Finance Bill, 2020

7 February, 2020

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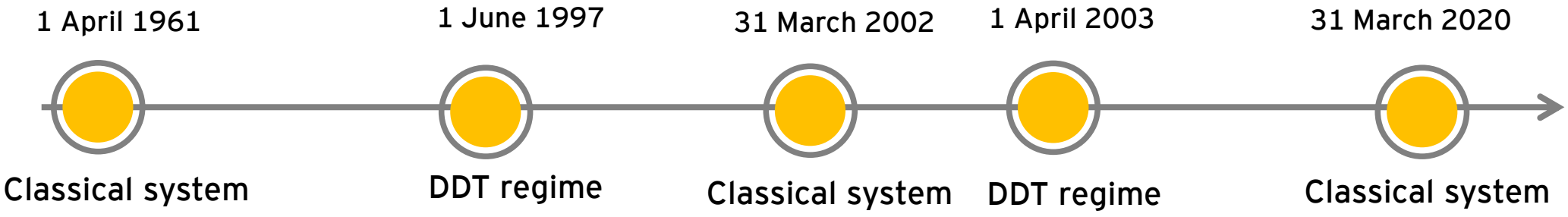
Proposed classical system of dividend taxation [w.e.f. 1 April 2021]

Time lines on Flip-flop of dividend taxation regime



Existing dividend taxation regime

Prior to proposed amendment by FB 2020

- Dividend declared, distributed and paid by the domestic companies chargeable to DDT in the hands of companies (Effective DDT rate approx. 20.56%)
  - Limited exemption provided for cases involving payment of dividend to business trust by company 100% owned by such trust and payment by company located in IFSC etc.
- DDT paid dividend was exempt in the hands of shareholders except:
  - Specified shareholders covered within super-rich levy under 115BBDA
  - Super-rich levy @ 14.25% for individual in highest tax slab
- No obligation of WHT from dividend payment due to specific exemption under Section 194
- Ambiguity on NR shareholders for eligibility of treaty benefits since DDT was considered largely to be levy on company
- No expenses or losses were allowed as deduction/ set off [(even if dividend taxable under super-rich levy by virtue of limitation under 115BBDA(2)] and disallowance under 14A attracted
  - The limitation of expenditure deduction under 115BBDA(2) and 115BBD(2) is applicable only in the year of receipt of dividend

Proposed classical system of dividend taxation

Proposed amendment by FB 2020 - Classical system of dividend taxation re-introduced [Explanatory Memorandum's (EM) explanation for rationalization]:

- Incidence of tax needs to be in hands of income recipient and not payer
  - Dividend is income of shareholders but yet taxed in hands of company
- Flat rate of DDT despite shareholders falling with different tax slabs
- Foreign shareholders unable to claim treaty benefits of reduced tax rates or tax credit in home country since tax was borne by company
  - This results in reduction of rate of return on equity capital
- Singe point of taxation under DDT regime was introduced to reduce compliance burden as different shareholders would need to be chased for collecting dividend tax.
  - However, with the development of technology, the compliance burden has reduced (i.e. online TDS system, availability of Form 26AS online, details linked with PAN) leading to no difficulty in chasing the shareholders for recovering tax

Proposed classical system of dividend taxation

Impact on distributing company

- Dividend to be taxed in the hands of shareholders instead of DDT on companies
  - Dividend to include deemed dividend under all limbs of Section 2(22)
  - Ambiguity on 2(22)(e) – Whether taxable in hands of shareholder or concern which receives loan. K&S believes dividend taxable in the hands shareholder
- Dividend will be subject to WHT obligation in the hands of dividend distributing company
  - For resident shareholders – 10% (no surcharge and cess applicable)
  - For NR shareholders – u/s. 195 at rates in force i.e. Finance Act rates or treaty w.e. beneficial
    - S. 206AA may be considered where NR does not have PAN
- Improved availability of cash flow
  - Earlier DDT was separate cash outflow for a company over and above the actual dividend distributed
  - In proposed regime, obligation to deposit TDS which will be withheld from the total amount distributed as dividend. Hence, no separate cash outflow

Proposed classical system of dividend taxation

Impact on dividend recipients

- Dividend income taxable at treaty rates or slab rates or corporate tax rates as the case may be
- No expenses allowable against dividend income except 20% as interest expenditure
  - No expenditure allowable for dividend received from foreign subsidiary by virtue of 115BBD(2)
  - Expenditure incurred in the years when 115BBD dividend is not received may not be allowable now due to specific proviso to Section 57
- Expenses allowable under MAT
- Set off of current year business losses possible against dividend income

Proposed classical system of dividend taxation

Impact on dividend recipients (contd...)

- Domestic company to get roll over benefit by way of deduction of dividend distributed subject to following:
  - Dividend recipient as also dividend payer should be domestic company – regardless of % of shareholding
  - Dividend distributed by dividend recipient company upto one month prior to due date of return u/s 139(1) to be considered for roll over
    - Mere declaration of dividend may not fulfil the condition
  - The sequence of receipt of dividend and payment of dividend is not relevant as long as dividend is distributed within specified time-limit
- Dividend from foreign company is not eligible for roll over exemption
- Roll over benefit academic where GTI is Nil (eg - due to set off of losses)

Snapshot of beneficial tax impact of proposed regime *(continued…)*

WILL RESULT IN LOWER TAX
▸ Shareholders falling in lower slab rate
▸ Dividend income exemption to continue for Section 10 entities (ie MF, charity)
▸ No tax on dividend received by Government
▸ Shareholders having treaty benefits of lower tax
▸ Most Indian treaties have 5% subject to limitation of minimum shareholding
▸ MFN clause in treaty triggers 5% benefit in treaties like Netherland, France, Sweden
▸ Ease of obtaining tax credit in home jurisdiction
▸ Interest expense deductible to the extent of 20%
▸ Set off against loss permissible
▸ For 115BAB companies, the effective tax rate on dividend would be 17.16% (if no roll over benefit) vis a vis DDT rates
▸ For MAT applicable companies, dividend received taxable under MAT (17.47%) lower than existing DDT:
▸ Expenses allowable under MAT basis 115JB and no limitation of 20% interest expenditure as applicable for normal taxation
▸ Section 80M to remove cascading effect irrespective of whether underlying company is subsidiary or not
▸ Erstwhile DDT roll over benefit for dividend received was restricted to dividend received from subsidiary (ie >50%)

Snapshot of tax disadvantages of proposed regime *(continued…)*

WILL RESULT IN MORE TAX

- Shareholders (including Promoter/ Individuals) in high tax bracket – dividend declaration/distribution/payment may be accelerated if DDT regime found favourable
- S.115A rate is 28.5%1 / 21.84%2 for no treaty – higher than DDT rate
- Dividend received from overseas subsidiary presently qualifying for rollover exemption may not qualify For MAT applicable companies, dividend received taxable under MAT (17.47%)
  - No benefit of roll over under MAT and hence, could lead to duplicated levy of MAT under multi – layer structure resulting in higher than existing DDT outflow
  - Dividend further distributed not allowable as deduction under MAT vis a vis roll over under normal tax
- Unit holders of MF, business trusts bear the tax on dividend income while in some cases, such income was totally exempt
- Domestic companies falling under normal tax provisions with highest CTR (34.04%) which are unable to take benefit of roll over and which are not 115BAB companies

[1] For NR taxpayers (HNI) falling under highest tax slab having surcharge of 37% and cess of 4%
[2] For foreign companies

Expense deduction against dividend income

Proposed amendment by FB 2020

- S.56(1) covers dividend even when earned as profits and gains of business
  - Covers dividend as defined in S. 2(22)
  - may not cover income in respect of mutual fund units.
- S. 57 proviso limits deduction of expenses in respect of dividend as also income in respect of units.
- S.57 limitation triggers complete disallowance for all expenses while it restricts to 20% in respect of interest expenditure
- Litigative to argue that interest may be fully allowable under Section 57 in the year when no dividend income is received basis following:
  - Interest expenditure is allowable only against dividend income
  - Interest expenditure is capped at 20% of dividend income. Hence, in case of Nil dividend income, the expenditure may not be allowable
- S.57 limitation arguably not applicable to income in respect of mutual fund units earned by taxpayer in course of business and assessable as PGBP.
  - Limitation of specific head of income u/s.56 does not apply to mutual funds units.
  - May have restricted applicability to non-business income.
- Arguably S. 57 may not apply when expenditure can be claimed as business deduction

Expense deduction against dividend income

- Interest expense deduction under IFOS is not to exceed 20% of the dividend / mutual fund income included in **total income** before grant of deduction of interest
  - The quantum of company's eligibility to claim roll over benefit under 80M may be reduced in the absence of dividend being included in GTI
- As a sequence, interest deduction to the extent of 20% may be claimed under IFOS. The next deduction could be set off in respect of losses and balance dividend income in GTI may be eligible for roll over benefit under 80M
- Further, unallowed interest under IFOS is not to be carried forward. Also, dividend being a specific caption covered by IFOS, it may be difficult to bypass the provision by claiming that dividend income is chargeable as business income.

Impact analysis of use of terms "declared, distributed paid, received"

Section	Proposed amendment	Impact on shareholder taxation
10(34)	The section does not apply for ***dividend received*** on or after 1 April 2020	Ambiguity in cases where dividend declaration or distribution (by crediting shareholders account) takes place in FY 2019-20 but actual receipt takes place in FY 2020-21 However, arguable that dividend which is taxed in FY 2019-20 basis Section 8 of ITA would continue to be exempt under 10(34) despite actual receipt in FY 2020-21
Section 80M	Where GTI of domestic company includes dividend income from another domestic company, roll over benefit is granted by way of deduction, from the ***dividend received,*** to the extent dividend is ***distributed***	The condition of "dividend received" could arguably be said to be fulfilled even if dividend is not actually received but is included in GTI of previous year basis Section 8 of ITA Further, recipient needs to further distribute dividend and such distributed dividend could be reduced from dividend received. Ambiguity may arise on term "distribution". Mere declaration may not fulfil the roll over condition. Also, there is possible view that for distribution, it needs to be given to all shareholders and it needs to be given to more than one shareholder. However, K&S believes dividend to single shareholder or selective dividend may also be covered in term "distribution"
Section 194	WHT obligation arises before making any distribution or payment	Ambiguity with regard to dividend which are declared in FY 2019-20 but distributed/ paid in FY 2020-21. Practically, except dividends declared in AGM in FY 2019-20 but to be distributed/ paid in FY 2020-21 (which are final dividend), it looks unlikely any other scenario may create ambiguity under 194.

Interplay of DDT and treaty: Impact of proposed amendment

- Prior to the proposed amendment, there was a heated debate on the issue whether the DDT rate is controlled by the dividend article of the tax treaty.
- While pursuant to the proposed amendment, going forward, the issue becomes academic, nevertheless the legislative intent of this amendment may be evaluated to throw some further light on this issue.
- The explanatory memorandum (EM) clearly acknowledges that while the dividend is income in the hands of the shareholders and not in hands of the company, under the DDT regime "*The **incidence of tax** is, thus, **on the payer company/Mutual Fund and not on the recipient, where it should normally be**.*"
  - This may support the view that DDT is a tax liability of the company paying divided as observed by SC/Bom HC in case of Godrej & Boyce [2017] 81 taxmann.com 111 (SC).
- However, the EM considers DDT provisions "iniquitous" and "regressive" - reiterates that the DDT regime was introduced since "*it was easier to collect tax at a single point and the new system was leading to increase in compliance burden. However, with the advent of technology and easy tracking system available, the justification for current system of taxation of dividend has outlived itself*".
  - The above may further consolidate the argument that DDT is a mere surrogate tax on the dividend income of the shareholder, levied in the hands of company for the sake of administrative convenience.
  - Also, EM acknowledged that tax should "normally" be on the shareholders

Tax rates on dividend in old regime vs proposed new regime [For illustrative effective tax rate of HNI – refer next slide]

Particulars	Old rates	New rates
Tax in the hands of individual who receives dividend income of <10 L in year	**Exempt**	**Slab rate**
Tax in the hands of specified resident non-corporate taxpayers (ie individual, HUF etc) who are in highest tax bracket and receives dividend income of >10 L in year	20.56%[1] + 14.25%[2]	42.74% [Refer next slide for effective tax rate)
Tax in the hands of specified resident non-corporate taxpayers (ie LLP) receiving dividend income of >10L in year	20.56% + 11.65%[3]	34.94%
Normal tax in the hands of the dividend recipient company where full rollover exemption is available before it reaches the non-corporate entity	20.56%[1]	34.94%
Tax in the hands of company where dividend received from foreign subsidiary and roll over benefit claimed	17.47%[4]	34.94%
Tax in the hands of treaty resident person where withholding is @5% / 10%	20.56%[1]	5%/ 10%
Tax in the hands of NR who does not qualify for treaty benefit and triggers tax u/s. 115A	20.56%[1]	NR Individual falling under highest slab -28.5% Foreign companies with highest surcharge – 21.84%
Tax in the hands of private DT	20.56% + 14.25%	42.74%
Tax in the hands of private DT if it can opt for CTR u/s. 115BAC	20.56% + 14.25%	42.74%
Tax in the hands of charity	Nil	42.74%
Tax in the hands of AIF/ST where the unit holder is NR qualifying for treaty benefit	Nil	Nil
Tax in the hands of ReIT which qualified for exemption u/s. 115-O(7)	Nil	Nil
Tax in the hands of ReIT which does not qualify for exemption u/s. 10(23FC)	Nil	Nil

[1]Since DDT @20.56% discharged by dividend payer domestic company though exempt in hands of recipient
[2]Due to super-rich levy under 115BBDA where surcharge is 37%+cess of 4%
[3]Due to super-rich levy under 115BBDA where surcharge is 12% + cess of 4%
[4]Due to roll over benefit no DDT but taxable under 115BBD

Comparison of ETR on dividend in old regime vs new regime for dividend received by HNI*

Particulars		Pre-amendment	Post-amendment
		Amount (Rs)	Amount (Rs)
Total profits available for distribution **(a)**	**(a)**	120.56	120.56
DDT payable by ICo (b)	**(b)**	**20.56**	**-**
Dividend income received by Mr A		100.00	120.56
Super-rich levy under 115BBDA @14.25% [For highest tax bracket individual] (c)	**(c)**	**14.25**	**-**
Tax on dividend income received by resident HNI in proposed regime @ 42.74% (d)	**(d)**	**Nil**	**51.53**
Total tax outflow (e)	**(e)**	**34.81**	**51.53**
% of tax outflow on dividend of Rs 1000 distributed by company [e] / (a)	**(f) = (e) / (a)**	**28.87%**	**42.74%**

*** Similar to above ETR comparison of HNI, the ETR may differ depending on the category of shareholders. The flat rates are given in previous slides. Using such rates for each category of shareholders, the ETR could be derived as shown in above table for HNIs**

Impact of sunset clause in s. 10(35) and 115R and insertion of s. 194K [w.e.f. 1 April 2021]

Current provisions dealing with distribution of income by mutual fund to its unit holders

- Any income received by Mutual Fund is exempt under s. 10(23FD) of ITA
- S. 115R of ITA is a special provision dealing with tax on distributed income by Unit Trust of India (UTI) or Mutual Fund (MF) to its unit holders
- S. 115R(1) of ITA provides that any income distributed by Unit Trust of India shall be liable for additional tax at the rate of 10% as increased by Surcharge and Cess- **to our knowledge s. 115R(1) is no more operative**
- S. 115R(2) of ITA provides that any income distributed by MF shall be liable for additional tax as under:

Type of MF units	Person to whom distributed	Base rate	Effective rate (including SC + EC)
Money market mutual fund / liquid fund	Individual and HUF	25%	38.83%
Money market mutual fund / liquid fund	Person other than Individual of HUF	30%	49.92%
Equity oriented mutual fund	Any person	10%	12.94%
Fund other than money market mutual fund or equity oriented fund	Individual and HUF	25%	38.83%
Fund other than money market mutual fund or equity oriented fund	Person other than Individual of HUF	30%	49.92%

Current provisions dealing with distribution of income by MF to its unit holders

- MF are liable to pay additional tax on distribution of income to its unit holders and such tax shall be deposited to the account of exchequer within 14 days of date of distribution or payment (whichever is earlier)
- Consequently, income received by unit holders is exempt under s. 10(35) of ITA. Further, such income is not subjected to super rich levy under s. 115BBDA of ITA
- In case of failure of MF to discharge the additional tax, it is liable to pay interest and can be considered as assessee in default – refer ss. 115S and 115T of ITA
- Taxes paid by MF under s. 115R (2) of ITA is not allowable as deduction under any provisions of ITA
- Requirement of payment of additional taxes u/s 115R(2) is subject to certain exemption
- MF are not required to carry out withholding on as income was exempt in the hands of unit holders (resident / non-resident) – refer proviso to section 196A(1) of ITA
- Expenditure incurred by unit holders in earning income from UTI / MF is not allowable as deduction in view of section 14A of ITA

Amendment proposed by FB 2020

- FB 2020 proposes to amend s. 115R of ITA to provide that provisions of sub-section (2) shall not be applicable in respect of distribution made by MF to its unit holders on or after 1 April 2020
- FB 2020 also proposes to insert sunset clause in s. 10(35) of ITA by inserting proviso and accordingly, income received by unit holders on or after 1 April 2020 shall not be exempt
- Income received by unit holders from MF shall be taxed in the hands of unit holders at applicable rate
- Since the income from MF is chargeable to tax in the hands of unit holders, expenditure is allowable as deduction
  - Proviso is inserted to s. 57 of ITA to provide that no deduction shall be allowed against income received from MF other than interest expenditure
  - Further, such deduction of interest expenditure shall not exceed 20% of income in respect of unit included in total income
- The aforesaid amendments are proposed to be inserted w.e.f. 1 April 2021 and accordingly, it shall apply from AY 2021-22 and onwards
- Section 196A of ITA is proposed to be amended to provide that MF company making payment to non-resident shall at the time of payment by any other mode shall withhold tax at the rate of 20%. This amendment is made applicable from 1 April 2020 and accordingly, withholding shall commence from 1 April 2020

Amendment proposed by FB 2020

- **Insertion of s. 194K of ITA:**
  - Any person responsible for making in respect of following income to resident taxpayer shall at the time of credit or payment (whichever is earlier) shall withhold taxes @ 10%
    - Income in respect of units of MF
    - Income in respect of units from the Administrator of specified undertaking
    - Income from specified company
  - It has been clarified that if income is credited or paid to any account by whatever name called shall be deemed to be credited to the account of the payee and accordingly, withholding provisions of s. 194K of ITA are applicable
  - Where the amount of income credited or paid in a financial year, in aggregate, does not exceed INR 5000, no withholding is required to be carried out
  - Section 194K of ITA is proposed to be inserted from 1 April 2020 and accordingly, withholding shall commence from 1 April 2020
  - The terms 'Administrator' and 'specified company' is defined in Explanation

Snapshot of provisions (pre-amendment and post amendment)

Particulars	Pre amendment	Post amendment
Period of applicability of s. 115 of ITA	Income distribution tax payable for distribution made on or before 31 March 2020	Unit holder pay tax from FY 2020-21 (AY 2021-22)
Withholding obligation on MF when payment made to resident taxpayer	No, in view of proviso to section 196A(1)	Yes, @ 10% under s. 194K of ITA
Withholding obligation on MF when payment made to non-resident taxpayer	No, in view of proviso to section 196A(1)	Yes, @ 20% + SC + EC under s. 196A of ITA
Whether investor can apply for lower withholding u/s 197	Not applicable as unit holders income was exempt and there was specific carve out in proviso to s. 196A of ITA	Yes. Investor can apply for lower rate of nil rate for deduction
Whether unit holders are required to pay tax	No. Income exempt u/s 10(35) of ITA	Yes, at applicable rates. In case of NR, subject to fulfilment of conditions u/s 115A of ITA, taxability @ 20% + SC + EC
Whether expenditure was allowable as deduction in computing income	No, in view of s. 14A	Yes, subject to proviso to s. 57

Impact of amendment proposed by FB 2020

- **In respect of expenditure:**
  - Taxpayer receiving income from MF may not suffer disallowance of expenditure under s. 14A of ITA.
  - Where income from MF is chargeable under the head IFOS:
    - Deduction of expenditure is subject to proviso to s. 57 of ITA
    - Deduction of interest expenditure is capped 20% of income from MF included in total income. In a year where, taxpayer has not earned income from MF, income from such unit included in MF is Nil. Accordingly, interest expenditure incurred by taxpayer may not be allowable as no income from MF is included in total income
  - Unlike dividend income received from company, income from units of MF is not specifically taxable as other source income. Where income from units of MF is taxable as business income (say income earned by trader in MF), no restriction laid down in proviso to s. 57 of ITA shall be applicable and entire expenditure incurred shall be allowable as deduction

Impact of amendment proposed by FB 2020

- **Impact of s. 194K of ITA (withholding threshold):**
  - Proviso to s. 194K proposes to provide a threshold of INR 5000 for withholding under s. 194K
  - An issue may arise whether the threshold is to be computed mutual fund house (MF A) wise or scheme wise (Scheme A)
  - S. 194K obligates person responsible for paying resident any income in respect of units of MF. In case of mutual fund house, a person responsible for paying the income of all scheme may be a singular person and accordingly the limits may need to be seen mutual fund wise and not scheme wise
  - If Mr. X holds 20 schemes in MF A, deduction under s. 194K of ITA may need to be carried out considering the amount paid to Mr. X from all 20 schemes. Accordingly, while calculating threshold of INR 5000, payment from all 20 schemes may need to be considered
  - In this regard, support may also be drawn from first and second proviso to s. 194A(3) of ITA. Prior to Core Banking System, banks were required to carry out withholding on interest paid to depositor branch wise. Threshold limit was also considered branch wise and not per depositor. However, post Core Banking System, Banks are required to withhold on interest income considering the threshold per depositor and not per branch

Impact of amendment proposed by FB 2020

- **Other impact:**
  - Income distributed by MF up to 31 March 2020 will be subjected to payment additional tax under s. 115R(2) of ITA and unit holders will be eligible for exemption under s. 10(35) of ITA
  - Under the domestic law, income distributed by MF its non-resident unit holders may be taxed at 20% + SC + EC in terms of s. 115A(1)(a)(iii) read with s. 115A(1)(a)(C) of ITA
    - Taxability of dividend income will be on gross basis – s. 115A(3) of ITA
    - Non-filing of return of income under s. 115A(5) of ITA is only permitted when non-resident unit holder is not claiming DTAA benefit
  - Under the domestic law, income distributed by MF to its non-resident FPIs unit holder may be taxed at 20% + SC + EC in terms of s. 115AD(1)(a) read with s. 115AD(1)(i) of ITA
    - Taxability of dividend income will be on gross basis – s. 115AD(2) of ITA
  - Under the domestic law, dividend income distributed by business trust to non-resident Indian unit holders may not be governed by provisions of chapter XII-A as unit of MF are not specified asset

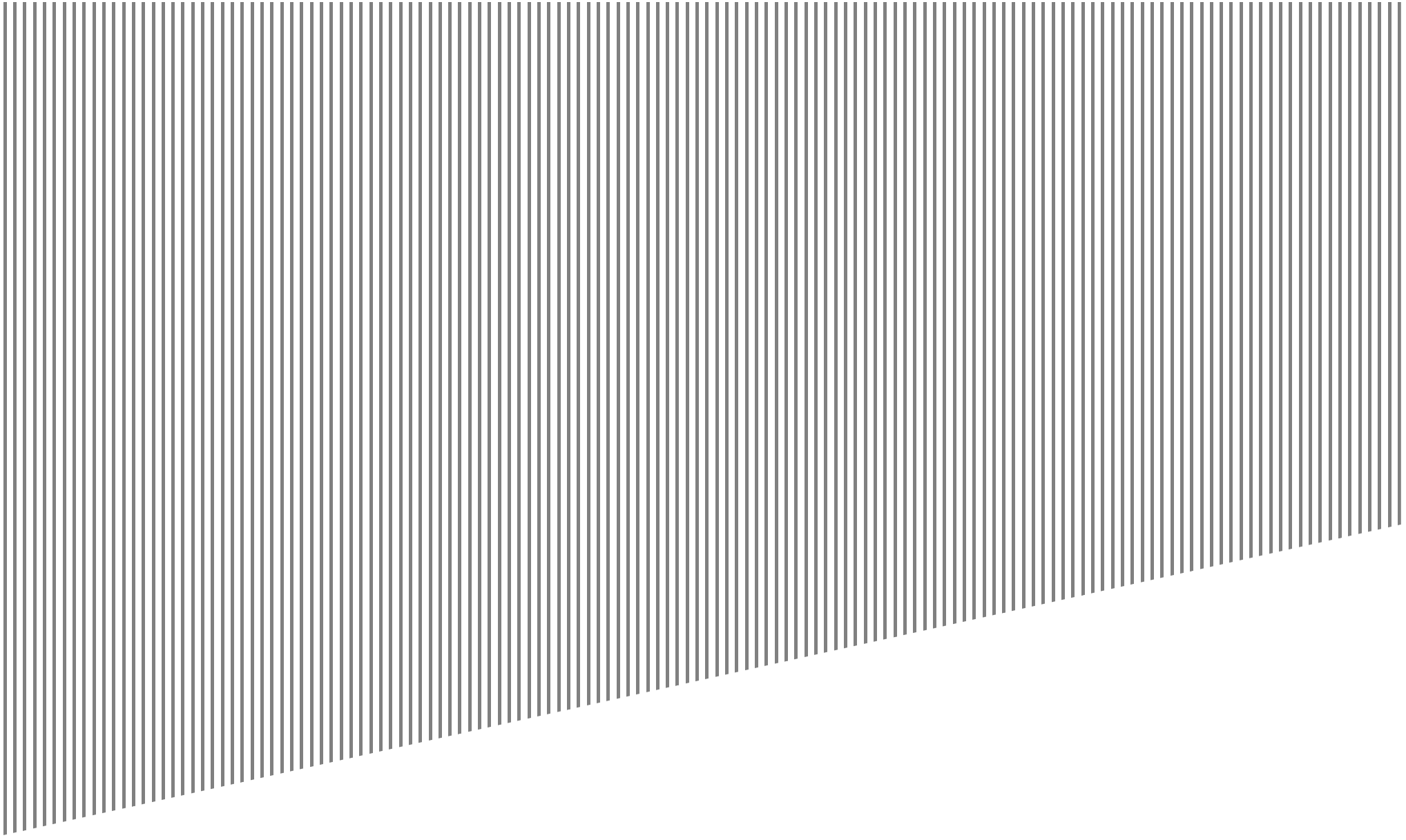
Treaty interplay on taxation of income from MF

- Income in respect of mutual fund units unlikely to be covered by Article 10 (dividend income) on account of its limitation
- Income may be covered by other income Article unless the taxpayer is able to enjoy benefit of Article 7
- Following matrix may be relevant:

Sr. No.	Particulars	Taxation
1	Income is business income for the recipient and recipient does not have PE in India or income is not attributable to PE in India.	Arguable to take no PE no taxation position.
2	Income is not covered by Article 7 and the treaty is	
	(a) Other income Article is favourable and provides no source taxation to India (DTAA such as Switzerland, UAE, Germany etc.)	No taxable
	(b) Other income Article is absent or falls back on domestic tax law of India (DTAA such Netherlands, Singapore etc.)	Taxable @ 20% plus surcharge if condition of s. 115A(1)(a)(iii) read with s. 115A(1)(a)(C) is fulfilled. If not, taxation at full rate on net basis.
	(c) Other income Article provides taxation in respect of income accruing or arising or in India (DTAA such as UK, USA etc.)	Taxable @ 20% plus surcharge if condition of s. 115A(1)(a)(iii) read with s. 115A(1)(a)(C) is fulfilled. If not, taxation at full rate on net basis.

Personal Taxation

S.115BAC- New CTR for Individuals and Hindu undivided Family (HUFs)



Concessional tax rate (CTR) for individuals and HUFs under new regime (S.115BAC) (w.e.f 1 April 2021)

- Presently, an individual pays 20% (plus surcharge and cess) on income between INR 5 lakhs - INR10 lakhs and 30% (plus surcharge and cess) on income exceeding 10Lakhs
- Before arriving at such total taxable income, the individual will generally consider various exemptions and deductions (such as S.24, 80C, 10(14) etc.) available to him under the ITA
  - Often, computation of such exemptions and deductions are seen as cumbersome process by small taxpayers especially individuals
- In an attempt to increase consumption to boost the economy, a new simplified personal income tax regime has been introduced
  - The FM has proposed an optional new tax regime where income tax rates will be significantly reduced for taxpayers who forego certain exemptions and deductions on lines of CTR for domestic companies

Concessional tax rate (CTR) for individuals and HUFs under new regime (S.115BAC) (w.e.f 1 April 2021)

- On satisfaction of certain conditions, an individual or HUF will have an option to pay taxes at the reduced slab rates (mentioned below) which are applicable without certain exemptions and deductions
- Importantly, the reduced tax rates are subject to specified conditions (discussed in ensuing slides). In view of the same, the Individuals have been given the option to continue to be taxed under the existing framework.
- The proposed tax rates (along with its comparison with the existing rates) are as below:

Sl. No	Total Income	Current Rate of Tax	Proposed Rate of Tax*
1.	Upto Rs. 2,50,000	Nil	Nil
2.	From Rs 2,50,001 to Rs 5,00,000	5%	5%
3.	From Rs 5,00,001 to Rs 7,50,000	20%	10%
4.	From Rs 7,50,001 to Rs 10,00,000	20%	15%
5.	From Rs 10,00,001 to Rs 12,50,000	30%	20%
6.	From Rs 12,50,001 to Rs 15,00,000	30%	25%
7.	Above Rs 15,00,000	30%	30%

*Surcharge and cess shall be continued to be levied at the existing rates

Concessional tax rate (CTR) for individuals and HUFs under new regime (S.115BAC) (w.e.f 1 April 2021)

Details of the provision

Parameters	Details
Nature of benefit	Reduced Tax rate for Individuals (residents and non-residents) and HUF for AY 2021-22 and onwards
Qualifying Conditions	Any Individual or HUF can exercise option in its return and pay tax at applicable rate, provided- a. No exemption or deduction is availed u/s – 10(5), 10(13A), 10(14) (other than those as may be prescribed for this purpose), 10(17), 10(32), 10AA, 16, 24(b) (for self occupied property) 32(1)(iia), 32AD, 33AB, 33ABA, 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA), 35AD, 35CCC, 57(iia) or under Chapter VIA (other than S. 80CCD(2) or S.80JJAA or s.80LA) (see slide 67 for details) b. No set off of loss c/f from earlier AYs if such loss is attributable to any deductions stated at bullet (a) above • Such losses are deemed to have been given effect to and no further deduction shall be allowed • However, with respect to unabsorbed depreciation as on 31 March 2020, adjustment can be made to opening WDV on 1 April 2020 if CTR is opted in FY 2020-21 (see slide 72) c. No set off of losses under Income from House Property (u/s 24) with any other head of income d. No deduction for any other exemption or deduction for allowance or perquisite, provided under any other law for time being in force e. Depreciation u/s 32 shall be allowed in such manner as prescribed except additional depreciation u/s 32(1)(iia)

Concessional tax rate (CTR) for individuals and HUFs under new regime (S.115BAC) (w.e.f 1 April 2021)

Details of the provision

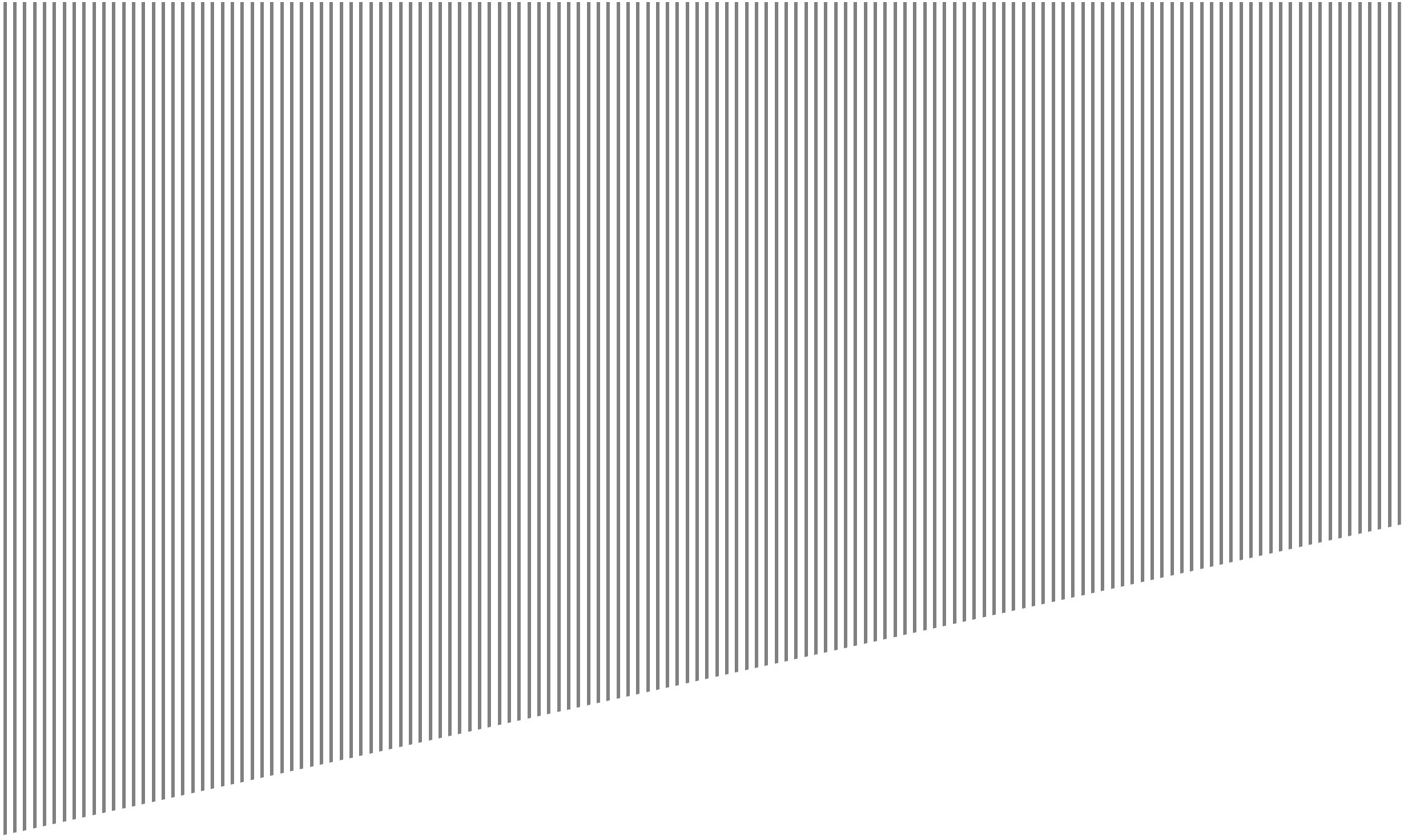
Parameters	Details
Key conditions in relation to exercise of the option	i. For taxpayer having business income- • Option to be exercised on or before filing the ROI in prescribed manner. Option can be exercised anytime on or after AY 2021-22. The option to be valid for all subsequent years • Option can be exercised even by a Individual or HUF who may have claimed exemption/incentive in the past • Option once exercised, is revocable only once in the year other than the year in which it was exercised. Thereafter, he shall never be eligible, except in case where he ceases to have business income in which case he will be covered by bullet (ii) below ii. For taxpayer without business income- • Option to be exercised every year along with ROI to be furnished under s.139(1)
Taxability in the year of breach of qualifying conditions and subsequent years	i. In case of breach of condition for taxpayer having business income- • The option to become invalid for that relevant assessment year and all subsequent years • Other provisions of ITL to apply, as if the option was not exercised • In case where taxpayer ceases to have business income, he can opt in again under bullet (ii) below ii. In case of taxpayer without business income- • The option to become invalid for the AY in which there is breach of condition • Other provisions of ITL to apply in year of breach, as if the option was not exercised • But taxpayer may opt in again for s.115BAC in subsequent years

Concessional tax rate (CTR) for individuals and HUFs under new regime (S.115BAC) (w.e.f 1 April 2021)

Details of the provision

Parameters	Details
Other key aspects	• Applicable to all Individual and HUF whether engaged in any business or not, and no conditions with reference to turnover or nature of business specified • Special rate income continues to be taxed at special rates- Capital gain, undisclosed incomes etc • Exemption from AMT available but past AMT credit not available for set off • Surcharge and cess continues at existing rates (but applicability of surcharge may get accelerated due to higher total income after foregoing exemptions & deductions)

List of exemption and deduction which cannot be claimed by Individuals and HUFs opting for CTR



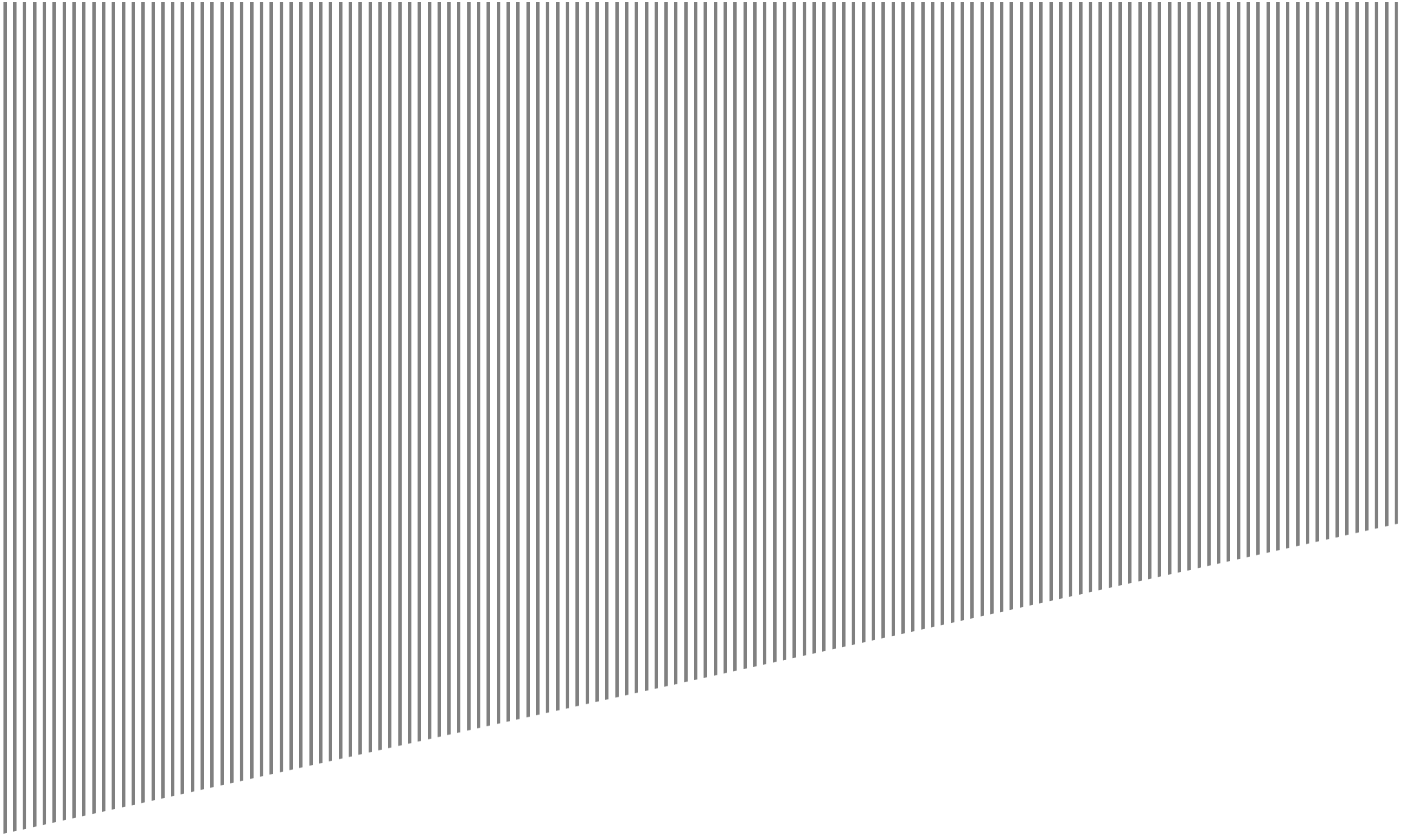
List of tax incentives which cannot be claimed for reduced tax rate

Sections	Particulars
10(5)	Leave travel concession
10(13A)	House rent allowance
10(14)	Exemption under s.10(14) (except for certain allowances referred in Exp Memo to be prescribed by rules)
10(17)	Allowance to MPs/MLAs
10(32)	Exemption for income of minor
10AA	Exemption for SEZ unit
16	Standard deduction and employment/professional tax
24	Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23
32(1)(iia)	Additional depreciation
32AD	Investment in new plant or machinery in notified back-ward area in certain States
33AB	Tea Development account, coffee development account and rubber development account
33ABA	Site restoration Fund
35(1)(ii)/ (iia)/ (iii)	Deduction of sum paid to a research association/ university/ college/ company for use in scientific research/ research association for undertaking research in social science/ statistical research
35(2AA)	Weighted Deduction of payment to national laboratory or university or IIT for scientific research

List of tax incentives which cannot be claimed for reduced tax rate

Sections	Particulars
35AD	Investment linked deduction in respect of expenditure on specified business
35CCC	Weighted deduction for expenditure on agriculture extension project
57(iia)	Deduction from family pension
Chapter VI-A	All profit linked deductions or deductions for investment/expenditure (except S.80CCD and 80JJAA) Illustratively, s.80C for investments, s.80D for Mediclaim premium, s.80TTA for savings bank interest, s.80U for person with disability, s.80G for donations, s.80EEA for interest on home loan, s.80EEB for interest on electric vehicle, etc
Rule 3	Exemption in respect of free food and beverage through vouchers

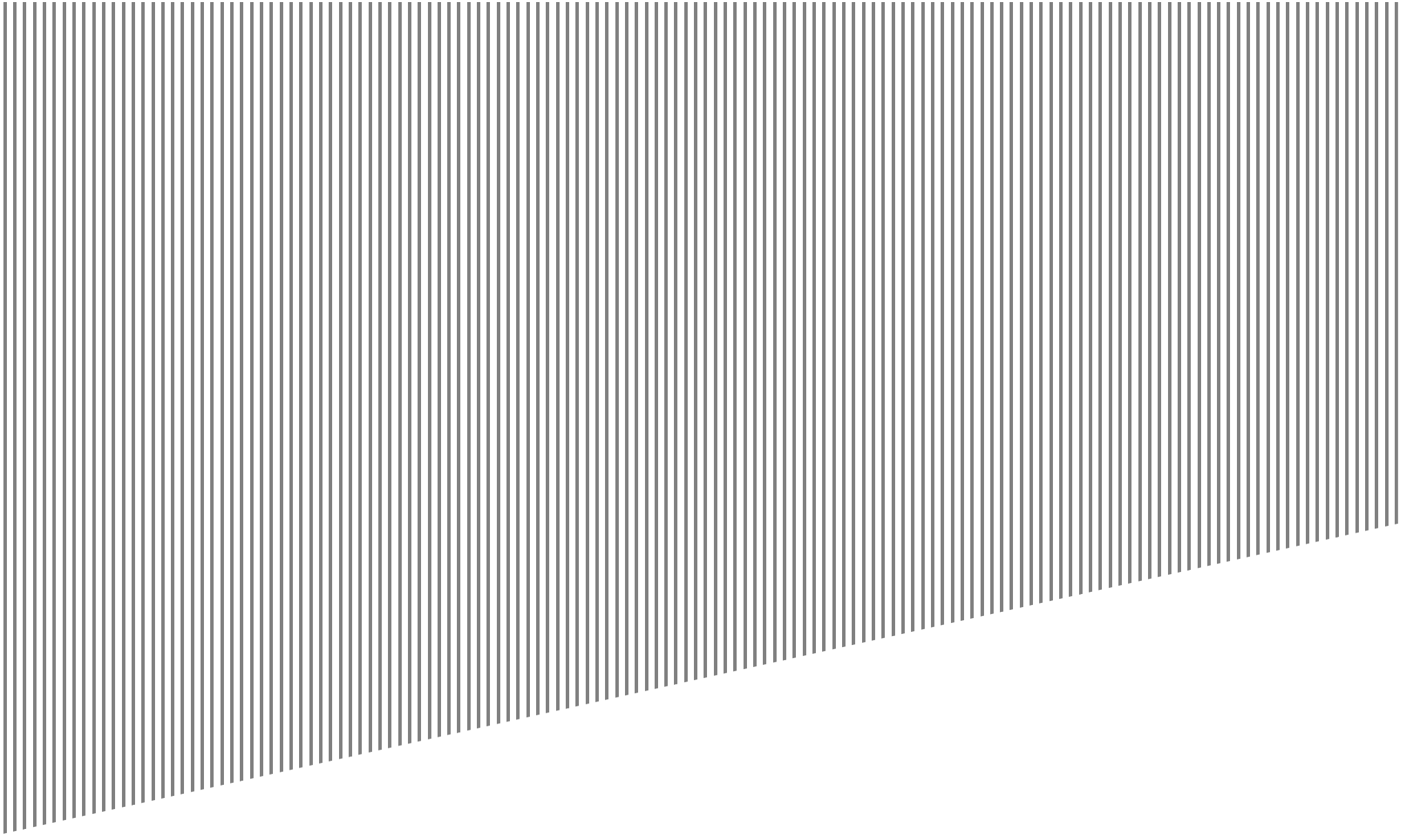
List of exemption and deduction available



Illustrative list of exemptions and deduction available

Sections	Particulars
80LA	Deduction with respect to IFSC
80CCD(2)	Employer's contribution to NPS
10(14)- these are specifically mentioned in the memorandum	(a)Transport Allowance granted to a employee to meet expenditure for the purpose of commuting between place of residence and place of duty (b)Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office; (c)Any Allowance granted to meet the cost of travel on tour or on transfer; (d)Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.
Various provisions u/s. 10	Terminal benefits like PF withdrawal, NPS withdrawal, VRS compensation, retrenchment compensation, gratuity, leave encashment, commuted value of pension, etc
10(10CC)	Tax paid by employer u/s. 192(1A)

Special tax rates applicable to Individuals and HUFs covered by S.115BAC



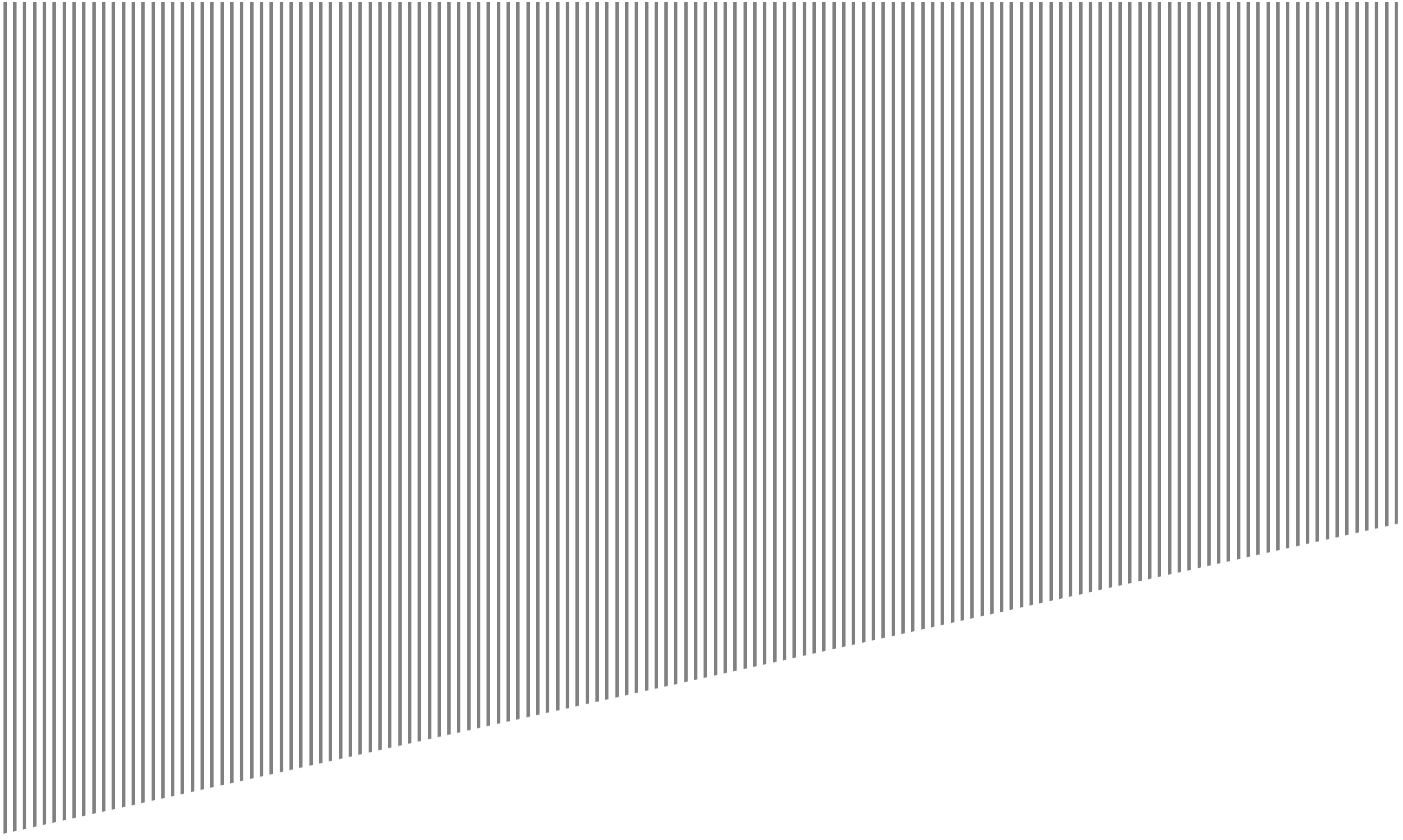
Special tax rates applicable to Individuals and HUFs covered by S.115BAC

Sr. No.	Sections	Dealing with	Tax rate(excludes SC/ EC)
1.	111A	Tax on short term capital gains arising on transfer of equity shares, units of MF or business trust on which STT is paid	15%
2.	112	Tax on long term capital gains	20% / 10%
3.	112A	Tax on long term capital gains arising on transfer of equity shares / units of MF or business trust on which STT is paid	10%
4.	115BB	Tax on winnings from lotteries, crossword puzzles, races including horse races, gambling or betting	30%
5.	1115BBE	Tax on undisclosed income / investment / expenditure etc referred to in S. 68/69/69A/69B/69C/69D	60%
6.	115BBF	Taxation on income from patent	10%
7.	115BBG	Taxation on income from transfer of carbon credit	10%

Impact Analysis

- Maximum possible tax benefit which individual may derive is Rs. 78,000 (See slide on s. 115BAC under Tax Rates caption). If taxpayer gets tax benefit of more than Rs. 78,000 in current regime, opting for CTR is not beneficial
- Contrary to object explained in Budget Speech, salaried individual will be required to make complicated cost-benefit analysis on year on year basis
- Salaried employees may need to intimate their employer for purposes of S.192 withholding through existing procedure of Form 12BB
- Loss from let out house property not allowed to be set off under any other head and to be carried forward. Implicitly, such loss will be after set off against income from other house property, if available
- No prohibition on non-residents to avail CTR
- It becomes pertinent to evaluate whether CTR extends to Discretionary Trust or say business trust or say AIF which is organised as trust and otherwise triggers liability at MMR but may be classified as an individual. KS is independently evaluating the issue
- IFSC unit income eligible for 100% deduction under s. 80LA despite opting for CTR. Benefit in opting for CTR is relief from AMT
- Block adjustment for unabsorbed additional depreciation is one time adjustment if CTR opted in AY 2021-22 – else, not available

Relaxation from ESOP perquisite taxation to employees of start-ups [w.e.f 1 April 2021]



Existing provisions and stakeholder's concerns

- S.17(2)(vi) provides for perquisite taxation in hands of the employees where shares or specified securities are allotted or transferred to the employees free of cost or at concessional rate
  - Perquisite value is difference between (a) FMV of the shares or specified securities as determined under Rule 3(8)/(9) and (b) the amount recovered from employee. It is treated as salary income at the time of allotment/transfer of shares/ specified security
- In case of start-up industry, the aforesaid provisions create hardship as salary income of employees of start-ups comprise majorly of ESOP component
  - Taxation of ESOP component at the time of allotment lead to early cash outflow in hands of employee at the time of allotment of shares
- In order to ease concern of the employees, the Budget 2020 has proposed amendments to provisions of S.140A, S.156, S.191, S.192 of ITA
  - Proposed provisions intend to defer the timing of collection of tax on ESOP perquisite in hands of employee and liability to withhold tax by employer on such salary income

Deferral of TDS on Start-up ESOP perquisite income

- New sub-clause (1C) is added to s.192 which provides that the "eligible start-up" as referred in s.80-IAC shall deduct or pay tax on perquisite income covered u/s. 17(2)(vi) within 14 days of:
  - Completion of 48 months from the end of the relevant A.Y. in which ESOP shares are allotted or transferred
  - Date of sale of ESOP or sweat equity shares by the employee
  - Date of cessation of employment with the relevant start-up

  Whichever is the earliest.
- TDS is to be undertaken at rates in force for the financial year in which the ESOP shares or sweat equity shares are allotted or transferred and not as per the rates prevailing in the year of TDS compliance
- Proposed methodology of TDS in hands of eligible start-up is applicable for normal withholding under S.192(1) as well as withholding where tax is borne by the employer under S.192(1A) as per single stage grossing up

Amendments in other provisions of ITA

- FB 2020 has proposed an amendment to S.191 by inserting clause (2) to provide that where the deductor has failed to withhold tax at source, payment of tax is to be made by employee directly. In such case, the employee is liable to pay tax at the earliest of the following:
  - Expiry of 48 months from the end of relevant AY in which ESOP shares are allotted/transferred
  - Date of sale of ESOP or sweat equity shares
  - Date of cessation of employment with the employer who has allotted or transferred ESOP shares to the employee
- S.140A provides for payment of self assessment tax excluding advance tax, TDS, AMT credit, etc. before furnishing ROI. FB 2020 has amended S.140A by adding a clause to provide that the employee shall can claim credit of tax payable by the employee under proposed s.191(2). In other words, no SA tax is payable by employee in the year of allotment or transfer merely due to absence of TDS by employer
  - FB refers to tax or "interest" payable according to S.191(2). The reference to "interest" is not clear and requires examination
- FB 2020 has also proposed same amendment in S.156 by inserting sub-clause (2) to provide that demand raised on the taxpayer for ESOP perquisite received from eligible start-up will be payable within 14 days of earlier of three events referred above

Impact analysis

- The proposed amendments shall take effect from 1 April 2020 i.e. for ESOPs allotted or transferred on or after 1 April 2020
- There is no change in substantive taxation provisions of S.17(2)(vi) which continue to treat ESOP perquisite as salary income in year of allotment or transfer. Tax rates of year of allotment/ transfer continues to apply. Merely collection is deferred to earlier of three specified events
- Deferral of ESOP perquisite taxation is available only to employees of eligible start-up as defined u/s. 80-IAC and may not necessarily extend to all start-ups defined under DPIIT Notification dated 19 February 2019 (2019 Notification)
  - For instance – employees of start-up company which is incorporated prior to 1 April 2016 will not qualify for deferral benefit even if the start-up is recognised under 2019 Notification of DPIIT
- Time limit of 14 days is provided from the earliest of the three specified events for purposes of TDS under S.192(1)/(1A).

Impact analysis (contd..)

- Monitoring of time limit will require evolution and can potentially pose challenge in certain situations

Sr. No.	Specified Event	Circumstance
1	"Sale" of ESOP shares or sweat equity shares	• Gift of ESOP shares by employee • Merger/demerger leading to allotment of new shares • Buyback of shares by employer • Stock swap transactions • Shares held in demat and sale transaction not informed to the employer immediately
2	"Ceasing" to be employee	• Death of employee • Employee being transferred on merger/demerger/slump sale • Secondment to another entity • Resignation when employer is undergoing insolvency resolution under IBC

- Employer will need to apply appropriate administrative safeguards to keep track of triggering the TDS payment date

Impact analysis (contd...)

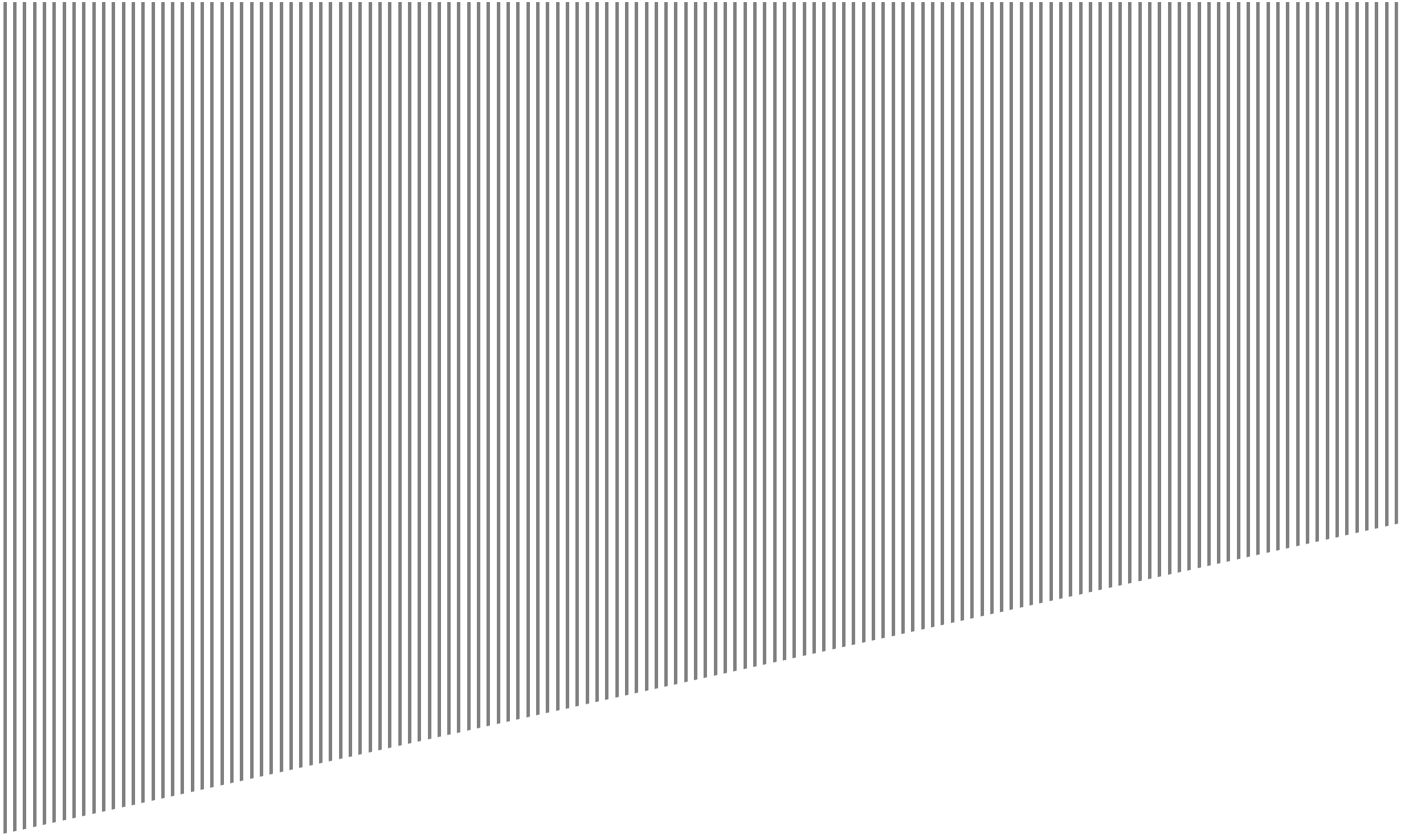
- ESOP taxation norms for employees of start-up companies are different. The reasoning for relief should arguably apply to all other employees as well. Could a question arise whether the provision is discriminatory? While a start-up is a reasonably different classification from others, does that enable its employees to claim a reasonably identifiable classification?
  - The justification is provided in Explanatory Memorandum to FB 2020 and explanation in Budget Speech of the Finance Minister which states that the ESOP component forms a significant part of salary of employees of start-up, as it allows the founders and start-ups to employ highly talented employees at low salary amount, it forms balance amount of compensation
- Breach of TDS payment by employee within time limit under proposed S.192(1C) triggers following consequences:
  - Interest under S.201(1A) for the employer on failure to deduct tax or failure to pay tax deducted at source
  - Penalty under S.271C penalty in case of failure to deduct whole or part of the TDS in hands of the employer
  - Interest u/s.220(2) for the employee (Refer Notes below) [1]
  - Penalty u/s. 221 for the employee

Notes:

1. S.220(1) perhaps requires consequential amendment to specify that tax under S.156(2) will be payable as per timelimit prescribed therein and not within 30 days of service of notice
2. Penalties can be defended if taxpayer shows good and sufficient reason or reasonable cause for default.

Capital gains related provisions

Restricting cost-substitution as on 1 April 2001 to stamp duty value for land or building held as capital asset [w.e.f. 1 April 2021]



Restricting cost-substitution as on 1 April 2001 to stamp duty value for land or building held as capital asset

- As per existing S. 55 of the ITA,
  - For the purposes of computation of capital gains in respect of capital assets acquired before 1 April 2001 including capital asset being land or building or both,
    - The taxpayer is allowed an option to take the fair market value (FMV) of the capital asset as on 1 April 2001 or the actual cost of the asset as "cost of acquisition".
    - The taxpayer is also allowed to claim deduction for cost of improvement incurred after 1 April 2001.
    - The option is also available where the capital asset becomes the property of the taxpayer by modes prescribed u/s. 49(1) i.e. under gift, inheritance etc. and the previous owner acquired the capital asset before 1 April 2001
  - FMV is defined u/s. 2(22B) as price that capital asset would ordinarily fetch on sale in open market on the relevant date.
- Finance Bill 2020, proposes to insert a proviso in S. 55(2)(ii) whereby:
  - In case of capital asset being land or building or both, FMV as on 1 April 2001 will not exceed the stamp duty value (SDV) as on 1 April 2001, wherever such SDV is available

Restricting cost-substitution as on 1 April 2001 to stamp duty value for land or building held as capital asset (contd.)

- SDV will mean value "adopted" or "assessed" or 'assessable" by Central Govt. or State Govt Authority for the purpose of payment of stamp duty in respect of immoveable property

- Impact Analysis:
  - As per Explanatory Memorandum, the intent of such amendment is for the purpose of "rationalisation" of provisions
  - Impact of the amendment can be illustrated with the help of following examples:

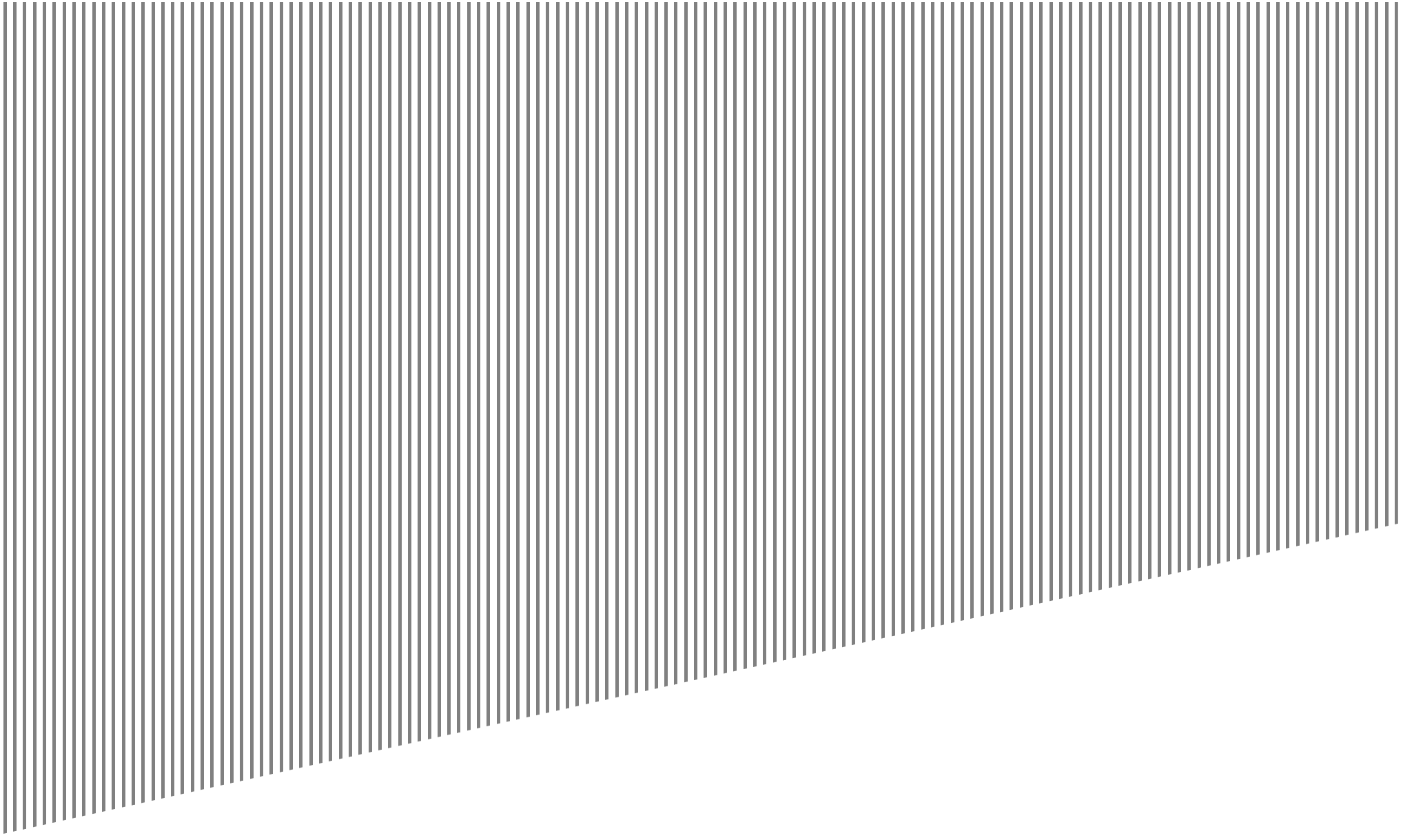
Particulars	Scenario 1	Scenario 2	Scenario 3
Actual cost of acquisition (a)	100	100	200
FMV as on 1 April 2001 (b)	200	150	150
SDV as on 1 April 2001 (c)	150	200	100
Cost of acquisition is higher of (a) and [lower of (b) and (c)]	**150**	**150**	**200**

Restricting cost-substitution as on 1 April 2001 to stamp duty value for land or building held as capital asset (contd.)

- Impact Analysis (contd.):
  - There is no change in the base date (i.e. 1 April 2001) with respect to which FMV is to be computed.
  - Amendment w.r.t SDV merely acts a ceiling beyond which FMV cannot exceed
    - Object of the provision is not clear since determination of FMV as on 1 April 2001 still needs to be undertaken in all cases
    - Where SDV is higher than the FMV, such higher SDV cannot be treated as cost of acquisition
  - SDV may not necessarily reflect the actual commercial FMV. It is possible as on the date of sale, the sale consideration is say, 3 times the SDV and such trend may also be visible on 1 April 2001. However, no exemption or carve-out is provided for such apparently genuine cases
  - Amendment will apply to cases where stamp duty value is available.
    - Where no stamp duty is triggered* or stamp duty value itself is not available (not sure, what could be such situations), restriction provided in proposed amendment will not apply.

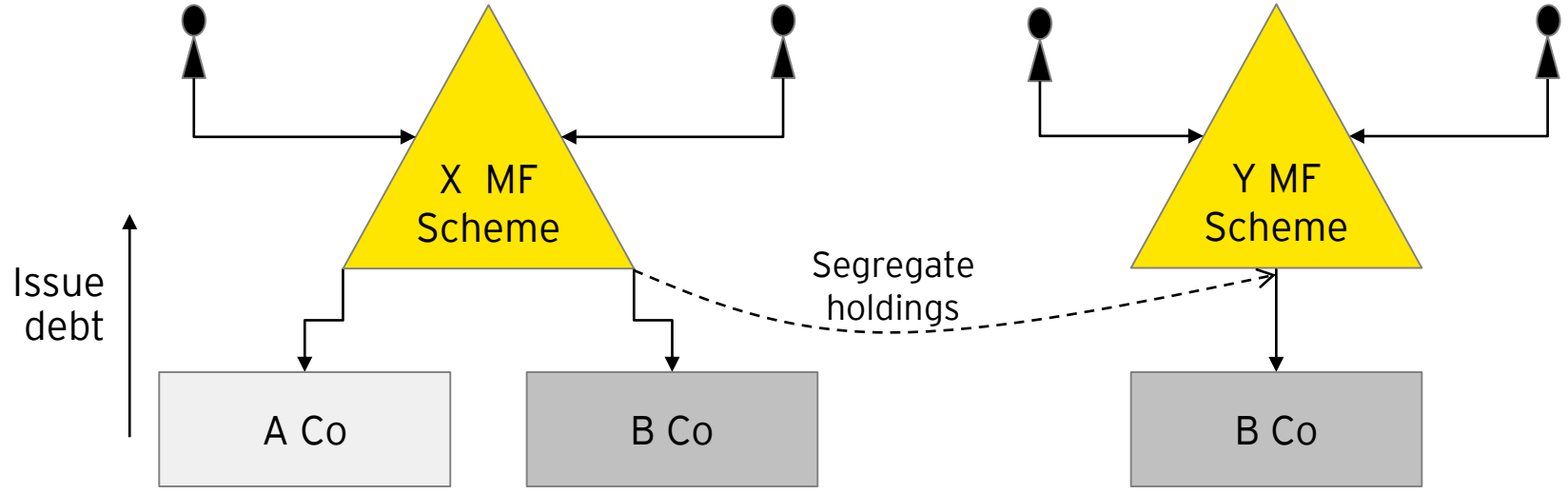
*Stamp duty levy is State levy and one may have to ascertain applicability or otherwise of levy of stamp duty on transaction of land or/and building as on 1 April 2001 basis applicable law

Rationalising capital gains in respect of segregated portfolios [s.49(2AG)/(2AH), s.2(42A)] [w.e.f. 1 April 2020]



Rationalising capital gains in respect of segregated portfolios [s.49(2AG)/(2AH), s.2(42A)] [w.e.f. 1 April 2020]

- Illustration to understand the amendment:-



- Year 1 – 2 investors equally contribute to invest 1,000 in X MF scheme, which in turn invests in bonds of A Co and B Co of 500 each – NAV (per unit) of X MF scheme is 500 (1,000 / 2)
- Year 2 – B Co becomes financially stressed; MF scheme writes down bonds of B Co by 400 – NAV of X MF scheme falls to 300 (600 / 2)
- Year 2 – X MF scheme segregates holdings in bonds of B Co into separate Y MF scheme; which allots equal units to existing investors
- Year 3 – Investor redeems units of X MF and Y MF scheme

Rationalising capital gains in respect of segregated portfolios [s.49(2AG)/(2AH), s.2(42A)] [w.e.f. 1 April 2020]

- SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/160 dated 28 December 2018 permits creation of segregated portfolio in MF schemes holding portfolio of debt and money market instruments – termed as "side-pocketing" in market terminology
  - Ensures fair treatment to all investors in case of adverse credit event (such as downgrade in credit rating of B Co's bonds) and to deal with liquidity risk
  - Asset management company (AMC) may create segregated portfolio only after receiving approval of trustees of X MF scheme
    - Segregated portfolio shall be effective from day of credit event (i.e. downgrade in credit rating of B Co's bonds)
    - All existing investors in X MF scheme as on day of credit event shall be allotted equal number of units in segregated portfolio as held in main portfolio (1:1)
    - No redemption and subscription shall be allowed from Y MF scheme - However, to facilitate exit/transfer of units, AMC shall enable listing of such units within 10 working days
    - Investors can redeem units of X MF scheme and continue to hold units of Y MF scheme
    - AMC to put sincere efforts to recover investments of Y MF scheme - Upon recovery of money, whether partial or full, it shall be immediately distributed to investors in proportion to their holding
- Instances of segregation made in public domain (Franklin Templeton, Tata MF)

Rationalising capital gains in respect of segregated portfolios [s.49(2AG)/(2AH), s.2(42A)] [w.e.f. 1 April 2020]

- Present provisions:
  - ITL is silent on tax treatment of segregation of portfolio
  - No tax neutrality provisions needed for mutual funds as they enjoy blanket exemption under s.10(23D)
  - Useful reference may be made to s.55(2)(b)(v) referring to sub-division of shares and s.47(xviii)/(xix) on tax treatment of consolidation of MF schemes
- Proposed amendment:
  - Amendment is along lines of provisions applicable to shareholders in case of demerger
  - For units of Y MF scheme, investor entitled to benefit of cost and period of holding of units held in X MF scheme - s.49(2AG) and sub-clause (hh) of clause (i) of Explanation 1 to s.2(42A)
    - Cost of units of segregated portfolio is computed as:-

COA of units in total portfolio x	Net asset value (NAV) of asset transferred to segregated portfolio
	NAV of total portfolio immediately before the segregation of portfolios

    - In our example, cost of units of Y MF scheme is 500 x 100/600 = Rs. 83
  - Cost of units of main portfolio is reduced by cost of units of segregated portfolio – s.49(2AH)
    - In our example, cost of units of X MF scheme is Rs. 417 (500-83)
  - Expressions "main portfolio", "segregated portfolio" and "total portfolio" shall have meanings respectively assigned in aforesaid SEBI Circular [Explanation to s.49]

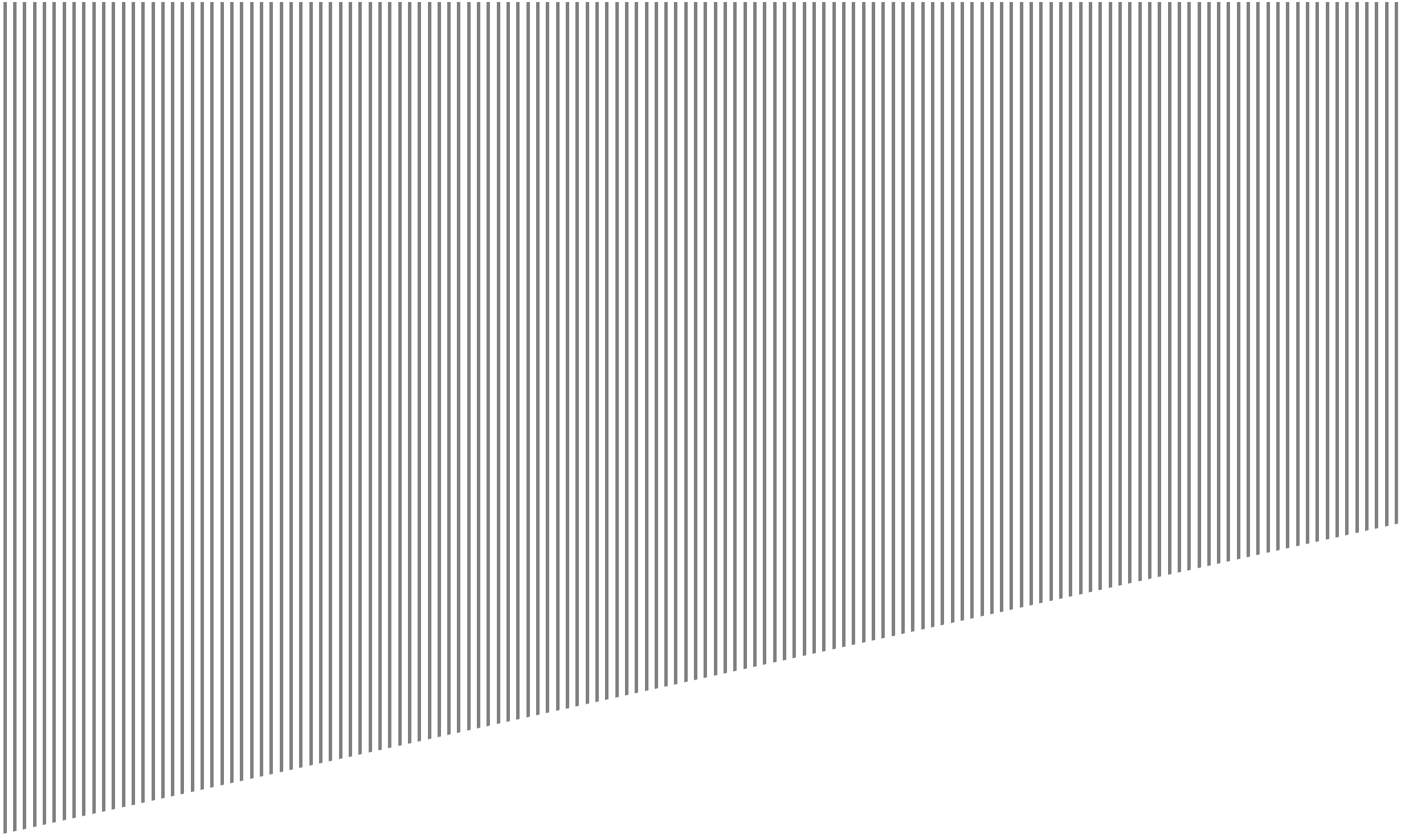
Rationalising capital gains in respect of segregated portfolios [s.49(2AG)/(2AH), s.2(42A)] [w.e.f. 1 April 2020]

- Issues:
  - Amendment is silent on tax neutrality of receipt of units of segregated portfolio – no provision along lines s.47(vid) for receipt of shares of resulting company on demerger
    - Segregation arguably does not result in transfer as investor continues to hold units of main portfolio and segregated portfolio
  - No specific carve-out u/s. 56(2)(x) for receipt of units of segregated portfolio
    - Arguably, s.56(2)(x) not triggered since receipt of units of segregated portfolio is not without consideration; investor sacrifices value of existing units
    - In any case, there is no fresh receipt as investor receives what he was always entitled to
  - Amendment also silent on units held as stock in trade
  - Amendment arguably covers segregation made before A.Y. 2020-21, where units are transferred later
    - Provisions subsisting as at beginning of A.Y. have ability to alter cost base even in respect of past transactions
  - Amendment applicable prospectively from A.Y. 2020-21, and does not specifically cover transfer of units of segregated portfolio before F.Y. 2019-20
    - As per info in public domain[1], side-pocketing first happened in June 2019 by Tata MF

[1] https://www.livemint.com/mutual-fund/mf-news/tata-mutual-fund-launches-india-s-first-mutual-fund-side-pocket-1559877471498.html

Incentives & other rationalization measures

S. 115BAB - Benefit extended to electricity generation companies [w.e.f. 1 April 2020]



Benefit extended to electricity generation companies

- **Current tax position:**
  - Section 115BAB was introduced vide The Taxation Laws (Amendment) Act, 2019 providing for concessional CTR of 15% (increased by surcharge and cess) to newly setup and registered domestic companies subject to fulfilment of various conditions
    - One of the condition was that company should not be engaged in any business *"other than the business of manufacture or production of any article or thing"*
  - Explanation to clause (b) provides for a negative list of business activities which are not considered as *"manufacture or production of any article or thing"* and disentitled for benefit of 15% CTR
    - The negative list included activities such as development of computer software, mining, bottling of gas, printing of books, etc.
  - There was uncertainty around qualification of power generation activity as eligible business for 15% CTR benefit i.e. whether it could be considered as "manufacture of production of an article or thing"

Benefit extended to electricity generation companies

- **Current tax position:**
  - There are multiple favourable judicial precedents on this aspect which considered power generation as answering to the requirement of being "*manufacture or production of an article or thing*", such as:
    - NTPC Ltd. v. Dy. CIT [(2012) 54 SOT 177 (Delhi) (URO)]
    - ACIT vs. M Satishkumar [2013] 33 taxmann.com 396 (Chennai Trib.)
    - DCIT vs. Hutti Gold Mines Co. Ltd. [2013] 39 taxmann.com 18 (Bangalore Trib.)
    - ACIT vs Mangalam Cement Ltd. [2017] 185 TTJ 97 (Jaipur Trib.)
    - Damodar Valley Corporation vs DCIT [2016] 72 taxmann.com 127 (Kolkata Trib.)
    - Giriraj Enterprises v. DCIT [2017] 79 taxmann.com 202 (Pune Trib.) (TM)
    - Sanwaria Agroils Ltd. vs. ACIT [2017] 165 ITD 604 (Indore Trib.)
  - As the activity of power generation was also not forming part of negative list, it raised more concerns due to the unfettered power given to Central Government to notify further activities in the negative list

Benefit extended to electricity generation companies

- **Amendment proposed by FB 2020:**
  - FB 2020 proposes to insert an Explanation to section 115BAB(2) stating that business of generation of electricity shall be considered as business of manufacture or production of any article or thing for the purpose of Section 115BAB
  - The amendment is proposed w.e.f. 1 April 2020 i.e. for AY 2020-21 and onwards.
  - EM to FB 2020 suggests that as the business of generation of electricity would not have otherwise qualified as "*manufacture of production of an article or thing*", the Explanation was inserted to extend the benefit of 15% CTR to such power generation activities

Benefit extended to electricity generation companies

- **Comments:**
  - The proposed amendment clears the uncertainty governing the entitlement of power generation activity as "manufacture or production of an article or thing". This shall end the ambiguity on qualification of power generation activities for purpose of s. 115BAB of ITA
  - The proposed amendment is in line with the judicial precedents rendered on the subject as listed in the earlier slides.
  - 15% CTR rate shall be available for entities engaged in following:
    - Generation and distribution of electricity;
    - Generation, transmission and distribution of electricity;
  - Section 115BAB(2)(b) requires business of manufacturing or production **and distribution** of such article or thing manufactured
    - Tax department could create ambiguity on the ground that taxpayers into business of generation and transmission may not be construed to fulfilling the condition of distribution as "distribution" and "transmission" are separate businesses in power sector
    - However, better view is that transmission itself is form of distribution and hence, business of generation and transmission is likely to qualify as eligible activity for 115BAB
  - An entity who merely distributes the electricity i.e. its business is transmission/ distribution centric without there being business of generation of electricity shall not be entitled to benefit of 15% CTR

Benefit extended to electricity generation companies

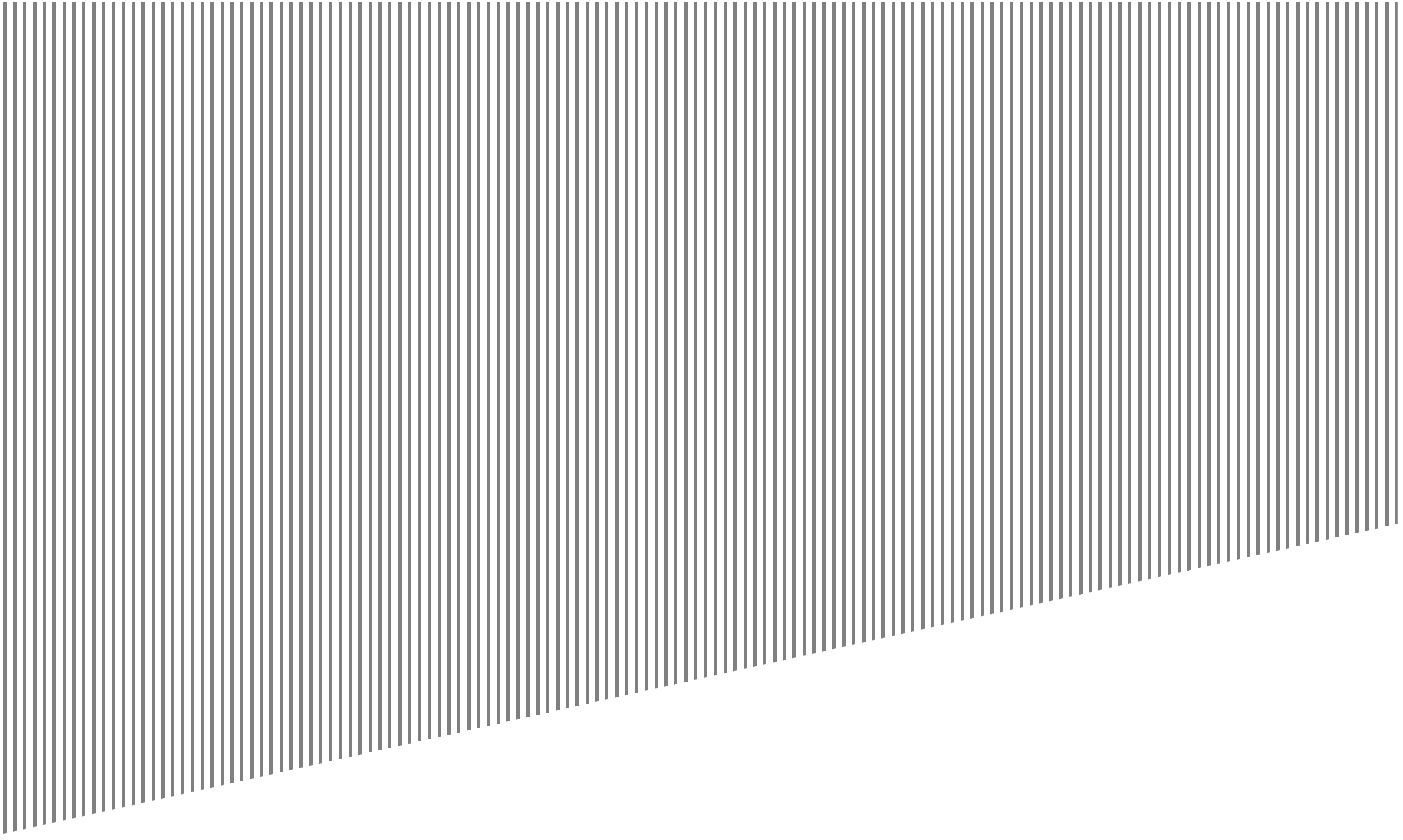
- **Comments:**
  - An entity engaged in generation of electricity for captive consumption in its other qualifying manufacturing or production facility i.e. using electricity for operation of its steel manufacturing plant, may be entitled for the benefit of s. 115BAB of ITA
  - An entity engaged in generation of electricity for captive consumption in its other non-qualifying line of business, say for operation of a retail mall or trading activities, may not be entitled for benefit of s. 115BAB of ITA
  - One may be indifferent on whether amendment is operative retrospectively or prospectively as the benefit of 15% CTR is available for entities set up and registered on or after 1 October 2019, thus falling in AY 2020-21 and the amendment is also effective from AY 2020-21.

Benefit extended to electricity generation companies

- **Comments:**
  - While the ambiguity on whether power generation qualifies as "manufacture or production of an article or thing" is settled for purpose of s.115BAB of ITA, there may still be litigation and ambiguity on scope of coverage of power generation activity as manufacturing or production for other sections of ITA viz s. 32AC, s. 32AD, etc. wherein taxpayer may need to rely on judicial precedents
    - The EM to FB 2020 suggest that power generation would have otherwise not qualified as activity of "manufacture or production of article or thing"
  - **To re-iterate, the above ambiguity would not be relevant for qualification of power generation activity as manufacturing for the purpose of 115BAB**

Tax holiday Incentive for Start-ups [w.e.f. 1 April 2021]

Incentivising tax holiday for start-ups u/s. 80-IAC (A.Y. 2021-22)



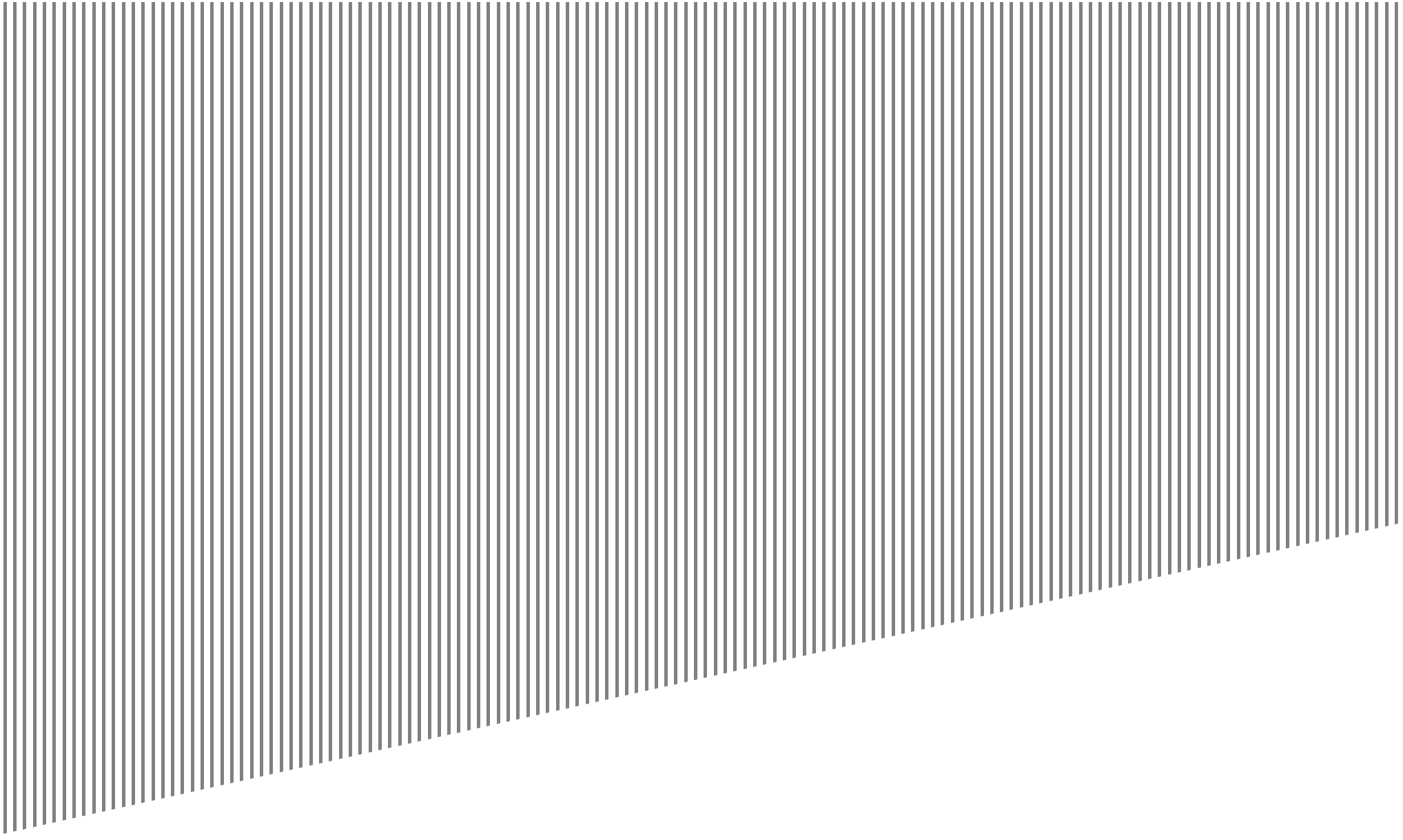
Existing provisions and stakeholder's concerns

- S.80-IAC provides 100% deduction of profits and gains derived from eligible business for any 3 consecutive AYs (at the option of taxpayer) out of 7 years from year of incorporation of eligible start-up
  - Deduction is available subject to fulfilment of certain conditions, e.g. formative conditions, use of new plant & machinery, engaging in eligible business, furnishing required information in prescribed forms, etc.
- S.80-IAC defines "eligible start-up" to mean –
  - a company or limited liability partnership (LLP) engaged in eligible business
  - Incorporated on or after 1 April 2016 but before 1 April 2021
  - With a total turnover from eligible business of < INR 25Crs in the year in which deduction is claimed
  - Holding eligible business certificate from Inter-Ministerial Board (IMB) constituted by DPIIT
- Threshold limit of Rs. 25Cr on turnover of start-up lead to exclusion of bigger start-up entities from the realm of profit-linked deduction
- Dichotomy arises as definition of "start-up" prescribed under DPIIT Notification dated 19 February 2019 (2019 Notification) states that, inter alia, an entity shall be considered as a start-up for 10 years from the date of incorporation if its annual turnover < Rs. 100 Cr for any financial year
  - Thus, not all start-up entities recognised by 2019 Notification were eligible u/s.80-IAC as the definition of "start-up" under 2019 Notification is wider
  - CBDT vide Press Release dated 22 August 2019 clarified that only small start-ups with a turnover of < INR 25 Crs are eligible to claim deduction under S.80-IAC

Extending benefit of s.80-IAC to bigger start-ups

- Stakeholders raised concerns over non-applicability of s.80-IAC to start-ups whose turnover > INR 25Crs but < INR 100Crs
- In order to eliminate ambiguity and to incentivise bigger start-ups, FB 2020 proposes to make following amendments to S.80-IAC:
  - **Time period for availing deduction:** an eligible start-up can now claim profit-linked deduction for a period of any 3 consecutive assessment years out of 10 years (earlier 7 years) from the date of its incorporation
  - **Turnover condition:** Threshold of total turnover from eligible business has been increased from INR 25 Crs to INR 100 Crs to grant the benefit to bigger start-ups
- Proposed amendment shall apply from A.Y. 2021-22 and onwards
- Amendment to duration condition makes the benefit more meaningful for start ups which may incur losses in the initial years of incorporation
- Taxpayers being bigger start-ups with a total turnover of upto INR 100 Cr can avail the benefit of 100% deduction of profits from F.Y. 2020-21
- The amendments align with eligibility criteria of "start-ups" under 2019 Notification

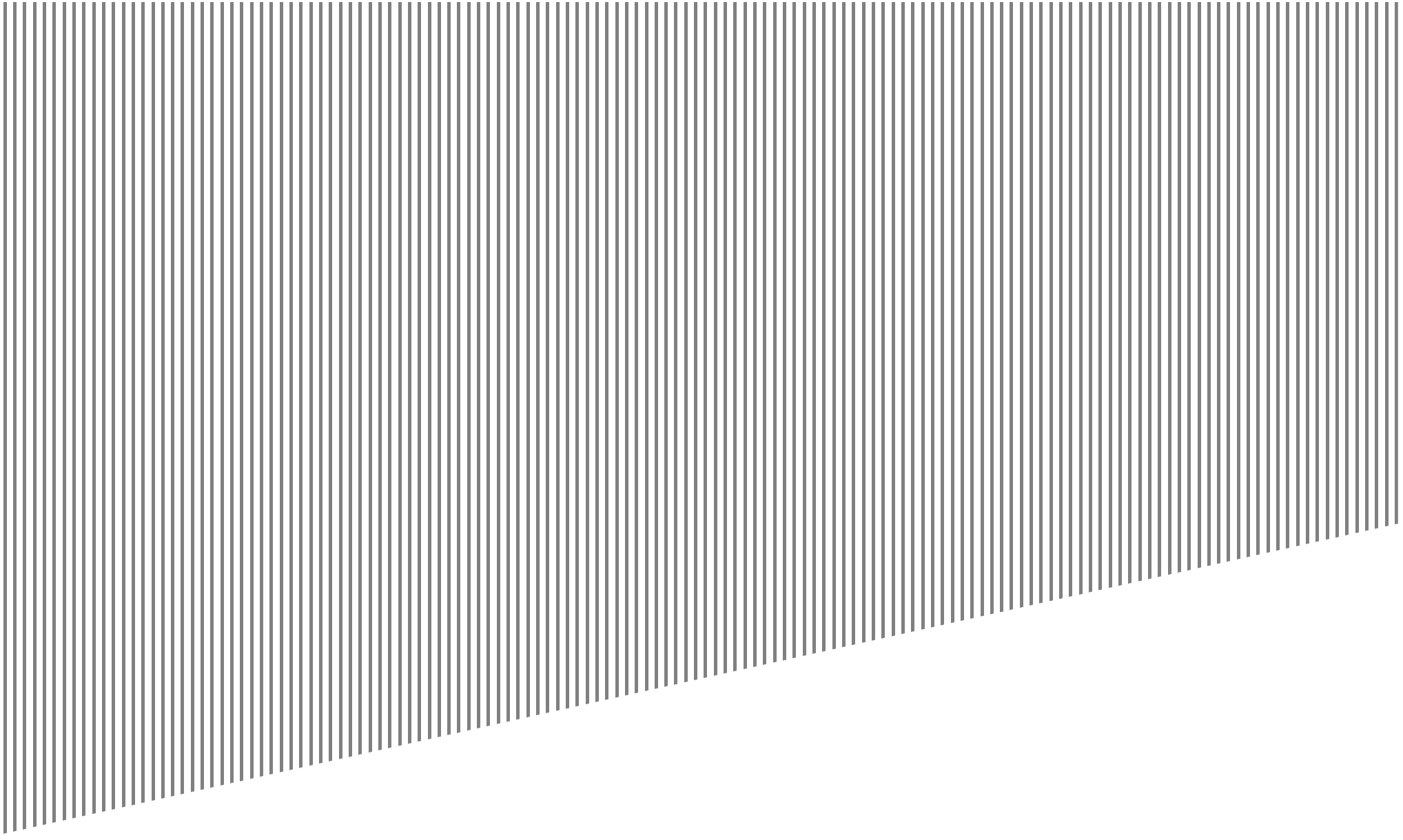
Extending cut-off date for affordable housing incentives (s.80EEA and 80-IBA) [w.e.f. 1 April 2021]



Extending cut-off date for affordable housing incentives (s.80EEA and 80-IBA)(w.e.f. 1 April 2021)

- Deduction in respect of interest on loan taken for certain house property (s.80EEA)
  - Existing provision:-
    - FA (No. 2) 2019 inserted new deduction for interest on housing loan, subject to fulfilment of specified conditions
    - One of the conditions is that loan should be sanctioned during the period from 1 April 2019 till 31 March 2020
  - Proposed amendment:-
    - Cut-off date for sanction of loan extended from 31 March 2020 to 31 March 2021
- Tax holiday for affordable housing project (s.80-IBA)
  - Existing provision:-
    - S.80-IBA grants 100% income linked tax holiday to developers of affordable housing projects, subject to specified conditions
    - One of the conditions is that approval of project should be after 1 June 2016 and on or before 31 March 2020
  - Proposed amendment:-
    - Cut-off date for approval of project extended from 31 March 2020 to 31 March 2021

Rationalisation of notional taxation under s.43CA, 50C and 56(2)(x) [w.e.f. 1 April 2021]



Notional taxation of income under ss.43CA, 50C and 56(2)(x) of ITA

- S. 43CA and s. 50C of ITA provide for notional taxation on transfer of land or building or both held as stock in trade / capital asset for a consideration less than stamp duty (SD) value, SD value adopted or assessed or assessable by stamp duty authority is deemed to be full value of consideration for computing business income/capital gains
- S. 56(2)(x)(b) of ITA provides that,

Particulars	Taxability under s.56(2)(x)
Where immovable property is received without consideration and stamp duty value exceeds Rs. 50,000	The entire stamp duty value
Where immovable property is received for consideration less than stamp duty value by an amount exceeding Rs. 50,000	Difference between stamp duty value and consideration

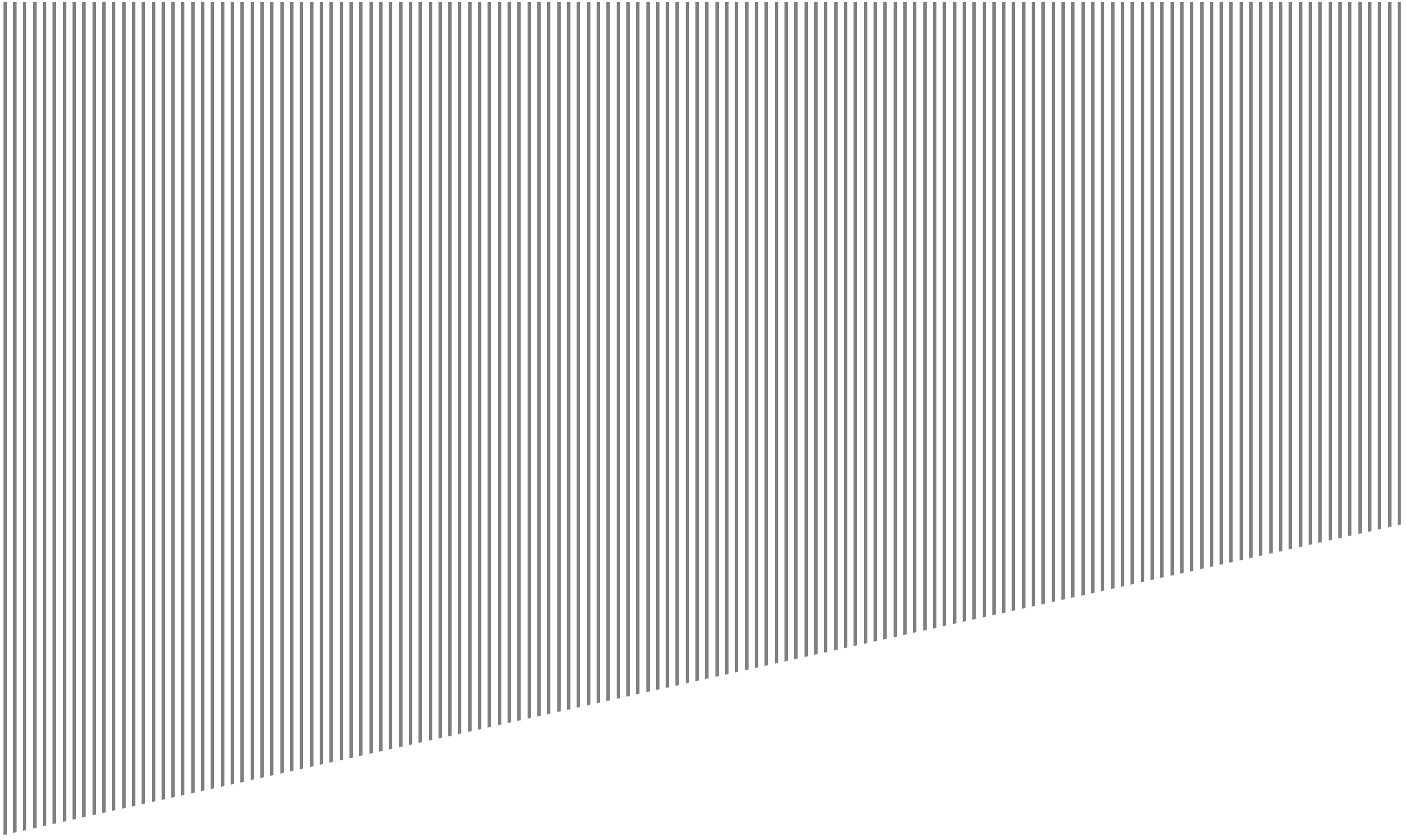
Notional taxation of income under ss.43CA, 50C and 56(2)(x) of ITA

- Where the taxpayer disputes the stamp duty value adopted for immovable property before tax authority, the case may be referred to divisional valuation officer. This remedy is available with taxpayer in respect of notional taxation related to immovable property provided under ss.43CA, 50C and 56(2)(x)
- Vide Finance Act, 2018, provisions of ss 43CA, 50C and 56(2)(x) of ITA were amended to provide threshold exemption of 5% for comparing the stamp duty value with the consideration. Accordingly, if the difference between the stamp duty value and consideration received / discharged was less than or equal 105% of consideration, provisions of ss. 43CA, 50C and 56(2)(x) of ITA were not triggered
- However, it may be noted that the benefit of amendment was available only when the difference between the stamp value and consideration is less than 5% of consideration. Where the delta of 5% of consideration was breached, the stamp value adopted by authority shall be full value of consideration

Impact of proposed amendment in ss.43CA, 50C and 56(2)(x) of ITA

- EM to FB 2020 provides that presently, ss. 43CA, 50C and 56(2)(x) of ITA provides for safe harbor of 5%. Further, EM provides that several representations were made to increase the limit of safe harbor
- In deference to the representations made, the limit of safe harbor has been proposed to be increased to 10%
- It is proposed that if the difference between the stamp duty value and consideration received / discharged will be less than or equal 110% of consideration, provisions of ss. 43CA, 50C and 56(2)(x) of ITA will not be triggered
- However, where the delta of 10% of consideration is breached, no threshold exemption will be applicable
- The proposed amendments are applicable from 1 April 2021 and accordingly will apply to AY 2021-22 and onwards
- It may be difficult to argue that increase in the safe harbor limit from 5% to 10% may be applicable retrospectively as the existing provision already provides for limit of 5% and proposed amendment are not made retrospectively

Concessional rate of tax to resident Co-operative societies [s.115BAD] [w.e.f. 1 April 2021]`



S. 115BAD - Concessional rate of tax to resident Co-operative societies [w.e.f. 1 April 2021 i.e. AY 2021-22]

Existing provisions:

- Currently resident co-operative societies are taxable as per following slab rate:

Total income	Rate of income tax	Surcharge	Health and education cess	Current effective tax rate
Up to INR 10,000	10%	-	4%	10.4%
> 10,000 - 20,000	20%	-	4%	15.6%
> INR 20,000 – 1cr	30%	-	4%	31.17%
Above INR 1 cr.	30%	12%	4%	34.94%*

- The Taxation Laws (Amendment) Act, 2019 (TLAA) introduced s. 115BAA in the Act to provide option to existing domestic companies to pay tax @ 22% by foregoing incentives and deduction. Such companies are relived from MAT also.
- The option can be availed from AY 2020-21 and onwards.
- Co-operative societies represented for CTR on similar lines.

* With surcharge @10% and cess @ 4%

S. 115BAD - Concessional rate of tax to resident Co-operative societies [w.e.f. 1 April 2021 i.e. AY 2021-22]

Amendment proposed by FB 2020:

- It is proposed to provide the concessional rate of tax @ 22% to resident co-operative societies on similar lines as domestic companies w.e.f. AY 2021-22.

Parameters	Details
Nature of benefit	Concessional rate of tax on profits of resident co-operative societies for AY 2021-22 and onwards
Qualifying Conditions	Any resident co-operative society can exercise option under this section in its return and pay tax at 22%, provided- ▶ No profit or investment linked deduction is availed u/s - 10AA, 32(1)(iia), 32AD, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC or under Chapter VIA* other than S. 80JJAA and 80LA ▶ No set off of loss c/f from earlier AYs if such loss is attributable to any deductions stated at bullet (a) above. Such losses are deemed to have been given effect to and no further deduction shall be allowed ▶ Depreciation u/s 32 shall be allowed in such manner as prescribed except additional depreciation u/s 32(1)(iia)

* Thus, deductions i.r.o. donation for scientific research u/s 80GGA, contribution to political parties u/s 80GGC etc. will not be available

S. 115BAD - Concessional rate of tax to resident Co-operative societies [w.e.f. 1 April 2021 i.e. AY 2021-22]

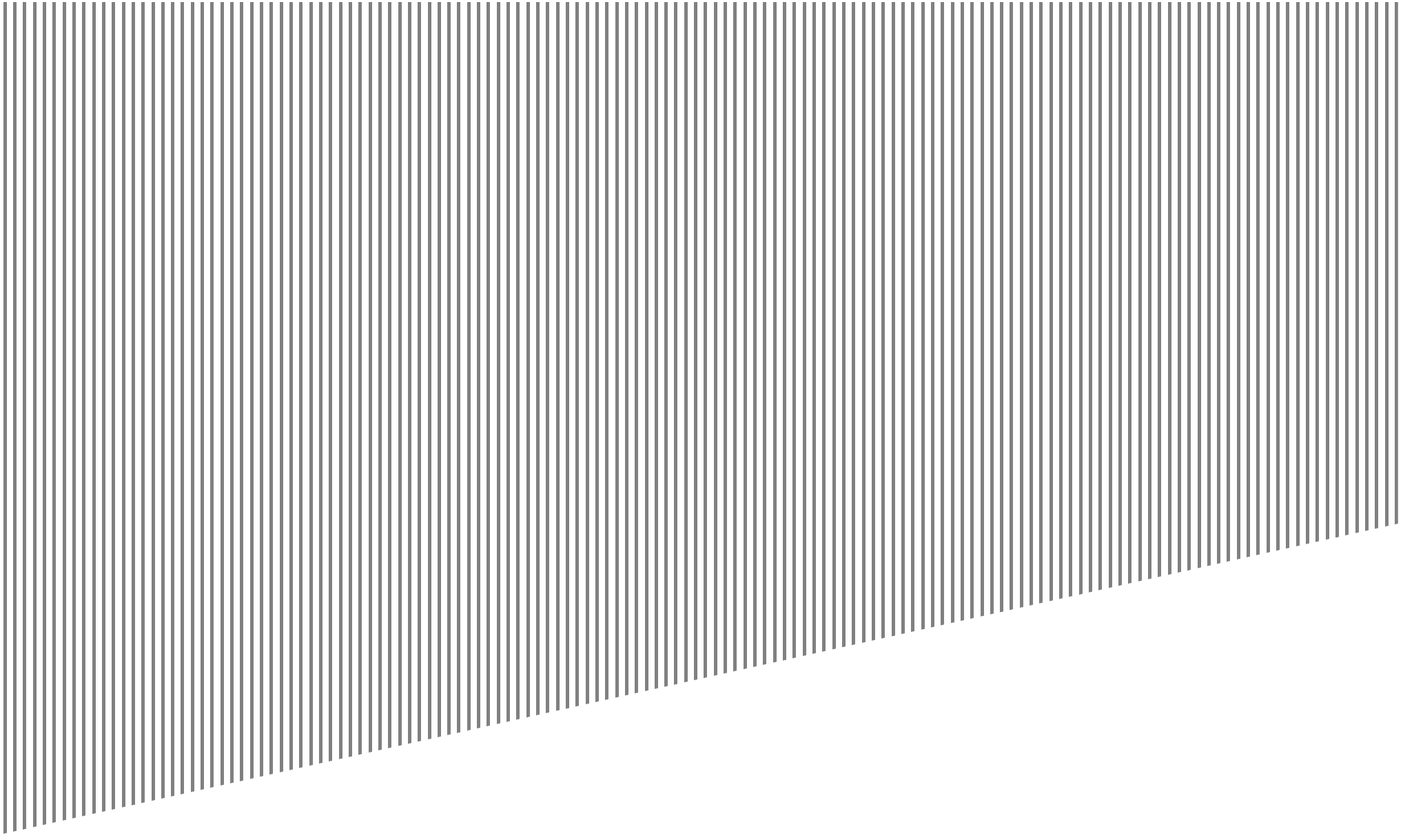
Parameters	Details
Quantum & Period of benefits	▶ CTR of 22% (plus applicable surcharge @10% and cess @4%) on permanent basis ▶ CTR not applicable to incomes which are taxable at special rates under chapter XII ▶ AMT is not applicable (post AMT credit cannot be availed)
Key conditions in relation to exercise of the option	▶ Option to be exercised on or before filing the ROI in prescribed manner. Option can be exercised anytime on or after AY 2021-22 ▶ Option can be exercised even by a resident co-operative societies which may have claimed exemption/incentive in the past ▶ Option once exercised, is irrevocable ▶ If conditions breached, option is lost permanent basis
Other key aspects	▶ Applicable to all resident co-operative societies (new or existing) and no conditions with reference to turnover or nature of activity specified
Sunset date	▶ No sunset date

S. 115BAD - Concessional rate of tax to resident Co-operative societies [w.e.f. 1 April 2021 i.e. AY 2021-22]

Impact analysis

- Conditions are identical to CTR for domestic companies.
  - One major distinction is that s. 115BAA restrict deduction only on profit/income linked deduction as specified under part C of chapter VI-A. However, s. 115BAD restricts deduction of the entire chapter VI-A (except s. 80JJAA and 80LA). Accordingly, deductions such as donation for scientific research u/s 80GGA, contribution to political parties u/s 80GGC etc. shall be allowed to companies but not to co-operative societies claiming the CTR
- Possible beneficiaries of CTR for resident co-operative societies-
  - Co-operative banks (other than primary agricultural credit society or a primary co-operative agricultural and rural development bank) who are not eligible for deduction u/s. 80P
  - Co-operative societies earning substantial interest or dividend income not eligible for deduction u/s. 80P
- Opting for CTR does not arguably dilute concept of mutuality
  - Co-operative housing society collecting contributors from members for common maintenance, they need not pay CTR on such income

Submission of audit reports and certificates preponed to enable pre-filled ITR [w.e.f. 1 April 2020]



Submission of audit reports and certificates preponed to enable pre-filled ITR [w. e. f. A.Y. 2020-21]

- Existing provision:-
  - Submission of various audit reports and certificates is required along with ROI or by due date for furnishing ROI
- Proposed provision:-
  - As per EM, to enable pre-filling of ITR in case of persons having income from business or profession, due date for submission of audit report or certificate is preponed to one month prior to due date of filing ROI
  - Amendment accordingly modifies due date for furnishing audit reports or certificates
  - Amendment also applies to person claiming income lower than presumptive income [such as 44AD, 44AE]
  - Refer provisions whose due dates are amended and provisions whose due dates which remain unamended in later slides
- Analysis:-
  - Some clauses in TAR (Form No. 3CD) are dependent upon events taking place till due date of furnishing ROI [for e.g. disallowance u/s. 43B, 40(a)]
    - Reporting in TAR may not capture events post submission of TAR but before ROI due date
    - Presently, no enabling mechanism for amending TAR [except for s.119(2)]
  - Pre-filled ITR may need to allow flexibility to edit information reported in TAR

Submission of audit reports and certificates preponed to enable pre-filled ITR [w. e. f. A.Y. 2020-21]

- Analysis:-
  - If submission of report is delayed, there may be penal consequences [refer ss.271B, 271BA]
  - Assuming ROI due date is extended from 31 October to 30 November, due date for submission of reports is also automatically extended
  - Due date is defined as "one month prior" to ROI due date
    - In context of s. 94(7), Chennai Tribunal in case of Tube Investment of India ltd. v JCIT [2010] 131 TTJ 359 and P&H HC in the case of Lachhmi Narain Gupta & Sons v CIT [2014] 221 Taxmann 356 have held that reference to a "month" will mean a period of British calendar month
    - As per aforesaid decisions, if ROI due date is 31 October, report submission due date is 30 September
      - Or, whether ROI due date of 31 October is to be excluded, such that report submission due date is 29 September?
  - If due date (say, 31 October) is public holiday, CBDT Circular No. 639 dated 13 November 1992 states that due date can be understood as 1 November [referring to s.10 of General Clauses Act]
  - In case of ss.10(23C), 10A, 50B, 80-IB, 80JJAA, 115JB, 115VW:-
    - While existing provision permits report submission "on or before" ROI due date, proposed provision refers to report submission "before" ROI due date

Provisions now requiring submission of reports/certificates one month before ROI due date

Sections	Particulars
80-IB(7A)	Deduction of in case of building, operating & owing a multiplex theatre
80-IB(7B)	Deduction in case of building, owing & operating a convention centre
80-IB(11B)	Deduction in case of operating & maintaining hospital in rural area
80-IB(11C)	Deduction in case of operating & maintaining a hospital anywhere in India, other than rural area
92F	Definition of certain terms relevant to computation of Arm's length price
10	Items which don't form part of total income
10(23C)- tenth proviso	Audit of accounts of fund/trust/institution/university on income exceeding maximum amount not chargeable to tax
10A	Special provisions in respect of newly established undertakings in free trade zone
12A	Correctness of list of persons covered u/s 13(3)
32AB	Deductions in case of investment deposit account
33AB	Deduction in case of investment in Tea Development account

Provisions now requiring submission of reports/certificates one month before ROI due date

Sections	Particulars
33ABA	Site restoration fund
35D	Amortisation of certain preliminary expenses
35E	Deduction in respect of expenditure on prospecting etc. for certain minerals
44AB	Audit of accounts of certain persons carrying on business & profession
44DA	Special provision for computing income by way of royalties in case of non-residents
50B	Special provision for computation of capital gains in case of slump sale
80-IA(7)	Audit of accounts of a person claiming deduction from profits/gains from industrial undertakings or engaged in infrastructure development
80JJAA	Deduction in respect of employment of new employees
115JB	MAT Provisions
115JC	AMT provision
115VW	Maintenance & audit of accounts for a persons engaged in tonnage taxation scheme

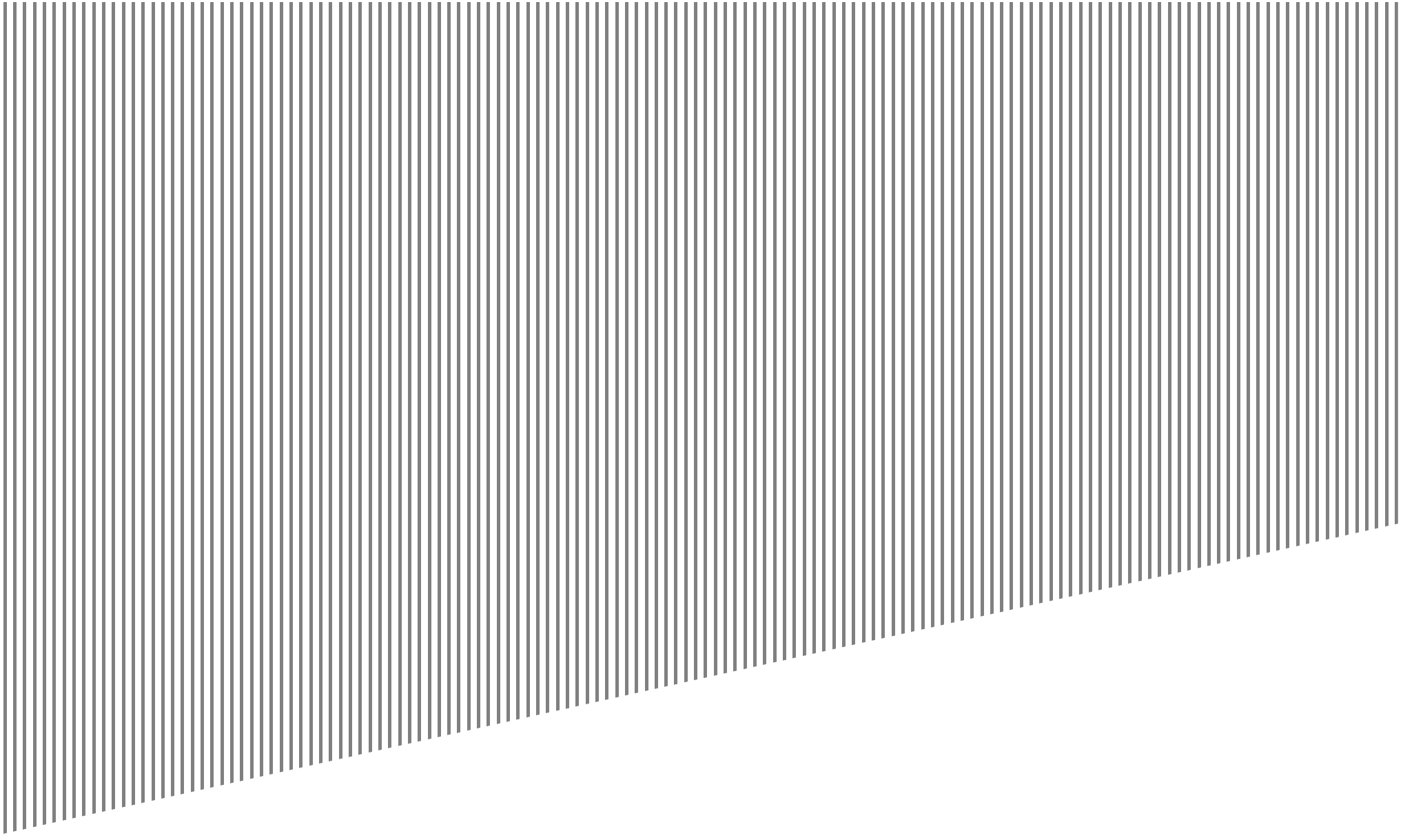
Provisions linked to amendment now requiring submission of reports/certificates one month before ROI due date

Sections	Particulars
44AF	Special provisions for computing profits and gains of retail business
44AE	Special provision for computing profits & gains of business of plying, hiring or leasing goods carriages
44BBB	Special provision for computing profits & gains of foreign companies engaged in business of civil construction
44ADA	Special provision for computing profits & gains of profession on presumptive basis
44BB	Special provision for computing profits & gains in connection with the business of exploration of mineral oils
44AD	Special provision for computing profits & gains of business on presumptive basis
80-IE	Deduction in respect of business activity in North-Eastern areas
80-IC	Deduction in respect of business activity special category states
80-IAC	Deduction in respect of an eligible start-up
80-IAB	Deduction in respect of undertaking engaged in development of SEZ
10AA	Provisions related to SEZ- Incomes not forming part of total income.

Unamended provisions where due date for submission of reports/certificates is unchanged

Sections	Particulars
80-ID	Deduction in profits of business of hotels & convention centres in specified areas
80LA	Deduction in respect of certain incomes of Off shore Banking Units & IFSC
Rule 11UA for s.50CA and s.56(2)(x)	Determination of fair market value in relation to value of unquoted share & property other than immovable property.
80QQB	Deduction in respect of royalty income of authors of certain boks other than text books
115VU	Minimum training requirement for tonnage tax company
80RRB	Deduction in case of royalty on patents
80GGA	Deduction in respect of certain donations for scientific research or rural development
286	Furnishing of report in respect of international group
80DD/80U	Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability
24(b)	Deduction of interest payable on borrowed capital
17(2)(viii)	Fringe benefits or amenity included in Perquisite
35AC	Expenditure on eligible projects or schemes related to social welfare

Relaxation in tax audit threshold (s.44AB) (w.e.f. 1 April 2020)



Relaxation in tax audit threshold (s.44AB) (w.e.f. 1 April 2020)

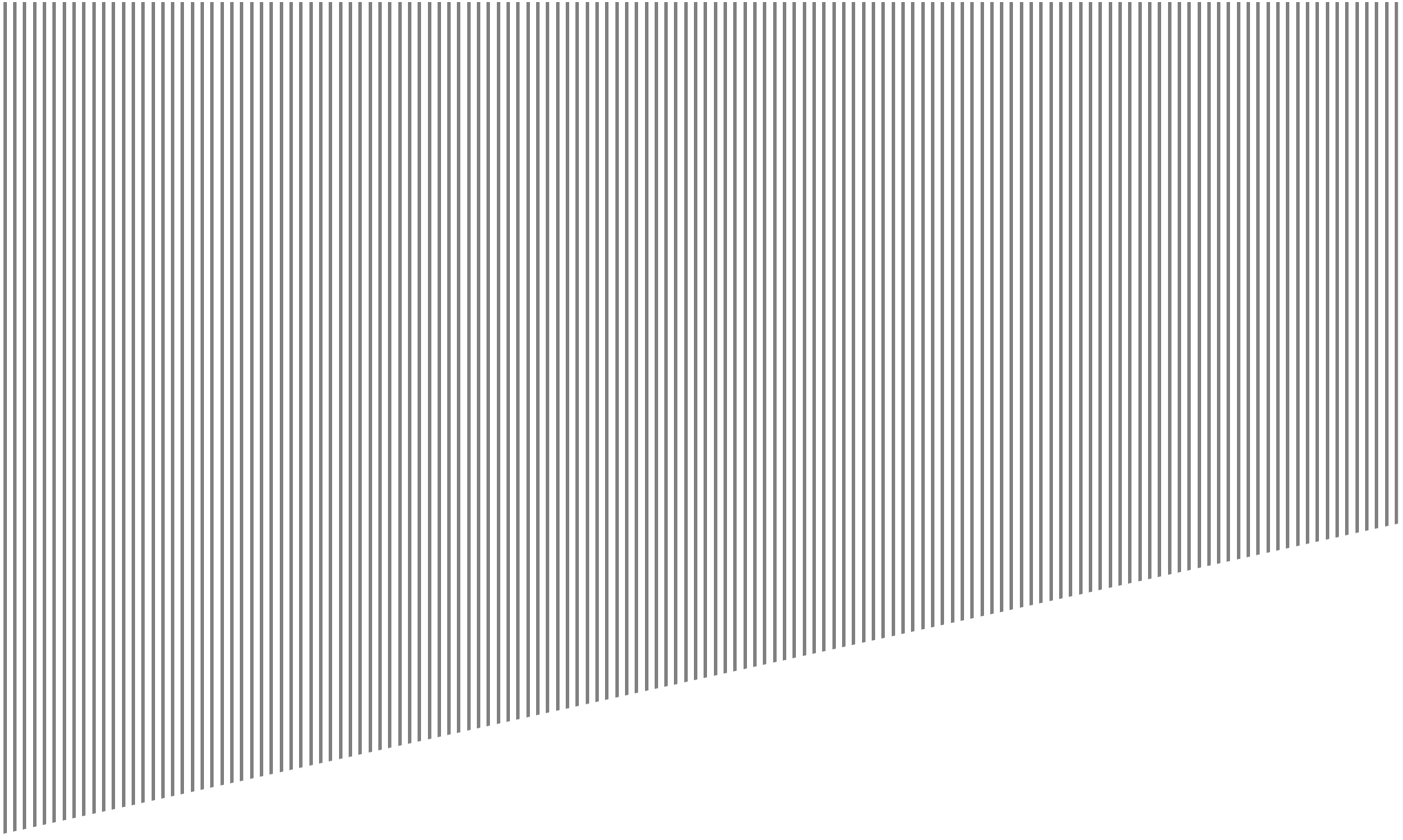
- Existing provision:-
  - S.44AB provides following threshold limits for tax audit:-
    - Business – total sales, turnover or gross receipts > Rs. 1 Cr. in any previous year
    - Profession – gross receipts > Rs. 50 L in any previous year
- Proposed amendment:-
  - Amendment introduces proviso to clause (a) of s.44AB to increase threshold limit for business from Rs. 1 Cr. to Rs. 5 Cr., if:-
    - Aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, $\leq$ 5% of the said amount
    - Aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year $\leq$ 5% of the said payment
  - As per EM and Budget Speech, intention is to reduce compliance burden on MSME, small retailers, traders, shopkeepers, and to boost cash-less economy
  - As per Budget Speech, revised threshold limit applicable to those which carry out less than 5% of their business transactions in cash

Relaxation in tax audit threshold (s.44AB) (w.e.f. 1 April 2020)

- Analysis:-
  - Amendment requires that: "aggregate of all amounts received...in cash" should be < 5% of "aggregate of all amounts received"
    - Similarly, "aggregate of all payments made... in cash" ≤ 5% of "aggregate of all payments made"
  - Arguably, scope of numerator may not include:-
    - Non-cash incomes such as: barter transactions
    - Non-cash expenses such as: ESOP expenditure

    But, above items may be included in denominator
  - Further, denominator is not merely restricted to total turnover of business, but may include all other business transactions such as repayment of loan
    - Receipts and payments for personal purposes (such as bank transfer for purchase of house from savings bank account of sole proprietor) is not to be counted
  - Loss incurred on account of bad debt write off is not "payments made" or "amounts incurred for expenditure"
  - While legislature proposes to relax tax audit compliance, withholding compliance for individual and HUF (which was earlier linked to tax audit compliance) is also modified – refer later slide for withholding compliance

Providing option to avail s.35AD deduction (w.e.f. 1 April 2020)



Providing option to avail s.35AD deduction (w.e.f. 1 April 2020)

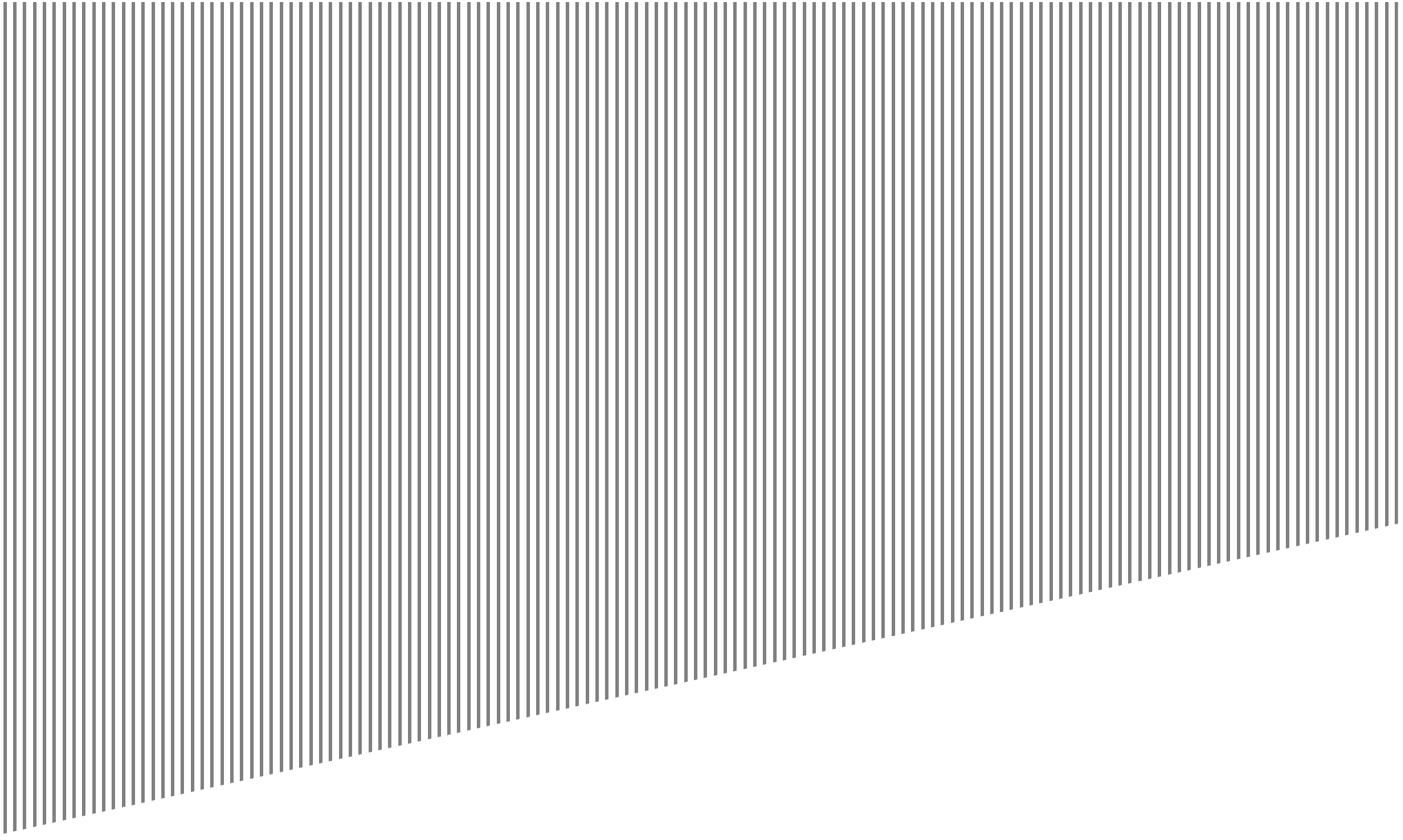
- Existing provision:-
  - S.35AD grants 100% deduction of capital expenditure in case of specified businesses subject to specified conditions
  - Under existing ITL, ambiguity arises whether s.35AD is mandatory or optional, due to s.35AD(1), which states that "an assessee shall be allowed a deduction" of expenditure referred in s.35AD. Further, s.35AD(4) states that "no deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section in any previous year..."
  - Arguably, a taxpayer has a choice to opt out of s.35AD and be governed by normal provisions of the Act
    - Explanatory Memorandum to Finance (No. 2) Bill, 2009 and Budget Speech to Finance Act, 2010 also support that legislative intent of s.35AD is to encourage investment by granting benefit in an 'alternative manner'
    - It is possible that a taxpayer may opt out of s.35AD for – say, s.35AD restricts taxpayer from setting off losses of specified business against other businesses whereas there is no such restriction under the normal provisions of the Act
    - S.115BAA/BAB also supports that taxpayer has choice of not availing s.35AD deduction and instead opt for CTR
    - S.35AD(4) is applicable to expenditure 'referred to in sub-section (1)'; and sub-section (1) refers to expenditure in respect of which deduction is 'allowed' to the taxpayer

Providing option to avail s.35AD deduction (w.e.f. 1 April 2020)

- Proposed amendment:-
  - As per EM, due to s.35AD(4), a legal interpretation can be made that taxpayer opting for CTR, which does not claim s.35AD deduction, would also be denied normal depreciation – this has not been the intention of statute
  - To clarify legislative intent, s.35AD(1) to be amended to provide that, "an assessee shall, if he opts, be allowed…"
  - S.35AD(4) also to be amended to provide that "no deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section…if the deduction has been claimed or opted by the assessee and allowed to him under this section"
  - However, amendment is effective from 1 April 2020 (A.Y. 2020-21) and not retrospective
    - Arguably, amendment being clarificatory of legislative intent, is also applicable to earlier assessment year

Charitable Trusts

Change in registration process of charitable trust [w.e.f. 1 June 2020]



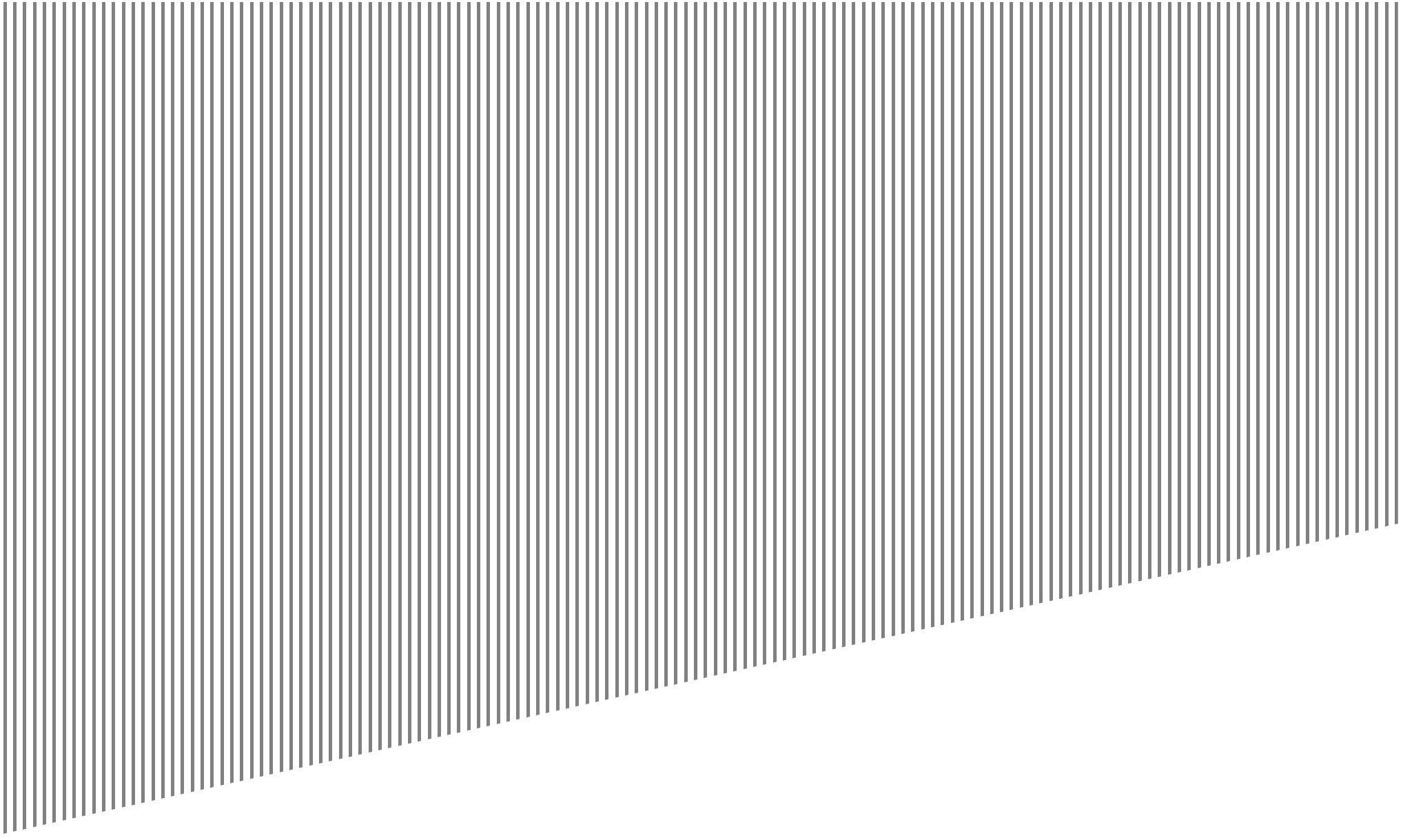
Change in registration process of charitable trust [w.e.f. 1 June 2020]

- The amendment in S. 11, 12A, 12AA and introduction of S. 12AB and its impact is evaluated in the document attached here in below:

Amendment in S.
, 12A, 12AA and 12

(For reading the above inserted file, please refer the attachment to this doc id in the secured portal – Please search with the doc id to source the attachment)

Accountability and Verification of Deductions [w.e.f. 1 April 2020]



Filing of Statement by Donee to cross-check claim of donation by Donor

- There exists various provisions under ITL which provide that an exempt entity (i.e. recipient entity) may accept donations/ payments for utilisation towards their objects or activities in respect of which the payer gets deduction in computation of his income as follows:
  - S. 35 – Deduction for expenditure on scientific research
  - S. 80G – Deduction for donations to various funds, charitable institutions, etc.
  - S. 80GGA – Deduction for donations for scientific research or rural development.
- Currently, there exists no reporting obligation by the recipient entity receiving donation.
- Accordingly, with an intention to standardise processes and to facilitate one-to-one matching (similar to TDS) FB 2020 makes various amendments to oblige the recipient entity to:
  - Issue a certificate to the payer in prescribed form based on which deduction may be claimed
  - Furnish statements to facilitate one-to-one matching

Amendment to S. 80G and S. 80GGA

- FB 2020 has made consequential amendments to S.35, s.80G and s.80GGA to provide that donor shall be allowed deduction only on the basis of information relating to said donation furnished by donee in the statement to the prescribed tax authority.
- In the context of amendment in s.35 (1A) which provides for allowance of deduction to donor basis donee furnishing statement in prescribed manner to the tax authority, there appears to be unintended error in language. The draft bill proposes to disallow claim in the hands of recipient entity instead of in the hands of donor. Clause reads as under:

  "..... the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) shall not be entitled to deduction ....."

- Suitable correction may be expected at the enactment stage.

Fee for Delay in Furnishing Statement/ Issuing Certificate [S. 234G]

- In order to ensure proper administration and timely filing statements by Donee entities under s.35(1) and 80G (5) with Tax Authority as well as Issuance of Certificate to the Payer, FB 2020 has introduced a new S. 234G which levies a fee of Rs. 200 per pay of default.
  - The amount of fee cannot exceed the amount in respect of which failure has occurred.
  - Further, the fee must be paid prior to furnishing the statement/ issuing the certificate.
  - There is no exclusion for reasonable cause. There is no provision of partial or full waiver. Levy of fee appears to be mandatory.
- The provision is drafted on lines similar to the existing S. 234E of the ITA. Accordingly, questions may arise on the constitutional validity of the provision for the reason that there is no provision in the Act for full/partial waiver of such fees on the ground that the levy is unreasonable or arbitrary or for the reason that the delay in filing TDS statement is on account of reasonable cause.
  - Judicial development so far has held S. 234E to be mandatory and constitutional. However, the same is currently pending adjudication before the SC.
- Development in the context of s.234E may have bearing on determination of constitutionality of levy under s.234G.

Fee for Delay in Furnishing Statement/ Issuing Certificate [S. 234G]

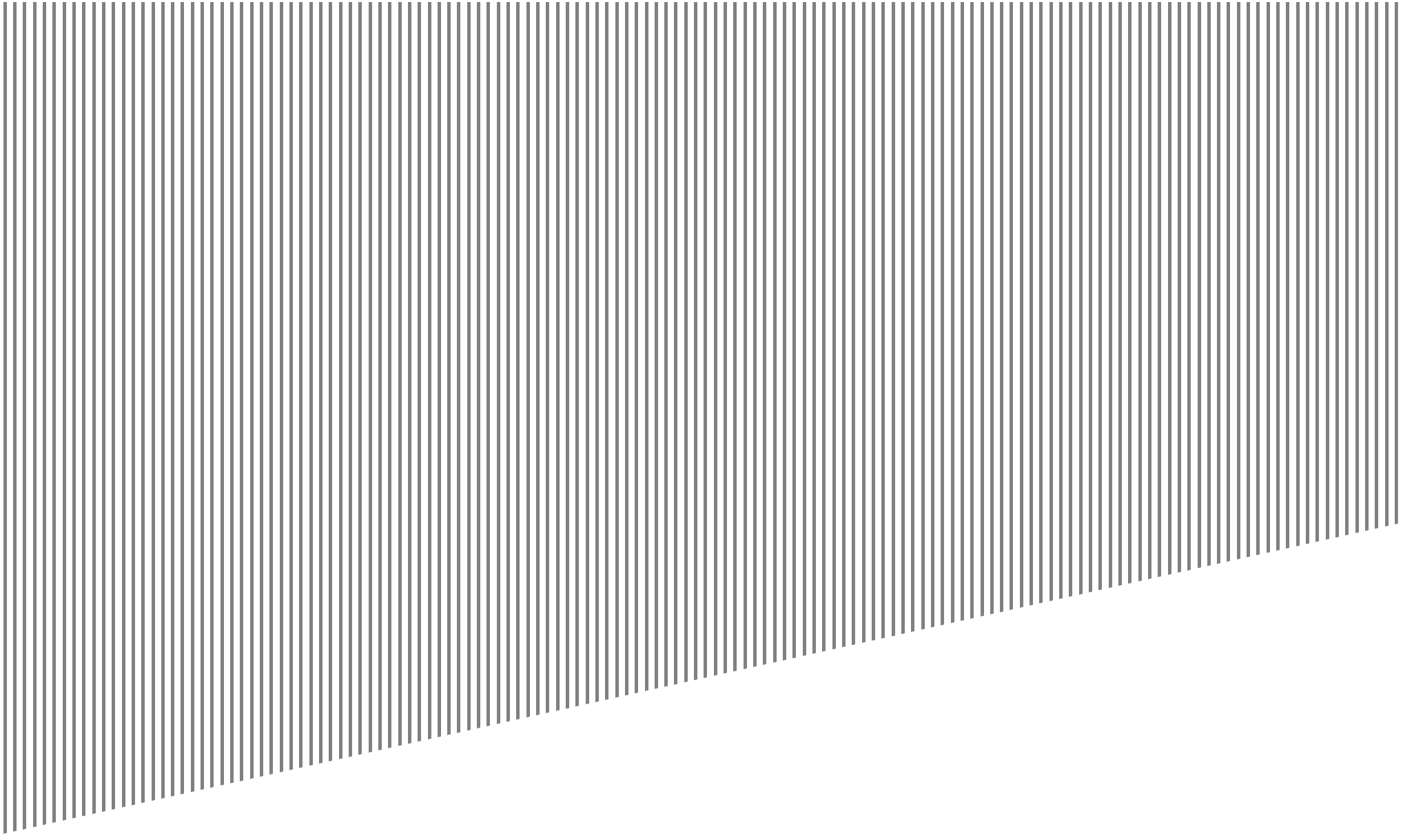
- Separately, the following may be noted:
  - The fee of Rs. 200 per day is the same whether the default is non-furnishing a statement to tax authorities or non-issuance of certificate to payer.
  - However, issue may arise whether where both the defaults are simultaneous, i.e. the recipient has neither furnished statement to tax authority in time nor issued certificate to tax payer, whether the fee will stay at Rs. 200 per day or increase to Rs. 400 per day?
  - Further, the fee is levied only in respect of defaults with respect to requirements to furnish statement/ issue certificate u/s 35 and S. 80G. **Defaults u/s 80GGA are not covered within the ambit of S. 234G**

Penalty for Delay in Furnishing Statement/ Issuing Certificate [S. 271K]

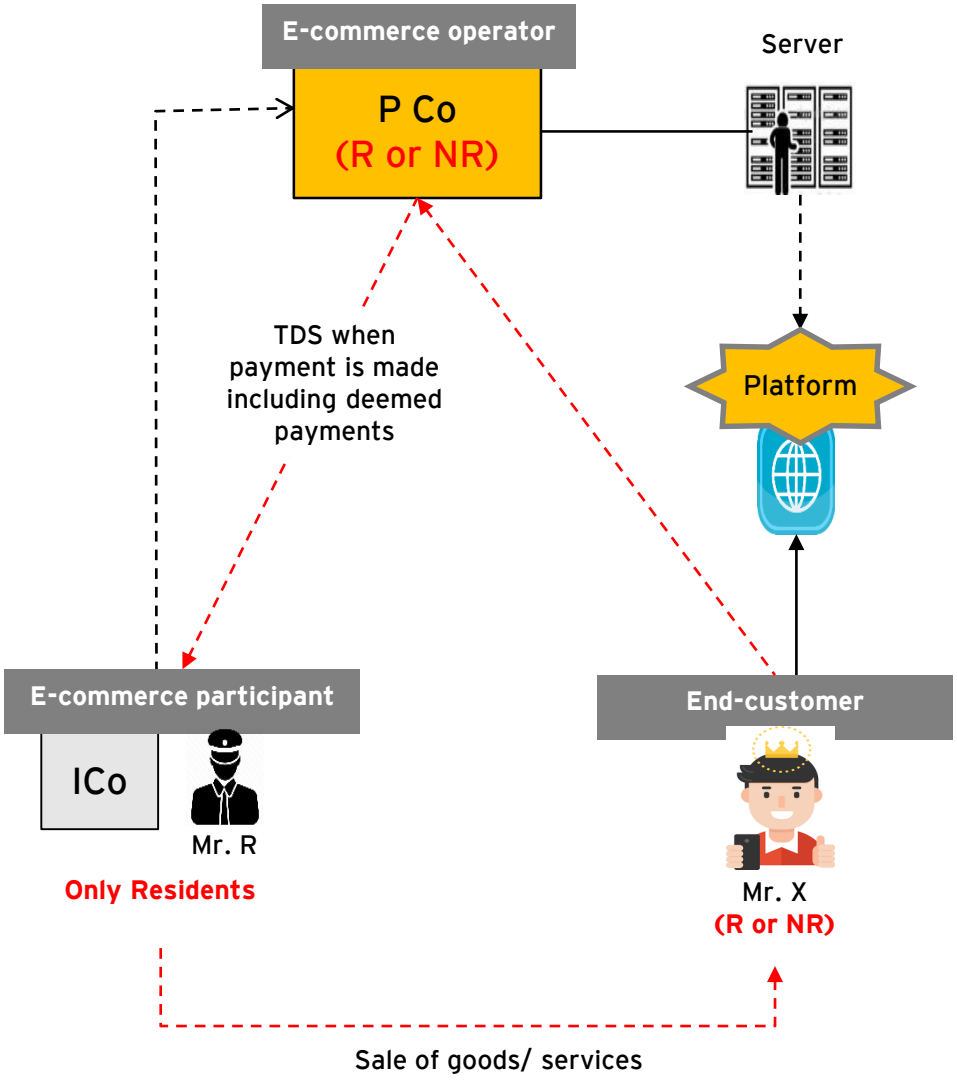
- In order to ensure proper administration and timely filing statements by Donee entities under s.35(1) and 80G (5) with Tax Authority as well as Issuance of Certificate to the Payer, FB 2020 has introduced a new S. 271K as per which a penalty may be levied in the range of Rs. 10,000 to Rs. 1 Lakh for default in furnishing statements/ issuing certificate u/s 35 and S. 80G
  - The penalty can be levied for both default furnishing a statement to tax authorities or non-issuance of certificate to payer
  - There is no back-up amendment in S.272B, 273B to provide protection for cases involving reasonable cause. This seems to be intended and may get amended at enactment stage.
  - Like in case of S.234G, issue may arise whether where both the defaults are simultaneous, i.e. the recipient has neither furnished statement to tax authority nor issued certificate to tax payer, whether penalty can be levied separately for either default?
  - Further, the penalty is levied only in respect of defaults with respect to requirements to furnish statement/ issue certificate u/s 35 and S. 80G. **Defaults u/s 80GGA are not covered within the ambit of S. 234G**

TDS, TCS, etc.

TDS on e-commerce transactions [s.194-O] [w.e.f. 1 April 2021]



Provisions in brief



- S.194-O applies where sale of goods or provisions of services of **e-commerce participant** is facilitated by an **e-commerce operator** through its digital or electronic facility or platform (by whatever name called)
- TDS by e-commerce operator @1% on payment or credit to e-commerce participant, whichever is earlier
  - TDS @ 5% if e-commerce participant does not furnish PAN or Aadhar
- Provisions are introduced w.e.f. 1 April 2020 (A.Y. 2021-22)
  - Payments or credits made from 1 April 2020 liable to TDS @ 1% u/s. 194-O

Meaning of “e-commerce operator”

- “e-commerce operator” means:
  - a person (whether resident or non-resident)
  - who owns, operates or manages digital or electronic facility or platform for electronic commerce and
  - is a person responsible for paying to e-commerce participant
- Direct payment by customer to e-commerce participant deemed to be credited/ paid by e-commerce operator to e-commerce participant and hence, liable to TDS
- Whether platform owner/ aggregator liable to TDS if contractually no obligation of collection and payment to participant? Refer ensuing slides

Meaning of "e-commerce participant"

- "e-commerce participant" means:
  - a person resident in India
  - selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce
  - excludes an individual/ HUF if gross receipts through a e-commerce operator is < INR 5 lakhs in previous year and PAN/ Aadhaar has been furnished to e-commerce operator
    - Threshold of INR 5 lakhs applies per e-commerce operator
- "e-commerce participant" being seller of goods may also be liable to TCS u/s. 206C, subject to conditions therein

Meaning of "electronic commerce"

- "electronic commerce" means supply of goods or services or both, including digital products, over digital or electronic network
  - "services" includes FTS and professional services as defined in s.194J
  - Goods would cover manufactured or acquired or second-hand goods
  - Arguably, not applicable when residents sell goods/ services on their own platform and not through e-commerce platform
- Since supply of goods or services needs to be *"over digital or electronic network"*, does it cover physical goods or services?
  - S. 194-O(1) covers transactions of sale of goods / services ***facilitated*** by e-commerce operator through digital or electronic facility or platform
  - E-commerce participant is defined to mean a person who sells goods or provides services through digital / electronic facility / platform for electronic commerce
  - Accordingly, reference to electronic commerce seems to cover digital as also physical goods as also services which may involve human interface
  - Accordingly, the section covers not only online services of music or digital content or software but may also extend to technical or profession services or services of drivers or any other person obtained over e-commerce platform

Absence of payment to e-commerce operator

In certain e-commerce models, customers directly make payment to e-commerce participant and no payment is required to be made by e-commerce operator

Whether e-commerce operator is obliged to deduct tax u/s. 194-O??

- View 1: TDS obligation triggers
  - Explanation to s.194-O(1) deems any payments directly made by customers to e-commerce participants to be amount credited or paid by e-commerce operator
  - Thus, on a deemed basis, obligation to deduct tax u/s. 194-O(1) triggers on e-commerce operator
- View 2: No TDS obligation triggers
  - For s. 194-O, the "e-commerce operator" is *"a person who owns….and* ***is responsible for paying to e-commerce participant****"*
  - No TDS obligation (including w.r.t. deemed payment) when person is not covered as "e-commerce operator"
  - Thus, it may be suggested that in a situation where participant can contractually enforce payment only against the customer and the participant in fact has obligation to make commission payment to the operator, s.194-O(1) and its Explanation is inapplicable

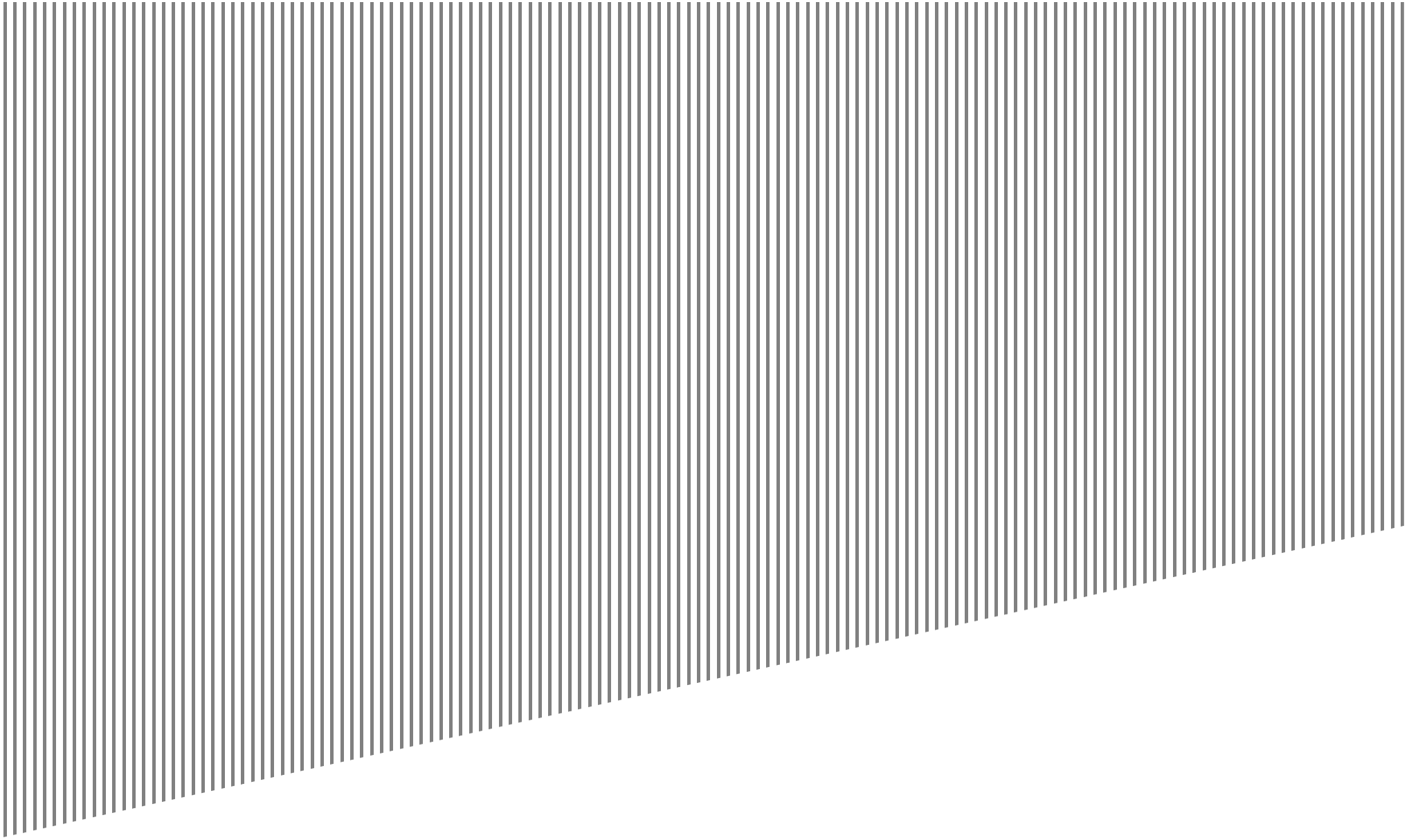
Whether NR operator with no India nexus is liable to deduct tax u/s. 194-O?

- Unlike s.195, s.194-O does not have any specific provision to extend obligation to NR e-commerce operators with no nexus in India
  - NR payer triggers TDS obligation when the payment is made in connection with taxable presence of NR in India
  - If NR payer has no physical presence in India till SEP triggers business nexus, arguable that TDS obligation is not triggered
- In any case, proviso to s. 201 may protect NR operator if the participant provides requisite confirmation
- Still, on a conservative basis, NR operator may pursuant to contractual arrangement require buyer to make 1% payment to NR or NR's agent in India which can be used for discharging TDS
- Also, one needs to evaluate the impact of amended s.204 (refer ensuing sildes)

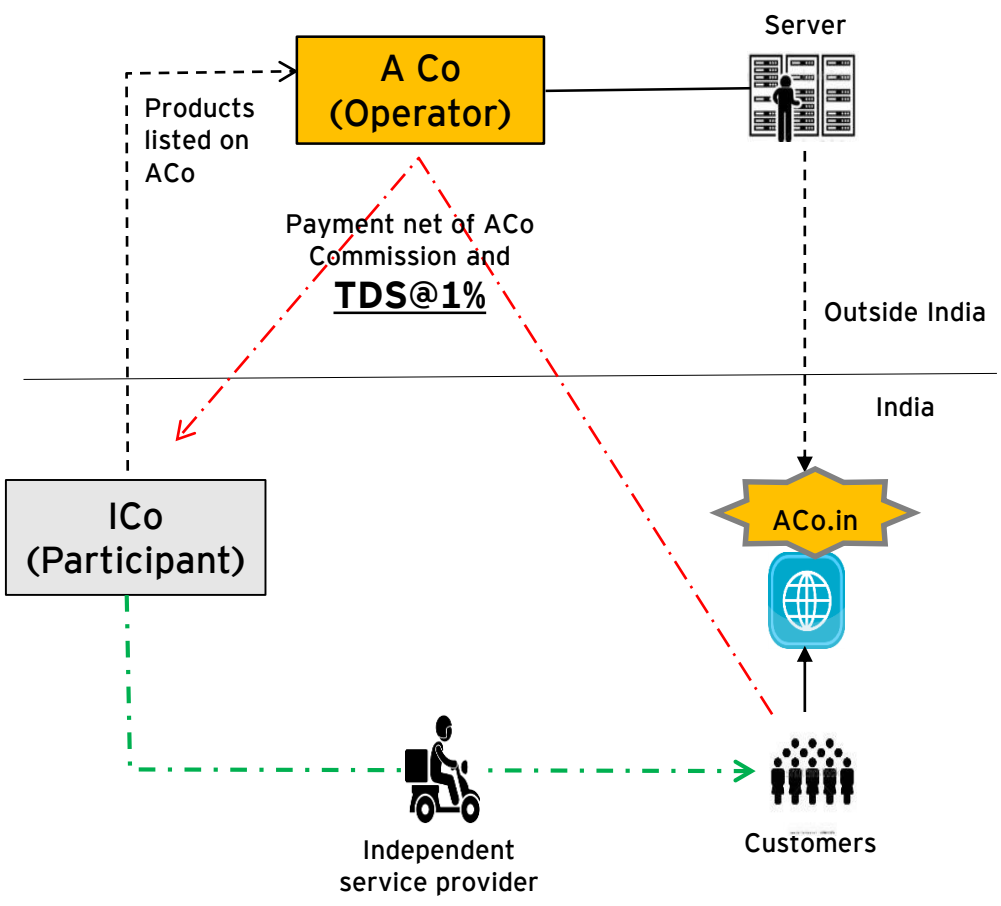
Impact on other TDS provisions

- S.194-O contains a non-obstante clause and overrides other TDS provisions
- As per sub-section (3) of s.194-O, no TDS under other provisions if –
  - tax has been deducted u/s. 194-O or
  - no tax is to be deducted u/s. 194-O in case of payments to individual/ HUF < INR 5 lakhs
- "Services" u/s. 194-O includes FTS and professional services as defined in s.194J
  - Thus, 1% TDS applicable if such services are provided through online platforms or "e-commerce operator" as against 2% for FTS or 10% for professional services u/s. 194J
- **S.194-O does not apply to income earned by e-commerce operator**
  - Curiously, proviso to s.194-O(3) explicitly states that exception in s.194-O(3) does not apply to receipts by e-commerce operator for hosting advertisements or providing other services not connected with sale of goods/ services referred in s.194-O
  - If operator is resident, payments may be subject to WHT u/s. 194C, 194H, etc.
  - If operator is a NR, payments may be subject to WHT u/s. 195 (subject to treaty relief)
    - Payment to NR for hosting advertisement may be subject to EL with exemption u/s. 10(50) of ITA

Applicability to various e-commerce models



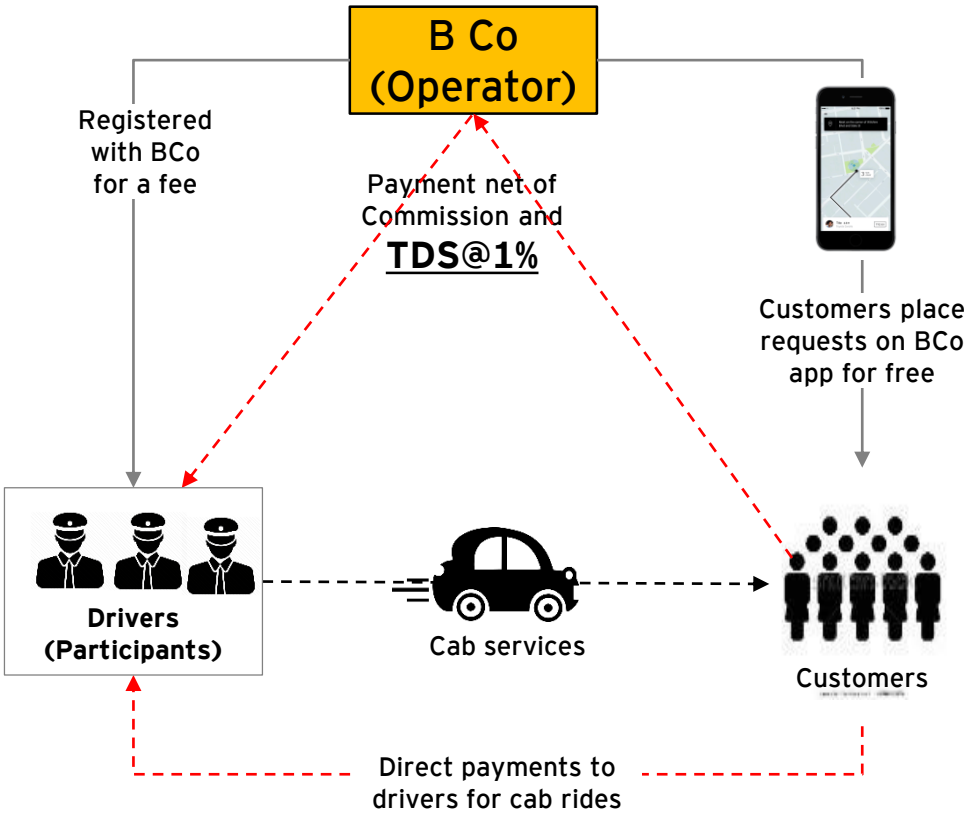
Sale of goods on a digital platform



- ICo, an Indian resident, is e-commerce participant who sells goods on ACo.in
- ACo is e-commerce operator since -
  - It owns, operates or manages ACo and
  - It is a person responsible for paying to ICo
- Thus, ACo will now have to deduct tax @ 1% on gross payments made to ICo
  - 5% TDS if ICo fails to furnish PAN/ Aadhar
- ACo will remit money to ICo after deducting its commission and TDS @ 1%

Arguably, s.194-O may not apply to e-retailers who sell goods on their own platform and not through e-commerce operator (R or NR)

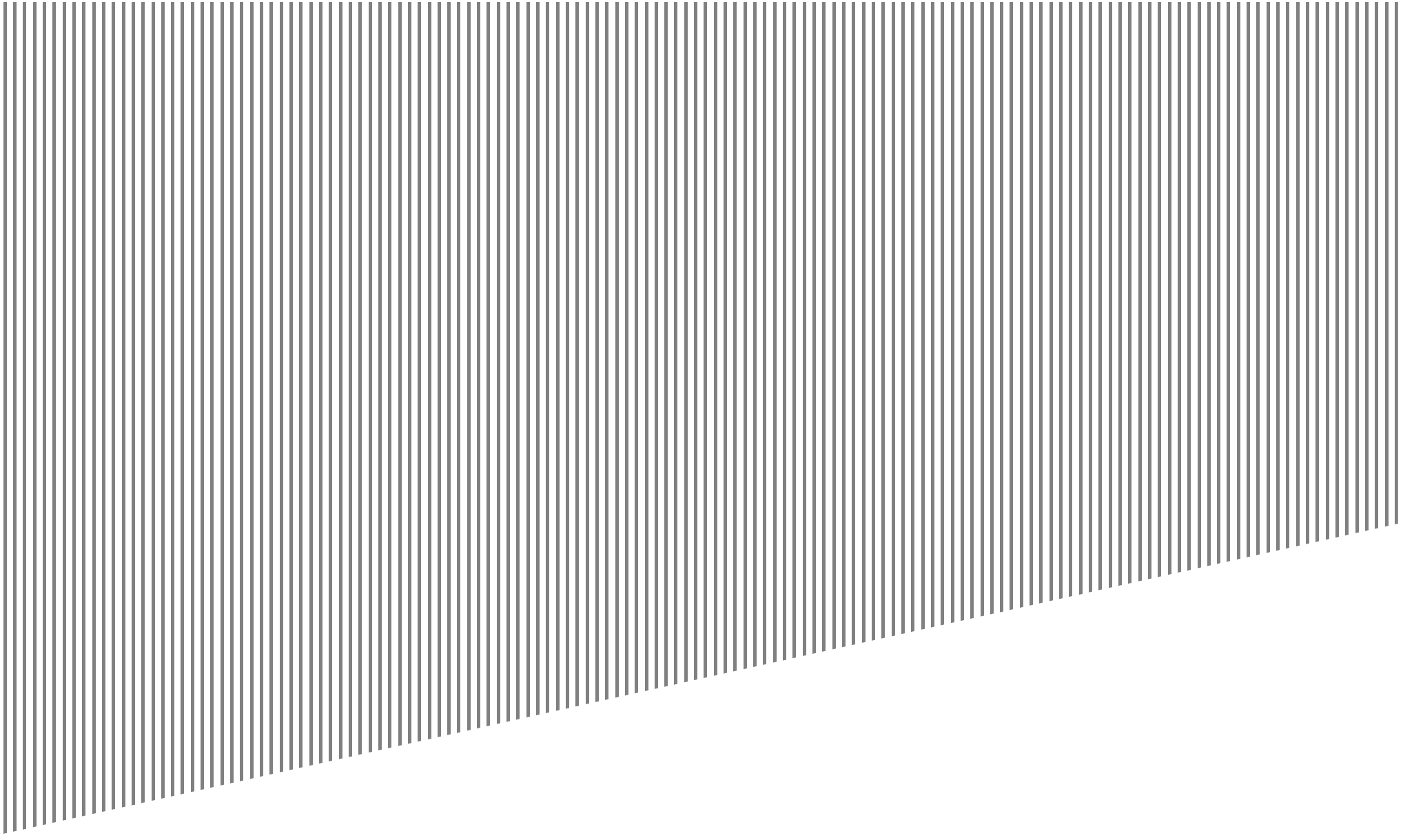
Provision of services using a digital platform



s.194-O N.A. if e-commerce participant is an individual or HUF with gross amount < INR 5 lakhs earned through e-commerce operator (R or NR)

- Drivers, resident individuals, are e-commerce participants rendering services through digital platform, viz. BCo App
- BCo is e-commerce operator since -
  - It owns, operates or manages BCo App and
  - It is responsible for paying to drivers
- Direct payments by customers to driver are deemed to be gross receipts payable by BCo [Expl. to s.194-O(1)]
- BCo will have to deduct tax @ 1% on gross payments made to each driver (incl. direct receipts) provided -
  - Gross receipts of each driver from BCo ≥ INR 5 lakhs and PAN/ Aadhar is furnished

Person responsible for paying (s.204)(w.e.f. 1 April 2020)



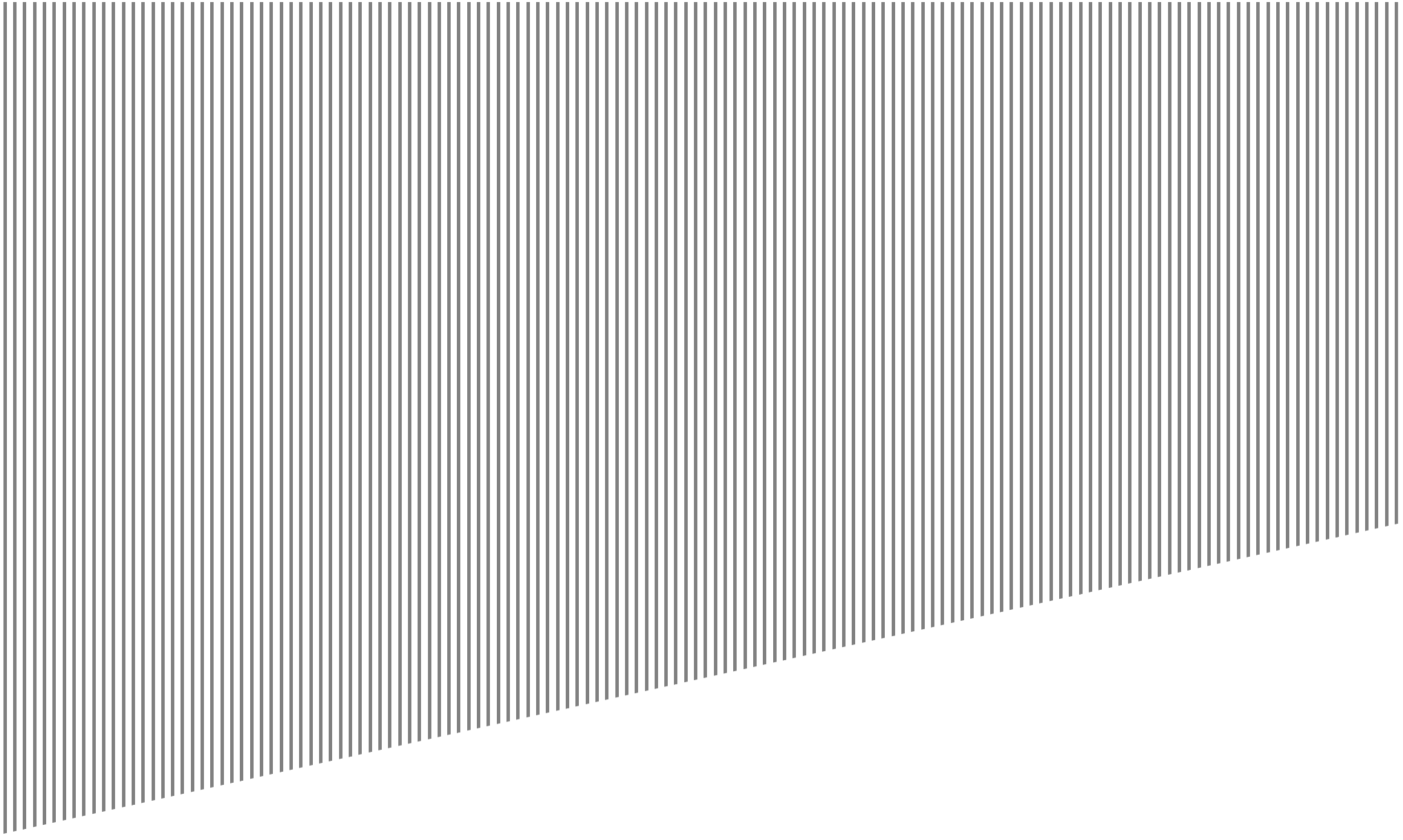
Person responsible for paying (s.204) (w.e.f. 1 April 2020)

- Existing provision:-
  - Primarily, s.204 triggers tax withholding obligation for specified persons
  - Specified persons are those covered by definition of "person responsible for paying" (and hence responsible for tax withholding) for purposes of Chapter XVII and s. 285 (obligating NR having liaison office to file statements)
  - S.204 presently covers, for instance, employers, authorised dealers, payer of any sum chargeable to tax
- Proposed amendment:-
  - S.204 to be amended by insertion of additional clause (v) – As per EM, such insertion is stated to be a consequential amendment to new s.194-O creating tax withholding obligation on e-commerce platform operators on payments to e-commerce participants
  - Technically, obligation under proposed a.194-O extends to resident as also non-resident e-commerce platform operator
  - Proposed clause (v) of s.204 regards each of the following to be a "person responsible for paying" when the person is NR
    - NR himself
    - Any person authorised by NR
    - Agent of NR
    - Any person who is deemed to be agent of NR u/s. 163

Person responsible for paying (s.204) (w.e.f. 1 April 2020)

- Analysis:-
  - Deemed agent u/s. 163 covers the following:-
    - An employee of NR
    - Person having business connection with NR
    - Person from or through whom NR is in receipt of any income, directly or indirectly
    - Trustee of NR
  - Unlike as canvassed in EM, s.204(v) is not restricted in its application to s.194-O
    - It may obligate compliance of Chapter XVII wherever section refers to 'person responsible for paying' (e.g. when commission payment by NR to R in India u/s. 194H)
    - In case of s.194-O, there is no reference to person responsible for payment except that definition of e-commerce operator itself introduces responsibility of deduction on e-commerce operator making payment to e-commerce participant
  - To evaluate if s.204(v) creates consequential TDS obligation for buyer himself which remits payment as buyer may indirectly be responsible for triggering business connection including for SEP and/or is the reason why NR receives income from seller
  - Arguably, a deemed agent u/s. 163 will trigger obligation u/s. 204(v) provided payment by such a deemed agent to e-commerce participant relates to transaction having nexus with business connection giving rise to deemed agency relationship u/s. 163 [i.e. such liability does not extend to overall liability of NR]

Amendment to s. 194A [w.e.f. 1 April 2020]



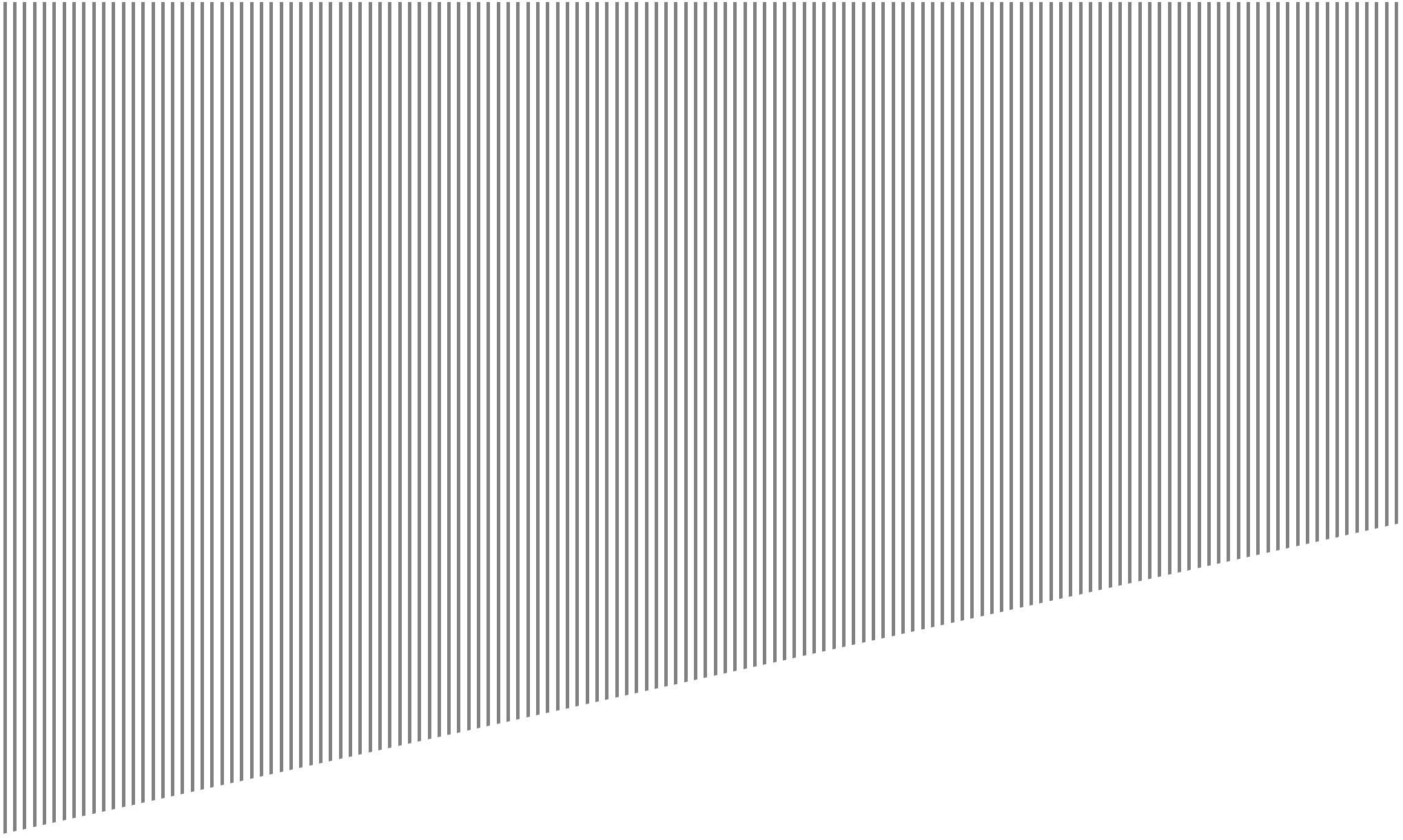
Enlarging the scope for tax deduction on interest income u/s. 194A

- Section 194A of the Act governs interest other than interest on securities. Sub-section (1) thereof provides that any person not being individual or HUF who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall deduct income-tax at the rates in force.
- Sub-section (3) of said section provides for circumstances in which the provisions of tax withholding under sub-section (1) shall not apply.
  - Clause (*v*) of sub-section (*3*) provides exclusion for interest income credited or paid by a cooperative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a cooperative society to any other co-operative society.
  - Clause (*viia*) of sub-section (*3*) exclusion for interest income credited or paid in respect of, deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank; and deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a cooperative society or bank referred to in sub-clause (*a*), engaged in carrying on the business of banking.

Enlarging the scope for tax deduction on interest income u/s. 194A

- It is proposed to amend sub-section (*3*) so as to insert a proviso to provide that a co-operative society referred to in clause (*v*) or clause (*viia*) shall be liable to deduct income-tax in accordance with the provisions of sub-section (*1*), if--
  - the total sales, gross receipts or turnover of the co-operative society exceeds fifty crore rupees during the financial year immediately preceding the financial year in which the interest referred to in sub-section (*1*) is credited or paid; and
  - the amount of interest, or the aggregate of the amount of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than fifty thousand rupees in case of payee being a senior citizen and forty thousand rupee in any other case.

Reduction in the withholding rate in case of FTS [w.e.f. 1 April 2020]



Reduction in the withholding rate in case of FTS [w.e.f. 1 April 2020]

Existing provisions:

- Section 194J requires TDS at 10% on the following payments to resident:
  - Fees for professional services; or
  - Fees for technical services; or
  - Renumeration or fees or commission paid to a director of a company (other than those on which tax is deductible u/s 192); or
  - Royalty; or
  - Any sum referred in s. 28(va) (non complete payments)
  - The threshold limit for deduction u/s 194J is INR 30,000/- in a FY
- Section 194C requires TDS on payment to residents for carrying out any work in pursuance of a contract:
  - 1% where payment is made to individual or HUF
  - 2% in other cases
  - The threshold limit for deduction u/s 194C is INR 30,000/- in a FY

Reduction in the withholding rate in case of FTS [w.e.f. 1 April 2020]

- As per explanatory memorandum, there are large number of litigation on the issue of short deduction arising out of characterisation dispute between s. 194C and s 194J. Possible illustrations could be:
  - Contract for design and construction of plant or building
  - Document management services [refer Tata Sky Ltd. (99 taxmann.com 272 (Mum Trib)]
  - AMC contract for repairs and maintenance of computers [refer Jagran Prakashan Ltd. (98 taxmann.com 459) (luck- Trib)]

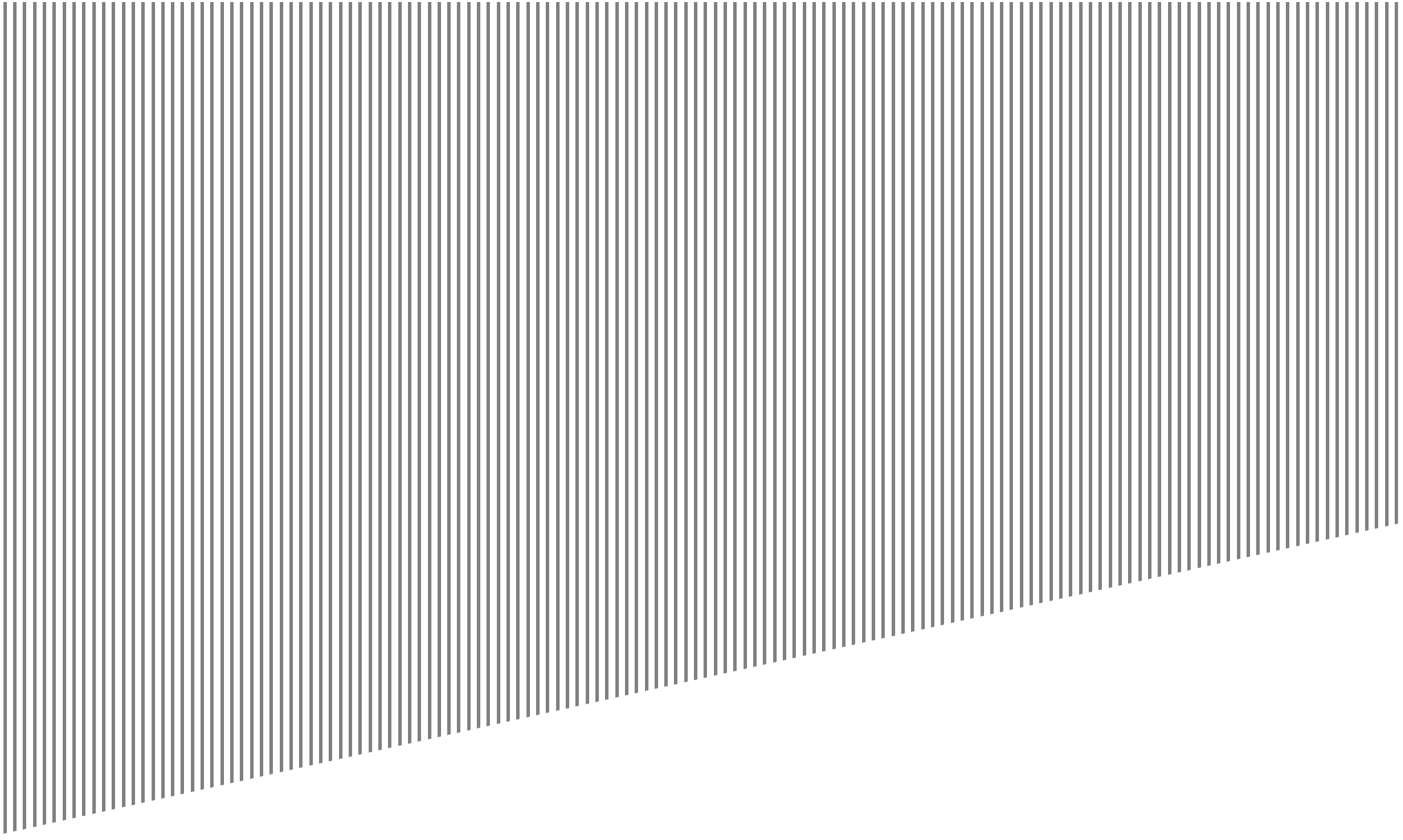
Amendment proposed by FB 2020:

- Reduction of TDS rate u/s 194J **in case of FTS** to 2% (from existing 10%)

Impact analysis:

- TDS rate in other cases (professional fees, royalty, non complete fee etc.) of s. 194J will remain same at 10%
- Amendment resolves issues relating to short deduction of taxes arising out of characterisation dispute between "work" and "FTS".
- But dispute may still persist in case of individual/HUF in view of TDS rate difference i.e. 1% u/s 194C and 2% under amended s. 194J

Amendment related to s. 206C



Widened scope of TCS provision u/s 206C (w.e.f. 1 April 2020)

- FB proposes to insert new sub-section in the s. 206C to expand the tax collection mechanism to cover the following persons:
  - Authorised dealer will be required to collect tax at the rate of 5% from the remitter if the aggregate sum remitted is INR 7 lakhs or more during the financial year for remittance outside India under the LRS scheme [S.206C(1G)(a)]
  - Tour operator will be required to collect tax at the rate of 5% on sum paid by the buyer of overseas tour program package [S.206C(1G)(b)]
    - There is no de-minimus threshold provided
  - Sellers of goods whose sales, turnover or gross receipts exceeds INR 10 crores during the preceding financial year who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding INR 50L in any previous year will be required to collect tax at the rate of 0.1 % of the sale consideration exceeding INR 50L received from buyer. [S.206C(1H)]
    - Section would apply to any goods other than as provided in s. 206C(1) – business of trading in alcohol, liquor, forest produce, scrap, etc., S.206C (1F) sale of motor vehicles exceeding value of Rs. 10L or S.206C (1G) – remittances under LRS or overseas tour program package

Widened the scope of TCS provision u/s 206C (w.e.f. 1 April 2020)

- In case where the payer fails to provide PAN or Aadhaar number to the payee, while Memorandum provides for increased TCS rates as under, there is no back-up amendment in the ITA

Nature of transaction/goods	TCS rate in normal circumstance	TCS rate in case failure to provide PAN/Aadhaar
Overseas remittance under LRS scheme	5%	10% (As per memorandum to FB)
Buyer of overseas tour package	5%	10% (As per memorandum to FB)
Sale of goods above specified limit	0.1%	1%

- Buyer/remitter will be entitled to credit for TCS in his tax return. However, in relation to TCS on remittance for LRS/Overseas tour, rules may need amendment since such remittances do not represent "income" of remitter/buyer
- Lower/NIL TCS facility to buyer is not extended to any of the proposed TCS provisions

TCS on remittance through LRS/tour operator

- "authorised dealer" is proposed to be defined to mean a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security.
- "Overseas tour program package" is proposed to be 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 expense of similar nature or in relation thereto.

TCS on remittance through LRS

- As it appears TCS provision in case of overseas remittance may apply qua each authorised dealer. The threshold of Rs. 7 L or more in a financial year may apply qua each authorised dealer
  - To clarify, suppose the remitter remits the amount of Rs. 5 lakhs and Rs. 4 lakhs outside India through two authorised dealer respectively during the year. In such case, the TCS provision may not apply as the amount of remittance qua each dealer is less than specified limit of Rs. 7 lakhs
  - While there is no clarity presently, as it appears, any remittance under LRS scheme of value exceeding the prescribed limit may be subjected to TCS provisions. Accordingly, transactions of purchase of prepaid forex card or purchase of currency or transfer to dollar denominated bank account abroad, of the value of 7L and above may be covered by TCS provision

TCS provisions in relation to sale of goods

- The expression "buyer" is defined to mean a person who purchases any goods subject to certain exclusion. Refer next slide
- Seller is defined to mean a person whose total sales, cross receipts or turnover from the business carried on by him exceed Rs. 10 cr. during the financial year immediately preceding the financial year in which sale of goods is carried out
  - The seller however will not include any person as the Central Government may, by notification in the official Gazette, specify for this purpose, subject to such conditions as may be specified therein
- Technically, any sale by Indian resident to non-resident outside India of any goods where value exceeds the threshold limit may trigger TCS. If non-resident has no PAN, there could be TCS at 1%. It is likely that non-resident may not be interested in seeking refund of TCS by filing tax return in India if he has no taxable presence in India. It is likely that in such case, the TCS may become cost for the seller
  - The resident seller should, however, be able to resist obligation to TCS as obligation of tax collection arises only when there is liability to tax triggered by the concerned person in India and like TDS, S.4 and 5 would not permit collection or recovery if the concerned taxpayer is beyond the tax net.
  - There is likely that Government may notify exclusion of seller from TCS in respect of export sale pursuant to power retained. Refer, ET news dt. 03.02.2020

TCS provisions in relation to sale of goods

- Intent is to widen and deepen the tax net
- Covers B2B transactions
- TCS will be in addition to GST compliance. This will increase compliance burden
- Likely result in liquidity issue for buyers. Facility for lower TCS under S.206C(9) is not extended to proposed TCS u/s. 206C(1H)

Exclusion from the ambit of TCS

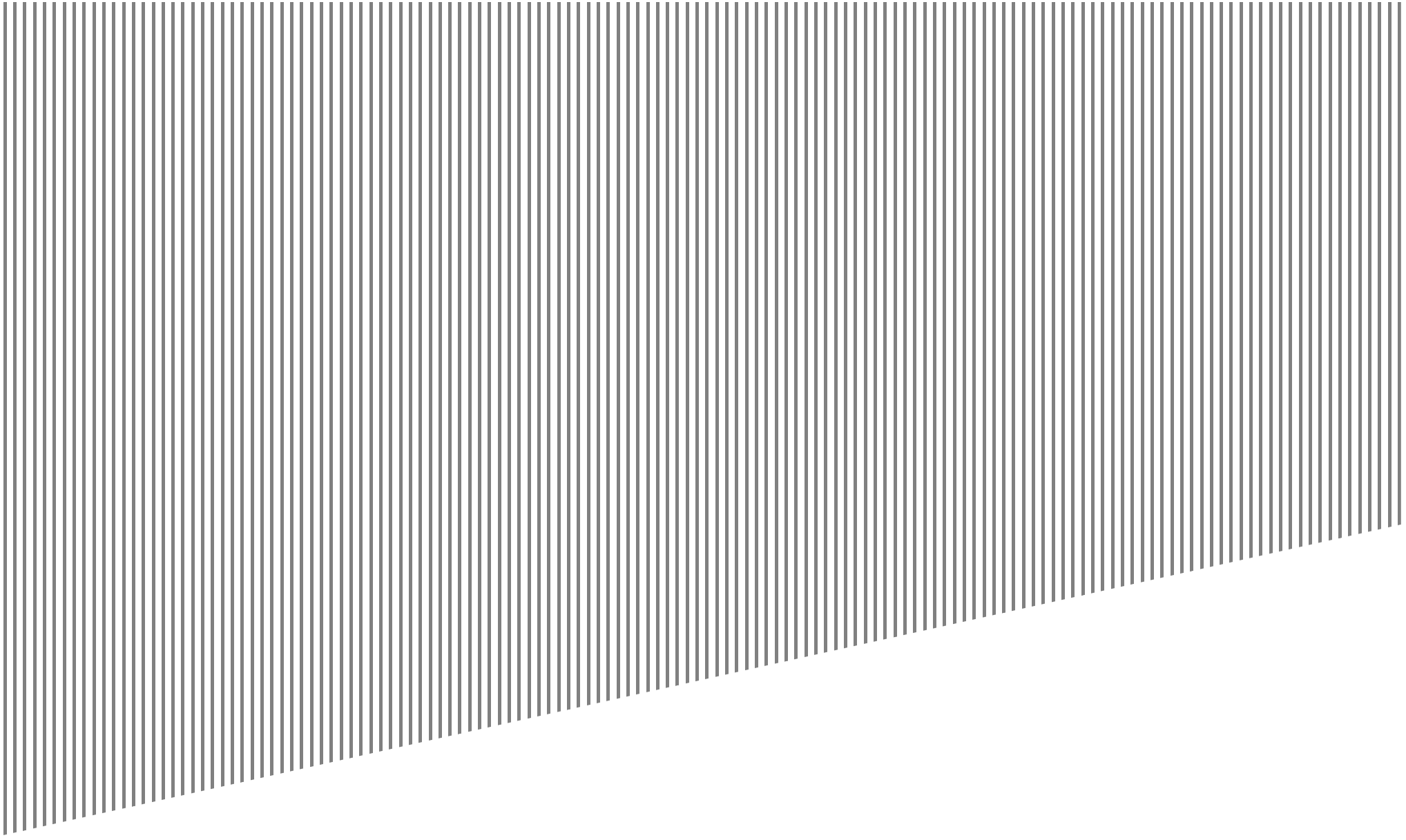
- In following cases, the above TCS provisions will not be applicable :
  - Where the buyer is liable to and has deducted tax at source on the above payments as required under any other provision of the Act
  - Where the buyer/remitter is CG, SG, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign state, a local authority as defined in the explanation to s. 10(20) **or any other person as CG notifies**

Other amendment

- Existing proviso to S.206C(6A) provides for seller being not AID if the buyer has furnished his ROI u/s. 139 and has taken into account the amount paid for computing the income and has paid tax due on income declared in such return
- The amended proviso restricts the facility of seller not being considered as AID only to the cases covered by S.206C(1) – business of trading in alcohol, liquor, forest produce, scrap, etc. and S.206C (1F) sale of motor vehicles exceeding value of Rs. 10L
  - The amended proviso does not extend the benefit of protection to authorised dealers, tour operators and seller of goods under the newly inserted provisions
- Definition of seller under S.206C(1)/(1F) has been amended to exclude the reference to the monetary limit as specified under S.44AB(a)/(b) for individual or HUF and instead value limit of Rs. 1 cr. in case of business and Rs. 50 L in case of profession is provided. Thereby, now individual or HUF whose total sales, gross receipts or turnover from business or profession exceed Rs. 1 cr. or Rs. 50L as the case may be, is covered within the definition of seller for TCS purposes – whether or not tax audit is applicable to such individual or HUF

Assessment, Appeal & Penalty related changes

Expansion of scope of E-assessment Scheme [w.e.f. 1 April 2020]



Expansion of scope of E-assessment Scheme – Amendment in s. 143(3A) and (3B) (w.e.f. 1 April 2020 i.e. AY 2020-21)

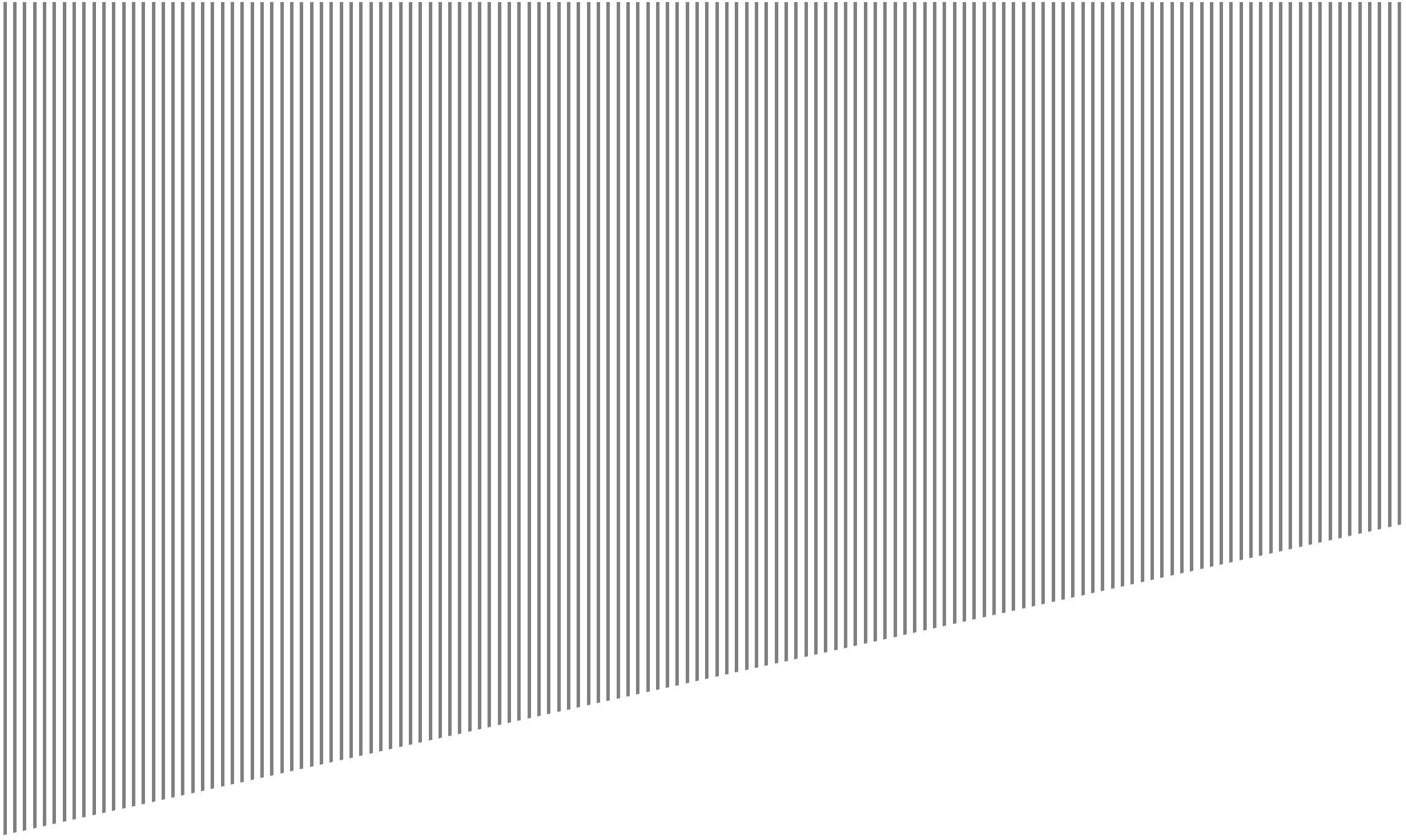
Existing Provision:

- S. 143(3) provides for manner of conducting assessments of taxpayers, where tax return has been made under s. 139 or in response to a notice under s. 142(1)
- S. 144 provides that Tax Authority may carry on the assessment at the best of his judgement in the following cases:
  - Non co-operation on the part of the taxpayer in complying with notices under s. 142(1) or s. 142(2A) or s. 143(3)
  - Non-filing tax return under s. 139(1) as well as under s. 139(4) / s. 143(5).
- FA 2018 amended s. 143 and introduced:
  - **Sub-s. (3A) =** Empowering CG to notify E-assessment Scheme;
  - **Sub-s. (3B) =** Empower CG to issue directions such that any provision of ITA shall not apply or shall apply with such exceptions, modification and adaptations. Such direction are to be issued on or before 31 March 2020
- Pursuant to powers granted under s. 143(3A), CG has notified a scheme of E-assessment vide Notification No. 61 / 2019 effective from 12 September 2019. The said scheme only covers cases of regular assessment u/s. 143(3)
- Pursuant to powers granted under s. 143(3B), CG had issued a notification stating provision of ITA which shall not apply or shall apply with such exceptions, modification and adaptations vide Notification No. 62 / 2019 dated 12 September 2019

Proposed Amendment:

- S.143(3A) is now amended to expand the scope of E-assessment Scheme to include its cases of best judgement assessments under s. 144
- Further, s. 143(3B) is amended to extend the sunset date of 31 March 2020 to 31 March 2022

Introduction of scheme of faceless appeals [w.e.f. 1 April 2020]



Introduction of scheme of faceless appeals [w.e.f. 1 April 2020 i.e. AY 2020-21]

- With the advent of e-governance drive of the GoI, various proceedings under ITA were digitalized to ensure non-personal interface between Tax Authority and taxpayer as follows:
  - Using 'e-mail' as means of communication in assessment proceedings
  - Facilitate paperless assessments
  - Launch of 'e-proceeding' facility in Income Tax Business Application (ITBA) and e-filing portal
  - Issue of notice under s.143(2) electronically
  - Cases of scrutiny and limited scrutiny assessments getting time bared in FY 2017-18 migrated to e-assessments using 'e-proceeding' facility
  - E-assessment scheme for making assessment in cases of regular assessment and best judgement assessment.
  - E-filing of appeals before CIT(A)
- However, process of appeal hearing under the ITA is neither electronic nor paperless

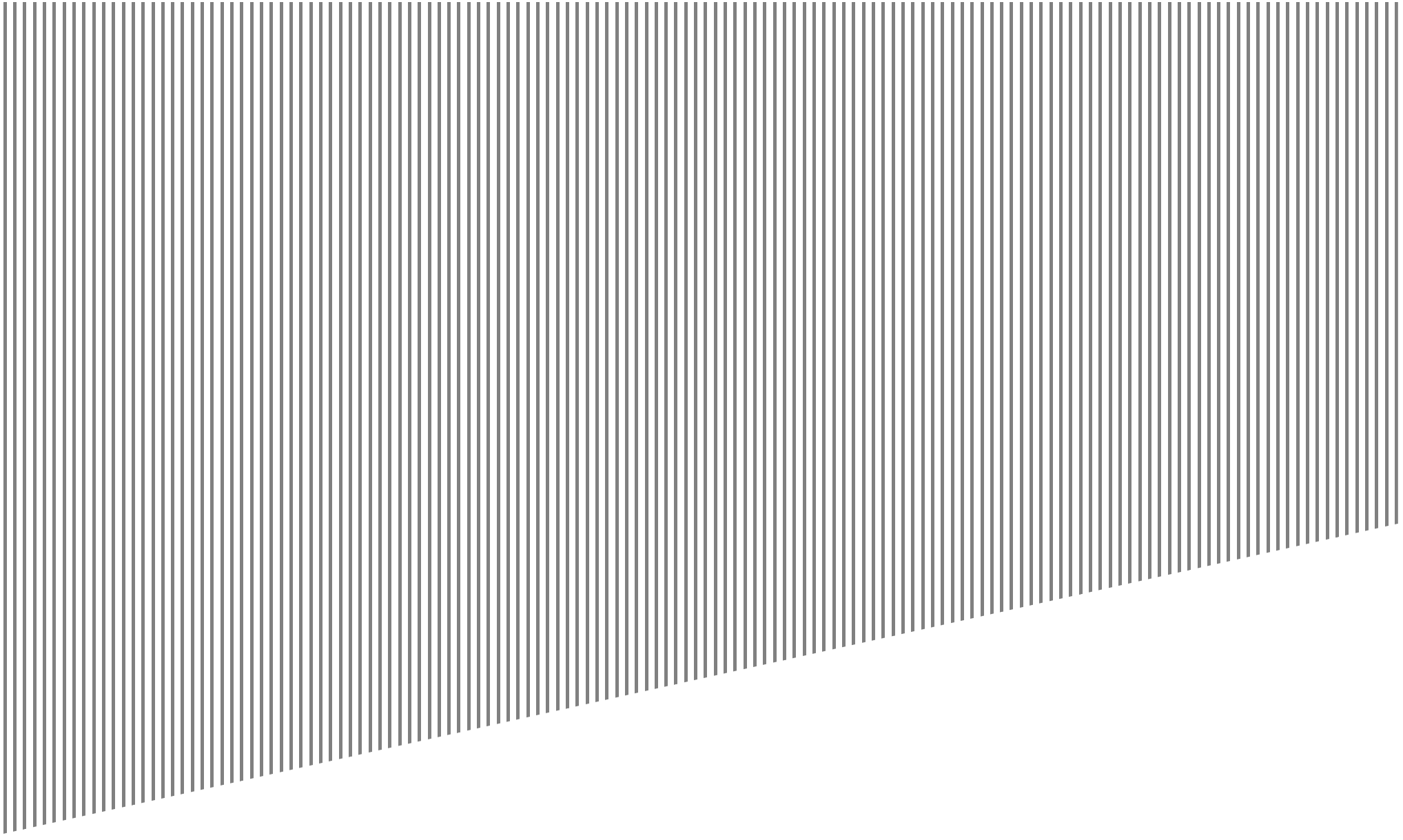
Introduction of scheme of faceless appeals [w.e.f. 1 April 2020 i.e. AY 2020-21]

- As a next step to eliminate human interface in the appellate level, an e-appeal scheme is being proposed by way of following amendment to S.250:
  - **Introduction of sub-s. (6B**): Empowering CG to notify a scheme for the purpose of disposing appeals electronically (E-appeal Scheme)
  - **Introduction of sub-s. (6C):** For the purpose of giving effect to e-appeal Scheme notified under ss. (6B) above, CG to issue directions (by way of notification) to provide for:
    - Carve outs: Non applicability of certain provisions of the Act pertaining to jurisdiction and procedure of disposal of appeal by CIT(A);
    - Exceptions/ modifications/ adaptations with which certain provisions of the Act pertaining to jurisdiction and procedure of disposal of appeal would apply;
    - However, no such direction shall be issued after 31 March 2022
  - Every notification issued under ss. (6B) and ss.(6C) to be laid before each House of Parliament

Introduction of scheme of faceless appeals [w.e.f. 1 April 2020 i.e. AY 2020-21]

- **Objective of the e-appeal Scheme [s. 250(6B)]:** To impart greater efficiency, transparency and accountability by:
  - Eliminating the interface between the CIT (A) and the appellant in the course of appellate proceedings to the extent technologically feasible
  - Optimizing utilization of the resources through economies of scale and functional specialisation
  - Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more CIT(A)
- **Impact:**
  - If E--assessment scheme for undertaking assessments under s.143(3) is any guide, E-appeal scheme is likely to provide uploading of submissions and evidences on ITBA portal of tax department electronically and personal hearing is likely to be through Video conferencing facility where identity of CIT(A) may be kept hidden
  - Like in case of E-assessment scheme, under E-appeal scheme also, there will be dynamic jurisdiction. CIT(A) at any location may be assigned appeal disposal

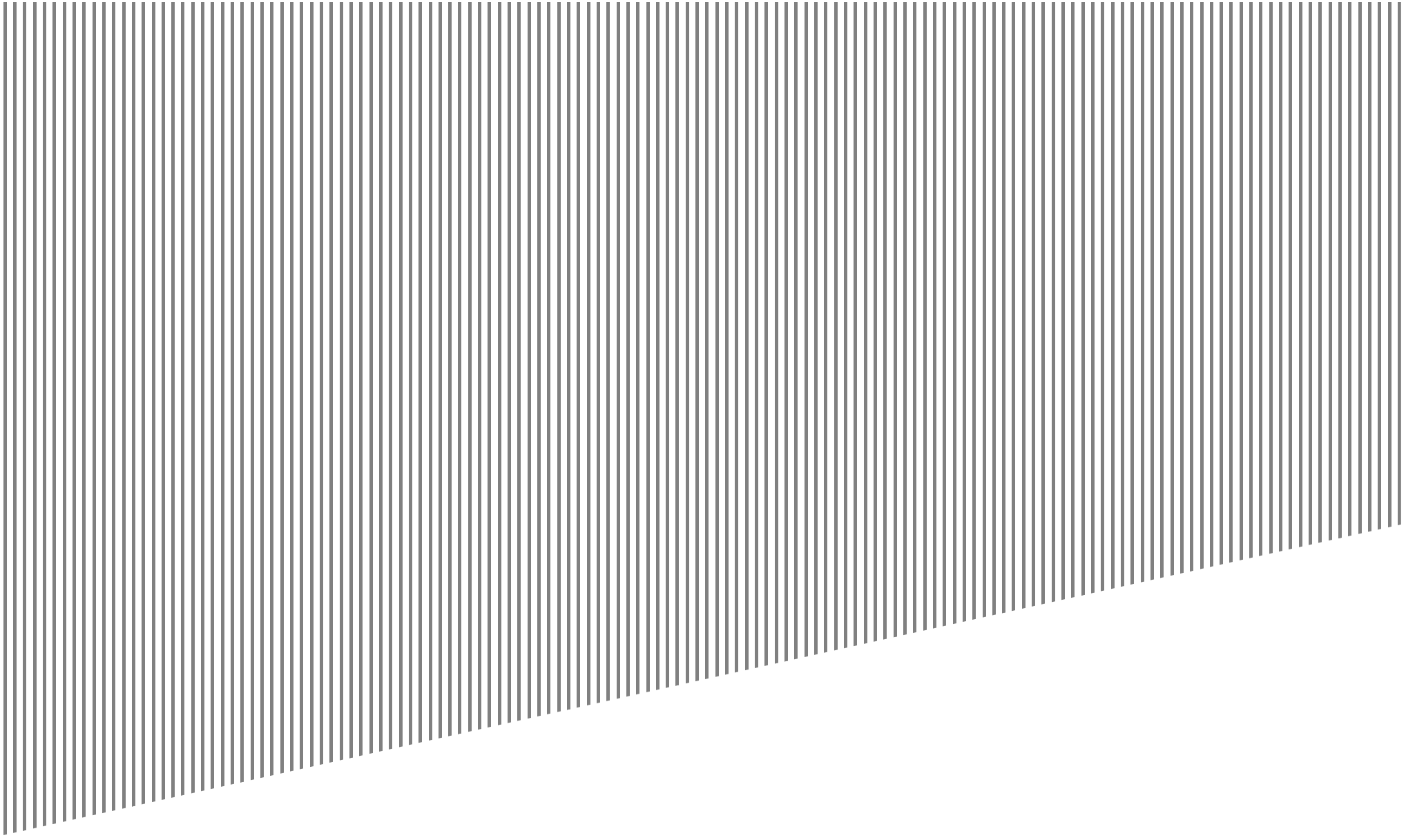
Amendment to s. 274 to provide for e-penalty scheme [w.e.f. 1 April 2020]



Amendment to s. 274 to provide for e-penalty scheme

- Provision of s. 274 provides that penalty shall not be imposed under the penalty chapter of the Act unless the taxpayer has been given an opportunity of being heard
- FB empowers the CG to make a scheme for providing provision relating to e-penalty procedure to be in line with the e-assessment procedure to eliminate the human interface
  - In relation to penalty for non-compliance of notices, directions or orders of the tax authority during e-assessment proceedings, penalty proceedings are already part of e-proceedings. The proposed amendment seeks to extend it now to all penalty proceedings including penalty u/s. 270A of ITA
- Pursuant to the above, new sub-sections (2A), (2B) and (2C) are inserted in s.274 so as to empower CG to make a scheme for the purposes of imposing penalty in order to impart greater efficiency, transparency and accountability by eliminating human interface, optimum utilisation of resources and mechanism for imposing penalty with dynamic jurisdiction
- Any direction wrt exceptions, modifications and adaptations to any of the provision relating to jurisdiction and procedure for imposing penalty shall be provided before 31 March 2022
- The above provision will take effect from 1 April 2020

Amendment in stay proceedings before ITAT under s. 254(2A) of ITA [w.e.f. 1 April 2020]



Current tax provisions dealing with stay proceedings before ITAT

- S. 254 of ITA deals with powers of Income Tax Appellate Tribunal (ITAT) to pass order in respect of appeal filed before it
- S. 254(2A) of ITA provides that ITAT shall endeavour to hear the appeal and decide the appeal within 4 years from the end of financial year in which appeal is filed before it
- Three provisos are appended to s. 254(2A) of ITA which provide as under:
  - **First proviso** - After considering the merits of the application filed by taxpayer, ITAT shall pass an order of stay for a maximum period of 180 days in any proceedings against the order of the CIT(A).
  - **Second proviso** – Where appeal is not so disposed during stay period, ITAT on being satisfied that the delay is not attributable to the assessee, extend the stay for a further period subject to the restriction that the aggregate of the periods originally allowed and the period so extended shall not exceed 365 days. Further, ITAT shall dispose of the appeal within the period or periods of stay so extended or allowed.
  - **Third proviso** – Provides that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to taxpayer

Amendment proposed by FB 2020

- FB 2020 proposes amendment in first proviso and substitution of second proviso to s. 254(2A) of ITA
- It is proposed that first proviso shall be amended to provide that ITAT after considering the merits of the application filed by taxpayer shall grant stay for a maximum period of 180 days provided that ***taxpayer deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under ITA or furnish security of equal amount***
- The substituted second proviso provides that no extension of stay shall be granted by ITAT, where such appeal is not so disposed of within the stay period granted. However, on an application made by taxpayer, ITAT may grant further stay
  - If the delay in disposing of the appeal is not attributable to the Taxpayer **AND**
  - Taxpayer has deposited not less than 20% of amount of tax, interest, fee, penalty, or any other sum payable under ITA or furnish security of equal amount
- However, period of stay granted in aggregate of the period originally allowed and period extended shall not exceed 365 days
- ITAT shall dispose appeal within the period of stay so extended or allowed
- Third proviso to s. 254(2A) of ITA remains unamended and accordingly, if the appeal is not disposed within the time period granted or extended under first or second proviso to s. 254(2A) of ITA, order of stay shall be vacated even if the delay is not attributable to taxpayer

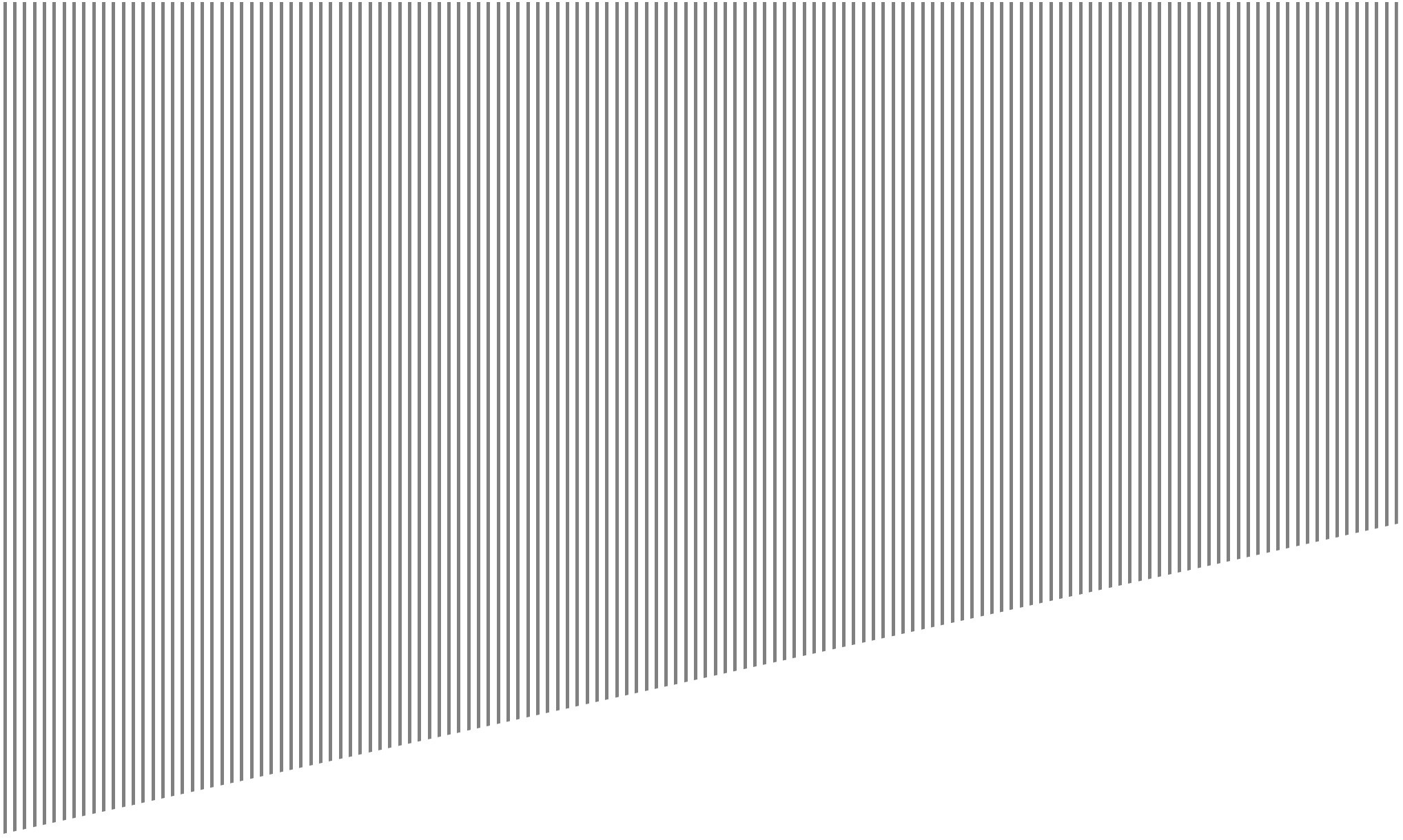
Snapshot view of present and proposed provisions

Particulars	Current provisions	Amended provisions
Stay application filed by taxpayer before ITAT	ITAT may grant stay considering the merits of the case for a period up to 180 days	ITAT may grant stay considering the merits of the case for a period up to 180 days **if taxpayer deposits 20% of tax, interest, fee, penalty or provides security thereof**
Appeal is not disposed within the stay period granted and non-disposal of appeal is not attributable to taxpayer	• ITAT may extend the stay period on application filed by taxpayer subject to condition that aggregate period or periods of stay does not exceed 365 days • ITAT shall dispose of the appeal within the period or periods of stay so extended or allowed.	• Stay shall not be extended **unless taxpayer deposits 20%of tax, interest, fee, penalty or provides security thereof**. • However, aggregate period or periods of stay does not exceed 365 days • ITAT shall dispose of the appeal within the period or periods of stay so extended or allowed.

Impact of amendment in stay proceedings before ITAT

- While granting stay on the first occasion, the honourable Tribunal has discretion to direct that more than 20% payment may be made. Assuming, the Tribunal directs payment of 20%, grant of stay could be subject to the condition of making payment. It does not appear that application for stay can be made only after depositing 20% amount. It also does not appear (though it is litigation prone) that the stay will be granted only after proof of payment has been furnished. The Tribunal may grant interim stay while granting reasonable time for deposit of funds or security
- It is not clear whether, under the proposed amendment, the taxpayer has an option whether to make deposit of funds or furnish the requisite security – say, bank guarantee.
- The amendment will apply to all those proceedings where stay is granted on or after 1 April 2020, even if the application may have been furnished prior to 1 April 2020
- In relation to stay (or an extended stay) which is already granted prior to 1 April 2020, it would not be necessary to review the stay orders, including in cases where the stay may have been granted without deposit of any tax
- It is possible that stay may have been granted prior to 1 April 2020 without insisting on deposit of tax. Should it become necessary pray for extension of that stay, the proposed amendment may need to be considered at the time of granting extended stay
- In case where the taxpayer has already deposited the amount ordered to be deposited by ITAT (say, before filing appeal before CIT(A) or in any other proceedings), no further tax may be required to be deposited by taxpayer

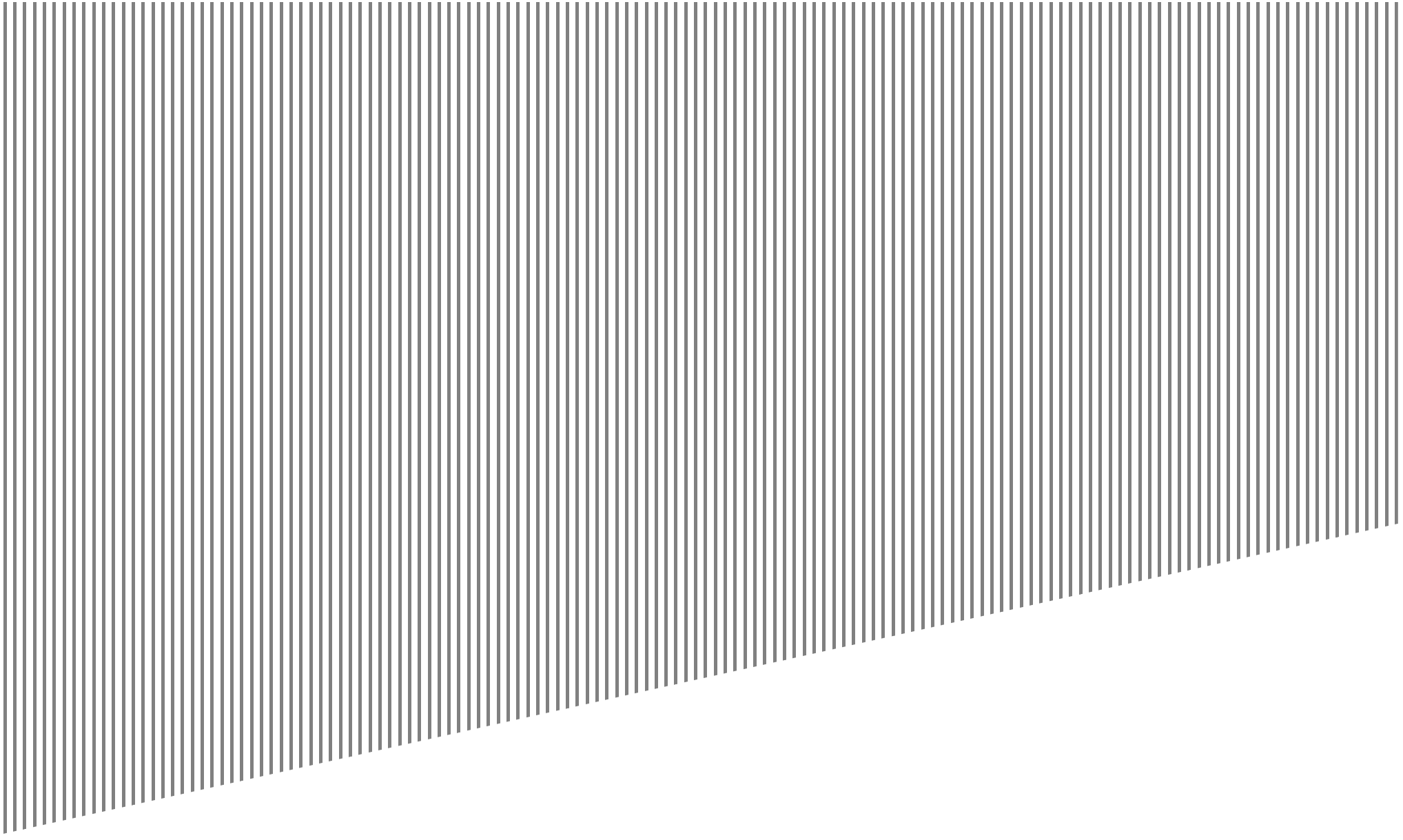
Providing check on survey operations under section 133A [w.e.f. 1 April 2020]



Providing check on survey operations under section 133A

- Under the existing provisions of section 133A of the Act, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction.
- To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso to sub-section (6) in the said section was inserted to provide that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be.
- It is proposed to substitute the proviso to sub-section (6) of section 133A to provide that,-
  - in a case where the information has been received from the prescribed authority, no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be; and
  - in any other case, no income-tax authority below the rank of Commissioner or Director, shall conduct any survey under the said section without prior approval of the Commissioner or the Director, as the case may be
- This amendment will take effect from 1st April, 2020

Penalty for fake invoice
(New section introduced i.e. s. 271AAD) [w.e.f. 1 April 2020]



Introduction of new penalty provision in relation to fake invoices [Applicable w.e.f. 1 April 2020 i.e. AY 2020-21]

Existing Provision:

- S. 270A levy penalty wherein taxpayer has under-reported his / her income. The rate of penalty is 50% of the tax payable on such under-reported income
  - However, the rate of penalty is increased to 200% in case where under-reported income is in consequence of misreporting of income [Refer s. 270A(8) r.w.s. (9)]
- Cases for misreporting of income includes:
  - misrepresentation or suppression of facts;
  - failure to record investments in the books of account;
  - claim of expenditure not substantiated by any evidence;
  - recording of any false entry in the books of account;
  - failure to record any receipt in books of account having a bearing on total income; and
  - failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply
- Therefore, if any under-reported income arises due to trigger of any of the aforesaid conditions, higher penalty @ 200% is to be levied

Introduction of new penalty provision in relation to fake invoices [Applicable w.e.f. 1 April 2020 i.e. AY 2020-21]

Proposed provision:

- Newly inserted s. 271AAD proposes to levy penalty for fake invoice on both the parties i.e. the person and the other person who is party to it
- **Penalty on taxpayer [S. 271AAD(1)]:**
  - Tax Authority may levy penalty on any person in whose books of accounts, it is found that there is:
    - (i) A false entry; or
    - (ii) Omission of any entry which is relevant for computation of total income of such person, to evade tax liability
  - Quantum of penalty is sum equal to aggregate of amount of such false or omitted entry
  - Penalty under this section is 'without prejudice to any other provision of ITA' and thereby penalty under this section is in addition to any penalty levied under any other provision including s. 270A
- **Penalty on other person [S. 271AAD(2)]:**
  - Tax Authority may also levy penalty on any other person who cause the person referred above in any manner to 'make a false entry' or 'omits' or 'causes to omit' any entry referred to in sub.s. (1)
  - Quantum of penalty is sum equal to aggregate of amount of such false or omitted entry

Introduction of new penalty provision in relation to fake invoices [Applicable w.e.f. 1 April 2020 i.e. AY 2020-21]

- **Meaning of false entry:** Explanation to s. 271AAD defines 'false entry' inclusively. It includes:
  - forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
  - invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or
  - invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist
- **This provision is applicable from 1 April 2020 w.e.f. AY 2020-21**
- As per EM, this provision was introduced to punish the taxpayers who are involved in circulation of fake invoices for evading GST liability. The relevant extract of EM is reproduced below:

  "In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act."

Introduction of new penalty provision in relation to fake invoices [Applicable w.e.f. 1 April 2020 i.e. AY 2020-21]

Impact Analysis:

- Penalty can be levied under 'any proceedings under ITA' and not necessarily in assessment proceedings. Accordingly, if in the course of survey under s. 133A or search action under s. 132, if tax authority finds false entry or omission in the books of the taxpayer, he can levy penalty under s. 271AAD at that stage
- There may be duplicated penalty for the same offense. For instance, if due to false entry there is misreporting of income and penalty under s. 270A may also be levied @ 200% of 'tax payable'. As against that. S. 271AAD proposes to levy penalty of sum equal to amount involved in false entry
  - As a general rule, a person should not be punished for the same offence twice. Whether taxpayer can defend duplicated levy of penalty?
  - Duplicated levy of penalty under ITA itself together with penalty under GST will be wholly disproportionate
- Omission of an entry must be with a view to evade tax liability:
  - Bonafide omission may be protected
  - Onus on AO to establish that omission was with a view to evade tax liability

Introduction of new penalty provision in relation to fake invoices [Applicable w.e.f. 1 April 2020 i.e. AY 2020-21]

Impact Analysis (cont.):

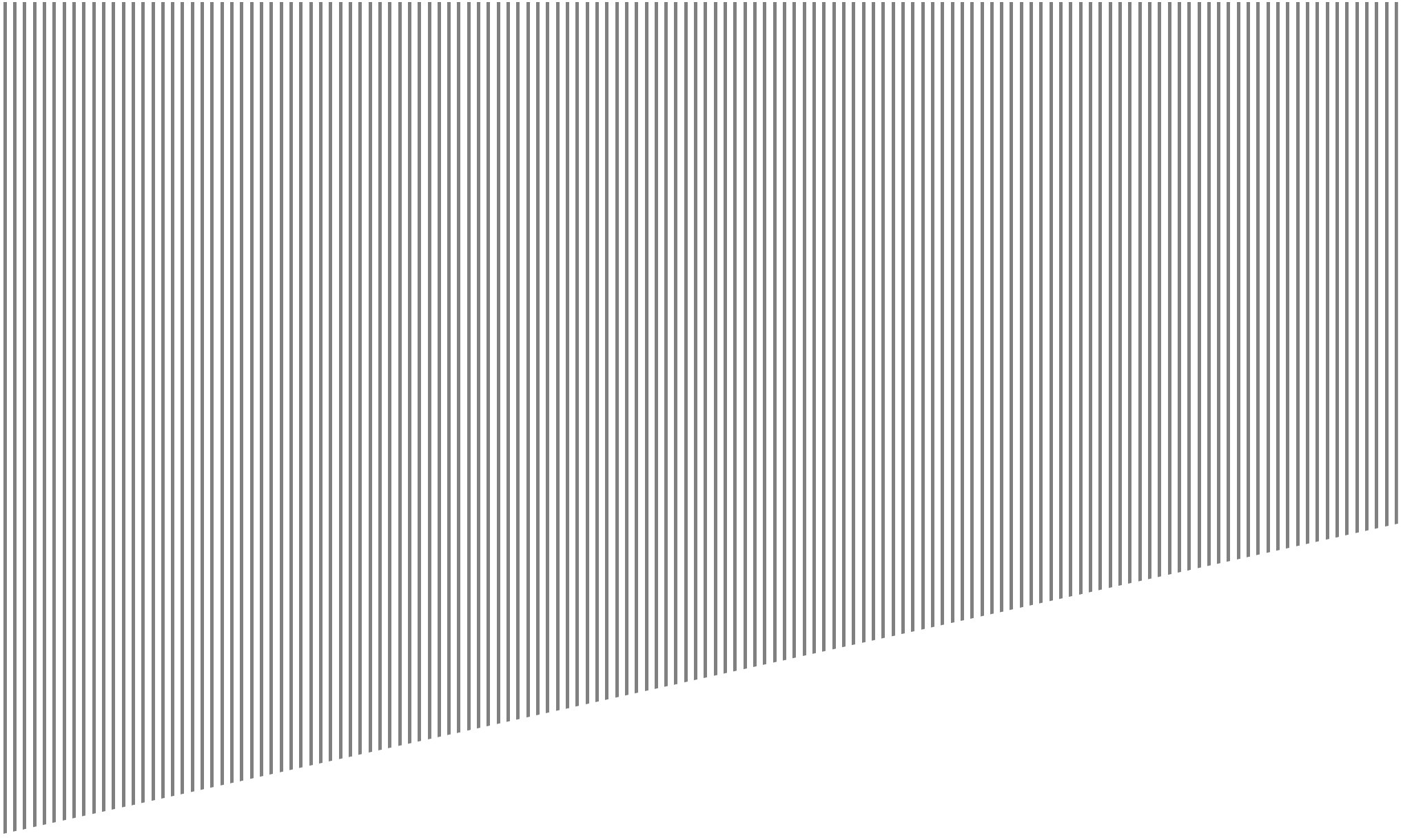
- False invoice could be sale invoice or purchase invoice for goods or services
- 'False entry' is defined inclusively and may cover cases of unproved cash credit u/s. 68
- Meaning of the term 'false', ' forged' and 'falsified' needs to be evaluated. Illustrative, dictionary meanings of these terms are as under:
  - 'false' means to be 'untrue, erroneous, deceitful, contrived or calculated to deceive and injure. Unlawful'. It may also mean intention to perpetrate some treachery or fraud
  - 'forged' means to be counterfeited, improper alteration, etc.
  - 'falsified' means to make something false, to temper with, etc.
- Meaning of expression 'false entry' may be overlapping:
    - Clause (a) covers cases of forged or false invoices
    - Clause (b) where invoice is raised but there is no actual supply of goods or services –This can also be classified as false invoice.
    - Clause (c) where there is actual supply of goods or services but the person does not exist – Whether purchase from unregistered dealers are covered here?
  - Cases of false entry or omission of entry with a view to evade tax may also carry risk of prosecution under s. 276C and 277A
  - Benefit of reasonable cause under s. 273B is also not available.
- As it appears, AO of taxpayer itself can levy penalty on 'other person' who abates false entry or omission of entry

Introduction of new penalty provision in relation to fake invoices [Applicable w.e.f. 1 April 2020 i.e. AY 2020-21]

Impact Analysis (cont.):

- Few illustrative examples (though not exhaustive) which may raise serious concerns could be:
  - In a case where there are sufficient evidences supporting that goods are received from an unregistered dealer but invoice is of registered dealer who subsequently found as hawala dealer
  - Case where taxpayer claims to have received management services from an AE but there is no proof that such services are actually received
  - Fraud is committed by the employee by raising bogus invoices for goods/expenses which was not known to the employer but nevertheless, the entries are passed in the books of account

Due date and verification of ROI (ss.139 and 140) [w.e.f. 1 April 2020]



Due date for filing ROI (s.139) (w.e.f. 1 April 2020)

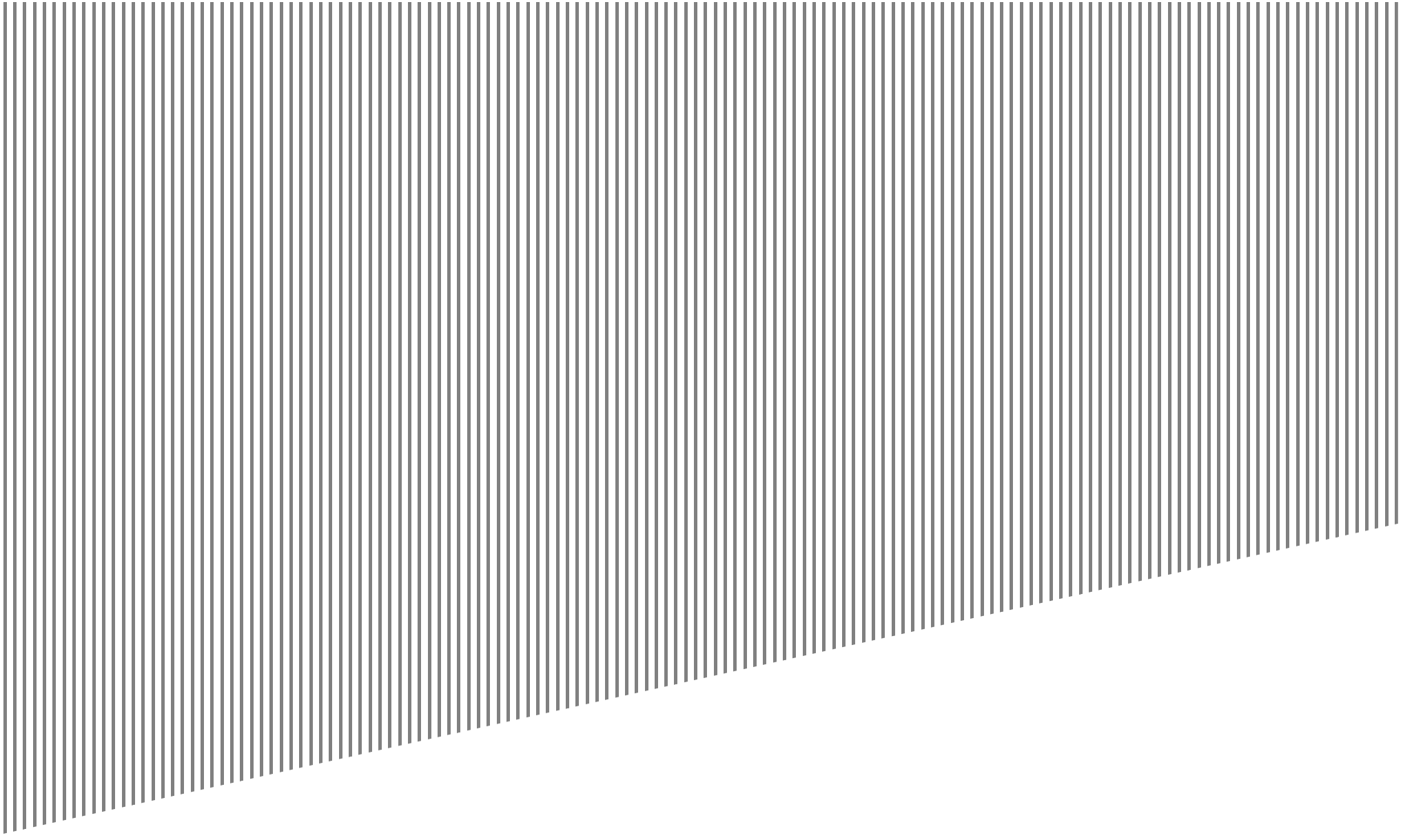
- Comparison of due date for filing ROI as per existing provision and proposed amendment:-

	Due date as per existing provision	Due date as per proposed amendment (highlighted in red)
Company	30 September	31 October
Taxpayer other than company liable to audit	30 September	31 October
Working partner in firm liable to audit	30 September	31 October
Non-working partner in firm liable to audit	No specific date, hence 31 July	31 October
Taxpayer liable to transfer pricing audit	30 November	30 November
Any other taxpayer not referred above	31 July	31 July

Verification of ROI in case of company and LLP (s.140) (w.e.f. 1 April 2020)

- Existing provision:-
  - For company, clause (c) of s.140 states that ROI shall be verified by managing director or any other director (where MD is not able to verify ROI for any unavoidable reason, or where there is no MD)
    - Additionally, provisos specify cases of company not resident in India, company whose management has been taken over by Government, and company in whose respect an application for insolvency resolution has been admitted
  - For LLP, clause (cd) of s.140 states that ROI shall be verified by designated partner or any other partner (where DP is not able to verify ROI for any unavoidable reason, or where there is no DP)
- Proposed amendment:-
  - Scope of clauses (c) and (d) expanded to provide that ROI can also be verified by any other person, as may be prescribed for this purpose
    - But, pre-condition of MD or DP's inability due to unavoidable reasons is not relieved
  - Amendment is not applicable to cases covered by provisos which mandate that ROI "shall be verified" by specified persons (for e.g., in case of IBC company, ROI shall be verified by IRP)
  - EM does not explain rationale behind amendment
  - EM states that amendment "will take effect from 1 April 2020"
    - Arguably, amendment being procedural may cover tax returns of past A.Y.s filed after 1 April 2020

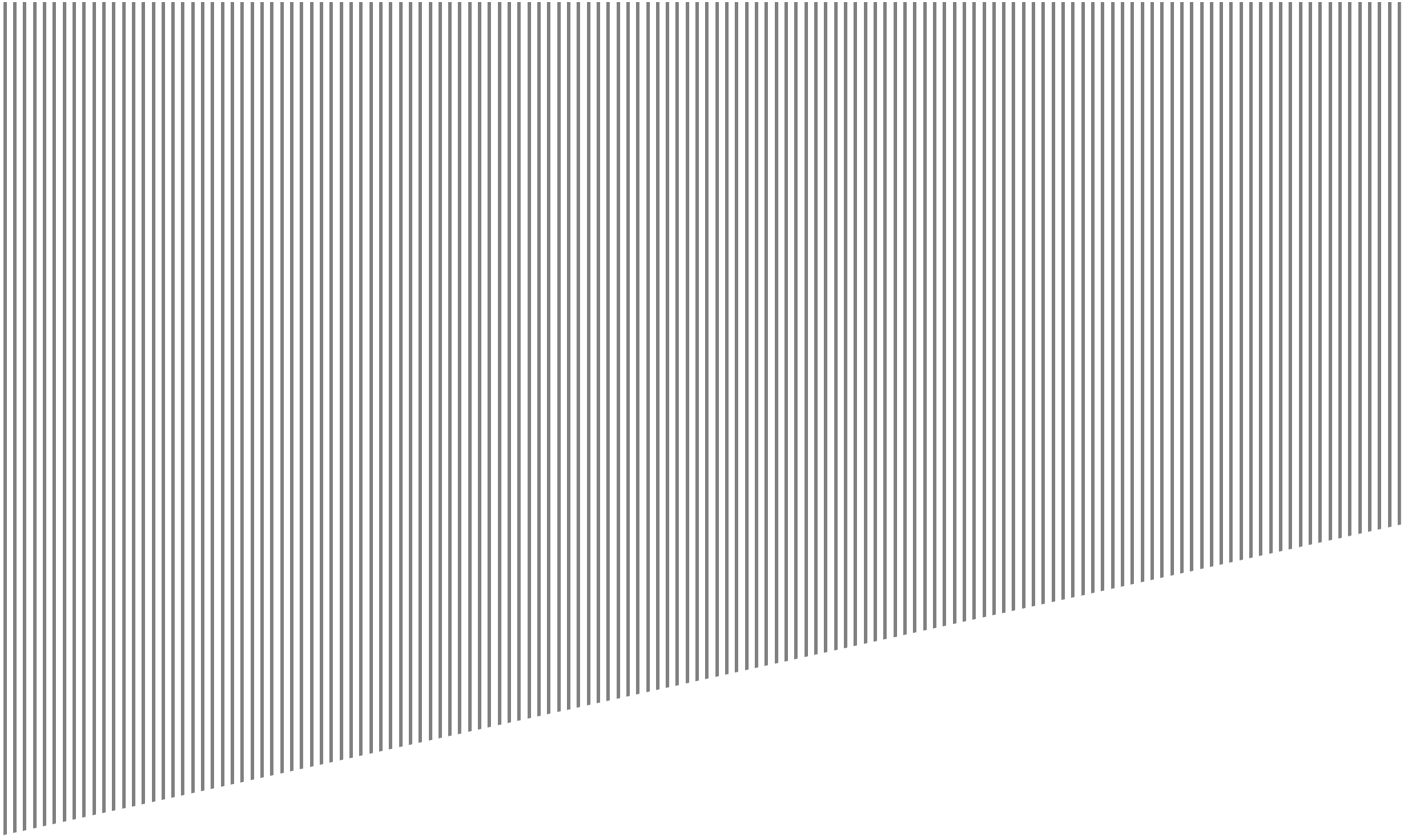
Appearance by authorized representative (s.288) [w.e.f. 1 April 2020]



Appearance by authorized representative (s.288) (w.e.f. 1 April 2020)

- Existing provision:-
  - S.288 provides for persons entitled to appear before any Income-tax Authority or ITAT, on behalf of taxpayer, as its "authorised representative", in connection with any proceedings under ITL
- Proposed amendment:-
  - As per EM, while Insolvency and Bankruptcy Code, 2016 empowers Insolvency Professional or Administrator to exercise the powers of BOD or corporate debtor, it has been reported that lack of explicit reference in s.288 of the Act for IRP to act as an authorised representative of corporate debtor has been raising certain practical difficulties
    - Hence, s.288(2) to be amended to insert clause (viii), to include any other person as may be prescribed
  - IBC, 2016 states that:
    - Powers of BOD or partners of corporate debtor shall stand suspended and be exercised by IRP [s.17(1)(b) of IBC];
    - IRP vested with management of corporate debtor shall be responsible for complying with requirements under any law for time being in force on behalf of corporate debtor [s.17(2)(e) of IBC]
  - Thus, even in absence of proposed amendment, IBC, 2016 authorises IRP to represent the corporate debtor - Proposed amendment is intended to clarify such position

Insertion of new s. 285BB (Detailed information in Form 26AS) [w.e.f. 1 June 2020]



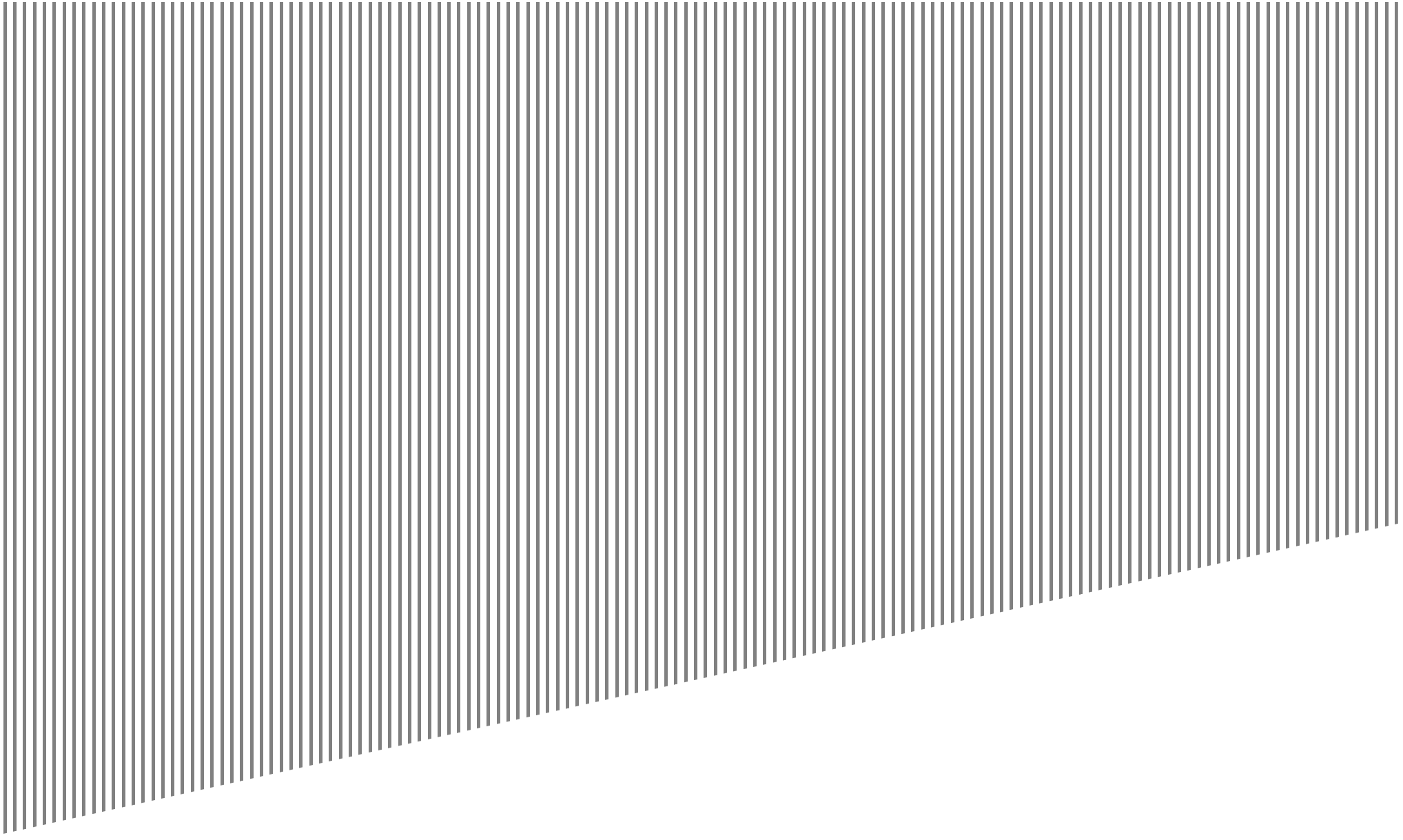
Insertion of new s. 285BB (Detailed information in Form 26AS)

- The existing S. 203AA provides that the prescribed income-tax authority is required to furnish information in Form 26AS to every person in relation to tax deducted or paid on income of such person
- Form 26AS as prescribed presently contains information about tax collected or deducted at source. The proposal is to expand the scope of such information to cover information in respect of other transactions collected by or available with the tax authority such as sale/purchase of immovable property, share transactions etc.
- FB proposes to insert a new s. 285BB wherein the prescribed income-tax authority shall upload the annual information statement on the registered account at e-filing portal of the respective taxpayer containing the information which is in the possession of an income-tax authority
  - Consequently, the existing s. 203AA is proposed to be deleted
- The amendment will take effect from 1 June 2020

Citizens Charter and dispute resolution scheme

Introduction of Taxpayer's Charter into ITA (S. 119A) (W.e.f. 1 April 2021)

Citizen charter



Taxpayer's Charter (S.119A) (w.e.f. 1 April 2021)

- FB 2020 proposes to introduce a new S. 119A empowering CBDT to adopt and declare a Taxpayer's charter
  - CBDT to issue orders, instructions, directions or guidance to tax authorities to administer the charter
  - Underlying motive is to ensure fair treatment of taxpayers and prevent any sort of harassment of taxpayers
- While introducing the taxpayer's charter, the FM in her budget speech stated:

  "Our Prime Minister has laid before us Ease of Living as a goal to be achieved on behalf of all citizens. An important aspect of both ease of living and ease of doing business is fairness and efficiency of tax administration. We wish to enshrine in the statutes a "taxpayer charter" through this budget. Our government would like to reassure taxpayers that we remain committed to taking measures so that our citizens are free from harassment of any kind."
- "Taxpayer's Charter" may be considered as a guideline which highlights the taxpayer's rights & obligations with regard to the jurisdiction of which he is liable to pay tax.
  - Philip Baker defines Taxpayer's Charter as **"***a short, accessible statement of the basic rights [and obligations] of taxpayers in dealing with the tax authorities***"** *

*in International Conference on Taxpayer's Rights.

Rights and obligations of Taxpayer as per OECD report

- A practice note released by OECD in 1990 enlisted the Taxpayer's Rights and Obligations as under*:

Rights	Obligations
• To be informed, assisted & heard	• Being honest
• To appeal	• Co-operate
• To pay only correct amount of tax	• Provide accurate information & documents on time
• Certainty	• Keep records
• Privacy	• Pay taxes on time
• Confidentiality & secrecy	

https://www.oecd.org/tax/administration/Taxpayers'_Rights_and_Obligations-Practice_Note.pdf

Informal taxpayer's Charter in India

- An informal Taxpayer's Charter is already in existence and is publicly available*
  - Since the existing Charter is not issued under authority of statutory provision, it may at best have persuasive but a legal effect
  - With introduction of the Charter in the Act, it may become legally binding on tax authorities and taxpayers
- Taxpayer Charter available in India covers:
  - Mission of Tax Department
  - Vision of Tax Department
  - Belief of Tax Department
  - Rights of taxpayer
  - Obligations of taxpayer
  - Time limits within which tax authorities would issue refund, give effect to appellate/ revision orders etc.
- After the Charter is given statutory recognition, one may need to evaluate the legal effect of the same on taxpayer and tax authorities
  - For instance, whether taxpayer can seek relief from courts by relying on the Charter where tax authority does not meet its obligation under the Charter
- Various countries like Australia, Canada, France, New Zealand, South Africa, United States, Malta, Turkey have a Taxpayer's Charter in their statutes.
  - Refer summary of the international experience in ensuing slides

* https://www.incometaxindia.gov.in/Documents/citizen-charter-declaration.pdf

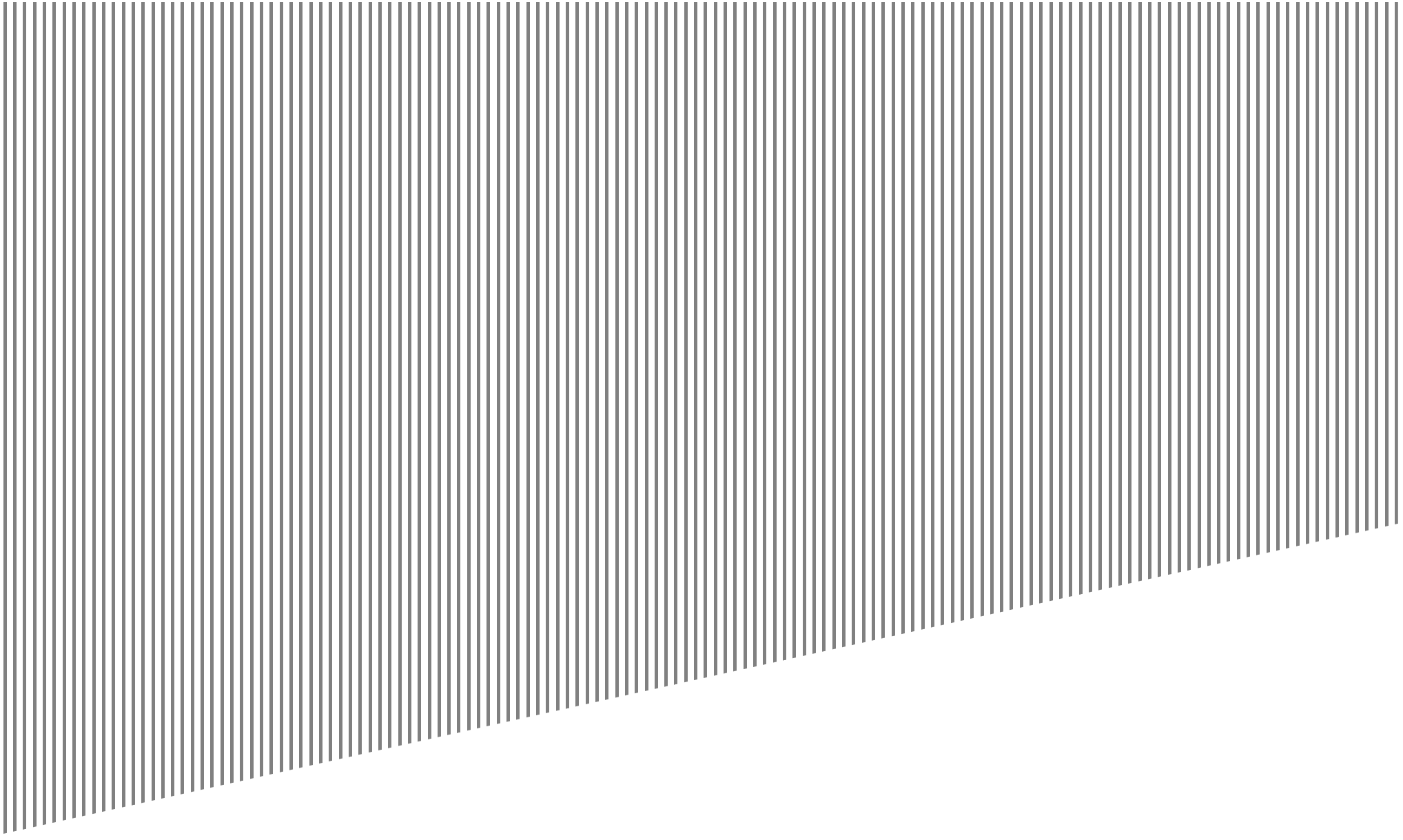
Taxpayer's Charter – A comparative Analysis across countries

Parameters	Hong -Kong	Malta	Australia	Qatar	USA	New Zealand
Rights of Taxpayers						
• Payment of tax due under law	✓	✓	×	×	✓	×
• Courteous treatment	✓	✓	✓	✓	✓	✓
• Privacy & confidentiality	✓	✓	✓	×	✓	✓
• Access to own tax info	✓	✓	✓	×	×	✓
• Complaints & Appeals	✓	✓	✓	✓	✓	✓
• Treated as honest	✓	✓	✓	✓	×	×
• Right to be represented	✓	✓	✓	✓	✓	×
• Right to quality & efficient service	×	×	×	×	✓	✓
• Right to be informed	×	×	✓	×	✓	×

Taxpayer's Charter – A comparative Analysis across countries

Parameters	Hong-Kong	Malta	Australia	Qatar
Obligations of Taxpayer				
• Honest	✓	✓	✓	✓
• Compliant and co-operative	✓	✓	✓	✓
• Maintain proper records	✓	✓	✓	✓
• File complete tax documents	✓	✓	✓	×
• Adherence to statutory dues	✓	✓	✓	×
• Understanding responsibilities	×	✓	×	✓
• Intimating the Tax dept with info change	✓	✓	×	×
• Ensure reasonable care	×	×	✓	✓

Dispute resolution scheme



Announced in Budget Speech but not part of Finance Bill

Vivad Se Vishwas Scheme – No Dispute but Trust Scheme (New Dispute Resolution Scheme):

- Announced in the Budget Speech, though did not form part of Finance Bill
- Scheme aims at resolving pending cases on prompt payment by taxpayer and is applicable in case of appeals pending at any level

Time of payment (if paid)	Quantum of payment and benefit available
On or before March 31, 2020	Only tax amount without interest or penalty
After March 31, 2020 but before June 30, 2020	Tax amount plus additional amount (which is not specified) to be paid, without interest or penalty
After June 30, 2020	Scheme is not applicable

- As per Budget Speech, such scheme is to be similar to Sabka Vishwas Scheme for indirect taxes, introduced vide Finance (No. 2) Act, 2019
- Incidentally, FA 2016 had introduced such scheme for settling disputes pending at CIT(A)
  - As per info in public domain[1], such scheme got a tepid response and garnered only Rs. 1,200 Cr.
  - For discussion on this scheme and similar past schemes

Tax Payer's Charter

- Tax Payer's Charter (enumerating tax payers' rights) to be enshrined in the Statute which is yet to be notified.

[1] https://economictimes.indiatimes.com/news/economy/finance/tax-dispute-scheme-gets-tepid-response-garners-rs-1200-crore/articleshow/57972610.cms?from=mdr