The Institute of Chartered Accountants of India

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Analysis of Provisions of Finance Bill 2021

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I. INCOME TAX RETURNS, ASSESSMENTS AND APPEALS

1. Extending due date for filing return of income in some cases, reducing time to file belated return and to revise original return and also to remove difficulty in cases of defective returns

1.1. Section 139 of the Act contains provisions in respect of the filing of return of income for different persons or class of persons. The said section also provides the due dates for filing of original, belated and revised returns of income for different classes of assessee.

1.2. Extending due date for filing of return by certain category of partners: In the case of a firm which is required to furnish report from an accountant for entering into international transaction or specified domestic transaction, as per section 92E of the Act, the due date for filing of original return of income is the 30th November of the assessment year. Since the total income of such partner can be determined after the books of accounts of such firm have been finalized, it is proposed that the due date of such partner be extended to 30th November of the assessment year

1.3. Reducing time to file belated return and to revise original return: Sub-sections (4) and (5) of section 139 of the Act contain provisions relating to the filing of belated and revised returns of income respectively. The belated or revised returns under sub-sections (4) and (5) respectively of the said section at present could be filed before the end of the assessment year or before the completion of the assessment whichever is earlier. It is proposed that the last date of filing of belated or revised returns of income be reduced by three months. Thus, the belated return. Thus, the belated return or revised return could now be filed three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

1.4. Defective Return: Sub-section (9) of section 139 of the Act lays down the procedure for curing a defective return. It provides that in case a return of income is found to be defective, the Assessing Officer will intimate the defect to the assessee and give him a period of 15 days or more to rectify the said defect and if the defect is not rectified within the said period, the return shall be treated as an invalid return and the assessee will be considered to have never filed a return of income. The Explanation to the sub- section lists the conditions in which a certain return of income shall be considered to be defective. Representations have been received that the aforesaid conditions create difficulties for both the taxpayer and the Department, as a large number of returns become defective by application of the said conditions. This has resulted in a number of grievances. It has been represented that the conditions given in the said Explanation may be relaxed in genuine cases. The amendment has been proposed to insert proviso before the Explanation to sub-section (9) of the section 139 of the Act so as to provide that the Board may specify, by notification, that any of the conditions specified in clauses (a) to (f) of the said Explanation shall not apply to such class of assessees or shall apply with such modifications, as may be specified in such notification.

1.5. These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

Comments:

- *It is worth mentioning here that the due date of furnishing return by a Company or tax audit cases is 31st October after the end of relevant previous year. Now, such assessees has only two months' time to furnish revised return.*
- *The proposed amendment regarding defective returns is a welcome move, and it is reasonably expected that the proposed notification will suitably deal with this issue.*

2. Reduction of time limit for completing assessment

2.1. Section 153 of the Act contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act. The sub-section (1) of the said section provides that the time-limit for passing an assessment order under section 143 or 144 of the Act.

2.2. It has been proposed that the time limit for completion of assessment proceedings be reduced by three months. Thus the time for completing of assessment is proposed to be nine months from the end of the assessment year in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.

2.3. This amendment will take effect from 1st April, 2021

Comments:

- *The time limit for passing various assessment orders giving effect to Taxation Ordinance dated 31.03.2020, Atmanirbhar Package dated 13.05.2020, CBDT Notification dated 24.06.2020 and the proposals in the present Finance Bill 2021 can be tabulated as follows :*

Nature of Assessment	*Earlier due dates*	*Revised due dates*
Assessment u/s 143(3) for AY 2018-19	*30.09.20*	*31.03.21*
Assessment u/s 143(3) for AY 2019-20	*31.03.21*	*30.09.21*
Assessment u/s 143(3) for AY 2020-21	*31.03.22*	*31.03.22*
Assessment u/s 143(3) for AY 2021-22	*31.03.23*	*31.12.22*
Assessment u/s 147 notice served upto 31.03.20	*31.03.21*	*30.09.21*
Assessment u/s 153A where search took place in FY 18-19	*30.09.20*	*31.03.21*
Assessment u/s 153A where search took place in FY 19-20	*31.03.21*	*30.09.21*
Assessment u/s 153A where search took place in FY 20-21	*31.03.22*	*31.03.22*

- *It may be noted that vide Atmanirbhar Package-1 dated 13.05.2020, it was announced that the date of assessments getting barred on 30.09.2020 extended to 31.03.2021 and those getting barred on 31.03.21 will be extended to 30.09.21.*
- *Though subsequent to this Package, there is no formal statutory amendment with regards to extension of time to 30.09.21, however, the same has been given effect in the above table.*

3. Income escaping assessment and search assessments

3.1. Existing provisions

3.1..1. Income Escaping assessments

Presently, under the Act, the provisions related to income escaping assessment provide that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or re- compute the total income for such year under section 147 of the Act by issuing a notice under section 148 of the Act. However, such reopening is subject to the time limits prescribed in section 149 of the Act.

3.1..2. Search assessments

In cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases.

3.2. The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued.

3.3. New Provisions are being discussed below.

3.4. Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).

3.5. Before such assessment or reassessment or re-computation, a notice is required to be issued under section 148 of the Act, which can be issued only when there is information with the Assessing officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.

3.6. Following shall be considered as 'information' which suggest that the income has escaped assessment

3.6..1. Any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board. The flagging would largely be done by the computer based system.

3.6..2. A final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act.

3.6..3. In search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years

immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

3.7. New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

3.8. The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

3.8..1. in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year.

3.8..2. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;

3.9. Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.

3.10. The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.

3.11. Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

3.12. The assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.

3.13. It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be

excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.

3.14. The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be —

(a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year

3.15. Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

3.16. These amendments will take effect from 1st April, 2021.

Comments:

- *Search assessments*

  The existing provisions of section 153A and section 153C, of the Act are proposed to inapplicable where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021. Thus, for search initiated after 01.04.2021, assessments shall be made under section 148 instead of section 153A/153C. Further, notice u/s 148 shall compulsorily be issued for three assessment years preceding the year of search, as against present norms under section 153A/153C for issue of notice for six assessment years. However, for those years where there is escapement of income exceeding Rs. 50 Lacs, the existing norms giving power to issue notice up to ten years preceding the year of search, will continue, though in a different section.

- *It seems that the proposed amendment is intended to reduce litigation in the context of Section 153A/153C, wherein the judiciary is generally of the view that in case of completed proceedings, additions can only be made on the basis of some incriminating material unearthed during the course of search, if any for the relevant year. With the merging of search provisions with section 148, and insertion of deeming provision in section 148 that in case of search cases, the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.*

- *On the face of the proposed amendment, it seems that number of assessment years generally involved in search cases has decreased from seven years to four years. However in our view, the proposed section gives more power of issuing notice beyond*

three years, since the earlier criteria of 'undisclosed income' has now been replaced by 'information which suggests that the income chargeable to tax has escaped assessment'. The term 'undisclosed income' has been judicially held in a number of cases that it should have nexus with incriminating materials found during search, while the proposed section uses the word 'suggests' or 'information' etc,, which can again be subject matter of new arena of litigations.

- *Proposed amendment in section 148 (other than search cases)*
- *The budget proposal will amend section 148 of the Income Tax where the time limit for reassessment has been reduced to 3 years from 6 years. The proposal addresses serious tax evasion, where evasion evidence is Rs.50 lakhs or more can be re-opened within 10 years.*
- *The present section 148 empowers AO to issue notice only when he has 'reasons to believe'. The proposed section has empowered the AO to issue notice even when he has 'information which suggest that income has escaped assessment'. Thus, the time tested interpretation of 'reasons to believe' may not continue to apply.*
- *A new section 148A has been inserted which provides that before issuing notice under section 148, the AO shall conduct necessary enquiry, provide opportunity to assessee as to why notice under section 148 should not be issued on the basis of information which suggests that income has escaped assessment. However, the provision of this section is not applicable, where 148 proceedings are initiated pursuant to search.*
- *Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.*
- *Certain scenario are being discussed below :*

Sl. No.	*Date of Issue of Notice*	*Assessment Year for which notice has been issued*	*Amount escaping assessment, represented in the form of asset*	*Whether 148 notice is legally valid*	*Remarks*
1	*After 01st April 2021*	*2015-16*	*40,00,000*	*No*	*Since after 01.04.2021, notice under section 148 can be issued only income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to*

					fifty lakh rupees or more for that year
2	*Before 01st April 2021*	*2015-16*	*40,00,000*	*Yes*	*Yes, notice under section 148 can be issued since income chargeable to tax, which has escaped assessment exceeds Rs. 1,00,000/- or more for that year*
3	*After 01st April 2021*	*2014-15*	*75,00,000*	*No*	*Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.*

4. Issue of notice u/s 142(1) of the Act

4.1. Section 142 of the Act provides for conduct of inquiry before assessment. Clause (i) of sub section (1) of the said section gives the Assessing Officer the authority to issue notice to an assessee, who has not submitted a return of income, asking for submission of return. This is necessary to bring into the fold of taxation non-filers or stop filers who have transactions resulting in income. However, this power can be currently invoked only by the Assessing Officer.

4.2. The Central Government is following a conscious policy of making all the processes under the Act, where physical interface with the assessee is required, fully faceless by eliminating person to person interface between the taxpayer and the Department. In line with this policy, and in order to enable centralized issuance of notices etc. in an automated manner, it is proposed to amend the provisions of clause (i) of the sub-section (1) of the section 142 to empower the prescribed income-tax authority besides the Assessing Officer to issue notice under the said clause.

4.3. This amendment will take effect from 1st April, 2021.

Comments:

- *Now it is expected that NeAC shall issue such notice. The database available with them shall easily give list of all such assessees who have not filed their return, and by a single click, notices to all such assessees can be generated.*

5. Rationalisation of the provision relating to processing of returned income and issuance of notice under sub-section (2) of section 143 of the Act

5.1. Prima-facie adjustments u/s 143(1)(a):

The existing provisions of section 143(1)(a) empowers CPC to make prima-facie adjustments specified in clauses (i) to (vi) therein. It is proposed to make some amendments in sub-clause (iv) and (v).

It is proposed to amend sub-clause (iv) to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.

It is further proposed to amend sub-clause (v) so as to give consequential effect to amendment carried out in section 80 AC vide Finance Act, 2018.

5.2. Time limit for sending intimation u/s 143(1)(a) reduced:

It is proposed to amend the provisions of section 143(1) to reduce the time limit for sending intimation from one year to nine months from the end of the financial year in which the return was furnished.

5.3. Time limit for issuing notice u/s 143(2) reduced:

It is proposed to reduce the time limit for issue of notice under section 143(2) from six months to three months from the end of the financial year in which the return is furnished.

5.4. These amendments will take effect from 1st April, 2021

Comments:

- *The existing sub-clause (iv) of section 143(1)(a) provides for adjustment on account of disallowance of expenditure indicated in the audit report but not taken into account in calculating the total income of the assessee. There has been a debate whether adjustment could be made for income not included in the return of income, but which is evident from the audit report. The amendment has been proposed to amend the said sub-clause so as to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.*
- *According to the existing provisions of Sub-clause (v) of section 143(1)(a), any deduction admissible under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, shall be allowed if the return of income is furnished on or before the due date specified under sub-section (1) of section 139 of the Act. The amendment has*

been proposed to amend the said sub-clause so as to provide that any deduction admissible under section 10 AA or under any of the provisions of Chapter VIA under the heading "C.—Deductions in respect of certain incomes" shall be allowed, if the return of income is furnished on or before the due date specified under the sub-section (1) of section 139 of the said Act.

- *The proposed amendment in reducing time limit for issue of scrutiny notice u/s 143(2) is in line with the amendments reducing time limit for passing assessments.*

6. Discontinuance of Income-tax Settlement Commission

6.1. Section 245B of the Act provides for constitution of the Income Tax Settlement Commission which was established to provide the necessary mechanism for the settlement of tax liability of a taxpayer and to give such person an opportunity make an application in the prescribed form containing a 'full' and 'true' disclosure of his income at any stage of the proceedings which has not been disclosed before the Assessing Officer.

6.2. It is proposed that the Income-Tax Settlement Commission ("ITSC") shall cease to operate on or after 1st February, 2021. This means that no application under section 245C of the Income Tax Act 1961 for settlement of cases shall be made on or after 1st February, 2021.

6.3. As regards the pending application which was not declared invalid under sub-section (2C) of section 245D of the Act and in respect of which no order under section 245D(4) of the Act was issued on or before the 31st January, 2021 shall be treated as pending applications.

6.4. Where in respect of an application, an order, which was required to be passed by the ITSC under section 245(2C) of the Act on or before the 31st day of January, 2021 to declare an application invalid but such order has not been passed on or before 31st January, 2021, such application shall be deemed to be valid and treated as pending application.

6.5. It has been stated that in respect of pending application, the Central Government shall constitute one or more Interim Board for Settlement ("Interim Board"), as may be necessary, for settlement of pending applications which shall consist of three members, each being an officer of the rank of Chief Commissioner, as may be nominated by the Board. If the Members of the Interim Board differ in opinion on any point, the point shall be decided according to the opinion of majority.

6.6. From 1st February, 2021, the provisions related to exercise of powers or performance of functions by the ITSC viz. provisional attachment, exclusive jurisdiction over the case, inspection of reports and power to grant immunity shall apply mutatis mutandis to the Interim Board for the purposes of disposal of pending applications and in respect of functions like rectification of orders for all orders passed under section 245D(4) of the Act.

6.7. With respect to a pending application, the assessee who had filed such application may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer, in the

prescribed manner, about such withdrawal. This means that the assessee can go before the Assessing Officer and get his assessment done in view of this latest amendment for the very same assessment period for which he has filed the settlement application.

6.8. However, where the option for withdrawal of application is not exercised by the assessee within the time allowed, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board. This means that application shall be decided by the Interim Board which was to be earlier decided by the ITSC.

6.9. Where the assessee exercises the option to withdraw his application, the proceedings with respect to the application shall abate on the date on which such application is withdrawn and the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C of the Act had been made.

6.10. It is important to state that during the course of such assessment, the income-tax authority shall not be entitled to use the material and other information produced by the assessee before the ITSC or the results of the inquiry held or evidence recorded by the ITSC in the course of proceeding before it. By inserting these conditions, the interest of the assessee is hedged.

6.11. The caveat and a very wide one is that the above restriction shall not apply in relation to the material and other information collected, or results of the inquiry held or evidence recorded by the Assessing Officer, or, as the case may be, other income-tax authority during the course of any other proceeding under this Act irrespective of whether such material or other information or results of the inquiry or evidence was also produced by the assessee or the Assessing officer before the ITSC.

6.12. The Central Government may, for the purposes of giving effect to the said scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st March, 2023.

6.13. These amendments will take effect from 1st February, 2021.

Comments:

- *The purpose of discontinuation of Income Tax Settlement Commission and constitution of Interim Board for Settlement is evident from the Memorandum Explaining Finance Bill which provide for eliminating interface between the Interim Board and the assessee and introducing a mechanism of dynamic jurisdiction. Thus, it is intended that Interim Board will function in a similar manner like Faceless Assessments or Appeals. Interestingly, this discontinuation and constitution is effective from 1st February 2021 implying that there is status- quo on all pending cases and no fresh cases can be filed in ITSC for time being.*
- *It is known fact that majority of applications filed in ITSC are relating to search and survey cases. Interestingly, assessments of such search and survey cases are still*

under physical regime with Central Circles. Even appeal against such assessments with CIT(A) are also under physical regime. This is quite logical as such assessments and appeals require reference to various seized records etc and it may not be practical to do such assessments or appeals in a faceless manner.

- *The assessee may put to a prejudice, if it is exposed to the newly constituted 'Interim Board' the working regulation of which is yet to be notified/finalised. It is not known as to which conditions shall be inserted by the legislature, unlike the previous conditions which existed for the functioning of the ITSC. It is like keeping the cart before the horse.*
- *In the alternative given to the assessee i.e. to file the application for withdrawal and go before the Assessing Officer for assessment, also prejudices the interest of the assessee. The amendment gives a right to the Assessing Officer to use the material and other information collected irrespective of whether such information was produced before the ITSC by the assessee of by the AO.*
- *No clear definition of the word 'inquiry' has been given. This provides a free hand to the AO, which was otherwise functus officio till now.*
- *The amendment which is clearly stated to be effective from 1st February, 2021 that is prospective is in fact impliedly made retrospective as it says that a stage of settlement shall be completed in a hybrid manner i.e. some part as per the old regime (which now remains discarded) and some part as per the new regime which is yet to be notified. This creates huge inconsistencies in the process and may lead to litigation/ deliberation/ discussions/ confusion.*
- *In view of the above, whether to continue with the ITSC or not is wholly up to the Legislature. However, the person who has already ventured into the same as per the existing provisions, the application of such person should be decided as per the old regime only. This is also in accordance with the principles of natural justice and requires to be implemented as per the 'fitness of things' principle.*

7. Dispute Resolution Mechanism for Small Taxpayers

7.1. In order to prevent new ITR disputes and settling issues at initial stage, it is proposed to introduce a new scheme by inserting a new section 245MA in the Act so as to constitute one or more Dispute Resolution Committees (DRC) with the following key points:

- Disputes where aggregate amount of variation proposed in specified order is **ten lakh rupees or less** shall be eligible to be considered by DRC. Provided that the returned income shall not be more than **fifty lakh rupees**.
- The assesse shall have the option to opt or not to opt for the dispute resolution through the DRC.
- The specified order shall not be eligible for being considered by the DRC if it is based on a search initiated under section 132 or requisition made under section 132A or a survey initiated under section 133A or information received under an agreement referred to in section 90 or section 90A of the Income tax Act, 1961.
- Assessee would not be eligible for benefit of this provision if there is detention, prosecution or conviction under various laws as specified in the proposed section.

- The DRC shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence under this Act in case of a person whose dispute is resolved under this provision.

7.2. The Central Government may, for the purpose of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However no such direction shall be issued after the 31st day of March, 2023.

7.3. Every such notification shall, as soon as may be after the notification is issued, be laid before each house of parliament.

7.4. The proposal will take effect from 1st April, 2021.

Comments:

- *Though the Scheme is yet to be notified, however on going through the fine prints, it seems that this Scheme can be availed by certain category of assessee when Draft Assessment Order is given to him. However, the clarity on the issue will come, when the Scheme is notified.*
- *The proposed DRC is akin to ITSC (now replaced by Interim Board), but expected to have much faster disposal and less reports/enquiry.*

8. Provision for Faceless Proceedings before the Income-tax Appellate Tribunal (ITAT) in a jurisdiction less manner

8.1. In order to impart greater efficiency, transparency and accountability to the assessment process, appeal process and penalty process under the Act a new faceless assessment scheme, faceless appeal scheme and faceless penalty scheme have already been introduced.

8.2. Further, vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 the Central Government has been empowered to notify similar schemes in respect of many other processes under the Act that require a physical interface with the taxpayers.

8.3. In order to ensure that the reforms initiated by the Department to reduce human interface from the system reaches the next level, faceless scheme be launched for ITAT proceedings on the same line as faceless appeal scheme.

8.4. To give effect of the new faceless scheme for ITAT proceedings, a new sub-section is proposed to be inserted in the section 255 of the Act. It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions soon as may be after the notification is issued, be laid before each House of Parliament. such direction shall be issued on or before 31st day of March, 2023

8.5. This proposal will take effect from 1st April, 2021.

Comments:

- *On 13.8.2020, Hon'ble PM Sh. Narendra Modi has launched a new platform for transparent taxation- 'honouring the honest' and the major thrust of this platform was on two pathbreaking and bold reforms- faceless assessments and faceless appeals. The faceless appeal scheme was launched only for cases pending with CIT(A).*
- *These two bold and path breaking reforms were a game changer for overhauling the entire tax administration system. Though for the taxpayers and tax practitioners, these reforms will result in missing out on that odd cup of Tea with the AO/CIT(Appeals), but as long as that odd cup of Tea is being substituted by a far more rewarding and satisfying TEA i.e. Transparency, Efficiency & Accountability, no one is complaining.*
- *To the best of my knowledge, at this stage, there is hardly any disposals in the faceless appeal scheme with CIT(A). Now, the proposal is to cover ITAT cases in Faceless Regime.*
- *It may be noted that a writ petition was filed in Delhi High Court on the issue of the violation of the Principle of Natural Justice & Article 14 of the Constitution of India, wherein it was inter-alia argued that right of personal hearing in appeal proceedings cannot be taken away. Time will tell whether such faceless mechanism satisfies the test of Principal of Natural Justice and Article 14 referred above.*

9. Provisional attachment in Fake Invoice cases

9.1. Section 281B of the Act contains provisions which provide that in cases of assessment or reassessment the Assessing Officer may provisionally attach any property of the assessee, if necessary, in order to protect the interest of revenue. This can be done only with prior approval of Pr. Chief Commissioner or Pr Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director, of Income-tax. Such provisional attachment is valid for a period of 6 months. Further, the said section allows the assessee to furnish a bank guarantee of the value of the property so attached for revocation of the provisional attachment. The above bank guarantee shall be invoked if the assessee fails to pay his tax demand on time. The powers under this section can only be exercised by the Assessing Officer.

9.2. Section 271AAD of the Act was inserted vide the Finance Act, 2020 to impose penalty on a person or a person who causes such person to make a false entry or omit an entry from his books of accounts. It is an anti-abuse provision. Upon initiation of such penalty proceedings, it is highly likely that the taxpayer may also evade the payment of such penalty, if imposed. Hence, in order to protect the interest of revenue, it is proposed to amend the provision of section 281B of the Act to enable the Assessing Officer to exercise the powers under this section during the pendency of proceedings for imposition of penalty under section 271AAD of the Act, if the amount or aggregate of amounts of penalty imposable is likely to exceed two crore rupees.

9.3. This amendment will take effect from 1st April, 2021.

Comments:

- *Clause 98 of the Finance Bill 2020 introduced section 271AAD of the Income Tax Act for penalty on false entry or entry omitted by intention by a person to evade tax. The penalty levied under this section is a sum equal to the aggregate amount of such false entry or omitted entry.*
- *False entry includes*
    - *false invoices,*
    - *invoice issued for goods/service without actual supply of goods/service and*
    - *invoices to/from a person who doesn't exist.*
- I*n the recent times after the implementation of GST, several cases of fraudulent input tax credit 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 the 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.*
- *It is highly anticipated that the person on whom penalty has been imposed for false entry or omitted entry with an intention to evade tax might also try to evade the payment of such penalty. Hence, in such circumstances where the penalty amount under section 271AAD exceeds two crore rupees, the Assessing Officer may attach any property of such person to safe guard the interest of the revenue to recover the penalty amount. Such provisional attachment shall be valid for a period of 6 months or until the assessee furnishes a bank guarantee of equivalent value against such attached property.*

10. Clarification regarding non applicability under Vivad se Vishwas Act, 2020 for assessee who have approached ITSC

10.1. In order to provide clarification of whether an assessee who opted for an alternative mechanism and approached the Income Tax Settlement Commission (ITSC) for settlement of his case under Chapter XIX-A of the Income Tax Act, 1961 can go for Vivad se Vishwas scheme, the Central Government has proposed to amend some provisions of the Vivad se Vishwas Act, 1961 with the following key points:

- Vivad se Vishwas scheme was enacted for the resolution of the disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case under Chapter XIX-A of the Income Tax Act, 1961 (whether they have attained finality or not).

- The definition of "Appellant" under the Vivad se Vishwas Act, 2020 is proposed to be amended to clarify that the expression "appellant" shall not include and shall be deemed never to have been included a person in whose case a writ petition or special leave petition or any other proceeding has been filed either by him or by the income-tax authority or both, before an appellate forum arising out of an order of Income-tax Settlement Commission under Chapter XIX-A of the Income-tax Act, and such petition or appeal is either pending or is disposed of;

- The definition of “Disputed Tax” under the Vivad se Vishwas Act, 2020 is proposed to be amendedto clarify that the expression “disputed tax”, in relation to an assessment year or financial year, as the case may be, shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Income-tax Settlement Commission under Chapter XIX-A of the Income-tax Act

- The definition of “Tax Arrear” under the Vivad se Vishwas Act, 2020 is proposed to be amendeddoubts to clarify that the expression “tax arrear” shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Settlement Commission under Chapter XIX-A of the Income-tax Act.

10.2. These amendments are proposed to take effect retrospectively from 17th March, 2020.

Comments:

- *Some of the appellant had filed writ petition or special leave petition before an appellate forum arising out of an order of Income-tax Settlement Commission in order to save interest on Income Tax (since settlement commission do not have power to give immunity from interest while applicants under VSVS get immunity from interest).*
- *Since these amendments are proposed to take effect retrospectively from 17th March, 2020, such appellant shall not be eligible to go for Vivad se Vishwas Scheme.*

11. Amendment in provision relating to tax audit under section 44AB

11.1. Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed or exceeds one crore rupees in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, fifty lakh rupees in any previous year.In order to reduce compliance burden on small and medium enterprises, through Finance Act 2020, the threshold limit for a person carrying on business was increased from one crore rupees to five crore rupees in cases where-

(i) Aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and

(ii) Aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

11.2. In order to incentivise non-cash transactions to promote digital economy and to further reduce compliance burden of small and medium enterprises, it is proposed to increase the threshold from five crore rupees to ten crore rupees in cases listed above.

11.3. This amendment will take effect from 1st April, 2021 and will accordingly apply for the assessment year 2021-22 and subsequent assessment years.

Comments:

- *This is also a very welcome amendment as it proposes to filter the small taxpayers out of the tax audit bracket and reduce the compliance burden for them. However, shopkeepers and retailers which mainly have their sales over the counter in cash will not be benefitted. It seems that the aggregate of all amounts received will include receipts of both revenue and capital account and similarly aggregate of all amounts paid would include all payment of revenue and capital nature.*
- *In substance, it seems that aggregate of the receipts and payments of whatever nature received by the assessee will be considered for calculation the threshold limit of five percent. No change has been contemplated in case of limit for tax audit in case of persons carrying on business/ profession and covered under section 44AE, 44BB, 44BBB, 44ADA or 44AD.*
- *Further, this amendment would be step forward the flagship programme of the Government, i.e, "Digital India".*

12. Rationalisation of the provision of presumptive taxation for professionals under section 44ADA

12.1. Section 44ADA of the Act relates to special provision for computing profits and gains of profession on presumptive basis.

12.2. Sub-section (1) of the said section provides that notwithstanding anything contained in sections 28 to 43C, in case of an assessee, being a resident in India engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent of the total gross receipts of the assessee in the previous year on account of such profession, or as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax.

12.3. The provisions of section 44ADA of the Act were made applicable to individual, Hindu undivided family (HUF) and partnership firm but not a Limited Liability Partnership (LLP) as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008. This is for the reason that LLP are required to maintain books of accounts in any case under LLP Act.

12.4. It is proposed to make this position clear in the law. Hence it is proposed to amend sub-section (1) of section 44ADA of the Act to provide that the provision of this section shall apply to an assessee, being an individual, HUF or partnership firm, not being an LLP as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008. All other provision like being a resident in India engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts does not exceed fifty lakh rupees in a previous year , shall remain same.

12.5. This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

Comments:

- *Earlier it was applicable on all assessee but as per recent amendment in budget it is applicable to an assessee, being an individual, Hindu undivided family or a partnership firm other than a limited liability partnership as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, who is a resident in India. The proposed amendment would bring hardship to other assessee who are not exempted under this section and they have to compulsory maintain the books of accounts*

13. Relaxation for certain category of senior citizen from filing return of income-tax

13.1. Section 139 of the Act provides for filing of return of income. Sub-section (1) of the section provides that every person being an individual, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income.

13.2. In order to provide relief to senior citizens who are of the age of 75 year or above and to reduce compliance for them, it is proposed to insert a new section to provide a relaxation from filing the return of income, if the following conditions are satisfied: -

(i) The senior citizen is resident in India and of the age of 75 or more during the previous year;
(ii) He has pension income and no other income. However, in addition to such pension income he may have also have interest income from the same bank in which he is receiving his pension income;
(iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank; and
(iv) He shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed.

13.3. Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A of the Act, for the relevant assessment year and deduct income tax on the basis of rates in force. Once this is done, there will not be any requirement of furnishing return of income by such senior citizen for this assessment year.

13.4. This amendment will take effect from 1st April, 2021.

Comments:

- *Any senior citizen aged 75 years or more during the financial year 2020-21, is not required to file Income Tax Return if such individual is only having pension income from Government specified Banks. In addition to pension income, such individual may also have interest income but such interest income should be earned from the same bank from where pension income is earned.*

- *The individual is required to furnish declaration to the specified bank, which shall compute the income tax liability of such individual and deduct tax after giving effect of deductions available under the Act.*
- *It is worth noting that pension income is the prime criteria for the senior citizen to avail the benefit of not filing the return. A senior citizen aged 75 years or more having interest income but not having pension income will continue to be liable to furnish Income Tax return if his/her income exceeds the basic exemption limit.*

II. TDS / TCS PROVISIONS

14. Tax Deduction at Source (TDS) on purchase of goods

14.1. Chapter XVIIB of the Act relates to deduction of tax at source. The provisions of this chapter provide for TDS on various payments at rates contained therein. It is proposed to provide for TDS by person responsible for paying any sum to any resident for purchase of goods. The rate of TDS is kept very low at 0.1%.

14.2. To ensure that compliance burden is only on those who can comply with it, it is proposed that the tax is only required to be deducted by those person (i.e "buyer") whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

14.3. Central Government is proposed to be empowered by notification in the Official Gazette to exempt a person from obligation under this section on fulfilment of conditions as may be specified in that notification.

14.4. Tax is required to be deducted by such person, if the purchase of goods by him from the seller is of the value or aggregate of such value exceeding fifty lakh rupees in the previous year.

14.5. It is also proposed to provide that the provisions of this section shall not apply to

- a transaction on which tax is deductible under any provision of the Act; and
- a transaction, on which tax is collectible under the provisions of section 206C other than transaction to which sub-section (1H) of section 206C applies.

14.6. This means, if on a transaction a TDS or tax collection at source (TCS) is required to be carried out under any other provision, then it would not be subjected to TDS under this section. There is one exception to this general rule.

14.7. If on a transaction TCS is required under sub-section (1H) of section 206C as well as TDS under this section, then on that transaction only TDS under this section shall be carried out.

14.8. Board with the approval of the Central Government has been empowered to issue guidelines for removing difficulty in giving effect to the provisions of this section.

14.9. Every guideline issued by the Board is required to be laid before each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax

14.10. It is also proposed to consequentially amend sub-section (1) of section 206AA of the Act and insert second proviso to further provide that where the tax is required to be deducted under section 194Q and Permanent Account Number (PAN) is not provided, the TDS shall be at the rate of five per cent.

Comments:

- *The Government has realised the difficulty that has arisen on implementation of 206C(1H) with regard to TCS on sale of goods. The existing difficulty in timing and manner of collection of tax at source has been partly dispensed with by introducing a fresh TDS section in relation to purchase of goods.*
- *Now on such transactions, TDS shall be deducted at the time of payment or credit, whichever is earlier. This seems to be much easier to implement and monitor.*
- *However, 206C(1H) survives for cases where turnover of buyer is less than Rs. 10 crores whereas turnover of seller is greater than Rs. 10 crores in the immediately preceding financial year. In such case, the seller shall continue to collect tax at source at applicable amount under section 206C(1H) since 194Q shall not be applicable in such cases.*
- *This partial disabling of the existing TCS provision is a measure to save the face of the Government in completely accepting the flaw in the said TCS provisions.*
- *Further apprehensions in the mind of the Government with regard to this new TDS provision are also clear from the fact that the Government has empowered to Board to modify the provisions of this section by way of issuance of guidelines approved by the Parliament.*
- *This amendment will take effect from 1st July, 2021.*

15. TDS/TCS on non-filer at higher rates

15.1. Section 206AA of the Act provides for higher rate of TDS for non-furnishing of PAN. Similarly section 206CC of the Act provides for higher rate of TCS for non-furnishing of PAN. It is seen that while these provisions have served their purpose in ensuring obtaining and furnishing of PAN by various person, there is need to have similar provisions to ensure filing of return of income by those person who have suffered a reasonable amount of TDS/TCS.

15.2. Hence, it is proposed to insert a new section 206AB in the Act as a special provision providing for higher rate for TDS for the non-filers of income-tax return. Similarly it is proposed to insert a section 206CCA in the Act as a special provision for providing for higher rate of TCS for non-filers of income-tax return.

15.3. Proposed section 206AB of the Act would apply on any sum or income or amount paid, or payable or credited, by a person (herein referred to as deductee) to a specified person. This section shall not apply where the tax is required to be deducted under sections 192,

192A, 194B, 194BB, 194LBC or 194N of the Act. The proposed TDS rate in this section is higher of the followings rates:-

- twice the rate specified in the relevant provision of the Act; or
- twice the rate or rates in force; or
- the rate of five per cent

15.4. If the provision of section 206AA of the Act is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA of the Act.

15.5. Proposed section 206CCA of the Act would apply on any sum or amount received by a person (herein referred to as collectee) from a specified person. The proposed TCS rate in this section is higher of the following rates:-

- twice the rate specified in the relevant provision of the Act; or
- the rate of five percent

15.6. If the provision of section 206CC of the Act is applicable to a specified person, in addition to the provision of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC of the Act.

15.7. The specified person is a person who:

- has not filed the returns of income for both of the two assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be, and
- The time limit for filing tax return under sub-section (1) of section 139 of the Act has expired for both these assessment years.
- The aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years.

15.8. Specified person shall not include a non-resident who does not have a permanent establishment in India

15.9. Consequential amendment is proposed in sub-section (4) of section 194-IB of the Act

Comments:

- *In effect TDS/TCS at higher rates shall be deducted or collected for persons*
  - *Who have not filed return for last two immediately preceding previous years*
  - *Whose last date of filing returns have expired as on the date of such tax deduction or collection*
  - *From whom tax has been deducted or collected exceeding 50,000 in the last two immediately preceding previous years*
- *Effectively this section shall become applicable only after the expiry of the due date of furnishing return of income of the previous year.*

- *The threshold limit of 50,000/- is for the two immediately preceding previous years and not for the previous year in which tax is to be deducted or collected at the higher rate.*
- *These amendments will take effect from 1st July, 2021.*

16. Exemption of deduction of tax at source on payment of Dividend to business trust in whose hand dividend is exempt

16.1. Section 194 of the Act provides for deduction of tax at source (TDS) on payment of dividends to a resident. The second proviso to this section provides that the provisions of this section shall not apply to such income credited or paid to certain insurance companies or insurers. It is proposed to amend second proviso to section 194 of the Act to further provide that the provisions of this section shall also not apply to such income credited or paid to a business trust by a special purpose vehicle or payment of dividend to any other person as may be notified.

16.2. This amendment will take effect retrospectively from 1st April, 2020.

III. RATIONALISATION PROVISIONS

17. End of Prevailing Litigations of 'Depreciation on Goodwill'

17.1. Clause (11) of the section 2 of the Income Tax Act defines, 'block of assets' to mean a group of assets falling within a class of assets comprising, tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed.

17.2. Sub-section (1) of the section 32 of the Income Tax Act provides for deduction on account of depreciation on tangible assets (Building, machinery, plant and furniture) and intangible assets (know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature) acquired on or after the 1st day of April, 1998 which are owned, wholly or partly by the assessee which are used wholly and exclusively for the purpose of business and profession while computing the income under the head – 'Profits and gains of business or profession'.

17.3. Further, Explanation 3 to sub-section (1) of the section 32 provides that for the purposes of this sub- section, the expression "assets" shall mean to be tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

17.4. It is seen that Goodwill of a business or a profession has not been specifically provided as an asset either in the definition under clause (11) of section 2 of the Act or in section 32 of the Act.

17.5. The question whether goodwill of a business is an asset within the meaning of section 32 of the Act and whether depreciation on goodwill is allowable under the said section, is an issue which came up before Hon'ble Supreme Court in the case Smiff Securities Limited

[(2012)348 ITR 302 (SC)]. Hon'ble Supreme Court answered the question in affirmative. Thus, as held by Hon'ble Supreme Court, Goodwill of a business or profession is a depreciable asset under section 32 of the Act.

17.6. However, there are other sections of the Act which are relevant for calculation of depreciation under section 32 of Act. These are as under:

17.6..1. Sixth proviso the section 32 of the Act mandates that in a case of succession/amalgamation/demerger during the previous year, depreciation is to be calculated as if the succession or amalgamation or demerger has not taken place during the previous year and apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

17.6..2. Explanation 2 of sub-section (1) of section 32 of the Act provides that the term —written down value of the block of assets shall have the same meaning as in clause (c) of sub-section (6) of section 43 of the Act.

17.6..3. Clause (c) of sub-section (6) of section 43 of the Act, with respect to block of assets, inter-alia, provides that the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year is to be increased by the actual cost of any asset falling within that block, acquired during the previous year.

17.6..4. Sub-section (1) of section 43 of the Act which defines —Actual cost as actual cost of the assets to the assessee. Explanation 7 to this section covers a situation where in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It clarifies that in this situation, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.

17.6..5. Explanation 2 of clause (c) of sub-section (6) of section 43 of the Act also covers a situation where in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It also clarifies that in this situation, the actual cost of the block of asset in the hand of the amalgamated company would be written down value of that block in the immediate preceding previous year in the case of amalgamating company as reduced by depreciation actually allowed in that preceding previous year.

17.7. Thus, while Hon'ble Supreme Court has held that the Goodwill of a business or profession is a depreciable asset, the actual calculation of depreciation on goodwill is required to be carried out in accordance with various other provisions of the Act, including the ones listed above. Once we apply these provisions, in some situations

(like that of business reorganization) there could be no depreciation on account of actual cost being zero and the written down value of that assets in the hand of predecessor/amalgamating company being zero.

17.8. However, in some other cases (like that of acquisition of goodwill by purchase) there could be valid claim of depreciation on goodwill in accordance with the decision of Hon'ble Supreme Court holding goodwill of a business or profession as a depreciable asset.

17.9. It is seen that Goodwill, in general, is not a depreciable asset and in fact depending upon how the business runs; goodwill may see appreciation or in the alternative no depreciation to its value. Therefore, there may not be a justification of depreciation on goodwill in the manner there is a need to provide for depreciation in case of other intangible assets or plant & machinery. Hence there appears to be little justification for depreciation on goodwill even in the category of cases referred to in the immediately preceding paragraph.

17.10. In view of above discussion, it has been decided to propose that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. In a case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.

17.11. Therefore, to give effect to the above decision, it has been proposed to,

17.11..1. amend clause (11) of section 2 of the Act to provide that - block of asset shall not include goodwill of a business or profession;

17.11..2. amend clause (ii) of sub-section (1) of section 32 of the Act to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said clause and therefore not eligible for depreciation. Further, it is also proposed to amend Explanation 3 to sub-section (1) of the said section to provide that goodwill of a business or profession shall not be considered as an asset for the said sub-section.

17.12. amend section 50 of the Act to provide that in a case where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on the 1st April, 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.

17.13. amend section 55 of the Act by substituting clause (a) of sub- section (2) to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture,

produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,—

17.13..1. in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and

17.13..2. in the case falling under sub-clause (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and

17.13..3. in any other case, shall be taken to be nil

17.14. provide that in case of goodwill of business or profession acquired by the assessee by way of purchase from a previous owner (either directly or through modes specified under sub-clause (i) to (iv) of sub-section (1) of section 49) and any deduction on account of depreciation under section 32 of the Act has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after the 1st April, 2021, then the cost of acquisition will be the purchase price as reduced by the depreciation so obtained by the assessee before the previous year relevant to assessment year commencing on 1st April, 2021.

17.15. These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

Comments

- *The Union Budget 2021 has clarified that no depreciation on Goodwill shall be allowed by amending the definition of 'block of assets' and expressly excluding goodwill from intangible assets.*
- *Earlier, although the word goodwill was not specifically included within the definition of intangible assets, depreciation on purchased goodwill was allowed as an expenditure u/s 32 on the basis of Supreme Court ruling.*
- *By amending the definition and clarifying that depreciation of goodwill shall not be allowed, the government has resolved the debate of whether Section 32 of the IT Act provides for such depreciation. Consequentially, the Government has also put to rest any litigations in relation to previous claims of depreciation by accepting the fact the same was an allowable expenditure u/s 32 and by reducing the cost of purchase of goodwill, the capital asset, by the amount claimed as depreciation in past*
- *Interestingly, the financial bill also states that the deduction for the amount paid for acquiring Goodwill shall be allowed on sale of Goodwill, a transaction which is difficult to actually materialize in practical world. In a way, amount paid for goodwill shall hardly ever be deductible as tax expenditure. This should adversely affect the pricing of future M&A transactions by bringing time value of money into play for amount paid as goodwill by the purchasing entity.*

18. Rationalization of the provision of slump sale

18.1. Section 50B of the Act contains special provision for computation of capital gains in case of slump sale. Sub-section (42C) of section 2 of the Act defines “slump sale” to mean the transfer of one or more undertakings as a result of sale for lump sum consideration without value being assigned to individual assets and liabilities in such cases. This has been interpreted by some courts that other means of transfer listed in sub-section (47) of section 2 of the Act, in relation to definition of the word “transfer” in relation to capital asset like exchange, relinquishment etc, are excluded.

18.2. While discussing transfer as a result of sale it needs to be kept in mind that it is the substance of transaction that is more important than the name given to it by the parties to the transaction. For example, a transaction of “sale” may be disguised as “exchange” by the parties to the transaction, but such transactions may already be covered under the definition of slump sale as it exists today on the basis that it is transfer by way of sale and not by way of exchange.

18.3. This principle was enunciated by Hon'ble Supreme Court in CIT vs. R.R. Ramakrishna Pillai [(1967) 66 ITR 725 SC]. Thus, if a transfer of an asset is in lieu of another asset (non-monetary) it can be said to be monetized in a situation where the consideration for the asset transferred is ascertained first and is then discharged by way of non-monetary assets. In this situation it would be a case of transfer by way of sale and would thus be covered within existing provisions of section 50C of the Act.

18.4. Based on this principle, Hon‘ble SC in the case of Artex Manufacturing Company [(1997), 227 ITR 260] held that the sale of business on a going concern for a lump-sum non-monetary consideration was transfer by way of sale on the ground that the slump price was determined by the value on the basis of itemized assets, though this price was not mentioned in the agreement.

18.5. Similarly, Ho‘ble SC in the case of Dhampur Sugar Mills [(2006) 147 STC 57] considered the case of a dealer who took a sugar mill on long term lease for an agreed amount of license fee and in satisfaction therefore, the dealer was required to give the entire quantity of molasses to the owner of the sugar mill. It was held that the said transaction “in effect and substance” involved passing of monetary consideration and was accordingly liable to sales tax.

18.6. Thus, a transfer which “in effect and substance” is by way of sale is also currently covered in the definition of slump sale under section 50C of the Act as interpreted by various courts. However, it is still seen that tax avoidance schemes are drawn to defeat the intent of this provision and Courts can always intervene to find the true substance of the transaction and purpose of section of 50C of the Act.

18.7. In order to make the intention clear, it is proposed to amend the scope of the definition of the term “slump sale” by amending the provision of clause (42C) of section 2 of the Act so that all types of “transfer” as defined in clause (47) of section 2 of the Act are included within its scope.

Comments:

- *The proposed amendment ensures that even if a transaction is designed so as to not fall within the definition of sale, such as an exchange of assets or rights, the same can now be construed as a slump sale and accordingly taxed under the provisions of section 50B.*
- *Earlier only "sale" of an undertaking was subjected to capital gains under Section 50B of the act. By this amendment, any form of transfer of undertaking, which will now include transactions such as exchange of assets, and giving up or extinguishing rights on assets, would be deemed to be a slump sale and would be subjected to capital gains.*
- *This amendment will take effect from the 1st April, 2021 and shall accordingly apply to the assessment year 2021-22 and subsequent assessment years.*

19. Rationalization of provision of transfer of capital asset to partner on dissolution or reconstitution

19.1. The existing provisions of section 45 of the Act inter alia, provides that any profits or gains arising from the transfer of a capital asset shall be chargeable to income-tax under the head Capital gains and shall be deemed to be the income of the previous year in which such transfer takes place.

19.2. Further sub-section (4) of the said section, provides that the profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of such firm or other association of persons or body of individuals of the previous year in which the said transfer takes place.

19.3. Further, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration for the purposes of section 48.

19.4. In this regard, it has been noticed that there is uncertainty regarding applicability of provisions of aforesaid sub-section to a situation where assets are revalued or self-generated assets are recorded in the books of accounts and payment is made to partner or member which is in excess of his capital contribution.

19.5. Hence, it is proposed to substitute the existing sub-section (4) of section 45 of the Act with a new sub-section (4) and also insert a new sub-section (4A) to this section.

19.6. New proposed sub-section (4) of section 45 of the Act applies in a case where a specified person who receives during the previous year any capital asset at the time of dissolution or reconstitution of the specified entity.

- The capital asset represents the balance in the capital account of such specified person in the books of the specified entity at the time of its dissolution or reconstitution.
- In this situation, the profit and gains arising from the receipt of such capital asset by the specified person shall be chargeable to income-tax as income of the specified

entity under the head “capital gains” and shall be deemed to be the income of such specified entity of the previous year in which the capital asset was received by the specified person.

- For the purposes of section 48 of the Act, the fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.
- The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

19.7. New proposed section sub-section (4A) of section 45 of the Act applies in a case where a specified person receives during the previous year any money or other asset at the time of dissolution or reconstitution of the specified entity.

- The money or other asset is required to be in excess of the balance in the capital account of such specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution.
- In this situation, the profits or gains arising from the receipt of such money or other asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which the money or other asset was received by the specified person.
- For the purposes of section 48 of the Act:

  19.7..1. value of the money or the fair market value of other asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset; and

  19.7..2. the balance in the capital account of the specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition.

- The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

19.8. Consequential amendment is also proposed in section 48 of the Act to provide that in case of specified entity, the amount included in the total income of such specified entity under sub-section (4A) of section 45 which is attributable to the capital asset being transferred, shall be reduced from the full value of the consideration to compute income charged under the head “capital gains”. This is to be calculated in the manner to be prescribed later. This is to mitigate the double taxation which may have happened but for this provision in a situation where an asset which was revalued and for which income under the proposed sub-section (4A) of section 45 of the Act was brought to tax is transferred subsequently by the specified entity.

Comments:

- *The proposed amendment is aimed at taxing transactions involving revaluation of assets of a firm and crediting the partners' capital account and subsequent transfer of same or other assets from the firm to the partners' against their capital account balances.*
- *Judicial pronouncements have held that such receipt of assets or sum of money is capital receipt in hands of partners and hence not chargeable to tax. However, the amendment proposes to tax the same in the hands of the partnership firm itself. Hence, the issue of taxability in the hands of the partner seems to have been put to rest by the proposed amendment.*
- *Also in case where the revalued asset is not transferred, the cost of the revalued asset shall be substituted by the amount on which tax has been paid under the new section for the purpose of computing capital gains on transfer of such revalued asset in future by the partnership firm.*
- *This amendment will take effect from the 1st April, 2021 and shall accordingly apply to the assessment year 2021-22 and subsequent assessment years.*

20. Rationalization of provisions of Minimum Alternate Tax (MAT)

20.1. Section 115JB of the Act provides for MAT at the rate of fifteen per cent of its book profit, in case tax on the total income of a company computed under the provisions of the Act is less than the fifteen per cent of book profit. Book profit for this purpose is computed by making certain adjustments to the profit disclosed in the profit and loss account prepared by the company in accordance with the provisions of the Companies Act, 2013.

20.2. Representations were received that the computation of book profit under section 115JB does not provide for any adjustment on account of additional income of past year(s) included in books of account of current year on account of secondary adjustment under section 92CE or on account of an Advance Pricing Agreement (APA) entered with the taxpayer under section 92CC.

20.3. Representation has also been received that since dividend income is now taxable in the hand of shareholders, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the Double Taxation Avoidance Agreement (DTAA).

20.4. Hence it is proposed to

- Provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner.

  Further, the provision of section 154 of the Act shall apply so far as possible and the period of four years specified in sub-section (7) of section 154 shall be reckoned from

the end of the financial year in which the said application is received by the Assessing Officer.

- Provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and Fee for Technical Services (FTS) in calculating book profit for the purposes of section 115JB of the Act, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.

Comments:

- *This amendment has been proposed primarily to ensure MAT is not paid on income of a foreign company on which taxes are payable at rates lower than applicable MAT rate and income which are not related to the current previous year.*
- *This clause shall be applicable for AY 2021-22 and subsequent assessment years*

21. Rationalization of the provision concerning withholding on payment made to Foreign Institutional Investors (FIIs)

21.1. Section 196D of the Act provides for deduction of tax on income of FII from securities as referred to in clause (a) of sub-section (1) of section 115AD of the Act (other than interest referred in section 194LD of the Act) at the rate of 20 per cent.

21.2. Since the said section provides for TDS at a specific rate indicated therein, the deduction is to be made at that rate and the benefit of agreement under section 90 or section 90A of the Act cannot be given at the time of tax deduction. The situation is different in cases where the provision mandates TDS at rate in force.

21.3. This is for the reason that the definition of the expression —rate in force‖, in clause (37A) of section 2 of the Act, allows benefit of agreement under section 90 or section 90A in determining the rate of tax at which the tax is to be deducted at source. This principle of tax deduction has also been upheld by Hon'ble Supreme Court in the case of PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 2012).

21.4. Representations have been received requesting that the benefit of agreements under section 90 or section 90A of the Act may be considered at the time of tax deduction on payments to FIIs.

21.5. Accordingly, it is proposed to insert a proviso to sub- section (1) of section 196D of the Act to provide that in case of a payee to whom an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A applies and such payee has furnished the tax residency certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A of the Act, then the tax shall be deducted at the rate of twenty per cent. or rate or rates of income-tax provided in such agreement for such income, whichever is lower.

Comments:

- *This clause shall be applicable from 1st April, 2021.*

22. Amendment to provision of Charitable Trust to check double deduction on income application /accumulation

22.1. Exemption to funds, institutions, trusts etc. carrying out religious or charitable activities is provided under clause (23C) of section 10 of the Act and sections 11 and 12 of the Act. Section 12A of the Act, inter alia, provides for procedure to make application for the registration of the trust or institution to claim exemption under section 11 and 12.

22.2. Section 12AB is the new section which comes into effect from the 1st April, 2021.

22.3. Under the existing provisions of the Income-tax Act, 1961, corpus donations received by trusts, institutions, funds etc. are exempt as follows:

22.3..1. Explanation to third proviso to clause (23C) of section 10 provides that income of the funds or trust or institution or any university or other educational institution or any hospital or other medical institution, shall not include income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus.

22.3..2. Clause (d) of sub-section (1) of Section 11 provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution.

22.4. These entities are not allowed to accumulate more than 15% of their income or accumulate for specific purpose up to 5 years, other than corpus donations referred above.

22.5. Instances have come to the notice where some of these entities claim the corpus donations to be exempt and at the same time claim the application of such Corpus as part of the mandatory 85% application from income other than such corpus. This results in a situation where the corpus income has been exempted and its application has been claimed as application against the mandatory 85% application of non-corpus income.

22.6. Instances have also come to the notice where these entities take loans or borrowings and make application for charitable or religious purposes out of the proceeds of loans and borrowings. Such loans or borrowings when repaid are again claimed as application. This results in unintended double deduction.

22.7. Both these situations, at times, also result in paper loss which is claimed by the assessee as carry forward resulting in unintended short application (less than 85%) in following years.

22.8. To ensure that there is no double counting while calculating application or accumulation, it has been proposed that-

22.8..1. Voluntary contributions made with a specific direction that it shall form part of the corpus shall be invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus.

22.8..2. Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.

22.8..3. Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.

22.8..4. Clarify in both clause (23C) of section 10 and section 11 that for the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed

22.9. These amendments will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

Comments

- *Charitable trusts shall not be permitted to claim carry forward of loss.*
- *It is made clear that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding to the previous year.*
- *Also suitable adjustment for change in loan and change in corpus shall have to be made every year to arrive at the amount of application of income for that previous year.*

23. Rationalization of the provisions of Equalization Levy

23.1. Under section 165A of Finance Act, 2016, as inserted by section 153 of the Finance Act, 2020, Equalisation Levy is to be levied at the rate of two percent of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated, by it-

(i) to a person resident in India; or
(ii) to a non-resident in the specified circumstances as referred to in sub-section (3); or
(iii) to a person who buys such goods or services or both, using internet protocol address located in India.

23.2. For this purpose, E-commerce supply or service is defined as to mean:-

(i) online sale of goods owned by the e-commerce operator;
(ii) online provision of services provided by the e-commerce operator;

(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or

(iv) any combination of activities listed in clause (i), (ii) or clause (iii);

23.3. Clause (50) of section 10 of the Act provides for the exemption for the income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force or arising from any e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2021 and chargeable to equalisation levy under that Chapter.

23.4. It is seen that there is need for some clarification to correctly reflect the intention of various provisions concerning this levy. Hence, it is proposed to carry out the following amendments in the Finance Act, 2016:-

- Insert an Explanation to section 163 of the Finance Act, 2016, clarifying that consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India under the Income-tax Act read with the agreement notified by the Central Government under section 90 or section 90A of the Income-tax Act.
- Insert an Explanation to clause (cb) of section 164 of the Finance Act, 2016, providing that for the purposes of defining e-commerce supply or service,online sale of goods‖ and —online provision of services‖ shall include one or more of the following activities taking place online:

a) Acceptance of offer for sale;
b) Placing the purchase order;
c) Acceptance of the Purchase order;
d) Payment of consideration; or
e) Supply of goods or provision of services, partly or wholly

- Amend section 165A of the Finance Act, 2016, to provide that consideration received or receivable from e-commerce supply or services shall include:

(i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and

(ii) Consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

These amendments will take effect retrospectively from 1st April, 2020.

It is also proposed to amend section 10(50) of the Act to -

(i) Provide that section 10(50) will apply for the e-commerce supply or services made or provided or facilitated on or after 1st April, 2020.

(ii) clarify that exemption under section 10(50) will not apply for royalty or fees for technical services which is taxable under the Act read with the agreement notified by the Central Government under section 90 or section 90A of the Act.

(iii) Define e-commerce supply or services under section 10(50) as the meaning assigned to it in clause (cb) of section 164 of Chapter VIII of the Finance Act, 2016.

23.5. This amendment will take effect from 1st April 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years

Comments:

- *E-commerce marketplaces facilitate the sale of goods belonging to other vendors through their platform. The revenue earned by such e-commerce operator is only a certain percentage of commission on the total sales price. EL should be required to be paid on the consideration received and retained by the e-commerce operator i.e. on the commission amount. However, the provisions are ambiguous in this respect.*

24. Payment by employer of employee contribution to a fund on or before due date

24.1. Section 36(1)(va) of the Act provides for deduction of any sum received by the assessee from any of his employees to which the provisions of Section 2(24)(x) apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.

24.2. Section 43B provides for deduction if any sum towards employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the assessee on or before the due date for furnishing the return of the income under Section 139(1) of the Act.

24.3. Section 43B of the Act covers only employer‘s contribution and does not cover employee contribution. However, some courts have applied the provision of section 43B on employee contribution as well and allowed the deduction under section 43B even though employee contribution were paid after the due date prescribed by relevant statutes but before the due date of filing the return.

24.4. In order to distinguish Employer‘s contribution towards welfare funds such as ESI and PF from the employee‘s contribution, and in order to provide certainty, it is proposed to amend Section 36(1)(va) and Section 43B.

24.5. It is proposed to make amendment in section 36(1)(va) of the Act by inserting another explanation in order to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the due date under this clause.

24.6. It is further proposed to make amendment in section 43B of the Act by inserting explanation to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of section 2(24)(x) applies.

24.7. The proposed amendments will take effect from Assessment year 2021-22 and subsequent assessment years.

Comments:

- *As per the Employee Provident Fund Act 1952 and Employees' State Insurance Act 1948, due date for depositing of the amount deducted by the employer is within 20th & 26th of the following month respectively including grace period of 5 days.*
- *Subsequently, the Employees' State Insurance Corporation (ESIC) had changed the payment due date from "Within 21 days " To "Within 15 Days" with effect from the*

contribution for the month of June 2017. However, if such contributions are paid after the due date prescribed by relevant statutes but before the due date of filing the return, the same is allowable as held by ma

- *Section 2(24)(x) of the Act, inter alia defines "Income" to include any sum received by the employer from its employees' as contribution towards certain specified funds. Because of this definition of income, the employees' contribution to specified funds, which has been deducted by employer is treated as income, but on payment within the due date, such income becomes allowable expenditure. As held by majority of High Courts, if such contributions are paid after the due date prescribed by relevant statutes but before the due date of filing the return, the same is allowable.*
- *The use of words like 'deemed to never have been applied' in the proposed amendment indicate that this proposal is clarificatory in nature, though the Finance Bill has clearly stated this proposal is effective from AY 2021-22. Perhaps, CBDT has to come up with a suitable clarification regarding past disputes on this matter.*
- *With the present proposals, employers need to be very vigilant in depositing the employees' contribution within the due date as per relevant statutes.*

IV. TAX INCENTIVES

25. Incentives for affordable rental housing

25.1. The existing provision of the section 80-IBA of the Act provides that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building affordable housing project, there shall, subject to certain conditions specified therein, be allowed a deduction of an amount equal to hundred per cent of the profits and gains derived from such business. One of the conditions is that the project is approved by the competent authority after the 1st day of June 2016 but on or before the 31st day of March 2021.

25.2. To help migrant labours and to promote affordable rental, it is proposed to allow deduction under section 80-IBA of the Act also to such rental housing project which is notified by the Central Government in the Official Gazette and fulfils such conditions as specified in the said notification.

25.3. Further, it is also proposed that the outer time limit for 31st March 2021 in this section for getting the affordable housing project approved be extended to 31st March 2022 and same outer time limit be also provided for the proposed affordable rental housing project.

25.4. This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

Comments:

- *The above amendment has provided opportunities to the migrant labours who travels different cities for employment. The migrant labours will easily get shelter at affordable rents, as the amendment promotes for building affordable rental housing projects.*

- *The above amendment has also increased the time limit to take approval from the competent authority for affordable housing projects and affordable rental housing projects from 31st March, 2021 to 31st March, 2022.*
- *This will also boost the initiative of Pradhan Mantri Awas Yojna which focused on housing for all by March, 2022.*

26. Extension of date of sanction of loan for affordable residential house property

26.1. The existing provision of the section 80EEA of the Act, inter alia, provides a deduction in respect of interest on loan taken for a residential house property from any financial institution up to one lakh fifty-thousand rupees subject to the condition that the loan has been sanctioned during the period beginning on 1st April, 2019 and ending on 31st March, 2021. There are further conditions that the stamp duty value of residential house property does not exceed forty-five lakh rupees and the assessee does not own any residential house property on the date of sanction of loan. This provision allows deduction to the first time home buyers, in respect of interest on home loan. In order to help such first time home buyers further, it is proposed to amend the provision of section 80EEA of the Act to extend the outer date for sanction of loan from 31st March 2021 to 31st March 2022.

26.2. This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

27. Increase in safe harbour limit of 10% u/s 43CA and 56 of the Income Tax Act to 20%

27.1. Section 43CA of the Act, provides that where the consideration received or accruing as a result of the transfer by an assessee (other than capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration.

27.2. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

27.3. Clause (x) of sub-section (2) of section 56 of the Act, *inter alia*, provides that where any person receives, in any previous year, from any person or persons on or after 1st April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head “income from other sources”.

27.4. It also provides that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds ten per cent of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "Income from other sources".

27.5. Thus, the present provisions of section 43CA and 56 of the Act provide for safe harbour of 10 per cent.

27.6. It is proposed to increase the differential from 10% to 20% (under section 43CA) for the period from 12th November, 2020 to 30th June 2021 for only primary sale of residential units of value up to Rs 2 Crores. Consequential Relief up to 20% was also allowed to buyers of the these units under section 56(2)(x) of the Income Tax Act for the said period

27.7. In view of the above, it is proposed to amend section 43CA and Clause (x) of sub-section (2) of section 56 of the Income Tax Act.

27.8. These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

Comments

- *The amendment is proposed to give effect to the package announced in Atmanirbhar Package 3.0 on 12th November, 2020 by the Ministry of Finance.*
- *The increased safe harbor is applicable only on the transfer of residential units which takes place during the period from 12th November, 2020 to 30th June, 2021*
- *The buyer should not have owned any residential house prior to such purchase. It is to be seen how the developers will confirm and document the fact that the buyer does not or did not any residential house prior to the proposed sale. Also, in a case the buyer did own a residential property in past but had sold the same before purchase of this new unit, whether the benefit is available is debatable.*
- *The aforesaid increase in differential limit to 20% will not apply if the consideration of transfer of such residential house property is more than Rs. 2 Crores.*
- *It should also be kept in mind that the safe harbor is transaction price plus 20% versus stamp duty value and not stamp duty value minus 20% versus transaction price.*
- *Also, in case difference is more than 20%, the entire amount of difference is taxable and not the difference exceeding 20%.*
- *"residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.'*
- *It means that more than joint buyers of a single residential unit cannot take the benefit of this amendment by apportioning the cost on one single residential unit between each of them.*

28. Extension of date of incorporation for eligible start up for exemption and for investment in eligible start-up

28.1. The existing provisions of the section 80-IAC of the Act, inter alia, provides for a deduction of an amount equal to hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years at the option of the assessee. This is subject to the condition that the total turnover of its business does not exceed one hundred crore rupees. The eligible start-up is required to be incorporated on or after 1st day of April, 2016 but before 1st day of April 2021.

28.2. The existing provisions of the section 54GB of the Act, inter alia, provide for exemption of capital gain which arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee. The assessee is required to utilise the net consideration for subscription in the equity shares of an eligible start-up, before the due date of furnishing of return of income under sub-section (1) of section 139 of the Act. The eligible start-up is required to utilise this amount for purchase of new asset within one year from the date of subscription in equity shares by the assessee. Further, it has been provided that benefit is available only when the residential property is transferred on or before 31st March, 2021.

28.3. In order to help such eligible start-up and help investment in them,-

(i) it is proposed to amend the provisions of section 80-IAC of the Act to extend the outer date of incorporation to before 1st April, 2022; and

(ii) it is proposed to amend the provisions of section 54GB of the Act to extend the outer date of transfer of residential property from 31st March 2021 to 31st March 2022.

28.4. These amendments will take effect from 1st April, 2021.

Comments:

- *This is also a welcome amendment and it would further promote investment in start-ups in India thereby enhancing the economic growth of the country.*
- *Startups create more jobs which means more employment and an improved economy. In addition, these start-ups also contribute to economic dynamism by spurring innovation and injecting competition.*

29. Raising of prescribed limit for exemption under sub-clause (iiiad) and (iiiae) of clause (23C) of section 10 of the Act

29.1. Clause (23C) of section 10 of the Act provides for exemption of income received by any person on behalf of different funds or institutions etc. specified in different sub- clauses.

29.2. Sub-clauses (iiiad) of clause (23C) of the section 10 provides for the exemption for the income received by any person on behalf of university or educational institution as referred to in that sub-clause. The exemptions under the said sub-clause are available

subject to the condition that the annual receipts of such university or educational institution do not exceed the annual receipts as may be prescribed. Similarly, sub-clauses (iiiae) of clause (23C) of the section provides for the exemption for the income received by any person on behalf of hospital or institution as referred to in that sub-clause. The exemptions under the said sub-clause are available subject to the condition that the annual receipts of such hospital or institution do not exceed the annual receipts as may be prescribed. The presently prescribed limit for these two sub-clauses is Rs 1 crore as per Rule 2BC of the Income-tax Rule.

29.3. Representations have been received to increase this limit of Rs 1 crore, as provided under Rule 2BC. In order to provide benefit to small trust and institutions, it has been proposed that the exemption under sub-clause (iiiad) and (iiiae) shall be increased to Rs 5 crore and such limit shall be applicable for an assessee with respect to the aggregate receipts from university or universities or educational institution or institutions as referred to in sub-clause (iiiad) as well as from hospital or hospitals or institution or institutions as referred to in sub-clause (iiiae).

29.4. This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

Comments:

- *The aforesaid amendments would provide benefits to small trusts and institutions as more institutions would be covered under the limits thereby promoting the growth of educational and health institutions at primary levels.*
- *The benefits of the above amendments cannot be availed in the Assessment Year 2021-2022.*
- *These amendments would further support the government's wider prospective of developing infrastructure in the fields of Health and Education as efforts of such institutions play a significant role in promoting economic development and social welfare objectives of the Government. Their outreach and more localised approach helps to identify the needy and lend a supporting hand.*

30. Exemption for LTC Cash Scheme

30.1. Under the existing provisions of the Act, clause (5) of section 10 of the Act provides for exemption in respect of the value of travel concession or assistance received by or due to an employee from his employer or former employer for himself and his family, in connection with his proceeding on leave to any place in India. In view of the situation arising out of outbreak of COVID pandemic, it is proposed to provide tax exemption to cash allowance in lieu of LTC.

30.2. It is proposed to insert second proviso in clause 5 of section 10, so as to provide that, for the assessment year beginning on the 1st day of April, 2021, the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of conditions to be prescribed. It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption under the second proviso in connection with prescribed expenditure, no exemption shall be

allowed under this clause in respect of same prescribed expenditure to any other individual.

30.3. The conditions for this purpose shall be prescribed in the Income-tax Rules in due course and shall, inter alia, be as under:

(i) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21;

(ii) "specified expenditure" means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors/service providers;

(iii) "specified period" means the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021;

(iv) the amount of exemption shall not exceed thirty-six thousand rupees per person or one-third of specified expenditure, whichever is less;

(v) the payment to GST registered vendor/service provider is made by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider;

(vi) If the amount received by, or due to an individual as per the terms of his employment, from his employer in relation to himself and his family, for the LTC is more than what is allowable to such person under the above discussed provisions, the exemption under the proposed amendment would be available only to the extent of exemption admissible under above listed provisions.

30.4. This amendment will take effect from 1st April, 2021 and will, apply in relation to the assessment year 2021-2022 only.

Comments:

- *Cash Allowance received by an Employee from his employer in lieu to LTC will be allowed as exemption subject to fulfilment of certain additional conditions as prescribed above.*
- *This will help in economical flow of the Country and also the people will be helping in generating more cash in the economy.*
- *This Scheme was restricted to Central Government Employees, which has been widen to cover all Private & Government Employees.*

V. RATES OF INCOME TAX

31. Income Tax Rates (For Assessment Year 2022-23)

31.1. From the assessment year 2021-22 (F.Y. 2020-21), individual and HUF tax payers have an option to opt for taxation under section 115BAC of the Act and the resident co-operative society has an option to opt for taxation under the newly inserted section 115BAD of the Act.

31.2. On satisfaction of certain conditions as per the provisions of section 115BAC, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

31.3. <u>New Tax Rates - Individuals (Resident Individuals), HUF</u>

Upto Rs. 2,50,000	NIL
Rs. 2,50,001 to 5,00,000	5 per cent
Rs. 5,00,001 to 7,50,000	10 per cent
Rs. 7,50,001 to 10,00,000	15 per cent
Rs. 10,00,001 to 12,50,000	20 per cent
Rs. 12,50,001 to 15,00,000	25 per cent
Above Rs. 15,00,000	30 per cent

- This option may be exercised for every previous year by an Individual and HUF having no business income, however, for other cases i.e. for person exercising this option and having business income, the option once exercised for a previous year shall be valid for that previous year and all subsequent years.

- The option can be withdrawn only once and thereafter, the individual of HUF will not be eligible to exercise the option of the concessional rate again, except in case where such individual of HUF ceases to have business income.

- The person availing concessional rate will not be allowed to claim any exemption or deduction for allowance or perquisites, by whatever name called, provided under any other law for the time being in force.

- The option is to be exercised along with the Return of Income to be furnished u/s 139(1) of the Act.

- It is proposed provisions of section 115JC- AMT will not apply to such Individuals and HUF having business income.

- It is proposed provisions of section 115JD- carry forward and set off of AMT credit will not apply to such Individuals and HUF having business income.

- The individual or HUF opting for taxation under the newly inserted section 115BAC of the Act shall not be entitled to the following exemptions/ deductions:

    - Leave travel concession as per clause (5) of section 10;
    - House rent allowance as per clause (13A) of section 10;
    - Some of the allowance as contained in clause (14) of section 10;
    - Allowances to MPs/MLAs as per clause (17) of section 10;
    - Allowance for income of minor as per clause (32) of section 10;
    - Exemption for SEZ unit as per section 10AA;
    - Standard deduction, deduction for entertainment allowance and employment/professional tax as contained in section 16;

- Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23. (Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);
- Additional deprecation under clause (iia) of sub-section (1) of section 32;
- Deductions under section 32AD, 33AB, 33ABA;
- Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;
- Deduction under section 35AD or section 35CCC;
- Deduction from family pension under clause (iia) of section 57;
- Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA,80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub-section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme) and section 80JJAA (for new employment) can be claimed.

Comments:

- *Provisions of Section 115BAC is riddled with endless conditions, including surprisingly that, in order to be eligible, neither standard deduction nor house rent allowance (both relevant to a salaried employee) can be claimed, nor U/s 80 C (which is the largest and most relevant deduction overall for individuals). Additionally, it is an irreversible option and not a year on year operation. In our opinion if the said option were to be exercised, it would lead to trivial benefits, if at all. Meaningful reduction in rates would have been beneficial in a slowing economy where public sentiment is quite poor and it would helped people with more disposable income.*

31.4. Old Tax Rates - Individuals (Resident Individuals), HUF, AOP, BOP and AJP-

➢ Other than Senior Citizen and Super Senior Citizen

Upto Rs. 2,50,000	NIL
Rs. 2,50,001 to 5,00,000	5 per cent
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

➢ Senior Citizen (60 years or more but below the age of 80 years)

Upto Rs. 3,00,000	NIL
Rs. 3,00,001 to 5,00,000	5 per cent
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

- Super Senior Citizen (80 years and above)

Upto Rs. 5,00,000	NIL
Rs. 5,00,001 to 10,00,000	20 per cent
Above Rs. 10,00,000	30 per cent

31.5. Similarly, a co-operative society resident in India shall have the option to pay tax at 22% for assessment year 2021-22 onwards as per the provisions of section 115BAD, subject to fulfilment of certain conditions.

31.6. Surcharge: The amount of Income-Tax computed as above, shall be increased by:

- Surcharge@10% of such Income-Tax if total income>Rs.50Lacs < Rs.1 Crore.
- Surcharge @ 15% of such Income-Tax if total income >Rs.1 Crore < Rs. 2 Crore.
- Surcharge @ 25% of such Income-Tax if total income >Rs. 2 Crore < Rs. 5 Crore
- Surcharge @ 37% of such Income-Tax if total income >Rs. 5 Crores
- Note: having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees, surcharge will be applicable at the rate of 15% of such income tax.

31.7. Marginal Relief on Surcharge:

- In case of Individuals/HUF/ AOP/ BOI/ AJP, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore as the case may be shall not exceed the tax payable on Total Income of Rs. 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore by more than the amount of Income that exceeds Rs. 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore.
- Similarly, in the case of certain companies, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 1 Crore (or Rs. 10 Crore) shall not exceed the tax payable on Total Income of exceeding Rs. 1 Crore (or Rs. 10 Crore) by more than the amount of Income that exceeds Rs. 1 Crore (or Rs. 10 Crore).

31.8. Cess: “Health and Education Cess” is payable at the rate of four per cent on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such cess.

31.9. Firms: Tax rate 30%. Cess @ 4%, Surcharge @ 12% if Taxable Income exceeds Rs. 1 Crore.

31.10. Domestic Company: Tax rate 25% + Cess @ 4%, if the total turnover turnover or gross receipts of the previous year 2018-19 does not exceed 400 crore rupees and in all other cases the rate of Income-tax shall be 30% of the total income + Cess @ 4%.

Taxable Income	Surcharge
Upto Rs. 1 crore	NIL
>Rs. 1 crore<Rs. 10 Crores	7 per cent
Rs. 10 Crores or above	12 per cent

31.11. Domestic Company (Concessional Tax Rate option):

- Concessional Tax Rate – 22 per cent (Section 115BAA)
- For New Manufacturing domestic companies – 15 per cent (Section 115BAB)
- The tax rate prescribed U/s 115BAA is 22% which shall be further increased by a surcharge of 10% and health and education cess of 4%. Hence, the effective tax rate U/s 115BAA is 25.168%. However, such companies will not be required to pay minimum alternate tax (MAT) U/s 115JB of the Act.
- Sections 115BAA and 115BAB were inserted via the Taxation Law (Amendment) Act, 2019. The scope of non-availment of deductions for the companies opting for the concessional rate has been widened to exclude all deduction under chapter VIA except deduction under section 80JJAA and Section 80M.
- The restriction to claim the deduction to avail the concessional tax rate under section 115BAA was earlier limited to deductions under Chapter VIA under the heading “C”- Deductions in respect of certain income. However, with the proposed Finance Bill, 2020 companies are now restricted to avail any deduction under whole of chapter VIA except Section 80 JJAA and Section 80M.
- Companies opting for concessional tax rate will get the benefit of section 80M in respect of dividend income received by it during the previous year and distributed by it. MAT provisions are not applicable on such companies.
- However, if the company continues to pay the tax under old regime, where provisions of Section 115JB are applicable, dividend income received by the company during the year will get added to the book profit for the calculation of MAT and reduction thereof would not available which would be detrimental to the Company.

31.12. Foreign Company: Tax rate 40%. Cess @ 4% on tax

Taxable Income	Surcharge
Upto Rs. 1 crore	NIL
>Rs. 1 crore<Rs. 10 Crores	2 per cent
Rs. 10 Crores or above	5 per cent

31.13. Local Authorities: Tax rate 30%. Cess @ 4% on tax

31.14. Cooperative Societies:

Taxable Income	Tax
Upto Rs. 10,000	10%
>Rs. 10,000 <Rs. 20,000	20%
Rs. 30,000 or above	30%

31.15. In line with section 115BAA and section 115BAB introduced via the Taxation Law (Amendment) Act, 2019, the new section 115BAD for cooperative societies provides an option to pay concessional tax with the following conditions:

- This option so exercised cannot be withdrawn
- The option is to be exercised in the prescribed manner on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the returns of income and such option once exercised shall apply to subsequent assessment years;
- Provision of section 115JC- AMT will not apply to such co-operative society.
- The co-operative society opting for concessional tax rate under the newly inserted section 115BAD of the Act shall not be entitled to the following exemptions/ deductions:
  - Exemption for SEZ unit as per section 10AA;
  - Additional deprecation under clause (iia) of sub-section (1) of section 32;
  - Deductions under section 32AD, 33AB, 33ABA;
  - Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;
  - Deduction under section 35AD or section 35CCC;
  - Any deduction under chapter VIA

VI. OTHERS

32. Advance Tax installment for dividend income

32.1. Section 234C of the Act provides for payment of interest by an assessee who does not pay or fails to pay on time the advance tax instalments as per section 208 of the Act. The assessee is liable to pay a simple interest at the rate of 1% per month for a period of three months on the amount of shortfall calculated with respect to the due dates for advance tax instalments.

32.2. The first proviso of the sub section (1) provides for the relaxation that if the shortfall in the advance tax instalment or the failure to pay the same on time is on account of the income listed therein, no interest under section 234C shall be charged provided the assessee has paid full tax in subsequent advance tax instalments. These exclusions are: -

(i) the amount of capital gains; or

(ii) income of the nature referred to in sub-clause (ix) of clause (24) of section 2; or

(iii) income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time; or

(iv) income of the nature referred to in sub-section (1) of section 115BBDA.

32.3. Aforesaid relaxation is to insulate the taxpayers from payment of interest under section 234C of the Act in cases where accurate determination of advance tax liability is not possible due to the intrinsic nature of the income. Therefore, after considering various representations favourably, it is proposed to include dividend income in the above exclusion but not deemed dividend as per sub-clause (e) of clause (22) of section 2 of the Act.

32.4. This amendment will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

Comments:

- *This proposed amendment would bring a relaxation in paying the interest on dividend income incurred by the assessee*

33. Issuance of zero-coupon bond by infrastructure debt fund

33.1. Clause (48) of section 2 of the Act provides for definition of zero-coupon bond, as a bond issued by any infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank and in respect of which no payment and benefit is received or receivable before maturity or redemption. These are required to be notified by the Central Government in the Official Gazette.

33.2. In order to enable infrastructure debt fund [which are notified by the Central Government in the Official Gazette under clause (47) of section 10 of the Act] to issue zero coupon bond necessary amendments are proposed in clause (48) of section 2 of the Act. Rules 2F and 8B of Income-tax Rules shall be amendment subsequently after the Finance Bill 2021 is enacted.

Comments:

- *In order to enable Infrastructure Debt Fund to issue zero-coupon bonds the proposed amendment has been done in the definition of zero-coupon bonds under section 2(48) of the Income Tax Act, 1961.*
- *This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.*

34. Facilitating strategic disinvestment of public sector company

34.1. Section 2 of the Act provides the definitions for the purposes of the Act. Clause (19AA) of the said section defines that “demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, by a demerged company of its one or more undertakings to any resulting company on satisfaction of conditions prescribed in the said clause.

34.2. Section 72A of the Act provides provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. Sub-section (1) of section 72A of the Act provides that the accumulated loss and unabsorbed depreciation of the amalgamating company or companies shall be deemed to be the accumulated losses and unabsorbed depreciation of the amalgamated company or companies in specified cases and subject to the conditions specified in the said section.

34.3. It is proposed to relax the provisions of these two sections for public sector companies in order to facilitate strategic disinvestment by the Government. Accordingly, it is proposed to carry out the following amendments.

34.4. It is proposed to amend clause (19AA) of section 2 of the Act to insert Explanation 6 to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if

(i) such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and

(ii) the resultant company is a public sector company on the appointed date indicated in the scheme approved by the Government or any other body authorised under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and

(iii) fulfils such other conditions as may be notified by the Central Government in the Official Gazette.

34.5. It is proposed to amend sub-section (1) of section 72A of the Act,

(i) to substitute clause (c) to provide that the provision of sub- section (1) of section 72A shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.

(ii) to substitute clause (c) to provide that the provision of sub- section (1) of section 72A shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies, if:

(a) the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and
(b) the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

(iii) to insert a proviso to sub-section (1) to provide that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment;

(iv) to insert an Explanation to sub-section (1) to define the followings:-

(a) “Control” shall have the same meaning as assigned to in clause (27) of Section 2 of the Companies Act, 2013;

(b) “Erstwhile” public sector company‖ means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government.
(c) Strategic disinvestment” shall mean sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below 51%, along with transfer of control to the buyer.

Comments:

- *The proposed amendment has been made keeping in mind the Government's disinvestment plans announced by the Finance Minister in her Budget Speech including the proposed IPO of Life Insurance Corporation of India (LIC in FY 22).*

- *These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.*

35. Tax neutral conversion of Urban Cooperative Bank into Banking Company

35.1. Section 44DB of Act provides for computing deductions in the case of business re-organization of cooperative banks. Further, the said section, inter alia, provides that where such business reorganization of co-operative banks takes place, the deductions under sections 32, 35D, 35DD and section 35DDA will be apportioned between the predecessor co-operative bank and the successor co- operative bank in the proportion of the number of days before and after the date of business reorganization. Further transfer of a capital asset by the predecessor co- operative bank to the successor co-operative bank, as well as transfer of shares by the shareholders in the predecessor co-operative bank, in a case of business reorganization under section 47 of the Act, is also not regarded as transfer.

35.2. It is proposed to expand the scope of business reorganization to include conversion of a primary co-operative bank to a banking company and the deductions available under section 44DB of the Act shall also be made applicable in relation to such conversion of primary co-operative bank to the banking company. Further it is also proposed that transfer of a capital asset by the primary co-operative bank to the banking company as a result of conversion shall not be treated as transfer under section 47 of the Act. Consequently, the allotment of shares of the converted banking company to the shareholders of the predecessor primary co-operative bank shall not be treated as transfer under the said section of the Act.

35.3. These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

Comments:

- *The Reserve Bank of India has granted permission for voluntary transition of primary co-operative Bank into a banking company by way of transfer of Assets & Liability vide Circular reference no. DCBR.CO.LS.PCB. Cir.No.5/07.01.000/2018-19 dated September 27, 2018.*

- *Pursuant to the above circular the scope of Section 44DB of the Act has been expanded to include conversion of primary co-operative Bank into a banking company.*

36. Investments Relaxations to Sovereign Wealth Fund (SWF) and Pension Fund (PF)

36.1. Allowing Alternate Investment Fund (AIF) to invest up to 50% in non-eligible investments

36.2. Allowing the investment by Category-I or Category-II AIF in an Infrastructure Investment Trust (InvIT).

36.3. Exemption under this clause shall be calculated proportionately, in case if aggregate investment of AIF in infrastructure company or companies or in InvIT is less than 100%.

36.4. SWF/PFs are now allowed to invest through holding company. It is proposed to allow the same subject to the following conditions:

- Holding company should be a domestic company.
- It should be set up and registered on or after 1st April, 2021.
- It should have minimum 75% investments in one or more infrastructure companies.
- Exemption under this clause shall be calculated proportionately, in case if aggregate investment of holding company in infrastructure company or companies is less than 100%

36.5. SWF/PFs are now allowed to invest in NBFC-IFC/IDF. It is proposed to allow the same subject to the following conditions:

- NBFC-IDF/IFC should have minimum 90% lending to one or more infrastructure entities.
- Exemption under this clause shall be calculated proportionately, in case if aggregate lending of NBFC-IDF or NBFC-IFC in infrastructure Company or Companies is less than 100%.
- It is proposed to provide that there should not be any loan or borrowing for the purpose of making investment in India. It is also proposed to provide that the condition regarding no benefit to private person and assets going to government on dissolution would not apply to any payment made to creditor or depositor for loan taken or borrowing other than for the purpose of making investment in India

36.6. This amendment will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

37. Addressing mismatch in taxation of income from notified overseas retirement fund

37.1. Representations have been received that there is mismatch in the year of taxability of withdrawal from retirement funds by residents who had opened such fund when they were non-resident in India and resident in foreign countries. At present the withdrawal from such funds may be taxed on receipt basis in such foreign countries, while on accrual basis in India. In order to address this mismatch and remove this genuine

hardship, it is proposed to insert a new section 89A to the Act to provide that the income of a specified person from specified account shall be taxed in the manner and in the year as prescribed by the Central Government. It is also proposed to define the expression "specified person", as a person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country. "Specified account" is proposed to be defined as an account maintained in a notified country which is maintained for retirement benefits and the income from such account is not taxable on accrual basis and is taxed by such country at the time of withdrawal or redemption. "Notified country" is proposed to be defined to mean a country notified by the Central Government for the purposes of this section in the Official Gazette.

37.2. This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

Comments:

- *The above amendments would provide further clarity on the taxability of income from overseas retirement fund.*

38. Taxability of Interest on various funds where income is exempt

38.1. Clause (11) of section 10 of the Act provides for exemption with respect to any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette. Similarly, Clause (12) of this section provides for exemption with respect to the accumulated balance due and becoming payable to an employee participating in a recognized provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule.

38.2. Instances have come to the notice where some employees are contributing huge amounts to these funds and entire interest accrued/received on such contributions is exempt from tax under clause (11) and clause (12) of section 10 of the Act. This exemption without any threshold benefits only those who can contribute a large amount to these funds as their share. Accordingly, it is proposed to insert proviso to clause(11) and clause (12) of section 10 of the Act, providing that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of contribution made by the person exceeding two lakh and fifty thousand rupees in a previous year in that fund, on or after 1st April, 2021, computed in such manner as may be prescribed.

38.3. These amendments will take effect from 1st April, 2022 and shall apply to the assessment year 2022-23 and subsequent assessment years.

Comments:

- *The proposed amendment has restricted the tax exemption on the interest income on the aggregate of amounts of contribution made by the person above two lakh and fifty thousand rupees in the previous year in a recognized provident fund.*

- *The benefits of the old provisions can be availed in the Assessment Year 2021-2022.*

39. Definition of the term "Liable to tax"

39.1. The Act currently does not define the term "liable to tax" though this term is used in section 6, in clause (23FE) of section 10 and various agreements entered into under section 90 or section 90A of the Act. Hence, it is proposed to insert clause (29A) to section 2 of the Act providing its definition. The term "liable to tax" in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.

Comments:

- *Some Litigations would be scrapped after the insertion of this definition providing further clarity.*
- *This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.*

40. Adjudicating authority under the PBPT Act

40.1. Section of the 71 of the PBPT Act, inter alia, provides that the Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under the PBPT Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the PMLA) and the Appellate Tribunal established under section 25 of the PMLA may discharge the functions of the Adjudicating Authority and the Appellate Tribunal, respectively, under the PBPT Act for such period and in respect of such cases or class of cases as may be specified in the said notification.

40.2. Since there is no appointment of the Adjudicating Authority under the PBPT Act, the Adjudicating Authority under the PMLA is discharging the functions of the Adjudicating Authority under the PBPT Act. It is now proposed to provide that the Competent Authority constituted under sub-section (1) of section 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) shall be the Adjudicating Authority under the PBPT Act which shall commence discharging the function from 1st July, 2021. As the said Adjudicating Authority under PBPT Act is proposed to commence the discharging the functions from 1st July, 2021, it is proposed to extend the period of limitation under sub-section (7) of section 26 of the PBPT Act to provide that where the time limit for passing order under sub- section (7) of section 26 of the PBPT Act expires during the period beginning from 1st July, 2021 and ending on 29th September, 2021, the time limit for passing such order shall stand extended to 30th September, 2021.

Comments:

- *The authority constituted under SAFEMA shall act as the Adjudicating Authority under the PBPT Act commencing its functions from 1st July 2021.*
- *This amendment will take effect from 1st July, 2021.*

41. Taxation of proceeds of high premium unit linked insurance policy (ULIP)

41.1. Clause (10D) of section 10 of the Act provides for the exemption for the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy in respect of which the premium payable for any of the years during the terms of the policy does not exceed ten percent of the actual capital sum assured.

41.2. Under the existing provisions of the Act, there is no cap on the amount of annual premium being paid by any person during the term of the policy. Instances have come to the notice where high net worth individuals are claiming exemption under this clause by investing in ULIP with huge premium. Allowing such exemption in policy/policies with huge premium defeats the legislative intent of this clause. The intention was to provide benefit to small and genuine cases of life insurance. Hence, it is proposed to provide for the followings:

(i) Insert Explanation 3 to the clause (10D) of section 10 of the Act to define ULIP as a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation (3) of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 dated the 8th day of July, 2019.

(ii) insert fourth proviso to clause (10D) of section 10 of the Act to provide that the exemption under this clause shall not apply with respect to any ULIP issued on or after the 1st February, 2021, if the amount of premium payable for any of the previous year during the term of the policy exceeds two lakh and fifty thousand rupees.

(iii) insert fifth proviso to this clause to provide that, if premium is payable by a person for more than one ULIPs, issued on or after the 1st February, 2021, exemption under this clause shall be available only with respect to such policies aggregate premium whereof does not exceed the amount of two lakh fifty thousand rupees, for any of the previous years during the term of any of the policy.

(iv) insert sixth proviso to this clause providing that the provisions of fourth and fifth provisos shall not apply to any sum received on the death of a person.

(v) insert seventh proviso to this clause to enable CBDT to issue guidelines with the approval of Central Government for the purpose of removing the difficulty and to lay every guideline issued by the Board before each House of Parliament and to make it binding on the income-tax authorities and the assessee.

(vi) provide that a ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] is a capital asset under clause (14) of section 2 of the Act.

(vii) provide for the deemed taxation of profit and gains from the redemption of ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] as capital gains by inserting new sub-section (1B) in section 45 and to take power to prescribe rules for calculation of such capital gains.

(viii) Include such ULIPs [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] in the definition of equity oriented fund in section 112A so as to provide them same

treatment as unit of equity oriented fund. Thus provisions of section 111A and 112A would apply on sale/redemption of such ULIPs.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

41.3. Consequential amendment has also been proposed in Finance (No 2) Act, 2004 to make security transaction tax applicable on maturity or partial withdrawal with respect to unit linked insurance policy issued by insurance company on or after the 1st February, 2021 [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso]

41.4. This amendment will take effect from 1st February, 2021.

Comments:

- *ULIPs will be taxed at 10%, just as equity mutual funds, as Budget closes exemption enjoyed by wealthy individuals. There is no tax exemption for maturity proceeds of unit-linked insurance policies with an annual premium above ₹2.5 lakh.*
- *Securities Transactions Tax (STT) may also be applicable on the redemption of ULIPs.*

42. Tax incentives for units located in International Financial Services Centre (IFSC)

42.1. Government has establishment a world class financial services centre. Units located in IFSC enjoy some concession. In order to make location in IFSC more attractive, it is proposed to provide the following additional incentives:

(i) It is proposed to amend section 9A of the Act to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in clauses(a) to (m) of sub-section(3) or clauses (a) to (d) of sub-section (4) of section 9A of the Act shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an International Financial Services Centre and has commenced operations on or before the 31st day of March, 2024.

(ii) It is also proposed to amend clause (4D) of section 10 of the Act so as to provide that the exemption under this clause shall also be available in case of any income accrued or arisen to, or received to the investment division of offshore banking unit to the extent attributable to it and computed in the prescribed manner.

(iii) It is also proposed to amend the expression “specified fund” to include under the purview the investment division of offshore banking unit which has been granted a category III AIF registration and fulfils other conditions to be prescribed including the condition of maintaining separate books for its investment division. The investment division of offshore banking unit is proposed to be defined as an investment division of a banking unit of a non- resident located in an International Financial Services Centre and which has commenced operation on or before the 31st day of March, 2024.

(iv) It is also proposed to insert new clause (4E) in of section 10 of the Act so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking

unit of International Financial Services Centre which commenced operations on or before the 31st day of Mach, 2024 and fulfils prescribed conditions.

(v) It is also proposed to insert new clause (4F) in of section 10 of the Act so as to exempt any income of a non-resident by way of royalty on account of lease of an aircraft in a previous year paid by a unit of an International Financial Services Centre, if the unit is eligible for deduction under section 80LA for that previous year and has commenced operation on or before the 31st day of the March, 2024.

(vi) It is also proposed to insert new clause (23FF) in of section 10 of the Act so as to exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place.

(vii) It is also proposed to amend section 47 of the Act to insert new clauses in the said section so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose. It is also proposed to provide another clause to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains.

(viii) It is also proposed to amend the section 80LA of the Act to:

a. provide that deduction under said section is also available to a unit of International Financial Services Centre if it is registered under the International Financial Services Centre Authority Act, 2019 and thereby removing the earlier requirement of obtaining permission under any other relevant law.

b. provide that the income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit referred to in clause (c) of sub-section (2) of said section to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before the 31st March 2024.

c. to provide that in case the unit is registered under the International Financial Services Centre Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the International Financial Services Centre Authority Act, 2019.

(ix) It is proposed to amend section 115AD to make the provision of this section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. However, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the Securities and exchange Board of India (Foreign Portfolio investors) Regulations, 2019 made under the Securities And Exchange Board of India Act, 1992 (15 of 1992), calculated in the prescribed manner.

Comments:

- *This amendment has been made in to make location in IFSC more attractive. Different entities will be attracted to setup their units in IFSC.*
- *These amendments will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.*

43. Constitution of the Board for Advance Ruling

43.1. With a view to avoiding dispute in respect of assessment of tax liability and to provide tax certainty, a scheme of Advance Rulings was incorporated in the Act vide the Finance Act, 1993 by inserting a new Chapter XIX-B.

43.2. Under these provisions the Authority for Advance Rulings (AAR) pronounces rulings on the applications of the non-resident/residents and such rulings are binding both on the applicants and the Tax department. AAR consists of a Chairman and various Vice-Chairman, revenue members and law members.

43.3. There are three benches of the Authority. The principal bench consists of Chairman, one revenue member and one law member. The other benches consist of one Vice-Chairman, one revenue member and one law member, each. A bench cannot function if the post of Chairman or Vice-Chairman is vacant. As per section 245-O of the Act, persons eligible for appointment as Chairman of AAR are retired judges of the Supreme Court, retired Chief Justice of a High Court or retired Judge of a High Court who has served in that capacity for at least seven years. Similarly, the persons eligible for appointment as Vice-Chairman are retired judges of a High Court. As per past experience, the posts of Chairman and Vice- Chairman have remained vacant for a long time due to non-availability of eligible persons.

43.4. This has seriously hampered the working of AAR and a large number of applications are pending since last many years. There is, therefore, a need to look for an alternative method of providing advance ruling which can give rulings to taxpayers in timely manner. Hence, it is proposed to constitute a Board of Advance Ruling and to make the following amendments in the existing provisions of AAR:-

- The Authority for Advance Rulings shall cease to operate with effect from such date, as may be notified by the Central Government in the Official Gazette (hereinafter referred to as the notified date).
- It is proposed that the Central Government shall constitute one or more Board for Advance Rulings for giving advance rulings under the said Chapter on and after the notified date. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner. Advance rulings of such Board shall not be binding on the applicant or the Department and if aggrieved, the applicant or the Department may appeal against the ruling or order passed by the Board before the High Court.
- Since the work of Authority shall be carried out by the Board for Advance Rulings on and after the notified date, amendments are proposed to be made to the various provisions of the Chapter to this effect.

Comments:

- *This clause shall be applicable from 1st April, 2021.*

44. Income Declaration Scheme (IDS) amendment

44.1. The Income Declaration Scheme, 2016 (the Scheme) contained in Chapter-IX of the Finance Act, 2016 provided an opportunity to the persons who had not disclosed any income in the past to come clean and make payment of tax, surcharge and penalty as per the provisions of the Scheme. The Scheme commenced on 01.06.2016.

44.2. Section 187 of the Finance Act, 2016 inter alia, provides that the tax, surcharge and penalty payable under the Scheme shall be paid on or before the specified date and if the declarant failed to pay such amount, the declaration filed by the declarant shall be deemed invalid. Further, section 191 of the Finance Act, 2016, inter alia, provides that any amount of tax, surcharge and penalty paid in pursuance of a declaration made under the Scheme shall not be refundable.

44.3. A proviso was inserted in section 191 of the Finance Act, 2016 vide Finance (No. 2) Act, 2019 empowering the Board to specify a class of persons to whom such tax paid in excess shall be refundable.

44.4. It is now proposed to amend the proviso of section 191 of the Finance Act, 2016, so as to provide that the excess amount of tax, surcharge or penalty paid in pursuance of a declaration made under the Scheme shall be refundable to the specified class of persons without payment of any interest.

Comments:

- *Thus it is being clarified that the Government shall not pay any interest on amount refundable to any person on account of any excess payment under the Income Declaration Scheme, 2016*
- *This amendment will take effect retrospectively from 1st June, 2016.*

B. INDIRECT TAX PROPOSALS

45. GST Proposals

45.1. A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

45.2. A new clause (aa) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.

45.3. This amendment is proposed to give legal framework to the intention of the Government to allow ITC only for invoices or debit notes appearing in GSTR 2A and GSTR 2B.

45.4. Sub-section (5) of section 35 of the CGST Act is being omitted so as to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional.

45.5. Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self- certification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.

45.6. Requirement of certification by practicing chartered accountant or cost accountant has been dispensed with. However, Form GSTR 9C has not been scrapped and the same shall now be submitted on a self-certification basis by the assessee.

45.7. Section 50 of the CGST Act is being amended, retrospectively, to substitute the proviso to sub-section (1) so as to charge interest on net cash liability with effect from the 1st July, 2017. This gives legal framework to relief already proposed earlier by the GST council.

45.8. Section 74 of the CGST Act is being amended so as make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.

45.9. An explanation to sub-section (12) of section 75 of the CGST Act is being inserted to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.

45.10. Section 83 of the CGST Act is being amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any

proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.

45.11. A proviso to sub-section (6) of section 107 of the CGST Act is being inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of penalty has been paid by the appellant.

45.12. Section 129 of the CGST Act is being amended to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.

45.13. Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.

45.14. Section 151 of the CGST Act is being substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

45.15. Section 152 of the CGST Act is being amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

45.16. Section 168 of the CGST Act is being amended to enable the jurisdictional commissioner to exercise powers under sections 151 to call for information.

45.17. Consequent to the amendment in section 7 of the CGST Act paragraph 7 of Schedule II to the CGST Act is being omitted retrospectively, with effect from the 1st July, 2017.

45.18. Section 16 of the IGST Act is being amended so as to:

- zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit only when the said supply is for authorised operations;
- restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and
- link the foreign exchange remittance in case of export of goods with refund.

46. Customs Proposals

46.1. Reduced duty on copper scrap from 5% to 2.5%

46.2. Basic and Special additional excise duty on petrol and high-speed diesel oil (both branded and unbranded) is reduced. Agriculture Infrastructure and Development Cess (AIDC) has been newly imposed on petrol and diesel at Rs2.5 and Rs.4 per litre respectively.

46.3. Increased duty on solar inverters from 5% to 20%

46.4. Raised duty on solar lanterns from 5% to 15%

46.5. The basic customs duty on gold and silver reduced.

46.6. The department will rationalize duty on textile, chemicals and other products

46.7. The revised rates will be applicable from 2nd February 2021 onwards.

46.8. New tariff items under 2404 11 00 and 2404 19 00 have been inserted in accordance with upcoming HS 2022 nomenclature. Further, NCCD of 25% is prescribed on these tariff items with effect from 1st January 2022.

46.9. Regarding agricultural products, the customs duty is increased on cotton, silks, alcohol, etc.

46.10. Exemption of Social Welfare Surcharge on the value of AIDC imposed on gold and silver. Therefore, these items would attract surcharge at the normal rate, only on value plus basic customs duty.

46.11. The exemption on import of leather will be withdrawn as they are domestically produced.

46.12. A new initiative called ‘Turant Customs’ will be introduced for faceless, paperless, and contactless customs measures.

C. OTHER PROPOSALS

47. Company Law and LLP Proposals

47.1. To decriminalize the Limited Liability Partnership (LLP) Act, 2008

47.2. Easing Compliance requirement of Small companies by revising their definition under Companies Act, 2013 by increasing their thresholds for Paid up capital from “not exceeding Rs. 50 Lakh” to “not exceeding Rs. 2 Crore” and turnover from “not exceeding Rs. 2 Crore” to “not exceeding Rs. 20 Cr”.

47.3. Promoting start-ups and innovators by incentivizing the incorporation of One Person Companies (OPCs):

- Allowing their growth without any restrictions on paid up capital and turnover
- Allowing their conversion into any other type of company at any time,
- Reducing the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days and

47.4. Allowing Non Resident Indians (NRIs) to incorporate OPCs in India.

47.5. To ensure faster resolution of cases by:

- Strengthening NCLT framework
- Implementation of e-Courts system
- Introduction of alternate methods of debt resolution and special framework for MSMEs

47.6. Launch of data analytics, artificial intelligence, machine learning driven MCA21 Version 3.0 in 2021-22

48. Other Macroeconomic Estimates

48.1. Budget at a Glance presents broad aggregates of the budget for easy understanding. This document shows receipts and expenditure as well as the Fiscal Deficit (FD), Revenue Deficit (RD, Effective Revenue Deficit (ERD) and the Primary Deficit (PD) of the Government of India. It gives an illustrative account of sources of receipts and their expenditure through graphs and info-graphics. In addition, the document contains the resources transferred to States and UTs with legislature. The document also contains extracts of allocations for programme and schemes and giving insights on sources of deficit financing and composition of important budgetary variables.

48.2. Fiscal Deficit is the difference between the Revenue Receipts plus Non-Debt Capital Receipts (NDCR) and the total expenditure. FD is reflective of the total borrowing requirement of Government. Revenue Deficit refers to the excess of revenue expenditure over revenue receipts. Effective Revenue Deficit is the difference between Revenue Deficit and Grants for Creation of Capital Assets. Primary Deficit is measured as Fiscal Deficit less interest payments.

48.3. Budget 2021-22 reflects firm commitment of the Government to boost economic growth by investing in infrastructure development. This is substantiated by increase in capital expenditure by 34.5% (`1,42,151 crore) over BE 2020-21.

48.4. In RE 2020-21, the total expenditure has been estimated at `34,50,305 crore and is more than Provisional Actual (2019-20) by `7,63,975 crore

48.5. The total resources being transferred to the States including the devolution of State's share, Grants/ Loans and releases under Centrally Sponsored Schemes etc in BE 2021-22 is `13,88,502 crore, which shows an increase of `74,565 crore over RE (2020-21). Actuals for 2019-20 are provisional.

BUDGET AT A GLANCE

(` in Crore)

		2019-2020	2020-2021	2020-2021	2021-2022
		Actuals	**Budget Estimates**	**Revised Estimates**	**Budget Estimates**
1	**Revenue Receipts**	**1,684,059**	**2,020,926**	**1,555,153**	**1,788,424**
2	Tax Revenue (Net to Centre)	1,356,902	1,635,909	1,344,501	1,545,396
3	Non Tax Revenue	327,157	385,017	210,652	243,028
4	**Capital Receipts**	**1,002,271**	**1,021,304**	**1,895,152**	**1,694,812**
5	Recovery of Loans	18,316	14,967	14,497	13,000
6	Other Receipts	50,304	210,000	32,000	175,000
7	Borrowings & Other Liabilities	933,651	796,337	1,848,655	1,506,812
8	**Total Receipts**	**2,686,330**	**3,042,230**	**3,450,305**	**3,483,236**
9	**Total Expenditure**	**2,686,330**	**3,042,230**	**3,450,305**	**3,483,236**
10	On Revenue Account of which	2,350,604	2,630,145	3,011,142	2,929,000
11	Interest Payments	612,070	708,203	692,900	809,701
12	Grants in Aid for creation of Capital Assets	185,641	206,500	230,376	219,112
13	On Capital Account	335,726	412,085	439,163	554,236
14	**Revenue Deficit**	**666,545**	**609,219**	**1,455,989**	**1,140,576**
		(3.3)	**(2.7)**	**(7.5)**	**(5.1)**
15	**Effective Revenue Deficit**	**480,904**	**402,719**	**1,225,613**	**921,464**
		(2.4)	**(1.8)**	**(6.3)**	**(4.1)**
16	**Fiscal Deficit**	**933,651**	**796,337**	**1,848,655**	**1,506,812**
		(4.6)	**(3.5)**	**(9.5)**	**(6.8)**
17	**Primary Deficit**	**321,581**	**88,134**	**1,155,755**	**697,111**
		(1.6)	**(0.4)**	**(5.9)**	**(3.1)**