

# INDIA BUDGET 2019-20

**Author**  
Jairaj Purandare

**Tags**  
Budget  
India  
Tax Policy

Jairaj Purandare is the Founder Chairman of JMP Advisors Pvt Ltd, a leading advisory, tax, and regulatory services firm based in Mumbai, India. Mr. Purandare has garnered three and a half decades of experience in tax and business advisory matters. Formerly, he served as Regional Managing Partner and Country Leader – Markets & Industries for PwC India.

## INTRODUCTION

Budget 2019-20, presented on July 5, 2019, was a budget of many firsts. It was the first budget of the Modi 2.0 government and the first time that a female, full-time Finance Minister (“F.M.”) presented the budget. The F.M. has commenced the process of bringing India back to a growth trajectory and is steering it towards becoming a \$5 trillion economy by 2025. To this end, the F.M. has laid down a roadmap for growth along with financial inclusion.

On the tax front, some welcome measures include incentives for International Financial Services Centres (“I.F.S.C.”), tax relief for start-ups, a boost for electric vehicles, and faceless tax scrutiny proceedings. Although it was expected in certain quarters, an inheritance tax has not been introduced.

Budget 2019-20 has now been introduced in the Income-Tax Act, 1961 (the “Act”) in order to be afforded legal authority.

Subsequently, the F.M. held two press conferences, on August 23, 2019, and on September 20, 2019, to announce various tax revisions. Thereafter, the Taxation Laws (Amendment) Ordinance, 2019 (the “Ordinance”) was introduced on September 20, 2019, to incorporate into law the announcements made at the press conferences. These amendments are effective from April 1, 2019.

## DIRECT TAX

The direct tax amendments discussed below are effective from Financial Year (“F.Y.”) 2019-20 (*i.e.*, April 1, 2019, to March 31, 2020) unless otherwise specifically stated.

### Tax Rates

The basic tax rate for foreign companies remains at 40%. For domestic companies, however, the benefit of a lower corporate tax rate, of 25%, has been extended to companies with turnover or gross receipts not exceeding I.N.R. 4 billion (approximately \$57 million as of September 24, 2019).

Further, as per the Ordinance, domestic companies that do not avail themselves of specified tax incentives or deductions, now have an option to pay income tax at the base rate of 22%. This amendment will be applicable to all domestic companies, which include Indian as well as foreign owned companies, irrespective of their size and turnover and whether they are listed or unlisted.

Further, new domestic manufacturing companies incorporated on or after October 1, 2019, and commencing manufacturing by March 31, 2023, would have an option to pay income tax at a lower base rate of 15%.

The surcharge has been reduced to a flat rate of 10% for companies opting for the lower 15% or 22% tax rate, and the provisions of Minimum Alternate Tax (“M.A.T”) will not be applicable to such companies. For all other companies that do not opt for the lower 15% or 22% tax rate, the rate of M.A.T has been reduced from 18% to 15%.

The table below shows the new effective tax regime for domestic companies:

	Certain Existing Manufacturing Companies	Existing Companies	New Manufacturing Companies	Companies Not Opting for 22% Tax Rate	
				Turnover or Gross Receipts ≤ I.N.R. 4 Billion for F.Y. 2017-18	Turnover or Gross Receipts > I.N.R. 4 Billion for F.Y. 2017-18
Base Tax Rate	25%#	22%	15%	25%	30%
Surcharge	0%* 7% 12%	10%	10%	0%* 7% 12%	0%* 7% 12%
Health and Education Cess	4%	4%	4%	4%	4%
<b>Effective Tax Rate*</b>	<b>26%</b> <b>27.82%</b> <b>29.12%</b>	<b>25.17%</b>	<b>17.16%</b>	<b>26%</b> <b>27.82%</b> <b>29.12%</b>	<b>31.2%</b> <b>33.38%</b> <b>34.94%</b>
<b>M.A.T.</b>	<b>15%</b>	<b>–</b>	<b>–</b>	<b>15%</b>	<b>15%</b>

# Subject to certain conditions

\* No surcharge is applicable where aggregate income is less than I.N.R. 10 million. The surcharge is applicable at 7% if the aggregate income is between I.N.R. 10 million and I.N.R. 100 million or at 12% if the aggregate income exceeds I.N.R. 100 million.

For Individuals, Hindu Undivided Families (“H.U.F.’s”), Associations of Persons (“A.O.P.’s”), Bodies of Individuals (“B.O.I.’s”) and Artificial Juridical Persons (“A.J.P.’s”), a higher surcharge on aggregate income exceeding I.N.R. 20 million (approximately \$280,000) was proposed in the Budget. Accordingly, the maximum tax rates for F.Y. 2019-20 are given below:

Aggregate Income	Existing Surcharge Rate	Proposed Surcharge Rate	Effective Tax Rate
> I.N.R. 20 million < 50 million	15%	25%	39%
> I.N.R. 50 million	15%	37%	42.74%

However, after the announcement made by the F.M. at a press conference on August 23, 2019, and as per the Ordinance, the enhanced surcharge for the above taxpayers has been withdrawn with respect to long-term and short-term capital gains arising on the transfer of listed equity shares, units of equity oriented mutual funds, and units of business trusts.

Additionally, in the case of an A.O.P. categorized as a Foreign Portfolio Investor (“F.P.I.”), the enhanced surcharge has been withdrawn with respect to all capital gains. Therefore, income from other sources such as interest arising to F.P.I.’s will continue to be subject to the enhanced surcharge. For all the above mentioned domestic and foreign investors (other than F.P.I.’s), the increased surcharge would continue to apply to capital gains arising on debt instruments and income under categories other than capital gains.

The revised Individual, H.U.F., A.O.P., B.O.I., and A.J.P. surcharge rates are below:

Aggregate Income	Surcharge on Capital Gains**	Surcharge on Other Income
Income including capital gains > I.N.R. 5 million < I.N.R. 10 million	10%	10%
Income including capital gains > I.N.R. 10 million < I.N.R. 20 million	15%	15%
Income from capital gains > I.N.R. 20 million	15%	N.A.
Income excluding capital gains > I.N.R. 20 million < I.N.R. 50 million	15%	25%
Income excluding capital gains > I.N.R. 50 million	15%	37%

\*\* Capital gains on the transfer of listed equity shares, units of equity oriented mutual funds, and units of business trusts where Securities Transaction Tax has been paid and all capital gains in the case of A.O.P.’s and B.O.I.’s (including F.P.I.’s)

### **Gift from an Indian Resident to a Nonresident**

Currently, a nonresident is taxed only in respect of income that (i) accrues or arises in India, (ii) is deemed to accrue or arise in India, (iii) is received in India, or (iv) is deemed to be received in India. The Act has been amended to widen the scope of income that is deemed to accrue or arise in India so that it includes a sum of money given without the receipt of consideration (gratuitously) by a resident to a nonresident. Excluded are gifts from a specified relative or under a will.

In the case of a nonresident seeking relief under an applicable Double Taxation Avoidance Agreement (“D.T.A.A.”), the relevant article of the D.T.A.A. shall continue to apply for such gifts as well.

The above amendment is effective as of July 5, 2019.

### **Transfer Pricing – Secondary Adjustment**

In the case of a transfer pricing adjustment prior to the budget announcement, a secondary adjustment applied if the amount of the primary adjustment exceeded I.N.R.

**“100% of the profits of a unit in an I.F.S.C. will be allowed as a deduction for any ten consecutive F.Y.’s out of the first 15 F.Y.’s.”**

10 million (approximately \$140,000) **and** the primary adjustment had been made for F.Y. 2016-17 or following years. Both conditions were required to be fulfilled. Under the budget, that is no longer required. The conditions are alternate conditions. As a result, the triggering amount no longer is relevant for original adjustments made for F.Y. 2016-17 and following years.

This amendment is effective as of April 1, 2017.

Currently, the excess funds in the hands of a party benefitting from a non-arm’s length transaction must be repatriated to India within 90 days of the day on which the adjustment becomes final. Failure to comply will result in an interest charge at a specified rate for each outstanding year, as if the benefitting party borrowed the excess money from the party that was injured by the non-arm’s length transaction. Under the budget, the benefitting party is given the option of paying a one-time additional income tax of 18% in lieu of repatriating the excess money to India. No further credit or deduction will be allowed to the taxpayer on the amount paid by way of such additional income tax.

This amendment is effective as of September 1, 2019.

### **I.F.S.C.**

#### **Extension of Profit Linked Deduction**

In order to maximize the benefit of the profit linked deduction to a unit located in an I.F.S.C., the Act has been amended to provide that the I.F.S.C. units will be able to defer the deduction to profitable years. Consequently, the budget provides that 100% of the profits of a unit in an I.F.S.C. will be allowed as a deduction for any ten consecutive F.Y.’s out of the first 15 F.Y.’s. The deduction will be allowed from the F.Y. in which the required permission was obtained under the relevant law.

In previous years, the 100% of the profits of an I.F.S.C. were exempt for the first five F.Y.’s, and for the next five F.Y.’s, the deduction was reduced to 50% of the profits.

#### **Capital Gains Exemption for Category III Alternative Investment Fund (“A.I.F.”)**

In order to promote development of world-class financial infrastructure in India and to encourage investments in I.F.S.C.’s, the Act has been amended to exempt the income accruing or arising to or being received by a Category III A.I.F. on the transfer of certain capital assets on a recognized stock exchange located in any I.F.S.C. The exemption is subject to following conditions:

- The A.I.F. must be located in an I.F.S.C.
- All the units of the A.I.F. must be held by nonresidents other than a sponsor or manager.

#### **Exemption from Dividend Distribution Tax**

Under the current regime of dividend distribution taxation for a unit in an I.F.S.C, distributed income is exempt when the dividend is distributed out of current income. With a view to facilitate the distribution of dividends by companies operating in I.F.S.C.’s, an amendment has been introduced to extend the exemption so that it covers distributions of accumulated income derived from operations in an I.F.S.C. in the period beginning April 1, 2017.

The above amendment is effective as of September 1, 2019.

### **Interest Payment on Loans Taken from Nonresidents**

With intent to facilitate external borrowing by units located in an I.F.S.C., the Budget has amended that the interest earned by a nonresident on debt issued by a unit located in an I.F.S.C. will be exempt from Indian withholding tax. The exemption is effective for interest paid on or after September 1, 2019.

### **Start-Ups**

#### **Relaxation in Condition for Allowability Setoff and Carryforward Loss**

Presently, the benefit of setoff and carryforward of losses is available to an eligible start-up company when the holders of at least 51% of the shares at the end of the F.Y. in which the loss is incurred continue to own at least that percentage in the carryforward F.Y.

The Finance Act relaxed the condition for eligible start-ups to claim setoff and carryforward of losses. It provides that the benefit of the carryforward of losses will be available to eligible start-ups, as long as all original shareholders continue to be shareholders at the end of the F.Y. to which the loss is carried.

#### **Measures to Ease Compliance for Start-Ups**

In order to provide a hassle-free tax environment for start-ups, the C.B.D.T. has issued various circulars and clarifications from time to time that provide the following:

- Procedures to be followed for ongoing tax scrutiny of start-ups
- A specified time limit to complete tax scrutiny of start-ups
- A less aggressive approach toward ongoing Angel Tax litigation for recognized start-ups before the first and second level appellate authorities relating to the issue of shares for a consideration exceeding the fair market value of the shares
- No communication from the tax authorities with respect to outstanding Angel Tax demands if an eligible valuation report was submitted by a start-up
- The creation of a start-up cell to address grievances and tax-related issues

### **Tax on Buyback of Shares Applicable to Listed Companies**

Prior to Budget 2019-20, only an unlisted company is subject to a buyback tax of 20% on distributed income upon buyback/repurchase of its shares. The income received upon buyback is exempt from further tax in the hands of the shareholders. The budget has introduced a provision to levy buyback tax on shares bought back/repurchased by listed companies as well. The provision is effective as of July 5, 2019. The buyback tax will be required to be paid by the listed company at 20% of the gain, which is the amount of the consideration paid buyback/repurchase over the amount that was received by the company upon the issuance of the shares. The shareholders involved in the buyback/repurchase of listed companies are exempt from further tax in the transaction.

At the press conference on September 20, 2019, the F.M. announced that the tax on the buyback of shares would not be applicable to listed companies that publicly announced a buyback prior to July 5, 2019.

### **Measures for Resolution of Distressed Companies**

In order to ease the restructuring and rehabilitation of companies seeking insolvency resolution, a company taking over the business of the rehabilitated company is allowed to carry forward and set off loss of the rehabilitated company even where the plan of resolution results in a change in shareholding exceeding 49%. This benefit is applicable to companies whose resolution plan has been approved under the Insolvency and Bankruptcy Code, 2016.

The Act has been amended to extend these benefits to a company and all its direct and indirect subsidiaries where the board of directors and shareholding are changed pursuant to an order issued by the National Company Law Tribunal in cases involving the oppression of minority shareholders and mismanagement.

### **Withholding on Cash Withdrawals from Banks**

In order to discourage cash transactions and move towards a cashless economy, the budget provided a new provision to charge a withholding tax of 2% on cash withdrawals in excess of I.N.R. 10 million (approximately \$140,000) in the aggregate during the year from one or more accounts maintained by the recipient with a banking company, a co-operative bank, or a post office. The charge does not apply to certain specified recipients that handle substantial amounts of cash as a part their business operations.

The above amendment is effective as of September 1, 2019.

## **INDIRECT TAXES**

The Budget 2019-20 encourages the government's Make-in-India policy by increasing customs duty on a slew of items that compete with goods manufactured in India. Covered by the new customs duty are, *inter alia*, gold and precious metals, automobile parts, electronics and electrical equipment, paper and paper products, and published books

Budget 2019-20 calls for the formation of a three-member National Appellate Authority for Advance Ruling ("N.A.A.A.") under the G.S.T. law in order to facilitate dispute resolution and determine legal precedents. A resolution and amnesty scheme is introduced to resolve and settle the huge backlog of pending litigation under Central Excise, Service Tax, and other related indirect tax law disputes.

## **CONCLUSION**

Apart from tax amendments, Budget 2019-20 has key policy announcements in various sectors including infrastructure, banking and finance, and micro-, small-, and medium-enterprises. Budget 2019-20 places emphasis on making the best use of technology, providing an impetus for foreign investment, simplifying procedures, reviving the rural economy, promoting ease of living, and reducing red tape.

