

# Finance Bill 2020 – Impact Analysis of select direct tax provisions

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# TCS provisions

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# TCS on sale of goods

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- Seller of goods who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding INR 50 lakhs in any previous year shall at the time of receipt of such amount, collect from the buyer a sum equal to 0.1% of the sale consideration exceeding 50 lakh
- In case of non PAN/Aadhaar the rate shall be 1%
- Buyer defined to mean all person excluding specified persons (State /Central Government /local authority and others as may be notified)
- Seller means a person whose total sales, gross receipts or turnover from the business carried by him exceed INR 10 crs in preceding financial year
- Credit for tax collect is given to the Buyer and buyer can claims the same in its tax return

# TCS on sale of goods

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- Quantum on which TCS to be deducted
  - TCS to be collected on sale consideration exceeding INR 50 L per Buyer
  - Thus, assuming sale of INR 51 L, TCS to be deducted at 0.1% on sale exceeding 1 L
  - Subsequent refund of sale consideration say – faulty goods etc does not negate seller obligation to collect tax
  - TCS on amount of sale consideration received
    - Includes GST
    - Excludes trade discount or early credit
  - TCS to be collected on gross value without considering any netting off transactions

# TCS on sale of goods

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## ➤ **Point of time of collection**

- TCS applicable at the time of receipt of sale consideration from Buyer
- TCS not applicable at the time of debit of account of Buyer but only at the time of receipt of sale consideration
- Receipt includes constructive receipt [J B Boa & Co ([1997] 223 ITR 271 (SC))]
- Necessary accounting entry to be passed at time of sales or at time of receipt of payment?

## ➤ **Clarification expected to make TCS not applicable on export**

# Action Points

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- Educate accounting staff on applicability of TCS provision
- System configuration and invoicing format to capture TCS provision
- Robust mechanism to monitor receipt of TCS and payment of same in accordance with law
- Factor TCS paid to estimate advance tax or SA tax
- TCS obligation is qua each seller irrespective of product sold

# Onerous compliance

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## **Seller to deposit TCS**

- Seller to deposit TCS with Govt. within 7 days from last day of the month in which amount is received from buyer
- For example,
  - X made sales to Y in March 2021
  - Y paid the amount in April 2021
  - X to deposit tax with Govt by 7<sup>th</sup> May 2021

## **Seller to file TCS return**

- In order to make buyer of goods eligible for TCS credit, seller would be required to file TCS return on quarterly basis regularly with due accuracy

# Consequence of failure

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- Failure to collect or pay tax –
  - Interest @ 1% p.m.
  - Penalty = amount of tax not collected or paid
- Failure to file TCS return –
  - Buyer not eligible to claim credit
  - Penalty = 10K to 1L, Fee = Rs. 200/day



# TCS on overseas tour program

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## Overseas tour operator to comply with TCS

- TCS by seller of an overseas tour program package, who receives any amount from a buyer being the person who purchases such package
- Buyer may be anybody – resident/firm/ co-operative society / company as long as it purchases overseas tour program package
- Seller being overseas tour operator can be anybody – local tour operator, foreign tour operator, may be resident or non-resident
- Overseas tour program package (OTPC) defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto
- Purpose for OTPC can be anything – medical visit, personal visit, tourism, business visit, educational visit etc

# TCS on overseas tour program

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## Overseas tour operator to comply with TCS

- OTPC artificially defined and following conditions should be satisfied
  - Existence of tour package
  - Such tour package should offer visit to overseas country and includes expenses for travel or hotel stay or boarding or lodging or any expenditure of similar nature or in relation thereto
- Interpretation issue : Whether inclusion of expenses for travel or hotel stay or boarding or lodging or any expenditure of similar nature or in relation thereto needs to be read as independent category to attract OTPC or be read as describing the nature of 'tour package'?
- Better view appears existence of specified expenditure describes tour packages rather than specifying independent category
- Thus, payment for hotel, visa to foreign government independent of tour package is not covered

# TCS on LRS

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- The outflow of money under the LRS scheme has hit \$5.8 billion in the first four months of FY20 and aggregated to over \$45 billion (Rs 3.15 lakh crore at exchange rate of 70 to a dollar) since the Narendra Modi-led NDA first came to power in May 2014 [Indian Express, 16 September 2019]
- Memorandum states:
  - In order to widen and deepen the tax net, it is proposed to amend section 206C to levy TCS on overseas remittances and for sale of overseas tour package
- Amendment not restrictive to payment of overseas tour package but covers within its scope all overseas remittance made under LRS route

# LRS payment

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## **AD Banker to comply with TCS**

- AD banker receives an amount or an aggregate of amount of seven lakh rupees or more in a financial year for remittance out of India from Buyer being a person remitting such amount out of India under LRS scheme of RBI
- TCS to apply all purpose permitted under LRS [refer next slide]

# FEMA provisions

- **Permissible Capital Account & Current Account transactions under LRS upto limit of USD 250,000 are as under:**

Capital Account – Permissible under LRS	Current Account – Permissible under Schedule III of Current Account Transactions Rules, 2000
opening of foreign currency account abroad with a bank;	private visit;
purchase of property abroad;	gift/donation;
making investments abroad as under: <ul style="list-style-type: none"> <li>a) Purchase of shares of listed / unlisted overseas company or debt instruments or investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes</li> <li>b) qualification shares of an overseas company for holding the post of Director;</li> <li>c) Purchase of shares of a foreign company towards professional services rendered or in lieu of Director's remuneration;</li> </ul>	going abroad on employment; emigration; maintenance of close relatives abroad; business trip; medical treatment abroad; studies abroad
setting up Wholly Owned Subsidiaries and Joint Ventures outside India for bonafide business;	
extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013	

# TDS provisions

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# TDS on E-commerce transactions

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- Section 194-O introduced for collecting of TDS on E-commerce transactions
- E-commerce operator to deduct TDS @ 1% on gross payment made by it to e-commerce participant (5% if e-commerce participant does not have PAN)
- **E-commerce participant** means a person resident in India selling goods or services, including digital products through electronic or digital platform;
- **E-commerce operator** means any person who owns, operates or manages electronic facility for e-commerce and responsible for paying to e-commerce participant. Hence, even non-resident e-commerce operator are also covered
- TDS to be deducted at the earlier of following two events:
  - At the time of payment to e-commerce participant or
  - At the time of credit of amount of sale or services to e-commerce participant;

# TDS on E-commerce transactions

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- Amount would be deemed to be paid to e-commerce participant by e-commerce operator when purchaser of goods or services makes payment to e-commerce participant
- TDS not applicable if following conditions are fulfilled:
  - E-commerce participant is individual or HUF; **and**
  - Their gross revenue during the year from sale of goods on e-commerce website does not exceed Rs. 5 lakhs; **and**
  - E-commerce participant has furnished PAN or Aadhar number to the e-commerce operator
- Once TDS deducted under this section, no TDS required to be deducted under any other section
- TDS not applicable on payment relating to hosting advertisements or providing any other services by e-commerce operator
- TDS applicable irrespective whether recipient has income or not in India

No simultaneous application of TDS and TCS provisions in same transaction



# Amazon



- Seller registers on Amazon and lists its product
- On sale to Customer, Amazon undertakes delivery of product
- Every 14 days, Amazon pays seller after deducting referral fees, shipping fee and closing fees
- Invoice of Seller along with GST No sent to buyer
- E-com participant – Seller selling goods on Amazon
- E-com operator – Amazon as it provides electronic facility and is responsible for paying Airlines
- Section 194-O triggered as Amazon provides e-commerce facility

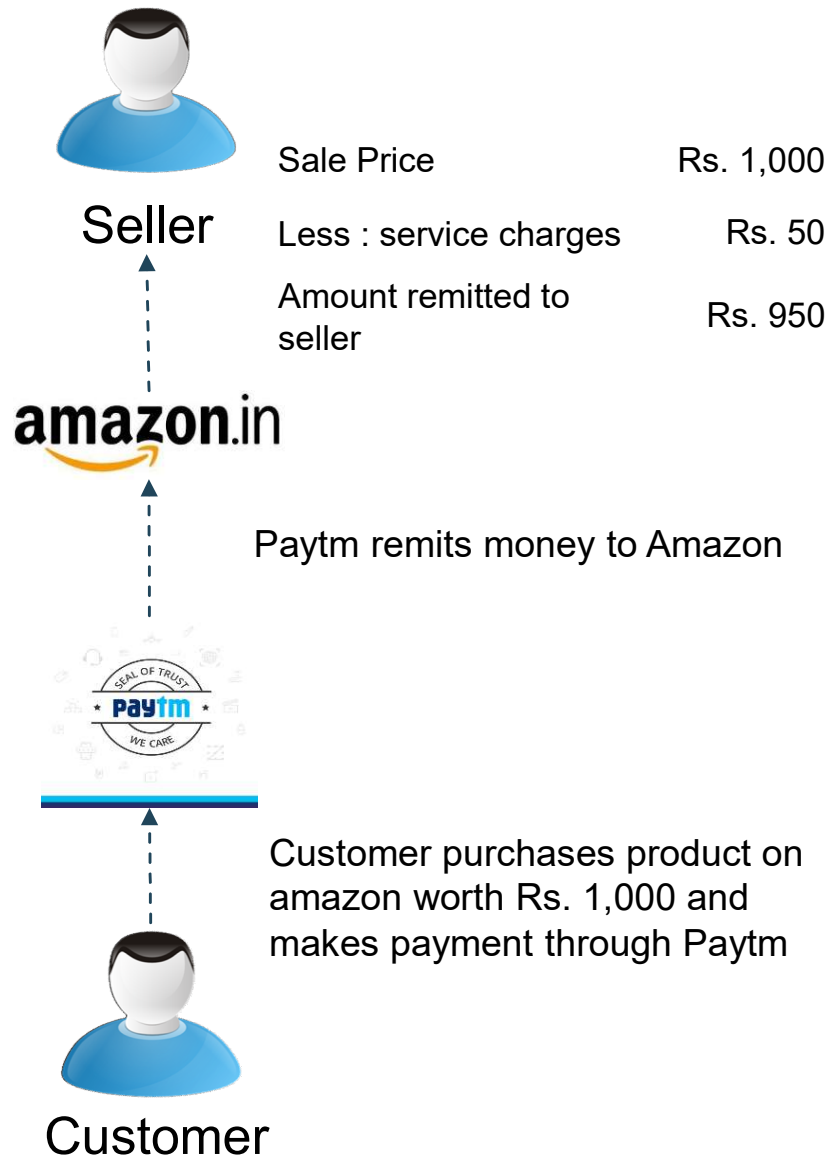
# Amazon



- Amazon to deduct tax on entire gross sale i.e INR 1,000 even though net payment to seller is Rs 950
- Seller need not deduct tax on service fees retained by Amazon

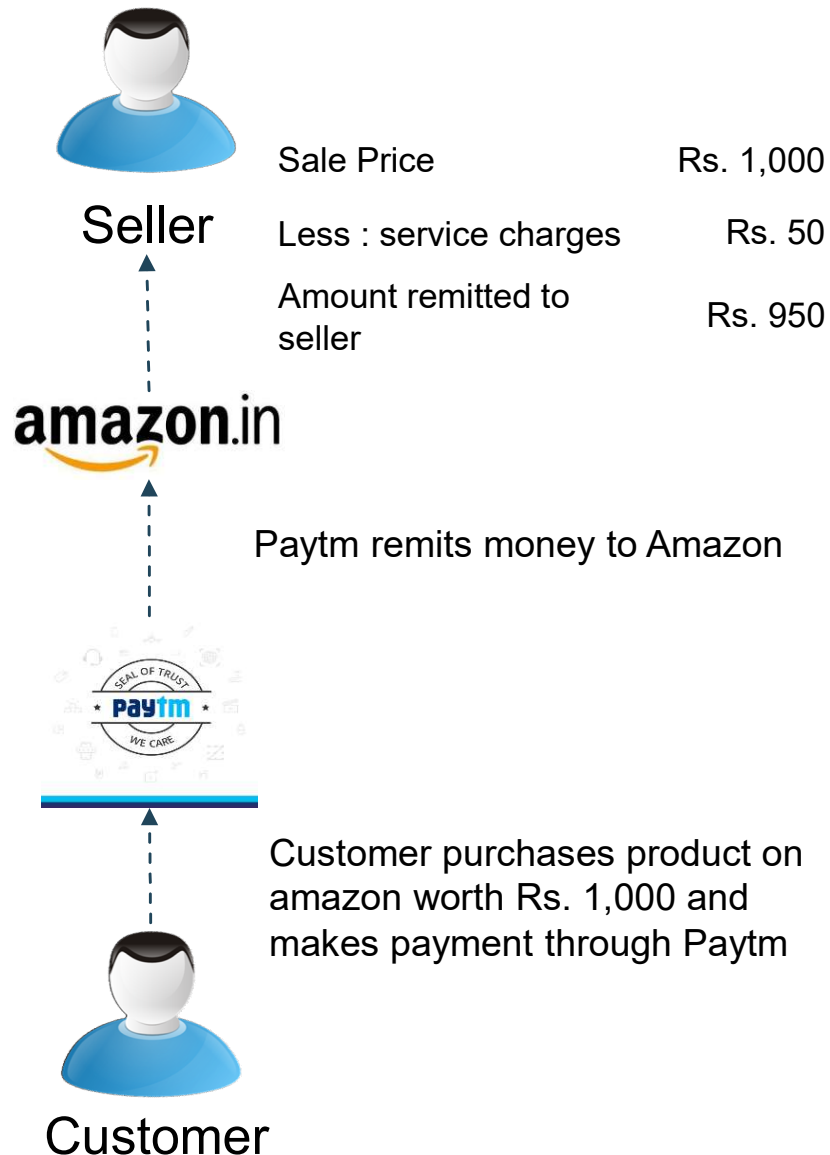
Similar mechanism for payment by Swiggy, Zomato, Flipkart, Book my show, Pharm Easy etc.

# Amazon – payment by e-wallet



- Customer buys product on Amazon but makes payment through Paytm
- Seller merely registers itself with Paytm to receive payment
- Section 194-O applies only when sale of goods or services is facilitated by e-commerce operator
- Words 'facilitated' are of wide import and accordingly providing wallet facility may be covered by above words
- However for section 194-O to apply it is necessary that seller satisfies definition of e-commerce participant

# Amazon – payment by e-wallet



- E-commerce participant means a person resident in India selling goods or providing services or both through digital or electronic facility or platform for electronic commerce
- In instant case, seller is not selling goods or providing service through electronic commerce. Electronic commerce is defined supply of goods or services or both through digital means
- Since Paytm merely provides wallet service, payment made by Paytm to seller or account of seller registered with Amazon does not attract section 194-O
- Payment by Amazon to Seller attracts TDS

# Ola

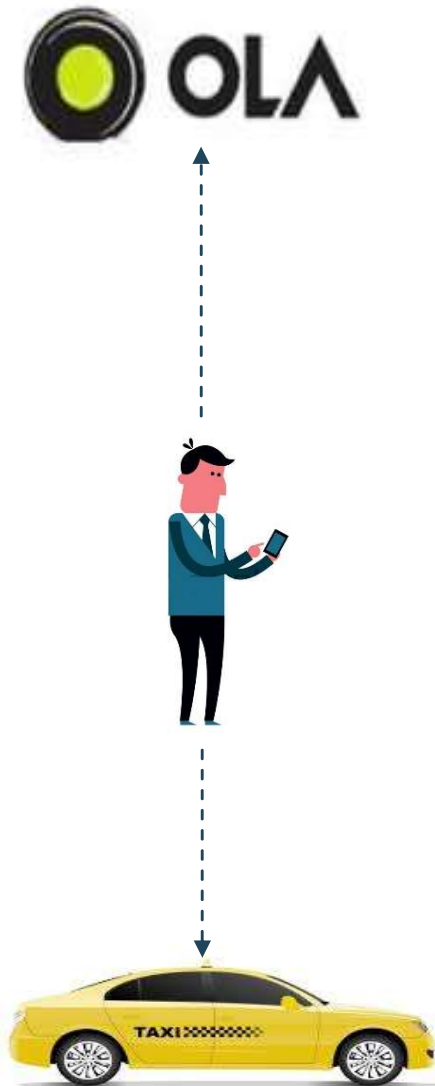
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- Vehicle owner registers himself on Ola
- Ola allots ride based on its software
- Pricing is decided by Software. Invoice is issued by Driver for ride and Convenience fees for ride and waiting is charged by Ola
- In case of corporate account, entire invoice is issued by Ola
- Ola pays rate per km and incentives to Driver. Driver incurs cost of car, petrol, maintenance etc
- Some customers pay cash directly to driver

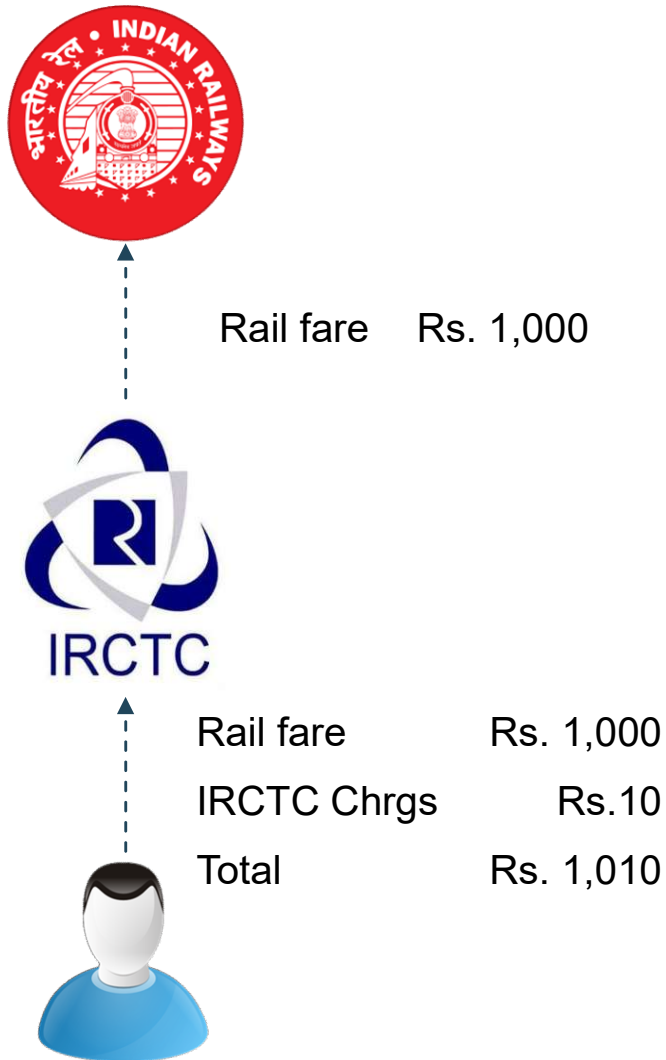
# Ola

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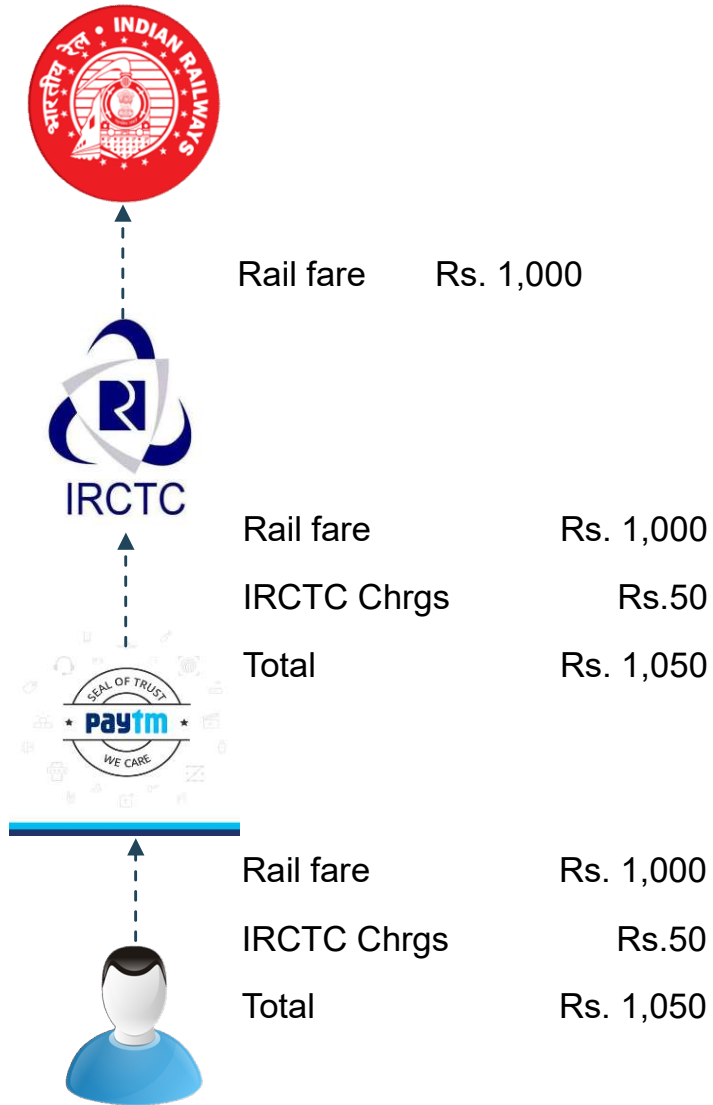
- E-com participant – Vehicle owner as he offers service on electronic platform
- E-com operator – Ola as it provides electronic facility and is responsible for paying Driver
- Section 194-O is triggered
- Ola will be required to deduct TDS on payments made to Vehicle Owner. Pursuant to Explanation to section 194-O, payment in cash made by customer to driver will be deemed to be payment made by Ola to vehicle owner
- Section 194-O not applicable if Ola otherwise deducts tax on payment to Vehicle owner say – under section 194C

# IRCTC ticket



- IRCTC has sole rights to book railway tickets online
- E-com participant – Ministry of Railway as it sells ticket (goods) through IRCTC
- E-com operator – IRCTC as it provides electronic facility and is responsible for paying Railway
- IRCTC charges user for railway fare and IRCTC service charge & convenience charge.
- IRCTC remits railway fare to Ministry
- Even though section 194O is triggered, no TDS deductible as section 196 makes section 194N non applicable to payment to Government

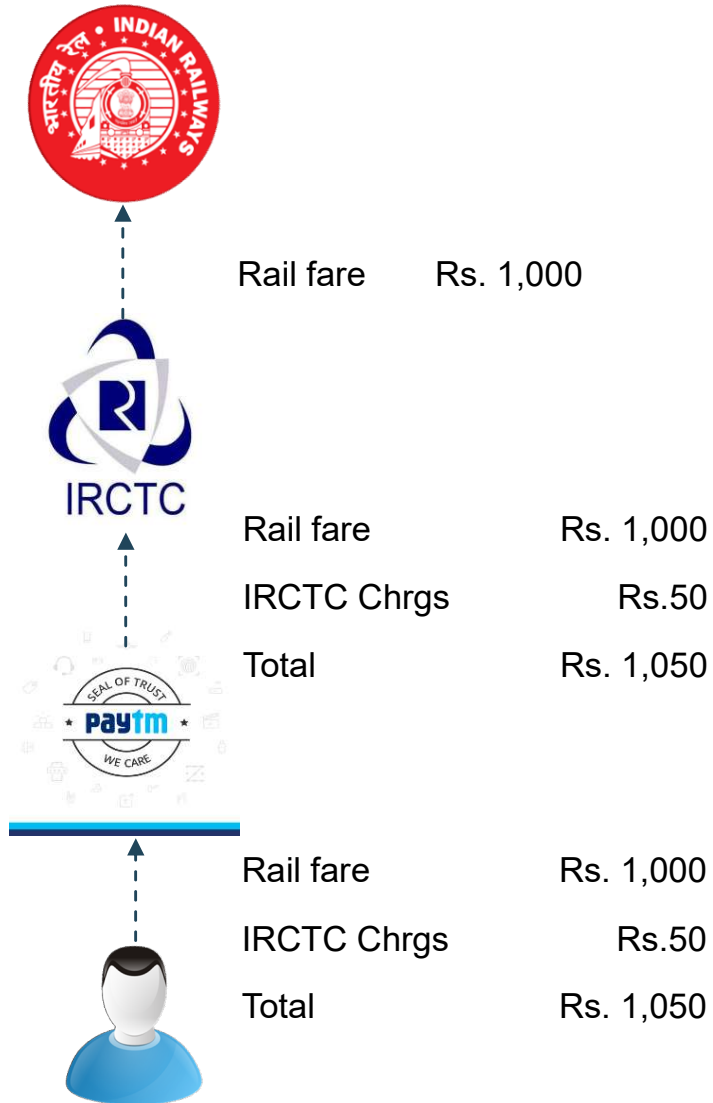
# IRCTC ticket booking through Paytm



- IRCTC has sole rights to book railway tickets online
- Paytm offers railway booking facility
- E-com participant – IRCTC as it provides service of offering tickets of railway
- E-com operator – Paytm as it provides electronic facility and is responsible for paying Railway
- Section 194-O triggered as IRCTC services are provided through Paytm
- Paytm will be required to deduct TDS under sec 194-O
- IRCTC is not government and hence exemption under section 196 is not available



# IRCTC ticket booking through Paytm



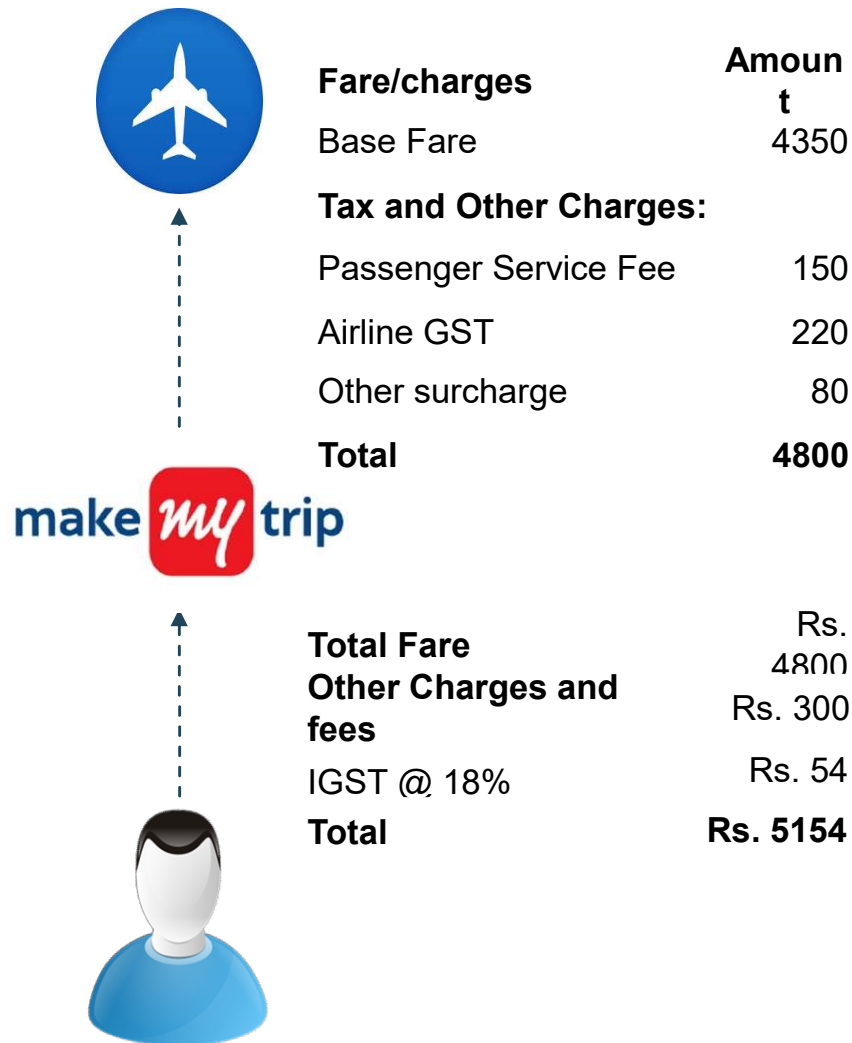
- Amount on which 194-O applies
  - Base Railway fare amount
  - Service charge
  - Or both
- It seems section 194-O applies to entire amount consisting of base fair and service charge as section 194-O uses words 'gross amount' as against income used in section 194J leaving no scope of reimbursement
- Section 194-O not applicable on payment made by IRCTC to railway

# Make my trip



- User books ticket online
- MTM charges user air fare (which includes airline GST) and MTM service charge
- Invoice provides details of air fare charged by airline along with airline GST and MTM charges are stated separately
- Credit for GST charged by Airline can be claimed by user based on separate invoice issued by Airline which can be obtained from its website

# Make my trip



- E-com participant – Airline Companies as it is selling goods through digital or electronic facility for electronic commerce
- E-com operator – MMT as it provides electronic facility and is responsible for paying Airlines
- Section 194-O triggered as MMT provides e-commerce facility
- TDS to be deducted by MMT on Total Fare payable to airline
- Airline need not deduct TDS on service provided by MTM

# Dividend Distribution Tax

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# New regime for taxation of dividend

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- Pre amendment, Indian domestic company declaring, distributing or paying any dividend required to pay tax @ 20% in addition to normal corporate tax rate
- It is proposed to shift incidence of tax from Company to recipient. Now dividend or income from units will be taxable in hands of shareholders or unit holder at tax rate applicable to recipient
- Section 115BBDA not applicable to above dividend income. Tax payable by recipient at normal tax rate
- Limited permissible deduction under section 57
- Buy back tax continues
- Whether section 14A required ?

# Tax impact on HNI promoters

Particulars	(Amount in Lakhs)					LLP
	Individuals					
	Existing provision	New Provisions				
Above 50 lakhs up to 1 crore		Above 1 crore up to 2 crore	Above 2 crore up to 5 crore	Above 5 crore		
	Tax rates as per slabs					
	11.44%	34.32%	35.88%	39.00%	42.74%	34.94%
Profit	100.00	100.00	100.00	100.00	100.00	100.00
Tax @ 25%	25.00	25.00	25.00	25.00	25.00	-
Tax @ 34.94%	-	-	-	-	-	34.94
Amount available with the company for distribution	75.00	75.00	75.00	75.00	75.00	65.06
Less : Dividend Distribution Tax @ 20.56%	15.42	-	-	-	-	-
Amount received by shareholder post dividend distribution	59.58	75.00	75.00	75.00	75.00	65.06
115BBD @ 10% in case of existing provision and at slab rate in case of new provisions	5.67	-	-	-	-	-
Tax in hands of shareholder	-	25.74	26.91	29.25	32.06	-
<b>Amount in the hand of an individual</b>	<b>53.91</b>	<b>49.26</b>	<b>48.09</b>	<b>45.75</b>	<b>42.95</b>	<b>65.06</b>
<b>Total tax cost (in Rs.)</b>	<b>46.09</b>	<b>50.74</b>	<b>51.91</b>	<b>54.25</b>	<b>57.06</b>	<b>34.94</b>
<b>Increase in tax (in Rs.)</b>		<b>4.65</b>	<b>5.82</b>	<b>8.16</b>	<b>10.96</b>	
<b>Incremental tax (in %)</b>		<b>10.08%</b>	<b>12.62%</b>	<b>17.70%</b>	<b>23.79%</b>	

# Dividend income

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- Income assessed under Income from other sources on account of fiction of section 56(1)
- Section 57(1)(a) provides for deduction of any reasonable sum paid by way of commission or remuneration to a banker or other person realizing such dividend on behalf of assessee
- Proviso added to above provision which restricts deduction of interest expenditure to 20% of dividend income and does not allow any deduction of any other expenses from dividend income
- Even though dividend is assessed under IFOS it does not cease to be part of income from business if securities are part of trading assets [CIT v Cocanada Radhaswami Bank Ltd [1965] 57 ITR 306 (SC)]
- Thus, brought forward business losses can be set off against dividend income

# Dividend income

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- Dividend stripping provisions contained in section 94(7) is applicable if conditions provided in said section are satisfied. One of the condition reads:
  - The dividend or income on such securities or unit received or receivable by such person is exempt from tax
- Since dividend is no longer exempt from tax, section 94(7) is not applicable
- Short term loss arising on account of dividend stripping can be set off against other capital gain income [CIT v Walfort Share & Stock Brokers (P.) Ltd [2010] 326 ITR 1 (SC)]



# Treaty interplay

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- Dividend income received by NR taxed in accordance with treaty
- NR may avail benefit of tax treaty and pay tax at the rate provided in tax treaty if its lower than rate provided under the Act
- Impact of MFN clause entered by India with few countries need to be evaluated
- Treaty benefit subject to availability of TRC, Form 10F, satisfaction of beneficial ownership, PPT test
- In case NR is not eligible for treaty protection, dividend taxable at the rate of 20% in hands of NR under section 115A
- If dividend is received from AE, reporting under Form 3CEB and maintenance of TP documentation is required
- NR shareholder should be able to claim tax credit on dividend tax in its home country
- Significant amendment for companies proposing to repatriate accumulated profits

# Impact on Indian Company declaring dividend

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- Indian Company required to withhold tax at the time of making dividend payment to NR shareholder
- Provisions applies equally to listed and unlisted companies.
- In case of payment to NR shareholder, benefit of lower treaty rate or rate provided under domestic law can be availed.
- Onerous obligation on deductor Company to accurately deduct tax in case of heterogenous group of shareholder
- Section 194 amended to provide TDS at the rate of 10% on payment of dividend to domestic shareholders

# Impact on Indian Company declaring dividend

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- Proviso to section 194 relieves Indian Company from TDS if dividend is paid to shareholder being Individual by any mode other than cash and amount of dividend does not exceed Rs. 5000
- Proviso restrictive to individual shareholder and not applicable to other categories of dividend recipient
  - Difficulty in case of Partner holding shares for Firm and Karta holding shares for HUF, trust is holding shares for beneficiary
- Failure to deduct TDS may attract AID proceedings, interest and in case of NR payments deem Indian Company as agent under section 163
- No parallel amendment in section 206AA and Rule 37BC
- Decisions supports that tax treaty override section 206AA

# Impact on Indian Company receiving foreign dividend

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- Dividend income received from Foreign Domestic Company taxable at 15% under section 115BBD
- Roll-over relief provision under section 115-O(1A) not available on deletion of section 115-O
- Scope of section 80M restrictive to dividend received from domestic company

Particulars	Pre-Amendment	Post-Amendment
Income from Foreign Subsidiary	1,00,000	1,00,000
Tax @ 15% u/s 115BBD	15,000	15,000
<b>Amount received by I Co</b>	<b>85,000</b>	<b>85,000</b>
Dividend declared by I Co to shareholder	1,00,000	1,00,000
Less:		
Amount of dividend taxed u/s 115BBD	1,00,000	-
<b>Dividend taxable</b>	<b>-</b>	<b>1,00,000</b>
Total Tax	<b>15,000</b>	<b>25,000</b>

# Intercorporate dividend

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- Section 80M mitigates double taxation of dividend received by domestic company from another domestic company
- Section 80M allows deduction of dividend income received from other domestic company from GTI of recipient domestic company provided it distributes equivalent or lesser dividend one month prior to the due date of filing of return
- Thus, benefit of section 80M can be availed if dividend is distributed even after end of previous year but before one month prior to the due date of filing of return
- Distribution of dividend requires putting funds in hand of shareholder [Delhi Tourism & T.D.C. Ltd v CIT [2006] 155 TAXMAN 10 (DELHI)]. Thus, recipient company should ensure that dividend is paid one month prior to the due date of filing of return to avail benefit of section 80M.

# Intercorporate dividend

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## Scope

- Covers one category of dividends – dividends received by a domestic company from another domestic company
- Does not cover dividend received from mutual fund
- Does not cover dividend received from foreign subsidiary company taxed at 15% under section 115BBD
- Does not cover dividend received by foreign company having POEM in India

# Issues in 80M deduction

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- Quantum of relief under 80M i.e. whether on gross basis or net off expenditure claimed on dividend
  - SC in Distributors (Baroda) P Ltd v UOI [1985] 155 ITR 120 (SC) held that section 80AA is clarificatory in nature and independent of said provision, quantum of deduction available should be on net basis
  - Kol HC after considering SC in Distributor (Baroda) held that when dividend income is assessed under business, deduction under section 80M should be allowed on gross basis [CIT v Carolina Investments Ltd [1996] 87 TAXMAN 238 (Cal)]
  - Deduction under section 80M need not be reduced by deduction on special reserve created by banking and financial company under section 36(1)(viii) [CIT v. Industrial Finance Corporation of India Ltd [2015] 53 taxmann.com 109 (Delhi)]

# Issues in 80M deduction

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- Whether loss (current or carried forward) or unabsorbed depreciation has to be set off first prior to grant of deduction under section 80M?
  - Section 80M forms part of Chapter VI-A and deduction is granted from Gross Total Income (GTI)
  - GTI is computed after set off of losses and unabsorbed depreciating as provided in Chapter VI. Thus, deduction under 80M can be availed only if there is positive income after GTI
  - Refer DCIT v Bajaj Auto Holding Ltd [2008] 23 SOT 493 (Mumbai) ; CIT v Mcleod & Co. Ltd [1982] 134 ITR 674 (Cal)



# Residential status of Individual

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# Stringent rule for NRI visiting India

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## Reduction in number of days for determining residential status for visiting NRI

- Existing provision states that an Indian citizen or person of Indian origin who visits India would be resident in India if he
  - a) is in India for **182 days** or more during the year;
  - or**
  - b) is in India for **182 days** or more during the year **AND** present for **365 days or more** in **preceding 4 previous years**
- Criteria of 182 days as appearing in (b) above has now been reduced to 120 days
- Thus, NRIs planning their visit in India should take into consideration above reduction in days while determining their residential status

# Beneficial for returning Indian

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## Change in criteria for determining Resident but not ordinary resident

- The existing criteria for determining resident but not ordinary resident for individual and HUF is as under:
  - Individual / HUF Manager has been non-resident in India in 9 out of 10 previous years
- OR**
- Has been in India for 729 days or less in 7 previous years
- The above criteria is now intended to be relaxed and an individual / HUF would be considered to be resident but not ordinary resident if he is non-resident in India in 7 out of 10 previous years
- Further, the second criteria of 729 days or less in 7 previous years has now been deleted
- Thus, criteria for determining resident but not ordinary resident has now been substantially relaxed

# Citizenship residence

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## Deemed to be resident – Section 6(1A)

- The bill has proposed a new section 6(1A) to deem a person to be resident in India if he fulfills following conditions:
  - is a citizen of India; and
  - is not liable to tax in any other country or territory by reason of his residence or domicile or any other criteria of similar nature.

# Residential status of Individual

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## Deemed to be resident – Section 6(1A)

- To allay fears regarding taxability of overseas employees who are Indian citizens, CBDT has issued press release dated 2 February 2020
- Said press release clarifies that the section does not include those Indians who are bona fide workers in other countries, including in Middle East, and who are not liable to tax in these countries.
- Also, it clarifies that income earned outside India by a deemed resident under this section shall not be taxable in India unless it is derived from an Indian business or profession.
- However, Indian income of non-resident would anyways be subject to taxation under existing provisions and hence, intention to introduce section 6(1A) is not clear

# Consequences of Indian Residence

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- Worldwide Income taxable in India
- Applicability of TP provision including reporting of international transaction and maintenance of TP documentation
- Denial of treaty benefit for example in India-US treaty on account of dual residency
- Applicability of withholding provisions – unless payment falls within source rule exclusions under domestic law
- Compliance in form of filing of ROI, TDS etc
- Disclosure of asset outside India
- Black Money Act becomes applicable

# ROI of flip side entity

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- NR receiving income in the nature of royalty, fees for technical services was obligated to file ROI in India
- Section 115A(5) exempts NR to file ROI in India if income consists of interest and dividend and tax is deducted in accordance with the TDS provisions
- Memorandum reads:

*“the current provisions of section 115A of the Act provide relief to non-residents from filing of return of income where the non-resident is not liable to pay tax other than the TDS which has been deducted on the dividend or interest income, the same relief has not been extended to non-residents whose total income consists only of the income by way of royalty or FTS of the nature as mentioned in point (b) above. **Representations have been received to extend this benefit to royalty and FTS income as well”***

# ROI of flip side entity

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- Section 115A(5) amended to include within its scope Royalty and FTS
- NR need not file ROI in India if following two conditions are satisfied
  - TDS is deducted under Chapter XVII; **and**
  - Rate of TDS is not less than rate specified under clause (a) or clause (b) of section 115A
- Section 115A(1) prescribes following rates for taxing different income
  - Dividend income – 20%
  - Interest income – 5% / 20%
  - Royalty / FTS – 10%
- The above rate needs to be increased by cess at the rate of 4% and surcharge at the rate of 2% / 5%\* as provided in Schedule II to Finance Act 2020



# ROI of flip side entity

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- Issue arises whether NR entity offering income to tax at treaty rate – say 10% (India-Germany, India-Singapore) can avail benefit of amended provision.
- As per one view, Section 115A rate after considering surcharge is higher than 10% and since TDS is deducted at treaty rate, benefit of section 115A(5) cannot be availed.
- Other view of the matter is that Section 115A(5) states 'Rate of TDS is not less than rate specified under clause (a) or clause (b) of section 115A'. Surcharge and cess is not tax rate and accordingly tax deducted as per treaty is same as stated in Section 115A and thus benefit should be available
- NR availing benefit of NIL taxation under treaty (say software royalty, make available benefit, absence of Equipment royalty article etc) need to file tax return

# ROI of flip side entity

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Scenario	Nature of income	Rate at which TDS deducted	Requirement to file return of income
1	Royalty / FTS / Dividend / Interest	115A rate	No
2	Royalty / FTS / Dividend / Interest	Treaty rate	Yes
3	Royalty / FTS / Dividend / Interest	Not taxable under treaty	Yes

- Irrespective of ROI filing obligation, NR needs to comply with disclosure of TP transaction in Form 3CEB and TP documentation if transaction is between AEs
- Exemption from filing of ROI (Scenario 1) applies irrespective of method of accounting followed by NR (i.e. benefit can be availed if NR earlier offered income on cash basis)

## Other amendments

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# Safe harbour limit for select provisions

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- Section 43CA, section 50C and section 56 brings to tax certain transactions in immovable property with reference to stamp duty value
- Present provisions provides for safe harbour limit of 5% i.e no tax is levied if difference between transaction price and stamp duty value is within 5% range
- FB 2020 proposes to raise safe harbour limit to 10% from AY 2021-22
- Possible to contend that raise in limit should be retrospective:
  - Chandra Prakash Jhunjunwala vs. DCIT [2020] 113 taxmann.com 246 (Kolkata - Trib.)
  - Kishore Hira Bhandari vs ITO [2019] 107 taxmann.com 218 (Mumbai - Trib.)
  - Amit Bansal vs ACIT [2018] 100 taxmann.com 334 (Delhi - Trib.)
  - Dharamshibhai Sonani vs. ACIT [2016] 75 taxmann.com 141 (Ahmedabad - Trib.)

# Revised due dates

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Type of assessee	Due date for filing tax audit report	Return of income	Transfer pricing certificate – Form 3CEB
Company	30 September	31 October	NA
Any person (other than company) whose accounts are required to be audited under any law	30 September	31 October	NA
Partner (including working and non-working) of any firm whose books of accounts are required to be audited	30 September	31 October	NA
Assessee required to furnish transfer pricing certificate in Form 3CEB	31 October	30 November	31 October
Others	NA	31 July	NA

# Thank You

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