducted at Source

- Exemption from deduction of tax at source under Section 194 is proposed to a business trust under Section 2(13A) by a special purpose vehicle referred to under explanation to Section 10(23FC). Exemption is also proposed to any other person as may be notified by the Central Government. This amendment will take effect retrospectively from 1st April 2020.
- It is proposed to insert a new Section 206AB providing for deduction of tax at source at higher rate in certain cases. Wherever tax is required to be deducted at source under certain specified sections from a specified person (a person who has not filed his ITR for both the two previous years immediately before the previous year in which tax is required to be collected and the time limit of filing of ITR has already expired), the proposed TDS rate shall be higher of twice the specified rate or twice the rate in force or 5%. This requirement will not apply if the aggregate of TDS and TCS is Rs 50,000 or more in each of the two previous years.

It is further proposed that if the higher rate of TDS is applicable under Section 206AA due to non furnishing of PAN, the rate of TDS shall be higher of the rates under Section 206AA and Section 206AB.

It is also proposed that specified person shall exclude non resident not having permanent establishment in India.

This will be applicable from 1st July 2021.

- It is proposed that any resident person, being a buyer of goods (buyer means a person having total sales, gross receipt or turnover exceeding Rs 10 crore during the financial year immediately preceding the financial year in which purchase of goods takes place), paying aggregate purchase consideration exceeding Rs 50 lacs in any previous year shall deduct tax @ 0.1% of the purchase consideration exceeding Rs 50 lacs at the time of credit or payment, whichever is earlier, under Section 194Q. No tax shall be deductible if tax is deductible under other provisions of the Act or tax is collectible under Section 206C other than a transaction on which TCS is applicable under Section 206C (1H). Thus in case where on any transaction, TCS is applicable under Section 206C (1H) and TDS is also applicable under the proposed section, then TDS will only be applicable. There may be confusion in case where both TCS and TDS are applicable since the seller will be the first party to the transaction and will collect tax. This will be applicable from 1st July 2021.
- At present TDS @ 20% is applicable under Section 196D on income payable to Foreign Institutional Investors. It is proposed that in case of FII to whom Double Taxation Avoidance Agreement applies and such FII has furnished the tax residency certificate referred to Section 90 or 90A of the Act, then the tax shall be deducted at the rate of 20 % or rate or rates of income-tax provided in such agreement for such income, whichever is lower.

Tax Collected at Source

- It is proposed to insert a new Section 206CCA providing for collection of tax at source at higher rate in certain cases. Wherever tax is required to be collected at source from a specified person (a person who has not filed his ITR for both the two previous years immediately before the previous year in which tax is required to be collected and the time limit of filing of ITR has already expired), the proposed TCS rate shall be higher of twice the specified rate or 5%. This requirement will not apply if the aggregate of TDS and TCS is Rs 50,000 or more in each of the two previous years.

It is further proposed that if the higher rate of TCS is applicable under Section 206CC due to non furnishing of PAN, the rate of TCS shall be higher of the rates under Section 206CC and Section 206CCA.

It is also proposed that specified person shall exclude non resident not having permanent establishment in India.

This will be applicable from 1st July 2021.

Tax Audit and other Reports

- It is proposed to increase the threshold limit for tax audit in case of a person carrying on business. The existing threshold limit of total sales, turnover or gross receipt is proposed to be increased from Rs 5 crore to Rs 10 crores. The existing condition requiring the aggregate of all cash receipts and all cash payments during the previous year not exceeding 5% of such receipt / payment will remain same.

Filing of Return and Assessment

- It is proposed to allow relaxation from filing of ITR to resident senior citizens of 75 years or above provided that the person is only having pension income and interest from the same bank in which he is receiving his pension income. It is further proposed that the banks will be specified by the Government and the person furnishes a prescribed declaration.

Once the declaration is furnished with the bank, the bank would compute the income after giving effect of deduction allowable under Chapter- VI-A and rebate allowable under Section 87A. The bank will thereafter deduct tax on the basis of rates in force.

This benefit is not likely to help majority of senior citizens due to so much of restrictive conditions put on the assessee as well as on the bank.

- It is proposed that the due date of filing of ITR by a partner of a firm shall be 30th November if the firm is covered under Transfer Pricing Audit.
- It is proposed to amend the due date of filing of belated or revised return which shall be allowed to be filed any time within three months before the end of the relevant assessment year or before the completion of assessment, whichever is earlier.
- In case of defective return under Section 139(9), it is proposed that the Board may specify that the conditions making the return as defective may not apply to such class of assesses or may apply with such modifications as may be notified.

- Time limit for completion of assessment under Section 143 is proposed to be reduced to nine months from the end of assessment year.
- The time limitation for issuance of notice under section 148 is proposed to be revised as below:
 - In normal cases, no notice shall be issued if 3 years have elapsed from the end of the relevant assessment year. Notice beyond the period of 3 years from the end of the relevant assessment year can be taken only in a few specific cases.
 - In specific cases where the Assessing Officer has in his possession evidence of income escaping assessment, amounting to Rs 50 lacs or more, notice can be issued beyond the period of 3 year but not beyond the period of ten years from the end of the relevant assessment year.
- It is proposed to introduce provision for faceless proceedings before the Income Tax Appellate Tribunal in a jurisdiction less manner.
- Presently Section 143 provides for adjustment on account of disallowance of expenditure indicated in the audit report but not taken into account in calculating the total income of the assessee. It is proposed to amend the said sub-clause so as to allow for the adjustment on account of increase in income indicated in the audit report also but not taken into account in computing the total income.
- Presently deduction under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, is allowed if the return of income is furnished on or before the due date. It is proposed that any deduction admissible under section 10 AA or under any of the provisions of Chapter VIA under the heading “C.—Deductions in respect of certain incomes” shall be allowed, if the return of income is furnished on or before the due date.
- The time period of furnishing notice under Section 143(2) is proposed to be reduced from six months from the end of financial year in which the return is furnished to three months from the end of financial year in which the return is furnished.
- It is proposed that if any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing officer may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for such assessment year.

Charitable Trust or Institutions

- Presently, voluntary contributions made with a specific direction that it shall form part of the corpus, is exempted. It is proposed that voluntary contributions made with a specific direction that it shall form part of the corpus shall be exempted if it is invested or deposited in one or more of the forms or modes specified in Section 11(5) maintained specifically for such corpus.
- It is also proposed that application out of corpus out of voluntary contribution shall not be considered as application for charitable or religious purposes. However, when it is invested or deposited back, into one or more of the forms or modes specified in Section 11(5) maintained specifically for such corpus from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited to the extent of such deposit or investment.
- It is further proposed that application from loans and borrowings shall not be considered as application for charitable or religious purposes. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.
- It is proposed to clarify that for the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed.
- These amendments will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

Other proposals

- At present, under various provision of the Act namely under Section 43CA and Section 56, if the consideration received on transfer of a residential unit is less than the stamp duty value then the stamp duty value shall be deemed to be consideration under these sections provided the difference between the consideration and stamp duty value is more than 10%. It is proposed to increase the limit of 10% to 20% provided that the transfer takes place between 12th November 2020 and 30th June 2021 and the consideration does not exceed Rs 2 crore. It is also provided that the transfer is by way of first time allotment of residential unit. Therefore, if the difference between consideration and stamp duty value is less than 20%, no adjustment is required and the consideration received shall be treated as full value of consideration for the purpose of computing business profits / other income.

It may be noted here that the proposed amendments are in respect of a residential unit only and for land or building the existing safe harbour limit of 10% will apply.

A “residential unit” has been defined as an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.

- In case of shortfall in payment of advance tax instalment under Section 234C is on account of under estimate or failure to estimate “dividend income”, it is proposed that interest shall not be levied provided the assessee has paid full tax in subsequent advance tax instalments or by 31st March if no instalment is due.
- For the purpose of determining the due date of payment of employees contribution of PF, ESI etc under Section 36(va), it is proposed to clarify that provisions under Section 43B shall not apply and shall be deemed never to have been applied for the purpose of determining the due date under this clause. Thus the due date under the relevant statute shall be considered for the purpose of ascertaining the deduction under this clause. Similar clarification is proposed under Section 43B also clarifying that provision of Section 43B shall not apply on any sum received from employees as contribution to various funds.
- In case of presumptive taxation for professionals under Section 44ADA, it is proposed to define the assessee as Individual, HUF or a partnership firm other than a LLP. Thus it will not apply to the LLP engaged in profession.
- It has been proposed that Goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on Goodwill of a business or profession. Consequently, various amendments have been made to give effect to the proposal. Now the definition of “block of assets” shall not include goodwill. Under Section 32, goodwill shall not be eligible for depreciation.
It has been proposed that if depreciation is earlier provided on goodwill then for the purpose of ascertaining the cost of acquisition under Section 55, the same will be reduced from purchase price.
- **Dispute Resolution Committee (DRC) for small and medium tax payers**
It is proposed to set up one or more DRC to resolve the dispute where the amount of dispute is less than Rs 10 lacs and the total income of the person as per ITR is Rs 50 lacs or less. This benefit will not be available to the persons against whom the order is based on search, or a survey is being initiated or information has been received under an agreement under Section 90 or 90A. It will not be available if there is detention, prosecution or conviction under various laws specified under this section.