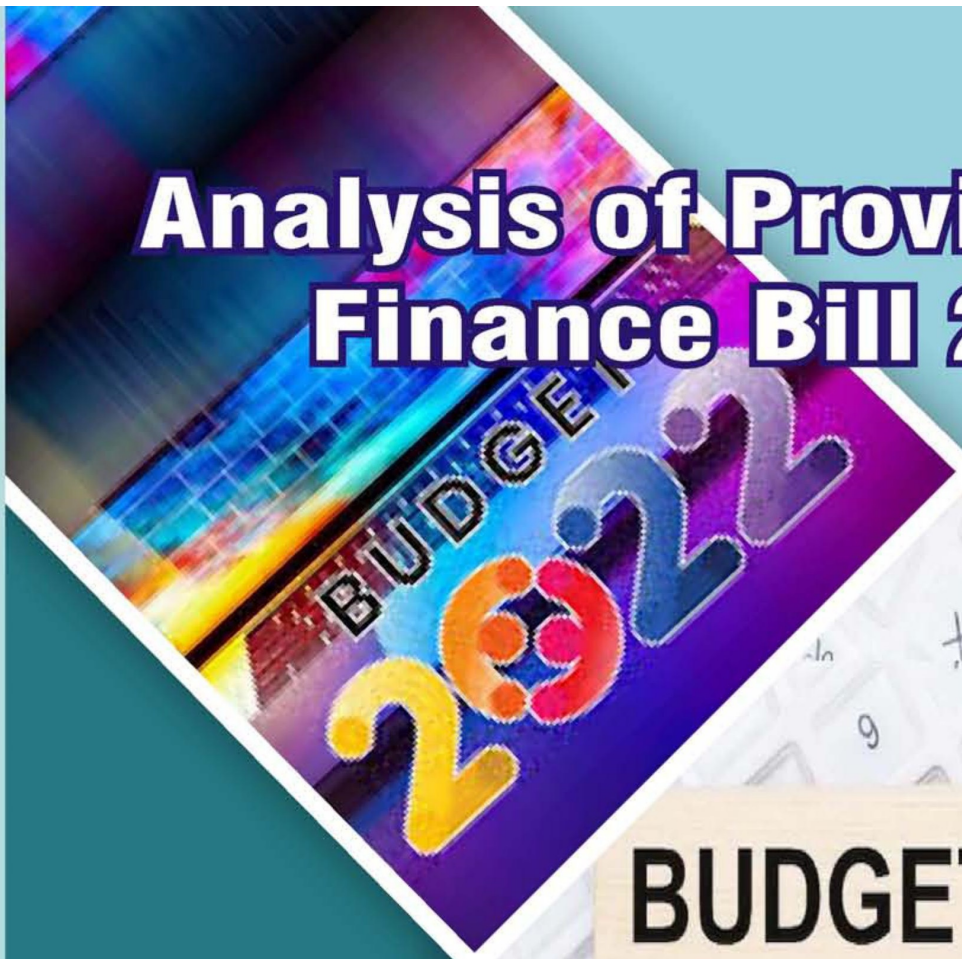
Analysis of Provisions of Finance Bill 2022



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Dear Reader,

It gives us immense pleasure to come out with our booklet on "Analysis of Financial Budget 2022".

The Budget for F.Y. 2022-23 presented by our Hon'ble Finance Minister Smt. Nirmala Sitharaman emphasized on sharp rebound and recovery of the economy from the adverse effects of the pandemic is reflective of our country's strong resilience.

Budget highlight GatiShakti which is a transformative approach for economic growth and sustainable development. The approach is driven by seven engines, namely, Roads, Railways, Airports, Ports, Mass Transport, Waterways, and Logistics Infrastructure. All seven engines will pull forward the economy in unison. GatiShakti is a reflection of 25,000 km national highway, 400 Vande Bharat Rails and other proposals the Government has planned to implement in the next one year.

Universalisation of Quality Education, Digital University, Ayushman Bharat Digital Mission, Ease of Doing Business 2.0, E-Passport are just stepping stones to take India to new heights.

In Last few years 1486 Union Laws repealed to promote Ease of Doing Business.

The numbers in GST is another remarkable achievement the Government has achieved and shows that our professional colleagues and business houses are ready for any challenge that may come in its way.

As the Hon'ble Finance Minister rightly penned down in his Budget Speech:

"The king must make arrangements for Yogakshema (welfare) of the populace by way of abandoning any laxity and by governing the state in line with Dharma, along with collecting taxes which are in consonance with the Dharma."

Mahabharat, Shanti Parva Adhyaya. 72. Shlok 11

With all these challenges, we all look forward for Atmanirbhar Bharat as promised by our Hon'ble Finance Minister in the Budget.

In this booklet, we have analysed all the important proposals being proposed in the Finance Bill 2022. We are grateful for the efforts of the entire team and specially Shruti Lohia, Gaurav Rathi, Harsh Mussadi, Ankit Ladia, Yati Agarwal and Subham Agarwal who have helped in bringing out this publication.

Regards

Regards,

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Contents

A. DIRECT TAX PROPOSALS

I. RATES OF INCOME TAX

1. Income Tax Rates (For Assessment Year 2023-24)

1.1. 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.

1.2. 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:

1.3. New Tax Rates - Individuals (Resident Individuals), HUF

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.

1.4. 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

1.5. 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.

1.6. 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.
- Surcharge on long term capital gains on all types of assets will be capped at 15%. This benefit was earlier available only for listed equity shares and mutual fund units. The extension of this benefit to unlisted asset will help reduce the tax burden for investors in start-ups, manufacturing, bonds and other types of unlisted assets.

1.7. 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).
- Marginal relief has also been provided in all cases where surcharge is proposed to be imposed.

1.8. 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.

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

1.10. 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

1.11. 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.

1.12. 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

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

1.14. Cooperative Societies:

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

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

- Surcharge @10% of such Income-Tax for resident co–operative societies covered under Section 115BAD.
- Surcharge @7% of such Income-Tax if total income > Rs 1 crore&< 10 crore for both resident &non-resident co–operative societies.
- Surcharge @12% of such Income-Tax if total income > Rs 10 croreboth resident &non-resident co-operative societies.
- Resident cooperative societies shall be able to avail the benefit of marginal relief.
- Health & Education Cess: is levied at the rate of 4% on such income-tax plus surcharge.
- Note : - Reduction of surcharge from 12% to 7% for total income not exceeding 10 crores is in line with the vision of the government to provide a level-playing field between cooperative societies and companies and provide a boost co-operative society and its members who are mostly from rural and farming communities.

1.16. 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

II. WIDENING AND DEEPENING OF TAX BASE

2. Provisions pertaining to Bonus Stripping and Dividend Stripping to be made applicable to securities and units

2.1. Section 94 of the Act contains anti avoidance provisions to deal with transactions in securities and units of mutual fund which, inter-alia, include dividend stripping and bonus stripping.

2.2. In Bonus Stripping, investors buy units within a period of three months prior to record date, so by virtue of the their holding they receive additional unit as bonus without any cost and subsequently, sell the original holding at a loss once the stock becomes ex-bonus. This loss can be adjusted against their capital gains on other holdings. To curb this practice Section 94(8) came into picture.

2.3. According to the Section 94(8), if an investors sells or transfers all or any of the units (original units) within a period of nine months after record date (date on which bonus is alloted), while continuing to hold all or any of the additional (bonus unit), Then the loss if any arising from such transfer shall be ignored for the purpose of calculating income chargeable to tax and the amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of additional units (bonus unit).

2.4. The current provisions of sub-section (8) of section 94 of the Income Tax Act do not apply to bonus stripping undertaken in case of securities. It is also not applicable to units of Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT) or Alternative Investment Funds (AIFs) as the definition of the term “unit” has not been modified subsequent to introduction of provisions relating to RETIs, InvITs etc.

2.5. In view of the above, it is proposed to amend sub-section (8) of section 94, pertaining to the prevention of tax evasion through bonus stripping, so as to make the said provision applicable to securities as well.

2.6. Further, the current provisions of sub-section (7) of section 94 of the Act, i.e. provisions pertaining to dividend stripping, are not applicable to the units of new pooled investment vehicles such as InvIT or REIT or AIFs. Dividend stripping is where any units of funds are bought for a short period ahead of the dividend being declared, called cum-dividend, and then selling them when the units go ex-dividend. This way one is entitled to dividend without tax since units of InvIT, REIT and AIFs have been exempt from tax.

2.7. It is also proposed to amend the Explanation to the said section to modify the definition of unit, so as to include units of business trusts such as InvIT, REIT and AIF, within the definition of units.

Comments:

- *The proposed amendment aims at plugging the age old loophole on tax avoidance through bonus stripping in securities other than units of mutual funds.*
- *This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.*
- *Since the amended provisions will come into effect from AY 2023-24, it may create a frenzy for bonus and dividend announcements in the next couple of months before 31st March, 2022.*
- *It may be relevant to draw attention to landmark judgement in the case of Walfort Share & Stock Brokers Ltd., where a five member special bench of Tribunal (96 ITD 1 (Mum) (SB)) and Bombay High Court 310 ITR 421 (Bom) held that the 'loss' incurred by an assessee in 'dividend stripping' transactions cannot be disallowed on the ground that it was 'tax-planning'. The Department's SLP against the said Bombay High Court judgement was dismissed by Supreme Court.*
- *Thus, unless there is specific provision to tax dividend/bonus stripping, it may be an unnecessary litigation by the Department in making additions of such cases during assessment proceedings.*

3. Cash Credits under section 68 of the Act

3.1. Section 68 of the Act provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

3.2. The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person.

3.3. Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum which is credited as loan or borrowing.

3.4. It is noticed that there is a pernicious practice of conversion of unaccounted money by crediting it to the books of assesses through a masquerade of loan or borrowing.

3.5. Therefore, it is proposed to amend the provisions of section 68 of the Act so as to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.

3.6. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

Comments:

- *Vide Finance Act, 2012, it was provided that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder.*
- *However, in case of loan or borrowing, the judicial decisions have held that only identity and credit worthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor.*
- *The proposed amendment seeks to change the stance and now is extended to explaining the source of funds in the hands of the creditor also.*
- *The nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.*
- *However, it is noteworthy to mention here that section 68 considers any sum credited in the books of the taxpayer during a previous year only and may not apply to credit arising due to purchase of goods, since the said credit does not represent receipt of sum of money.*
- *It is a prospective amendment and will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.*

4. Reduction of 'Goodwill' from block of assets to be considered as 'transfer'

4.1. From the assessment year 2021-2022, goodwill of a business or profession is not considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. In 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.

4.2. When the amendment was carried out through the Finance Act 2021, consequential amendment was carried out in section 50 of the Act by insertion of a proviso to clause (2) of that section, which is as under :-

- "provided 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".

4.3. A further consequential amendment required is being proposed now and accordingly, it is proposed to clarify that for the purposes of section 50 of the Act, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with sub item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, shall be deemed to be transfer.

Comments:

- *Where the value of net goodwill removed from the block is in excess of the opening written down value as on 1 April 2020, such excess will be offered to tax as Short-Term Capital Gain. However, where goodwill was the only asset in the block, there is no impact.*
- *Since the amendment to the effect that goodwill of a business or profession is not a depreciable asset has been made applicable from assessment year 2021-2022 the above amendment will take effect retrospectively from 1st April 2021 and will accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.*

5. Amendments Related to Successor Entity Subsequent to Business Reorganization

5.1. Chapter XV of the Act refers to liability in certain special cases. Section 170, inter-alia, governs the procedure of taxation in case of succession to business in the event of reorganization or restructuring of the business which is discussed as under.

5.2. Various Court decisions have held that tax assessments/notices cannot be done/issued on a non-existent entity. Reference may be made to Supreme Court judgment in PCIT Vs. Maruti Suzuki India Limited. [2019] 107 taxmann.com 375 (SC) and another Supreme Court judgment in Spice Infotainment Limited.

5.3. Though section 170 provides for assessment in cases of succession otherwise than by death, in practice once an entity starts the process of reorganization by filing an application with the adjudicating authority or any High Court, the period of time involved in coming to a conclusion with respect to such reorganization is found to be a long-drawn process and is not time-bound.

5.4. The reorganization often is from a preceding date. During the pendency of the court proceedings the income tax proceedings and assessments are carried on and often completed on the predecessor entities only. Courts have held such proceedings and consequent assessments illegal as the predecessor assessee ceases to exist in the midst of a perfectly valid and legal proceeding.

5.5. Hence, till the decision of the court is received, the proceedings of the Act have to be continued in the case of the predecessor only and such proceedings once completed, cannot become illegal as a result of subsequent order of any court. Therefore, with a view to clarify that such proceedings under the Act are valid, it is proposed to insert a sub-section (2A) to section 170, to provide that the assessment or other proceedings pending or completed on the predecessor in the event of a business reorganization, shall be deemed to have been made on the successor.

5.6. For the purposes of this sub-section, the expressions,—"business reorganisation" means the reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons; and "pendency" to mean the period commencing from the date of filing of application for such reorganisation of business before the High Court or tribunal or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 and ending with the date on which the order of such High Court or tribunal or such Adjudicating Authority, as the case may be, is received by the Principal Commissioner or the Commissioner.

5.7. Further, it is seen that post such reorganization, the affairs of the successor entity go through a complete change with effect from the date from which such reorganization takes place. However, due to the indefinite timeline involved in issuing such orders, there is a gap between the effectivity of such order and the date on which such order is issued by the competent authority. This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganization. Hence, in order to remove this anomaly, it is proposed to insert a new section 170A to the Act, to enable for the entities going through such business reorganization, for filing of modified returns for the period between the date of effectivity of the order and the date of issuance of final order of the competent authority.

5.8. Further, it has been noted that in the cases of business reorganisation, instances have been found where the Court or Tribunal or an Adjudicating Authority, as defined in clause (1) of section (5) of the Insolvency and Bankruptcy Code, 2016, as the case may be, as a part of the restructuring process, recast the entire liability to ensure future viability of such sick entities and in the process, modify the demand created vide various proceedings in the past, by the Income Tax department as well, amongst other things.

5.9. However, it is observed that there is no procedure or mechanism provided in the Act to reduce such demands from the outstanding demand register. Hence, in order to remove this anomaly, it is proposed to insert a new section 156A to the Act to give effect to the orders of the competent authority and to modify such demands in accordance with such directions.

Comments:

- *Though Supreme Court in the aforesaid judgment has held that the assessment on a non-existent entity is a nullity, however there are judgments which has held that where the tax payer didn't inform the AO about the amalgamation, the assessment cannot be treated as a nullity. Thus it is advisable to inform the AO about the amalgamation /conversion, etc. on the happening of the event.*
- *The proposed amendment has dealt with a very practical problem in view of the fact the "appointed date" in a Scheme of Arrangement is generally different from the date of passing of amalgamation order by the Court/NCLT (generally the appointed date is earlier than the passing of order). The Supreme Court in the landmark judgment in the case of Marshall Sons & Company India Limited (230 ITR 809)(SC) has held that the appointed date" is the relevant date to determine the income. Now there have been instances that at the time of issue of notices by the department, the amalgamation order was not sanctioned by the Court/NCLT. Subsequently, the Court sanction the Scheme wherein the appointed date may be prior to the issue of notice by the*

Department. To give an example, the AO issue notice u/s 148 on 05.01.2020, and the Court sanction the Scheme on 25.03.2020 (the appointed date being 01.04.2019). In such case, as per the proposed amendment, the assessee cannot argue that notice was issued on non- existent entity, since at the time of issue of notice, the amalgamation order was not passed and notice was served on existent entity.

- *The proposed amendment has inserted a new sub-section (2A) to provide a deeming provision in order to save and validate the proceedings and to hold the assessment or other proceedings pending or completed on the predecessor in the event of a business reorganisation, to be held in the hands of the successor, if at the time of issue of notice, the predecessor company was in existence.*
- *The newly inserted sub-section (2A) is given below:*

  (2A) Notwithstanding anything contained in subsections (1) and (2), where there is a business reorganisation, the assessment or reassessment or other proceedings, made on the predecessor during the course of pendency of such reorganisation, shall be deemed to have been made on the successor and all the provisions of this Act shall, so far as may be, apply accordingly.
- *The provision to insert new section 170A is a welcome step. It is quite often seen that due to huge backlog of cases lying at NCLT, the order passed by such Tribunal is quite delayed. In the meantime, the assessee is required to comply with its statutory obligations including furnishing of return. The proposed section has also been inserted in the Income-tax Act relating to the effect of order of tribunal or court in respect of business reorganisation. It is proposed to provide that notwithstanding anything contained in section 139, in case of business reorganisation, where prior to the date of order of a High Court or tribunal or an Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016, as the case may be, any return of income has been furnished by the successor under the provisions of section 139 for any assessment year relevant to the previous year to which such order applies, such successor shall furnish, within a period of six months from the end of the month in which the said order was issued, a modified return in such form and manner, as may be prescribed, in accordance with and limited to the said order.*
- *The above section only deals about the filing of modified return of the successor but doesn't say anything about the modification of return of the predecessor. In our view, even the predecessor company should also be having option to furnish a modified return, which may be verified by authorized signatory of the successor entity. Let us explain this provision with an example :*

  Suppose the appointed date is 01.04.2019 in a Scheme of Amalgamation of A into B. Assuming the due date of furnishing return is 30.09.2020. Now, if the Scheme was not sanctioned till 30.09.2020, then both the transferor and transferee company are required to furnish the return. Assuming A had taxable income of Rs. 2 crores in FY 2019-20 and B had taxable loss of Rs. 1 crores in the said year. Now, if the NCLT sanction the Scheme of Amalgamation on 05.07.2021, then as per existing provisions, there was no option to revise the return, either by transferor or transferee company. Now, in view of proposed amendment, the transferee company can furnish a modified return. However, the proposal is silent while transferor company is also eligible to furnish modified return. In the given example, the transferor company had paid tax on

Rs. 2 crores, which need to be allowed in the hands of transferee company, consequent to the sanction of the above Scheme.

- *The provision to insert new section 156A is a welcome step. Sub Section (1) of Section 156A provides that where any tax, interest, penalty, fine or any other sum in respect of which a notice of demand has been issued under section 156, is reduced as a result of an order of an Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016, the Assessing Officer shall modify the demand payable in conformity with such order and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly. In view of waterfall mechanism provided in Section 53(1) of IBC Code 2016, it is generally seen that income tax department is not able to realize any amount in liquidation. There have been various judgments that the order of NCLT under IBC Code is binding on income tax department. Reference may be made to Supreme Court Judgment in Monet Ispat and Energy Limited (SLP(C) No. 6483/2018), Essar Steel India Limited (Civil Appeal No. 8766-67 of 2019) and Ghanshyam Mishra's Case (Civil Appeal No. 8129 of 2019). In all the judgment it has been held that the provisions of IBC Code providing waterfall mechanism is binding on Income Tax Department.*

6. Scheme for taxation of virtual digital assets

6.1. Virtual digital assets have gained tremendous popularity in recent times and the volumes of trading in such digital assets has increased substantially. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. Accordingly, a new scheme to provide for taxation of such virtual digital assets has been proposed in the Bill.

6.2. The proposed section 115BBH seeks to provide that where the total income of an assessee includes any income from transfer of any virtual digital asset, the income- tax payable shall be the aggregate of the amount of income-tax calculated on income of transfer of any virtual digital asset at the rate of 30% and the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of the income from transfer of virtual digital asset.

6.3. However, no deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act while computing income from transfer of such asset.

6.4. Further, no set off of any loss arising from transfer of virtual digital asset shall be allowed against any income computed under any other provision of the Act and such loss shall not be allowed to be carried forward to subsequent assessment years.

6.5. This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

6.6. Further, in order to widen the tax base from the transactions so carried out in relation to these assets, it is proposed to insert section 194S to the Act to provide for deduction

of tax on payment for transfer of virtual digital asset to a resident at the rate of one per cent of such sum. However, in case the payment for such transfer is–

- wholly in kind or in exchange of another virtual digital asset where there is no part in cash; or
- partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer,
- the person before making the payment shall ensure that the tax has been paid in respect of such consideration

6.7. In case of specified persons, the provisions of section 203A and 206AB will not be applicable. Further, no tax is to be deducted in case the payer is the specified person and the value or the aggregate of such value of consideration to a resident is less than Rs. 50,000 during the financial year. In any other case, the said limit is proposed to be Rs. 10,000 during the financial year.

6.8. It is also proposed to provide that if tax has been deducted under section 194S, then no tax is to be collected or deducted in respect of the said transaction under any other provision of Chapter XVII of the Act.

6.9. Furthermore, in any sum paid for transfer of virtual digital asset is credited to any account, whether called “Suspense Account” or by any other name, in the books of account of the person liable to pay such sum, such credit of the sum shall be deemed to be the credit of such sum to the account of the payee and the provisions of section 194S shall apply accordingly.

6.10. It is proposed to empower the Board to issue guidelines, with the prior approval of the Central Government, to remove any difficulty arising in giving effect to the provisions of the said section and every such guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person responsible for paying the consideration on transfer of such virtual digital assets.

6.11. It is also proposed to provide that in case of a transaction where tax is deductible under section 194-O along with the proposed section 194S, then the tax shall be deducted under section 194S and not section 194-O.

6.12. For the purposes of the said section, it is proposed to provide that ‘specified person’ means a person: —

- being an individual or Hindu undivided family whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;
- being an individual or Hindu undivided family having income under any head other than the head ‘Profits and gains of business or profession’

6.13. Further, in order to provide for taxing the gifting of virtual digital assets, it is also proposed to amend Explanation to clause (x) of sub-section (2) of section 56 of the Act to inter-alia, provide that for the purpose of the said clause, the expression "property" shall have the meaning assigned to it in Explanation to clause (vii) and shall include virtual digital asset.

6.14. This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

6.15. To define the term "virtual digital asset", a new clause (47A) is proposed to be inserted to section 2 of the Act. As per the proposed new clause, a virtual digital asset is proposed to mean any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. Non fungible token and; any other token of similar nature are included in the definition.

6.16. Central Government may notify any other virtual digital asset as virtual digital asset by way of notification in the Official Gazette. The Non-fungible tokens means such digital assets as notified by the Central Government. Further, Central Government can notify such assets which shall not be considered as virtual digital assets for the purposes of the proposed section.

Comments:

- *In recent years crypto currency has gained immense popularity. Such block chain technology is being traded in the economy without any legal rules and regulations.*
- *The proposed section 115BBH levies flat tax on transfer of digital asset @ 30%. No benefits of basic exemption limit and deduction under chapter VI-A shall be available while computing tax under section 115BBH.*
- *Such tax is on the profit on transfer of digital asset. However, while computing the profit from transfer of digital asset, only cost of acquisition can be taken. No transfer charges, commission, brokerage etc. can be reduced from the sale consideration to compute the profit for levy of tax under section 115BBH.*
- *Such profits cannot be set off with any other loss of the assessee. Further, loss on transfer of digital asset cannot be used to set off profits under any head of income of the assessee. Further losses on digital assets cannot be carried forward.*
- *This amendment is applicable only from assessment year 2023-24. Hence any profits made on transfer of digital asset during financial year 2021-22 cannot be taxed.*
- *The Proposed amendment also seeks to introduce TDS under section 194S on transfer of Digital Assets. The rate of TDS under section 194S shall be 1% of the transfer value. TDS shall even apply if exchange of digital assets is being taken place.*

- *In case if TDS is liable to be deducted under section 194O (TDS on e-commerce) of the Act along with the proposed section 194S then section 194S shall prevail over section 194O.*
- *TDS under section 194S shall not be applicable in case the Buyer is a "Specified Person" under this section where value of consideration to a resident is less than Rs. 50,000/- in a year or Rs. 10,000/- to a non-resident in a year.*
- *Specified Person shall mean:*
    - *An individual or HUF having turnover not exceeding Rs. 1 crore from Business or Rs. 50 Lacs from Professional activities in the immediate proceeding financial year. Or*
    - *An Individual or HUF having income other than income under the head Profit or Gains from Business or Profession.*
- *The Provisions of TDS under section 194S shall apply from 1st July 2022.*
- *The definition of property under section 56(2)(X) shall also include virtual digital assets. Which means in case of gifting of digital assets, the recipient shall be liable to tax on such assets. This shall apply from assessment year 2023-24 (Financial Year 2022-23).*
- *This amendment will take effect from 1st April 2022.*

III. RATIONALISATION PROVISIONS

7. Clarification regarding Treatment of Cess and Surcharge

7.1. Section 40 of the Act specifies the amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". Sub-clause (ii) of clause (a) of section 40 of the Act provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profit or gains shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession".

7.2. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to include an Explanation retrospectively in the Act itself to clarify that for the purposes of this sub-clause, the term "tax" includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax.

7.3. Hence, the proposed retrospective amendment puts to rest all the above litigations and confirms that cess is not allowed as deduction and that tax includes cess.

7.4. This amendment will take effect retrospectively from 1st April, 2005 and will accordingly apply in relation to the assessment year 2005-06 and subsequent assessment years.

7.5. Any deductions claimed by assessee till date for cess shall be subjected to disallowance u/s 40(a)(ii) and shall be added back to the income of the assessee.

Comments:

- *Certain taxpayers had been claiming deduction on account of 'cess' or 'surcharge' under section 40 of the Act claiming that 'cess' has not been specifically mentioned in the aforesaid provisions of section 40(a)(ii) and, therefore, 'cess' is an allowable expenditure. This view has been upheld by Courts in a few judgments.*

- *The CBDT Circular No. 91/58/66-ITJ (19) dated 18-05-1967, which is given as under:*

  "Interpretation of provision of s. 40(a)(ii) of IT Act, 1961— Clarification regarding Business Expenditure – Section 40(a)(ii)

  Recently a case has come to the notice of the Board where the ITO has disallowed the 'cess' paid by the assessee on the ground that there has been no material change in the provisions of s. 10(4) of the old Act and s. 40(a)(ii) of the new Act.

  The view of the ITO is not correct. Clause 40(a)(ii) of the IT Bill, 1961 as introduced in the Parliament stood as under: "(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains". When the matter came up before the Select Committee, it was decided to omit the word 'cess' from the clause. The effect of the omission of the word 'cess' is that only taxes paid are to be disallowed in the assessments for the years 1962-63 and onwards.

  The Board desire that the changed position may please be brought to the notice of all the ITOs so that further litigation on this account may be avoided."

- *Reliance of aforesaid Circular by various Courts*

  The various Hon'ble High Courts had relied upon the aforesaid CBDT Circular Dt. 18-05- 1967 and in view of the interpretation made by the CBDT have held that 'education cess' can be claimed as an allowable deduction while computing the income chargeable under the heads "profits and gains of business or profession". Based on these decisions ITAT in various judgments have followed the same reasoning and have allowed deduction on account of payment of "Cess".

- *Recent judgement of ITAT Kolkata*

  However, one of the latest judgments of ITAT Kolkata has discussed the two High Court judgments as well as other judgments vide order dated 26-10-2021 in the case of M/s. Kanoria Chemicals & Industries Ltd ITA No. 2184/Kol/2018 (TS-1129-ITAT2021 Kol) and has held that the "Cess" is not to be allowed as deduction. The relevant portion of the judgment is produced below:

  "19. However, with due respect to the decisions of the Hon'ble Bombay High Court and Hon'ble Rajasthan High Court and of co-ordinate Benches of this Tribunal, we find that the issue is squarely covered by the decision of the Hon'ble Apex Court of the country in the case of "CIT Vs. K. Srinivasan" (1972) 83 ITR 346, wherein the following questions came for adjudication before the Hon'ble Apex Court:- " Whether the words "Income tax" in the Finance Act of 1964 in sub- s (2) and sub-s.(2)(b) of s. 2 would include surcharge and additional surcharge

  20. The Hon'ble Supreme Court answered the question in favour of revenue observing as under :- "In our judgment it is unnecessary to express any opinion in the matter because the essential point for determination is whether surcharge is an additional

mode or rate for charging income tax. The meaning of the word "surcharge" as given in the Webster's New International Dictionary includes among others "to charge (one) too much or in addition" also "additional tax". Thus the meaning of surcharge is to charge in addition or to subject to an additional or extra charge. If that meaning is applied to s. 2 of the Finance Act 1963 it would lead to the result that income tax and super tax were to be charged in four different ways or at four different rates which may be described as (i) the basic charge or rate (In part I of the First Schedule); (ii) Surcharge; (iii) special surcharge and (iv) additional surcharge calculated in the manner provided in the Schedule. Read in this way the additional charges form a part of the income tax and super tax"

21. The Hon'ble Supreme Court, therefore, has decided the issue in favour of the revenue and held that surcharge and additional surcharge are part of the income- tax. At this stage, it is pertinent to mention here that 'education cess' was brought in for the first time by the Finance Act, 2004, wherein it was mentioned as under: - "An additional surcharge, to be called the Education Cess to finance the Government's commitment to universalize quality basic education, is proposed to be levied at the rate of two per cent on the amount of tax deducted or advance tax paid, inclusive of surcharge."

22. The provisions of the Finance Act 2011 relevant to the Assessment Year under consideration i.e. 2012-13 are also relevant. For the sake of ready reference, the same is reproduced here under :- 2(11) The amount of income-tax as specified in sub-sections (1) to (10) and as increased by a surcharge for purposes of the Union calculated in the manner provided therein, shall be further increased by an additional surcharge for purposes of the Union, to be called the "Education Cess on income-tax", calculated at the rate of two per cent of such income-tax and surcharge, so as to fulfil the commitment of the Government to provide and finance universalized quality basic education.

23. A perusal of the aforesaid provisions of the Finance Act 2004 and Finance Act 2011 would show that it has been specifically provided that 'education cess' is an additional surcharge levied on the income-tax. Therefore, in the light of the decision of the Hon'ble Supreme Court in the case of "CIT Vs. K. Srinivasan" (supra) the additional surcharge is part of the income-tax. The aforesaid decision of the Hon'ble Apex Court and the provisions of Finance Act, 2004 and the relevant provisions of section 2(11) & (12) of the subsequent Finance Acts have not been brought into the knowledge of the Hon'ble High Courts in the cases of "Sesa Goa Ltd" & "Chambal Fertilisers" (supra). Since the decision of the Hon'ble Supreme Court prevails over that of the Hon'ble High Courts, therefore, respectfully following the decision of the Hon'ble Supreme Court in the case of "CIT Vs. K. Srinivasan" (supra), this issue is decided against the assessee. The additional ground of assessee's appeal is accordingly dismissed."

- *Since the judgments of Rajasthan High Court and Bombay High Court did not consider the judgment of Hon'ble Supreme Court discussed above, the judgments of these two High Courts appear to be per incuriam. It may be mentioned that in paragraph 578 at page 297 of Halsbury's Laws of England, Fourth Edition, the rule of per incuriam is stated as follows:*

  "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, in which case it must be decided which case to follow; or when it has acted

in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."

- *From the above discussion it may be seen that the interpretations of two High courts and various ITATs are against the intention of legislature and not in line with the judgment of Hon'ble Supreme Court.*
- *Summing up*

  Thus the proposed retrospective amendment seeks to rectify the decision passed by the Rajasthan High Court and Mumbai High Court and follow the principle laid down by the recent Kolkata ITAT decision.

8. Clarification in respect of disallowance under section 14A in absence of any exempt income during an assessment year

8.1. Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income that does not form part of the total income as per the provisions of the Act (exempt income).

8.2. Over the years, disputes have arisen in respect of the issue whether disallowance under section 14A of the Act can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year.

8.3. CBDT issued Circular No. 5/2014, dated 11/02/2014, clarifying that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income. However, still some courts have taken a view that if there is no exempt income during a year, no disallowance under section 14A of the Act can be made for that year. Such an interpretation is not in line with the intention of the legislature.

8.4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

8.5. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.

Comments:

- *To illustrate, if during a previous year, an assessee incurs an expense of ₹2 lakh to earn non-exempt income of ₹3.5 lakh and also incurs an expense of ₹50,000/- to earn exempt income which may or may not have accrued/received during the year.*

By holding that provisions of section 14A of the Act does not apply in this year as the exempt income was not accrued/received during the year, it amounts to holding that ₹50,000/- would be allowed as deduction against non-exempt income of ₹3.5 Lakh even though this expense was not incurred wholly and exclusively for the purpose of earning non- exempt income.

According to the Hon'ble Finance Ministry, such an interpretation defeats the legislative intent of both section 14A as well as section 37 of the Act.

- *Thus, the proposed amendment clarifies all doubts and is aimed at putting to rest all litigations on the matter whether any disallowance can be made under section 14A in absence of exempt income during the previous year in which the disallowance is proposed.*
- *However, the issue in respect of absence of any expenditure and consequent disallowance of flat 0.5% of average monthly investments still remains and litigations in this regard may continue in future as well as assessee may be reluctant to do such disallowance in absence of any expenditure.*
- *This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.*
- *Since the amendment is prospective, past litigations may be ruled in favour of the assessee and such disallowances may be deleted in appellate proceedings.*

9. Clarification regarding deduction on payment of interest only on actual payment

9.1. Section 43B of the Act provides for certain deductions to be allowed only on actual payment.

9.2. Explanation 3C, 3CA and 3D of this section provides that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank under clause (d), clause (da), and clause (e) of this section respectively, shall be allowed if such interest has been actually paid and any interest referred to in these clauses which has been converted into a loan or borrowing or advance shall not be deemed to have been actually paid.

9.3. Certain taxpayers are claiming deduction under section 43B on account of conversion of interest payable on an existing loan into a debenture on the ground that such conversion is a constructive discharge of interest liability and, therefore, amounted to actual payment which has been upheld by several Courts.

9.4. In view of the above, it is proposed to amend Explanation 3C, Explanation 3CA and Explanation 3D of section 43B to provide that conversion of interest payable under clause (d), clause (da), and clause (e) of section 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid.

Comments:

- *The interpretation made by the assessee for claiming the deduction under section 43B by converting the interest payable into a loan or borrowing or advance is against the intent of legislation.*
- *The section was introduced to curb the mischief of claiming deduction by the assessee, without paying interest to financial institutions/NBFC/scheduled bank or a co-operative bank.*
- *Section 43B makes a departure from other sections in the Act, as indicated by its non-obstante clause. Under the provisions of this section conversion of the outstanding interest liability into debentures as discussed above is not an actual payment and cannot be claimed as deduction.*
- *In other words, a mercantile system of accounting cannot be looked at when a deduction is claimed under this section, as actual payment would have to be made.*
- *This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.*

10. Definition of the term "Slump Sale"

10.1. Slump sale is defined in clause (42C) of section 2 of the Act, as the transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to individual assets and liabilities in such sales.

10.2. Vide the Finance Act, 2021, the definition of "slump sale" was amended to expand its scope to cover all forms of transfer under slump sale which is as under :-

""slump sale" means the transfer of one or more [undertaking, by any means,] for a lumpsum consideration without values being assigned to the individual assets and liabilities in such sales."

10.3. However, inadvertently, in the last sentence there is reference to the word "sales" instead of "transfer".

10.4. Therefore, it is proposed to carry out consequential amendment by amending the provision of clause (42C) of section 2 of the Act, to substitute the word "sales" with the word "transfer"

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.*
- *Since this is a clarificatory amendment, it shall take effect retrospectively from the 1st April, 2021 and will accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.*

11. Clarifications on allowability of expenditure under section 37

11.1. Section 37 of the Act provides for allowability of revenue and non-personal expenditure (other than those failing under sections 30 to 36) laid out or expended wholly and exclusively for the purposes of business or profession.

Explanation 1 of sub-section (1) of section 37 of the Act provides that if any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

11.2. It is seen that certain taxpayers are claiming deductions on expenditure incurred in offering certain benefits or perquisite to a person which are not intended to be allowed under this section, like meeting his expenditure related to travel, hospitality, conference etc. In these cases acceptance of such benefit or perquisite by such person is in violation of a law or rule or regulation or guidelines, as the case may be, governing the conduct of such person.

11.3. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert another Explanation to sub-section (1) of section 37 to further clarify that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law", under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee, —

- "for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or
- to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or to compound an offence under any law for the time being in force, in India or outside India."

Comments:

- *CBDT, vide circular No. 5/2012 dated 1.8.2012 noted that:*

  The Indian Medical Council in exercise of its statutory powers amended the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the regulations) on 10.12.2009 imposing a prohibition on the medical practitioner and their professional associations from taking any Gift, Travel facility, Hospitality, Cash or monetary grant from the pharmaceutical and allied health sector Industries.

- *Accordingly, CBDT clarified that the claim of any expense incurred in providing above mentioned or similar benefits in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section sub- section (1) of section 37 of Act being an expense prohibited by the law.*

- *This disallowance was directed to be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid benefits and claimed it as a deductible expense in its accounts against income.*

- *Court Judgement against this circular:*

  This circular was challenged in Himachal Pradesh High Court in the case of Confederation of Indian Pharmaceutical Industry Vs Central Board of Direct Taxes [(2013) 335 ITR 388 (HP)], in which the Hon'ble High Court rejected the petition and held that –

  "The regulation of the Medical Council prohibiting medical practitioners from availing of freebies is a very salutary regulation which is in the interest of the patients and the public. This Court is not oblivious to the increasing complaints that the medical practitioners do not prescribe generic medicines and prescribe branded medicines only in lieu of the gifts and other freebies granted to them by some particular pharmaceutical industries. Once this has been prohibited by the Medical Council under the powers vested in it, s. 37(1) comes into play. The Petitioner's contention that the circular goes beyond the section is not acceptable. In case the assessing authorities are not properly understanding the circular then the remedy lies for each individual assessee to file an appeal but the circular which is totally in line with s. 37(1) cannot be said to be illegal. If the assessee satisfies the assessing authority that the expenditure is not in violation of the regulations framed by the medical council then it may legitimately claim a deduction, but it is for the assessee to satisfy the AO that the expense is not in violation of the Medical Council Regulations."

- *After this there have been various judgments of Income-tax Appellate Tribunals. Some of these judgments have held that these expenses to be not allowable under sub-section (1) of section 37 the Act, while others holding it to be allowable.*

- *Reliance of aforesaid by various Courts*

  In the case of Kap Scan and Diagnostic Centre (P) Ltd. [(2012) 344 ITR 476 (P&H)], the Hon'ble High Court of Punjab & Haryana held that payments which are opposed to public policy being in the nature of unlawful consideration cannot equally be recognized. It cannot be held that businessmen are entitled to conduct their business even contrary to law and claim deductions of payments as business expenditure, notwithstanding that such payments are illegal or opposed to public policy or have pernicious consequences to the society as a whole.

- *Recent Judgement of ITAT Mumbai:*

  The latest Judgment on this issue is from ITAT Mumbai in the case of Macleods Pharmaceuticals delivered on 14th October 2021 in ITA Nos. 5168 & 5169/Mum/2018. In this judgment ITAT held that the action of the assessing officer in disallowing the expenditure deserves to succeed.

- *Thus, the legal position is clear that the claim of any expense incurred in providing various benefits in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section sub-section (1) of section 37 of Act being an expense prohibited by the law.*

- *Further, some taxpayers are seen to be claiming deduction on expenses incurred for a purpose which is an offence under foreign law or for compounding of an offence for violation of foreign law, claiming that provisions of Explanation 1 to sub- section (1) of*

section 37 of the Act applies only to offences which are prohibited by the domestic law of the country. In some case this view has also been accepted by the tribunal. These judgments are also against the intention of the legislation as the legislation does not say that the Explanation 1 applies only to the violation of domestic law.

- *Hence, the proposed amendments are aimed at disallowing exemptions claimed by assessee for expenditure incurred in violation of a guideline or in violation of a foreign law, which was earlier subjected to large scale litigations.*
- *This amendment will take from 1st April, 2022.*

12. Withdrawal of concessional rate of taxation on dividend income under section 115BBD

12.1. Section 115BBD of the Act provides for a concessional rate of tax of 15% on the dividend income received by an Indian company from a foreign company in which the said Indian company holds 26% or more in nominal value of equity shares (specified foreign company). This rate was aligned to the rate of tax provided under section 115-O of the Act which was related to dividend distribution tax.

12.2. It is now proposed to amend section 115BBD of the Act to provide that the provisions of this section shall not apply to any assessment year beginning on or after the 1st day of April, 2023.

Comments:

- *Finance Act, 2020 abolished the dividend distribution tax provided in section 115-O to, inter-alia, provide that dividend shall be taxed in the hands of the shareholder at such rates plus surcharge and cess as applicable to the shareholder.*
- *In order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies vis a vis dividend received from domestic companies, the amendment has been proposed in the Income Tax Act.*
- *This amendment shall be effective from 1st April, 2023 and will accordingly apply in relation to assessment year 2023-24 and subsequent years.*

13. Withdrawal of exemption under clauses (8), (8A), (8B) and (9) of section 10 of the Income-tax Act, 1961- reg

13.1. Clause (8) of the section 10 of the Act provides for exemption to the income of an individual who is assigned duties in India in connection with any co-operative technical assistance programmes and projects. Such co-operative technical assistance programmes and projects are required to be in accordance with an agreement entered by the Central Government and the Government of a foreign state (the terms thereof provide for the exemption given by this clause).

13.2. Exemption is provided to both (i) the remuneration received by the individual from the foreign state for such duties and (ii) any other income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the individual is required to pay any income or social security tax to the Government of the foreign state.

13.3. Clause (8A) of the said section provides for exemption on the remuneration or fee received by a consultant, directly or indirectly out of the funds made available to an international organisation (agency) under a technical assistance grant agreement between the agency and the Government of a foreign state. The said clause also provides exemption to such consultant in respect of any income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the consultant is required to pay income or social security tax to the Government of the country of his or its origin.

13.4. For the purposes of this clause, if the consultant is an individual he must be a foreign citizen or in case he is an Indian citizen he should be not ordinarily resident in India. In case the consultant is not an individual, such person is required to be non- resident.

13.5. Consultant should be engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project. Such technical assistance programme or projects are required to be in accordance with an agreement entered into by the Central Government and the agency and the agreement relating to the engagement of the consultant is required to be approved by the prescribed authority.

13.6. Clause (8B) of the said section provides for exemption to an individual who is an employee of the consultant as referred to in clause (8A) of section 10 . Such individuals are those who are assigned duties in India in connection with any technical assistance programme and project. These technical assistance programmes and projects are required to be in accordance with an agreement entered into by the Central Government and the agency.

13.7. The exemption is provided to the remuneration received by such individual, directly or indirectly, for such duties from any consultant referred to in clause (8A) of section 10. Exemption is also provided to any income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the individual is required to pay income or social security tax to the country of his origin.

13.8. The individual must be the employee of the consultant. He may be a foreign citizen or if he is an Indian citizen, he is not ordinarily resident in India. It is also required that the contract of service of the employee is approved by the prescribed authority before the commencement of his service.

13.9. Clause (9) of the said section provides for exemption to the income of the family members of any individual or consultant as referred in clause (8), clause (8A) and clause (8B), who accompanies such individual or consultant to India. The exemption is provided to income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which such member is required to pay any income or social security tax to the Government of that foreign state or country of origin of such member.

13.10. The exemptions as provided under the above-mentioned clauses have outlived their utility in the era of simplification of tax laws and where exemptions and tax incentives are being phased out as a matter of stated policy of the Government.

13.11. Further, if under a tax treaty, India gets a right to tax a particular income and the other country is expected to then relieve double taxation by exemption or credit method, providing exemption by India amounts to surrender of right of taxation by India in favour of the other country.

13.12. Accordingly, it is proposed to amend clauses (8), (8A), (8B) and (9) of section 10 of the Act to provide that the provisions of the said clauses shall not apply to remuneration, fee or income of the previous year relevant to the assessment year beginning on or after the 1st day of April, 2023.

Comments:

- *The proposed amendments are aimed at restoring the right of India to tax the income stated in the above mentioned exemptions. Although, if the income has been subjected to tax in a foreign country, the assessee can still claim the income exempt in India in accordance with DTAA provisions.*
- *Hence, the proposed amendment does not lead to double taxation but it aims at withdrawing irrelevant exemptions from the Act.*
- *This amendment shall be effective from 1st April, 2023 and will accordingly apply in relation to assessment year 2023-24 and subsequent years.*

14. Rationalization of provisions of the Act to promote the growth of co-operative societies

14.1. Section 115JC of the Act, inter alia, provides for the alternate minimum tax (AMT) payable by co-operative societies, which is at the rate of 18.5%. However, vide the Taxation Laws (Amendment) Act, 2019, the Minimum Alternate Tax (MAT) rate for companies has been reduced to 15%.

14.2. It is proposed to modify sub-section (4) of section 115JC to reduce the AMT rate at which co-operative societies are liable to pay income-tax to 15%. Consequential amendment is also proposed in clause (b) of section 115JF in relation to the definition of “alternate minimum tax”.

Comments:

- *The proposed amendment is aimed at providing parity between co-operative societies and companies carrying out similar activities so that they pay similar taxes and one form of business is not at a disadvantage than the other form of business.*
- *As iterated by the Hon’ble Finance Minister, the proposed amendment is aimed at enhancing the income of cooperative societies and its members who are mostly from rural and farming communities.*
- *This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.*

IV. INCOME TAX RETURNS

15. Provisions for filing of Updated Return

15.1. A new sub-section (8A) in section 139 is proposed to be introduced to provide for furnishing of updated return under the new provisions. An updated return of his income or the income of any other person in respect of which he is assessable under the Act, for the previous year relevant to such assessment year, within twenty four months from the end of the assessment year.

15.2. The following persons are not eligible to furnish "updated return" :

- If the updated return, is a return of a loss or has the effect of decreasing the total tax liability determined on the basis of return furnished under sub-section (1), subsection (4) or sub-section (5) or results in refund or increases the refund due on the basis of return furnished under sub-section (1), sub-section (4) or subsection (5), of such person.

- In the case of person in respect of whom a search has been initiated under section 132 or books of account or other documents or other assets are requisitioned under section 132A of the Act;

- In the case of a person a survey has been conducted under section 133A of the Act. However, this embargo will not apply in the case of survey conducted in respect of TDS/TCS.

- In the case of a person to whom a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing seized or requisitioned under section 132 or under section 132A in the case of any other person;

- Where a notice has been issued that any books of account or documents seized or requisitioned under section 132 or section 132A (in the case of any other person), pertains or pertains to any other information contained therein relating to such person;

- Where an "updated return" was furnished for the relevant assessment year, the taxpayer cannot again file yet another "updated return" for the same assessment year;

- Where any proceeding for assessment or reassessment or re-computation or revision is pending or has been completed for the relevant assessment year. Thus once a notice under section 143(2) or reassessment provisions are invoked, the choice of filing "updated return" ceases to exist for that assessment year;

- Where the Assessing Officer has information in his possession in respect of taxpayer under the Smugglers and Foreign Exchange Manipulators (Forfeiture of property) Act, 1976 or the Prohibition of Benami Property Transactions Act, 1988 or the Prevention of Money-laundering Act, 2002 or the Black Money Act, 2015 and the same has been communicated to him, prior to the date of furnishing of "updated

return". Thus a taxpayer apprehending proceedings under the abovesaid Acts can file "updated return" until he is informed of the possession of such information by the Assessing Officer. But once he has been informed of the possession of information by the Assessing Officer and proceedings are initiated the taxpayer is estopped from filing "updated return".

- Where any prosecution proceedings under Chapter XXII have been initiated for the relevant assessment year before filing the "updated return" such person cannot file an "updated return" in respect of the year for which the prosecution proceedings are initiated.

15.3. Further, section 140B has been proposed to provide for the tax required to be paid for opting to file a return under the proposed provisions i.e. sub-section (8A) of section 139 of the Act. An amount equal to twenty five percent or fifty percent as additional tax on the tax and interest due on the additional income furnished would be required to be paid.

- The additional tax shall be equal to twenty-five per cent of aggregate of tax and interest payable, if return furnished after the due date under Section 139(4) and (5) and before completion of 12 months from end of relevant assessment year.

- Additional tax payable shall be fifty per cent of aggregate of tax and interest payable if such return is furnished between 12 months and 24 months from end of relevant assessment year. For Section 234A, 234B, 234C calculations, “assessed tax” means the tax on the total income as declared in the return to be furnished under sub-section (8A) of section 139.

Comments:

- *The proposed amendment will gives some more time to the taxpayers under the Act to file particulars of their income for a previous year in an updated return. A payment of additional tax by persons opting to furnish their returns in the newly provided timelines is also required. It is proposed that an amount equal to twenty five percent or fifty percent as additional tax on the tax and interest due on the additional income furnished would be required to be paid.*
- *In a significant reform to tax compliance, this provision will enable the taxpayer to declare income which was missed out earlier and to file an updated return on payment of additional tax.*
- *Taxpayers will not be able to use this facility if the updated return leads to lesser total tax liability or income tax refund or increase in income tax refunds for the last income tax return filed (original/filed).*
- *ITR for any year pending for assessment or reassessment or re computation or revision of income by the income-tax department or completed thereof, will not be eligible for this new rule.*
- *In case any assessee has failed to furnish its return of income under section 139(1) or 139(4) or 139(5) for any earlier relevant assessment year, for any reason, the assessee has an option to furnish the return under this section within the stipulated time frame.*

However, there will an incremental tax liability of 25% or 50% as an additional tax on the computed tax and interest due on the net tax payable.

- *Existing provision of section 139 of the Act provides an additional time of approximately 5 months to an individual assessee, 2 months to a company/auditable case and 1 month to an assessee who enters into an international transaction or specified domestic transaction respectively, in a financial year to file belated or revised return. This additional timeline for filing a revised/belated return may not be adequate when we factor in utilization of huge information and data available coupled with the "nudge approach" that motivates the taxpayer towards the desired objective of voluntary tax compliance, starting with filing of correct tax returns.*
- *In view of the above consequential amendments have been made in section 144, section 153, section 234A and section 234B and 276CC have also been made.*
- *These amendments will take effect from 1st April, 2022.*

V. ASSESSMENTS, APPEALS, PENALTY AND TAX RECOVERY

16. Extension of introduction of Faceless Scheme in certain cases

16.1. The provisions for notifying faceless schemes under sections 92CA, 144C, 253 and 264A were introduced in the Act through Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.11.2020. Further, sub-section (7) was inserted in section 255 through Finance Act, 2021 with effect from 01.04.2021:

S.No.	Section	Scheme	Date of Limitation
1.	92CA	Faceless determination of arm's length price	31st day of March,2022
2.	144C	Faceless Dispute Resolution Panel	31st day of March,2022
3.	253	Faceless appeal to Appellate Tribunal	31st day of March,2022
4.	255	Faceless procedure of Appellate Tribunal	31st day of March,2023

16.2. Section 92CA and section 144C are principally related to the transfer pricing functions and international taxation which are presently out of the regime of faceless assessment. Therefore, notification at this time shall result in delay in stabilization of the systems.

16.3. As for notification of scheme under section 255, the Appellate Tribunal is deemed to be a civil court for all the purposes of section 195 of the Act and Chapter XXXV of the Code of Criminal Procedure, 1898. Therefore, a scheme governing the procedures to be followed by such a body needs to be formulated after due consultations with Ministry of Law & Justice. Similarly, the scheme under section 253 have to follow the scheme under section 255.

16.4. In light of the above limitations, it is proposed to extend the date for issuing directions for the purposes of these sections 92CA, 144C, 253 and 255 till 31st March, 2024.

Comments:

- *The proposed amendment has deferred the applicability under Faceless Scheme of transfer pricing functions, international taxation and appeals to appellate tribunals.*

17. Amendment in Faceless Assessment under section 144B of Income Tax Act

17.1. Vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, section 144B was inserted in the Act to provide the procedure for faceless assessment with effect from 01.04.2021 and the Faceless Assessment Scheme, 2019 ceased to operate from that date.

17.2. However, there has been several litigations in the Court with respect to existing Faceless Assessment procedure and various difficulties are being faced by the administration and the taxpayers in its operation. In view of the above, it is proposed that the existing provisions of the section 144B of the Act may be amended to streamline the process of faceless assessment in order to address the various legal and procedural problems being faced in the implementation of the said section.

17.3. Therefore, it is proposed to substitute section 144B of the Act so as to provide that—

- the provisions of the proposed section shall apply for faceless assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147 of the Act, as the case may be, in the cases specified therein.

- the National Faceless Assessment Centre (NaFAC) shall assign the case selected for the purposes of faceless assessment to a specific Assessment Unit (AU) and intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down in the proposed section.

- the assessee shall be served a notice under sub-section (2) of section 143 or under sub-section (1) of section 142 of the Act, through the NaFAC. The assessee may file his response to the aforementioned notice under sub-section(3) of section 143, within the date specified in such notice in this regard, to the NaFAC, which shall forward the reply to the AU.

- Thereafter, the AU may make a request, through the NaFAC, for obtaining such further information, documents or evidence from the assessee or any other person, as it may specify and the NaFAC shall serve appropriate notice or requisition on the assessee or any other person for obtaining such information, documents or evidence. The AU may also make a request, through the NaFAC, for conducting enquiry or verification by Verification Unit (VU) and the request shall be assigned by the NaFAC to a VU through an automated allocation system. The AU may also similarly make a request in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit and the request shall be assigned by the NaFAC to a Technical Unit (TU) through an automated allocation system.

- The assessee or any other person, as the case may be, shall file his response in compliance to the said notice served by NaFAC, at the request of AU, to the NaFAC which shall forward the reply to the AU. If the assessee fails to comply with the said notice seeking information served by NaFAC, or the earlier notice under sub-section (2) of section 143 or under sub-section (1) of section 142, the NaFAC shall intimate the same to the AU. The AU shall serve upon the assessee, through NaFAC, a show cause notice under section 144 giving him the opportunity to explain as to why the assessment in his case should not becompleted to the best of its judgement. Further any report received by the NaFAC, from the VU or TU shall also be forwarded to the AU.

- The assessee shall file his response to the show-cause notice under section 144 of the Act, within the time specified in such notice, to the NaFAC which shall forward the same to the AU. If the assessee fails to respond, the NaFAC shall intimate the same to the AU.

- The AU shall, after taking into account all the relevant material available on the record, prepare in writing, an income or loss determination proposal where no variation prejudicial to assessee is proposed and send the same to the NaFAC. If a variation is being proposed then a show cause notice is served on the assessee stating the variations proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made, through the NaFAC.

- The assessee shall file his reply to the show cause notice to the NaFAC, on date and time as specified, which shall forward the reply to the AU. If the assessee fails to respond within the specified time, the NaFAC shall intimate the same to the AU. After considering the response of the assessee or the intimation of failure of the assessee to file a response received from NaFAC and all relevant material available on the record, the AU shall prepare an income or loss determination proposal, in writing, and send the same to the NaFAC.

- Upon receipt of the income or loss determination proposal, with or without any variations proposed to the income of the assessee, as the case may be, the NaFAC may, on the basis of guidelines issued by the Board, convey to the AU to prepare draft order in accordance with such income or loss determination proposal, which shall thereafter prepare a draft order, or assign the income or loss determination proposal to a Review Unit (RU) through an automated allocation system, which shall conduct a review of such order, prepare a review report and send it to NaFAC.

- The NaFAC shall forward the review report received from the RU to the AU which had proposed the income or loss determination proposal. The AU may accept or reject some or all of the modifications proposed in such review report, prepare a draft order accordingly, and send it to NaFAC. The AU shall record reasons in writing if it is rejecting the modifications proposed by the RU.

- The NaFAC shall, upon receiving draft order in a case of eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee under sub-section (1) of section 144C for reference to Dispute Resolution

Panel, serve such draft order on the assessee. In any case, other than that of eligible assessee under section 144C, the NaFAC shall convey to the AU to complete the assessment in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the NaFAC. The NaFAC shall serve a copy of such final assessment order, notice for initiating penalty proceedings, if any and the demand notice, specifying the sum payable by, or refund of any amount due to the assessee on the basis of such assessment, to the assessee.

- An eligible assessee, as referred to in section 144C, shall, upon receiving the draft order as served on him above, shall file his acceptance of the variations proposed in such draft order or file objections, if any, to such variations, with the Dispute Resolution Panel, under section 144C and the NaFAC, within the period specified in sub-section (2) of section 144C.

- In case the variations proposed in the draft order are accepted by the assessee or not objected to within the time given in sub-section (2) of section 144C, the NaFAC shall intimate the AU of the same, which shall complete the assessment, on the basis of the draft order, within the time allowed under sub-section (4) of section 144C and initiate penalty proceedings, if any, and send the order to the NaFAC.

- Where the eligible assessee files objections with the Dispute Resolution Panel, against the variations proposed in the draft order in his case, the NaFAC shall send such intimation along with a copy of such objections to the AU. Upon receipt of the directions issued by the Dispute Resolution Panel in the case of an eligible assessee under section 144C, the NaFAC shall forward such directions to the AU. The AU shall complete the assessment within the time allowed in sub-section (13) of section 144C and initiate penalty proceedings, if any, in conformity with the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, and send a copy of such order to the NaFAC.

- The NaFAC shall, upon receipt of final assessment order, in the case of an eligible assessee under section 144C or in other cases, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, alongwith the demand notice, specifying the sum payable by, or the amount of refund due to, the assessee on the basis of such assessment. The NaFACshall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Income-tax Act.

- The proposed section also provides that faceless assessment shall be made in respect of persons or class of persons, or incomes or class of incomes, or cases or class of cases or such territorial area, as may be specified by the Board.

- The proposed section also provides that Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:-

17.3..1. a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

17.3..2. assessment units (referred to as AU), as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment and the term "assessment unit", wherever used in this section, shall refer to an Assessing Officer having powers to the extent so assigned by the Board; ;

17.3..3. verification units (referred to as VU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

- Further, the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions ofthe Act and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit.;

17.3..1. technical units (referred to as TU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under sections 90 or 90A, which may be required in a particular case or a class of cases and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

17.3..2. review units (referred to as RU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xix) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues on which addition or disallowance should be made have been incorporated and such other functions as may be required for the purposes of review and the term "review unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board.

17.4. It is also proposed that the AU, VU, TU and the RU shall have the following authorities, namely:-

- Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;
- Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;
- Such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.

17.5. The proposed section also provides that all communication, among the AU, RU, VU or TU or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the NaFAC, between the NaFAC and the assessee, or his authorised representative, or any other person and all internal communications between the NaFAC and variousunits shall be exchanged exclusively by electronic mode. However, this provision shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this regard.

17.6. It is further proposed that for the purposes of faceless assessment, an electronic record shall be authenticated by the NaFAC by way of an electronic communication, by the AU or VU or TU or RU, as the case may be, by affixing digital signature and by the assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal. It is also proposed that every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of placing an authenticated copy thereof in the registered account of the assessee or by sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative or by uploading an authenticated copy on the assessee's Mobile App, and followed by a real time alert.

17.7. The proposed section further seeks to provide that the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the NaFAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated. The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000.

17.8. A person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under the proposed section.

17.9. Further, it is proposed that in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment

should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit. Where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through NaFAC, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board. Any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

17.10. It is proposed that the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end. The Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the NaFAC shall, with the prior approval of the Board, lay down the standards, procedures and processes in the specified manner for effective functioning of the NaFAC and the units set up, in an automated and mechanised environment.

17.11. The proposed section also seeks to provide that if at any stage of the proceedings before it, the AU having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing, refer the case to the NaFAC stating that the provisions of sub-section (2A) of section 142 may be invoked in the case. The Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the NaFAC shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (2A) of section 142 may be invoked in the case, forward the reference received from the AU to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such case, and inform the AU accordingly. Such case shall also be taken up for transfer to the jurisdictional Assessing Officer with the approval of the Board. Where a reference has been received the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over such case, he shall direct the Assessing Officer having jurisdiction over such case to invoke the provisions of sub-section (2A) of section 142. However, where a reference has not been forwarded to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,

having jurisdiction over such case, the AU shall proceed to complete the assessment in accordance with the procedure laid down in the proposed section.

17.12. It is also proposed to provide that the Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case, in addition to a case referred to in (y) to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board. It is also proposed to define the terms such as electronic verification code, assessment unit, technical unit, verification unit, review unit etc used in the proposed section.

17.13. This amendment will take effect from 1st April, 2022.

17.14. Sub-section (9) of section 144B of the Act provides that the assessment proceedings shall be void if the procedure mentioned in the section was not followed. The said sub-section refers to violation of the procedure laid down by the law whereas a large number of disputes have been raised under this sub- section involving technical issues arising due to use of information technology, leading to unnecessary litigation. It is, therefore, proposed to omit this sub- section i.e., sub-section (9) of section 144B from its date of inception.

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

Comments:

- *It is worth referring to the case before the Hon'ble Supreme Court in the case of CBDT Vs. Laksha Budhiraja & Anr, wherein, in the course of hearing before Apex Court on 01.10.2021, the Learned Solicitor General submitted that the Department is having a second look at the matter on the issue of Faceless Appeal Scheme, 2020. However, in the present Finance Bill, no proposal for amendment in Faceless Appeal Scheme has come.*
- *The proposals seem to address some clauses in the existing faceless assessment procedure, wherein, the assessee have filed Writ Petitions in Courts, challenging the entire proceedings on the ground of lapses by the Department in following the procedure. For instance, the Delhi High Court vide order dated 02.09.2021 in the case of Novelty Merchants Pvt Ltd Vs National Faceless Assessment Centre, Delhi set aside the order passed under faceless provisions. In that case, the assessment order was passed without issuing the mandatory show-cause notice and draft assessment order. The Court was of the view that the assessment should have been done in accordance with the statutory procedure prescribed for assessment. In the proposed bill, it is seen that the present provisions of issuing draft assessment order has been replaced by 'income or loss determination proposal'.*
- *It may be relevant to mention that in most of the cases, where writ petitions have been filed by the assessee, the Court have set-aside the notice/order, with direction that NFAC may issue fresh notice/order in accordance with law and after following the principles of natural justice. For instance, the Divisional Bench of Calcutta High Court in the case of Pradip Kumar Saha vs. UOI (order date 17.12.2021) observed that the assessment order was passed in violation of principle of natural justice and accordingly the assessment order was quashed. However, the Department was allowed fresh*

opportunity to pass assessment order after granting fresh opportunity to the assessee. Similar view was held in the order passed by Calcutta High Court in the case of Neeraja Rateria Vs. NFAC, Delhi (order dated 05.10.2021). Thus, it is seen that the assessee normally doesn't get permanent relief in such writ petitions, though the demand raised in the assessment order gets vacated, till a fresh assessment order is passed.

18. Litigation Management when in an Appeal by Revenue an identical question of law is pending before jurisdictional High Court or Supreme Court

18.1. Section 158AA of the Act provides that where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee (relevant case) is identical with a question of law arising in his case for another assessment year (other case) which is pending in appeal before the Supreme Court against an order of High Court which was in favour of assessee, he may direct the Assessing Officer to make an application to the Appellate Tribunal stating that an appeal on the question of law in the relevant case may be filed when the decision on the question of law becomes final in the other case, subject to the acceptance of the same by the assessee

18.2. If such a principle could be applied to cases where a question of law is common and where a decision of the jurisdictional High Court, on the same question of law is available, the filing of appeal in such cases can be avoided to reduce the amount of litigation.

18.3. Therefore, to provide a procedure when an appeal by revenue is pending on an identical question of law, it is proposed to insert a new section 158AB in the Act, to provide that where the collegium is of the opinion that any question of law arising in the case of an assessee for any assessment year ("relevant case") is identical with a question of law already raised in his case or in the case of any other assessee for an assessment year, which is pending before the jurisdictional High Court under section 260A or the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, in favour of such assessee ("other case"), it may, decide and intimate the Commissioner or Principal Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under sub-section (2)of section 253 or to the High Court under sub-section (2) of section 260A against the order of the Commissioner (appeals) or the Appellate Tribunal, as the case may be.

18.4. Further, the Commissioner or Principal Commissioner shall, on receipt of a communication from the collegium, direct the Assessing Officer to make an application to the Appellate Tribunal or jurisdictional High Court, as the case may be, in the prescribed form within sixty days from the date of receipt of the order of the Commissioner (Appeals) or within one hundred and twenty days from the date of receipt of the order of the Appellate Tribunal, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case. The Commissioner or Principal Commissioner shall direct the Assessing Officer to make such an application only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case, and in case no such

acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in sub-section (2) of section 253 or in sub-section (2) of section 260A.

18.5. Furthermore, where the order of the Commissioner (Appeals) or the order of the Appellate Tribunal, as the case may be, in the relevant case is not in conformity with the final decision on the question of law in the other case as and when such order is received, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or the jurisdictional High Court, as the case may be, against such order.

18.6. With the introduction of section 158AB, a sunset clause is proposed to be inserted in sub-section (1) of section 158AA to provide that no direction shall be given under the said sub-section on or after 1st April, 2022.

Comments:

- *In order to reduce the amount of litigation and to avoid the filing of appeal by Department in various cases, it is proposed to insert a new section 158AB in the Act.*
- *Section 158AA comes in to play when question of law arising in assessee's case is identical with a question of law already raised in assessee's own case for any other assessment year, while proposed section 158AB come into play when any question of law arising in the case of an assessee for any assessment year is identical with a question of law already raised in the case of any other assessee for an assessment year.*
- *Under section 158AA of the Act, Commissioner or Principal Commissioner is require to form opinion with respect to question of law, whereas under proposed section 158AB, "collegium" is require to form opinion with respect to question of law. For the purpose of this section, "collegium" comprise of two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by the Board in this regard.*
- *The Commissioner or Principal Commissioner shall direct the Assessing Officer to make such an application only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case, and in case no such acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in sub-section (2) of section 253 or in sub-section (2) of section 260A.*
- *Under section 158AA(1), a sunset clause is proposed to be inserted to provide that no direction shall be given under the said sub-section on or after 1st April, 2022 and introduction of section 158AB will take effect from 1st April, 2022*
- *In order to illustrate the aforesaid new section, it may be supposed that a question of law (Q1)A1 has arisen in case of an assessee (A1) and the A1 has received a favourable decision on Q1A1 from the Commissioner (Appeals). Further, in case of another assessee (A2), where Department's appeal on identical question of law (Q1)A2 is pending before the jurisdictional High Court or the Supreme Court and the collegium is of the opinion that Q1A1 and Q1A2 are identical questions of law. Then in this situation, provisions of proposed section 158AB can be invoked by Revenue to defer filing of appeal for decision on Q1A1 to the higher appellate authority in ITAT till a decision on Q1A2 is communicated to Assessing Officer having jurisdiction over the assessee, A1.*

Such a decision on deferment will be subject to acceptance by the assessee A1 that question of law in his case Q1A1 is identical to Q1A2 in the case of the assessee A2.

- *This amendment will take effect from 1st April, 2022.*

19. Amendment in Provisions of section 179 of the Act

19.1. Section 179 of the Act contain provisions which enable income tax authorities to recover tax due, in respect of any income, from a private company from its directors, under certain circumstances where such tax cannot be recovered from the company itself.

19.2. Each director of the private company shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

19.3. The title of the section which was *"Liability of directors of private company in Liquidation".* However, the section doesn't restrict its applicability to private limited company in liquidation.

19.4. The liability of directors of a private company under this section is not conditional upon the company being in liquidation and the section makes no reference to liquidation. Thus in order to provide clarification and to make the title of the section uniform with its provisions, it is proposed to amend the title of the section to "Liability of directors of private company".

19.5. Earlier, Explanation to the section clarifies that the expression "tax due" in the section includes penalty, interest of any other sum payable under the Act. However, it is proposed to insert the word "fees" in the scope of the expression "tax due" under Explanation to the section.

Comments:

- *Section 179 was substituted by Taxation Laws (Amendment) Act 1975 w.e.f 01.10.1975. The amendment substituted for "wherein any private limited wound up……" by inserting "where any tax dues from a private company….". Thus, with the said amendment, the director of private limited company were liable even if the company was not in liquidation. Though the provision of the Act was amended, way back in 1975, however the title was not amended inadvertently. The present Finance Bill has proposed the amendment in the title.*

- *This section was seldom being used by the Department in the past. However, with IBC Code being applicable now, it is widely perceived that if Income Tax Department is unable to recover its tax dues from a private company in liquidation in view of waterfall mechanism provided in Section 53(1) of IBC Code, then the Department may be proceeding against the director to recover their dues. For instance, if Mr A was a director in Company Y during the financial year 2017-18, and tax demand in respect of that financial year is raised pursuant to assessment completed in 2020, Mr A can be held liable under Section 179, even if he had resigned from directorship in 2019, whether the company Y is under liquidation or not.*

- *The directors' liability would get triggered only in scenarios where the Income tax authorities establish that attempts made to recover from the company have gone in*

vain. For instance, in case company goes under liquidation and Income tax department, being the Operational Creditors doesn't get anything against its outstanding liability, then Income tax authorities can invoke section 179 against the director of the private companies.

- *The charge created on the directors vide Section 179 is however, not sacrosanct, in that, should any director be able to demonstrate that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to affairs of the company, then, there will not be any liability cast on the director. Needless to say, this would depend largely on the surrounding facts and circumstances of the case and the factors giving rise to the demand of tax.*
- *Earlier, the expression "tax due" in the section includes penalty, interest of any other sum payable under the Act. However, it is proposed to also insert the word "fees" in the scope of the expression "tax due" under Explanation to the section.*
- *This amendment will take effect from 1st April, 2022.*

20. Amendment in Provisions of section 263 of the Act

20.1. Section 263 of the Act contains the provision for revision of order which is erroneous in so far as it is prejudicial to the interests of revenue. An order under section 263 of the Act can be passed within two years from the end of the financial year in which the order sought to be revised was passed.

20.2. As per provisions of section 92CA, if the Assessing Officer considers it necessary or expedient, he may, with the approval of the Principal Commissioner or Commissioner refer the computation of arm's length price (ALP or specified domestic transaction entered into by an assessee, to the Transfer Pricing Officer (TPO). The TPO passes an order determining the ALP in an international transaction or specified domestic transaction under the provisions of section 92CA and send it to the Assessing Officer for final income determination. However, it is not clear as to who has the power under section 263 to revise the order of the TPO passed under section 92CA.

20.3. Therefore, it is proposed to amend the provisions of section 263 of the Act so as to provide that the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner who is assigned the jurisdiction of transfer pricing may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the TPO, working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO.

20.4. Consequential changes are also be made in the provisions of section 153 of the Act inter alia to provide two months' time to the Assessing Officer to give effect to the order of TPO consequent to the directions in the revision order.

20.5. Further, in section 153 of the Act, it is proposed to

- provide that the provisions of sub-sections (3) and (5) of that section shall also be applicable to order passed by Transfer Pricing Officer under section 92CA,

- to insert sub-section (5A) to provide that where the Transfer Pricing Officer gives effect to an order or direction under section 263 by means of an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him,

- to provide that the said provisions of the sub-section (6) shall also be applicable to orders referred to in the sub-section (5A) inserted in the Act.

Comments:

- *Earlier, it was not clear as to who has the power under section 263 to revise the order of the TPO passed under section 92CA.*
- *As such, it is proposed to amend the provisions of section 263 of the Act so as to provide that the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner who is assigned the jurisdiction of transfer pricing may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the TPO, working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO.*
- *This amendment will take effect from 1st April, 2022.*

21. Amendment in Provisions of section 272A of the Act

21.1. Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc. This section ensures compliance with various obligations under the Income- tax Act by penalizing non-compliance and acting as a deterrent.

21.2. Presently, sub-section (2) of section 272A provides the amount of penalty for failures is one hundred rupees for every day during which the failure continues.

21.3. The section was introduced in 1999 and since the penalty had not been increased and does not have an adequate deterrence value. Therefore, it is proposed to increase the amount of penalty for failures listed under sub-section (2) of section 272A to five hundred rupees from the existing sum of one hundred rupees.

Comments:

- *It is proposed to increase penalty for failure to answer questions, sign statements, furnish information, returns or statements and allow inspections etc. to five hundred rupees from the existing sum of one hundred rupees for every day during which the failure continues.*
- *This amendment will take effect from 1st April, 2022.*

22. Amendment in Provisions of Section 245MA of Income Tax Act related to Dispute Resolution Committee

22.1. The Finance Act 2021 introduced section 245MA for constituting Dispute Resolution Committee ("DRC") for specified persons who may opt for dispute resolution under the said section and who fulfil specified conditions mentioned in the said section.

22.2. After the resolution of the dispute by the DRC, the assessed income of the person who had applied to DRC has to be determined, which will be followed by, inter alia, initiation of penalty proceedings, if any and issuance of demand notice under section 156 of the Act.

22.3. However, the existing provisions of the said section do not contain any provision which will enable the Assessing Officer to pass an order giving effect to the order or directions of the Dispute Resolution Committee under the said section.

22.4. It is proposed to insert a new sub-section to this section to enable the Assessing Officer to pass an order giving effect to the resolution of dispute by the DRC.

22.5. However, since DRC is an alternate dispute resolution mechanism itself, a taxpayer may opt for approaching either the Dispute Resolution Panel under section 144C of the Act or the DRC under section 245MA of the Act, and the AO shall pass the final order in conformity with the order by the DRC even in the case of an eligible assessee.

Comments:

- *The existing provision of section do not contain any provision which will enable the Assessing Officer to pass an order giving effect to the order or directions of the Dispute Resolution Committee. It is proposed to insert a new sub-section to this section to enable the Assessing Officer to pass an order giving effect to the resolution of dispute by the DRC.*
- *This amendment shall be effective from 1st April, 2022.*

23. Alignment of the provisions relating to Offences and Prosecutions under Chapter XXII of the Act assets

23.1. Sections 269UC/UE/UL along with other provisions of Chapter XX-C have been made inapplicable with effect from 01.07.2002. Vide Finance Act, 2002, section 269UP was introduced providing that the provisions of the Chapter shall not apply to, or in relation to, the transfer of any immovable property effected on or after 01.07.2002. Consequently, prosecution provisions u/s 276AB are not relevant, as launching prosecution against offences committed more than twenty years ago, that is prior to 2002 would be beyond reasonable time.

23.2. Since such cases involve transfer of immovable property, it is not improbable that prosecution cases launched previously while the relevant provisions were still in effect might be ongoing. Therefore, in order to take those cases to logical conclusion without any interpretational issue arising on applicability of the section or otherwise, it is proposed to amend section 276AB to align it with the provisions of the Act that have been made inapplicable, by providing a sunset clause. Hence, it is proposed that no

fresh prosecution proceeding shall be initiated under this section on or after 1st April, 2022.

23.3. Section 276B provides for prosecution for a term ranging from three months to seven years with fine for failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B. Under this section, a person shall be punishable for failure to-

- deduct the tax as required under the provisions of Chapter XVII-B which deals with deduction of tax at source, or to pay the tax, as required by or under sub-section (2) of section 115-O or

- the second proviso to section 194B. Section 194B was amended vide Finance Act 1999 w.e.f. 01.04.2000 by which the first proviso to the section was omitted and the section currently has only one proviso. Therefore, to avoid ambiguity among the sections 276B and 194B, it is proposed to substitute the sub-clause (ii) of clause (b) of section 276B with "proviso to section 194B". Similar amendment is proposed in Section 271C.

23.4. Sections 278A and 278AA are related to punishment with prosecution against persons for failure to pay tax to the credit of Central Government under Chapter XVII- B for tax deducted at source. However, similar provisions for offence with respect to tax collected at source under Chapter XVII-BB, providing for punishment with prosecution against persons failing to pay tax collected at source is not there under sections 278A and 278AA.Therefore, it is proposed to include section 276BB under sections 278A and 278AA owing to the similar nature of offences that are punishable under section 276B and section 276BB.

Comments:

- *Section 276AB talks about punishment in case of failure to comply with the provisions of section 269UC, 269UE and 269 UL of the Act.*
- *Section 269UC, 269UE and 269UL talks about restriction of transfer of immovable property, vesting of property with Central Government and restriction on registration of immovable property. All these sections were made inapplicable from 01.07.2002. Therefore, section 276AB held no value in the Income Tax Act. But there are still cases running under section 276AB of the Act which has not reached finality. Hence the proposed amendment is not to start fresh prosecutions under section 276AB from 1st April 2022.*
- *Further the other proposed amendments are only to align prosecution section 276B with section 194B.*
- *Further section 276B and 276BB has been included under section 278A and 278AA due to similar provisions for offenses in the sections.*
- *This amendment will take effect from 1st April, 2022.*

VI. SURVEY AND SEARCH

24. Rationalization of provisions relating to reassessment and search/survey cases

24.1. The Finance Act, 2021 amended the procedure for assessment or reassessment of income in the Act with effect from the 1st April, 2021. The said amendment modified, inter alia, sections 147, section 148, section 149 and also introduced a new section 148A in the Act. In cases where search is initiated under section 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, on or after 1st April, 2021, assessment or reassessment is now made under sections 143 or 144 or 147 of the Act after the Finance Act, 2021.

24.2. It is proposed to insert a new proviso to the effect that requirement for approval to issue notice under section 148 shall not be required to be taken by the Assessing Officer if he has passed an order under 148A(d) with prior approval in that case stating that the income is escaping assessment and to omit the requirement of approval of specified authority in clause (b) of section 148A.

Comments:

- *The proposed amendment mentioned has reduced the number of times, approval from higher authority needs to be taken before issuing notice u/s 148.*
- *The proposed amendment shall apply for notices issued after 1st April 2022. Thus, if notice u/s 148 needs to be issued within 31.03.22, the same needs to be complied as per existing provisions as introduced by Finance Act 2021.*
- *These amendments will take effect from 1st April, 2022*

24.3. To correct the inadvertent drafting errors and align the provisions with the intent of the section, following amendments are proposed,

- In section 148 to omit the word flagged from clause (i) of Explanation 1,
- In clause (ii) of Explanation 2 to section 148 to omit the reference of sub- section (5) of section 133A made therein.
- These amendments will take effect from1st April, 2022
- In Explanation 2 of section 148 to omit the reference to three assessment years preceding the assessment year relevant to the year of search;
- In section 153B by inserting sub-section (4) to provide that nothing contained in the said section shall apply to any search initiated under section 132 or requisition made under section 132A on or after the 1st day of April, 2021.
- In the first proviso of sub-section (1) of section 149 to provide that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-

section (1) of section 149 or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.

Comments:

- *Vide Finance Act 2021, the provisions of section 153A and section 153C, of the Act were made 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 to be made under section 148 instead of section 153A/153C. Further, as per the provisions introduced by FA 2021, notice u/s 148 shall compulsorily be issued for three assessment years preceding the year of search.*
- *As per the proposed amendment, notice u/s 148 may not be issued compulsorily for three assessment years preceeding the year of search. Thus, for each year for which notice u/s 148 is issued, the assessing officer has to fulfil the condition of satisfaction as per section 148A. The Act in the present form deem automatic satisfaction of three years preceeding the year of search.*
- *The proposed amendment may have serious implication in search cases as the insertion of section 153A/153C in the first proviso to section 149 may imply that now the assessing officer has power to reopen case for ten years preceeding the year of search. Interestingly, the proposed amendment is retrospective from 01.04.2021, implying that all search cases after 01.04.2021 shall get covered by the proposed amendment.*
- *This amendment will take effect retrospectively from 1st April, 2021.*

24.4. In order to align the scheme of search assessments with the intent of the Act, it is proposed to

- Amend sub-section (8) of section 132 to make the provisions of that section also applicable to assessment or reassessment or re-computation under sub- section (3) of 143 or section 144 or section 147, as the case may be,
- Amend clause (i) of sub-section (1) and sub-section (4) of section 132B to provide that these provisions shall also apply to assessment or reassessment or re-computation.
- These amendments will take effect retrospectively from1st April, 2022
- Insert a new section 148B to provide that no order of assessment or reassessment or re-computation under the Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.
- These amendments will take effect retrospectively from1st April, 2022
- amend section 153, by inserting a new clause to provide for exclusion of the period of limitation for the purpose of assessment, reassessment or re-computation, (not exceeding one hundred eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and

ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated or such requisition is made or to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or to whom any books of account or documents seized or requisitioned, pertains or pertain to, or any information contained therein, relates to ;

- amend section 153B, by inserting a new clause to provide for exclusion of the period (not exceeding one hundred eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion , jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated under section 132 or such requisition is made under section 132A.

- These amendments will take effect retrospectively from1st April, 2021.

- amend the definition of "specified date" in clause (a) Explanation to section 271AAB to make it also applicable to a notice issued under section 148 in case where search is initiated on or after 1st April, 2021.

- This amendment will take effect from 1st April, 2022.

Comments:

- *The proposed amendments seem to have been made to align the provisions of search assessments with other provisions of the Act.*

24.5. In order to bring clarification in the existing provisions and to align them with the intent of the Act, it is proposed to

- clarify what constitutes information under Explanation 1 to section 148 so as to include any audit objection, or any information received from a foreign jurisdiction under an agreement or directions contained in a court order, or information received under a scheme notified under section 135A etc.

- to amend the clause (b) of sub-section (1) of the section 149 to provide that a notice under section 148 shall be issued only for the relevant assessment year after three years but prior to ten years from the end of the relevant assessment year where the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented,

  24.5..1. in the form of an asset; or

  24.5..2. expenditure in respect of a transaction or in relation to an event or occasion; or

24.5..3. an entry or entries in the books of account,

which has escaped assessment amounts to or likely to amount to fifty lakh rupees or more.

- insert a new sub-section (1A) in section 149 to provide that notwithstanding anything contained in sub-section (1) of the said section, where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1) of the said section, has escaped assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1) of the said section, notice under section 148 shall be issued for every such assessment year for assessment, reassessment or re-computation, as the case may be.

- to provide that the provisions of the section 148A shall not apply in cases where the Assessing Officer has received any information regarding the scheme notified under section 135A, pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

- These amendments will take effect from 1st April, 2022.

Comments:

- *The proposed amendments may have significant implication. In the existing section 149(1)(b), the Assessing Officer could have issued notice u/s 148 if he is in possession of evidences represented in the form of asset, which has escaped assessment. Now, this section is being amended to cover expenditure in respect of a transaction or in relation to an event or occasion; or an entry or entries in the books of account. Thus, loan entries or share application/capital entries, marriage expenses, etc may also be the basis for reopening.*
- *Interestingly, the amendment in section 149(1) take effect from 01.04.2022, implying that for searches conducted during FY 2021-22, there may be litigation as to whether bogus share capital/loans/expenditure can be subject matter of additions in a search assessment.*
- *There was a wide spread discussions in the professional forum before this Budget, whether the Finance Bill will have some clause to make some amendment in section 148 to nullify the decisions rendered by various high courts in writ petitions, wherein 148 notices issued after 01.04.2021 have been quashed. The said notices, issued without following the procedure laid down in section 148A (which become applicable from 1.04.2021) has been held as bad in law. We find that Divisional Bench of Delhi High Court, Divisional Bench of Allahabad High Court, Calcutta High Court (Original Jurisdiction) and Rajasthan High Court (Original Jurisdiction) have passed consolidated orders favoring a large number of assesses. However, no such proposed amendment in the Finance Bill, implying that unless the Apex Court reverse the decision of High Courts, such notices are bad in law and consequent proceedings are liable to be quashed.*

25. Set off of loss in search cases – Insertion of section 79A of the Act

25.1. In some cases, assessee claim set off of losses or unabsorbed depreciation, against undisclosed income corresponding to difference in stock, undervaluation of stock, unaccounted cash payment etc. which is detected during the course of search or survey proceedings.

25.2. Presently, there is no provision in the Act to disallow such set-off and no distinction is made between undisclosed income which was detected owing to search & seizure or survey or requisition proceedings and income assessed in scrutiny assessment in the regular course of assessment. Even though such restriction is levy on incomes falling under section 68, section 69, section 69B etc.

25.3. As a consequence, it is proposed to insert a new section 79A in the Act which provide that notwithstanding anything contained in the Act, where consequent to a search initiated under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than under sub-section (2A) of section 133A, the total income of any previous year of an assessee includes any undisclosed income, no set off, against such undisclosed income, of any loss, whether brought forward or otherwise, or unabsorbed depreciation under sub-section (2) of section 32 shall be allowed to the assessee under any provision of this Act in computing his total income for such previous year.

25.4. Explanation to section 79A provides the definition of undisclosed income for the purposes of this section as –

- any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than that conducted under sub-section (2A) of section 133A, which has –

  25.4..1. not been recorded on or before the date of search or requisition or survey, in the books of account or other documents maintained in the normal course relating to such previous year; or

  25.4..2. not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search or requisition or survey, or

- any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year which is found to be false and would not have been found to be so, had the search not been initiated or the survey not been conducted or the requisition not been made.

Comments:

- *Proposed new section 79A of the Act starts with and non-obstante clause, meaning thereby it will override the effects of any other provisions contrary to this under the Income Tax Act. The definition of undisclosed income is similar to definition of undisclosed income as per section 271AAB of the Act.*
- *The implication of proposed amendment is that there is no possibility of escapement of payment of tax, for undisclosed income detected during search, even if the assessee may have brought forward losses etc.*
- *This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.*

26. Rationalization of provisions of section 271AAB, 271AAC, 271AAD of the Act

26.1. Sections 271AAB, 271AAC and 271AAD of the Act penalize actions pertaining to undisclosed income, unexplained credits or expenditures, or deliberate falsification or omission in books of accounts.

26.2. Sections 271AAB, 271AAC and 271AAD of the Act under Chapter XXI contain provisions which give powers to the Assessing Officer to levy penalty.

26.3. It is proposed to amend the sections 271AAB, 271AAC and 271AAD by enabling the Commissioner (Appeals) to levy penalty under these sections along with Assessing Officer.

Comments:

- *Under Chapter XXI of the Act which deals with penalties, Commissioner (Appeals) has concurrent powers with Assessing Officer to levy penalty in eligible cases under section 270A, section 271, section 271A, section 271AA, section 271G, section 271J which deal with deliberate concealment, non-disclosure and omission by an assessee to evade tax. It is now proposed to amend the sections 271AAB, 271AAC and 271AAD by enabling the Commissioner (Appeals) to levy penalty under these sections along with Assessing Officer.*
- *This amendment will take effect from 1st April, 2022.*

27. Income Tax Authorities for the purpose of section 133A of the Act

27.1. Section 133A of the Income-tax Act inter-alia deals with the power of survey.

27.2. Section 133A of the Act enables income-tax authority to enter any place of business or profession or charitable activity within his jurisdiction to verify the books of account or other documents, cash, stock or other valuable article or thing, which may be useful for or relevant to any proceeding under this Act. Explanation to section 133A provides the definition of an income tax authority for the purposes of this section.

27.3. Through Taxation and Other Laws (Amendment and Relaxation of Certain Provisions) Act, 2020, the Explanation was amended to provide that any income- tax authority who is subordinate to

- the Principal Director General of Income-tax (Investigation) or
- the Director General of Income-tax (Investigation) or
- the Principal Chief Commissioner of Income-tax (TDS) or
- the Chief Commissioner of Income-tax (TDS)

as the case may be shall only be considered as Income-tax authorities for the purposes of section 133A.

27.4. It is proposed to amend the Explanation to section 133A of the Act to provided that income tax authority shall be sub-ordinate to

- Principal Director General or
- Director General or
- Principal Chief Commissioner or
- Chief Commissioner

as may be specified by the Board.

Comments:

- *The proposal has widen the definition of an income tax authority for the purposes of doing Survey under section 133A of the Act.*
- *This amendment will take effect from 1st April, 2022*

VII. TAX INCENTIVES

28. Extension of the last date for commencement of manufacturing or production, under section 115BAB, from 31.03.2023 to 31.03.2024

28.1. Section 115BAB of the Income-tax Act provides for an option of concessional rate of taxation @ 15 % for new domestic manufacturing companies provided that they do not avail of any specified incentives or deductions and fulfil certain other conditions.

28.2. Clause (a) of sub-section (2) of provides that the new domestic manufacturing company is required to be set up and registered on or after 01.10.2019, and is required to commence manufacturing or production of an article or thing on or before 31st March, 2023.

28.3. It is proposed to amend section 115BAB so as to extend the date of commencement of manufacturing or production of an article or thing, from 31st March, 2023 to 31st March, 2024.

Comments:

- *The proposed amendment is aimed at providing relief to the companies who opted for the same and were impacted by the COVID-19 pandemic, resulting in delay in setting up/registration of new domestic companies and the commencement of manufacturing or production by such companies, if they have been setup and registered.*
- *This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.*

29. Extension of date of incorporation for eligible start up for exemption

29.1. The existing provisions of the section 80-IAC of the Act inter alia, provide for a deduction of an amount equal to one 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, beginning from the year of incorporation, at the option of the assesses subject to the condition that,-

(i) the total turnover of its business does not exceed one hundred crore rupees,
(ii) it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and
(iii) it is incorporated on or after 1st day of April, 2016 but before 1st day of April 2022.

29.2. It is proposed to amend the provisions of section 80-IAC of the Act to extend the period of incorporation of eligible start-ups to 31st March, 2023.

Comments:

- *The proposed amendment would help in countering the delays caused by the COVID-19 pandemic in setting up of such units and is aimed at fulfillment of the original objective of promotion of start-ups in India.*
- *This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.*

30. Exemption of amount received for medical treatment and on account of death due to COVID-19

30.1. Clause (x) of sub-section (2) of section 56 of the Income-tax Act, 1961 (the Act) inter alia, provides that where any person receives, in any previous year, from any person or persons any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum shall be the income of the person receiving such sum. However, certain exceptions have been provided in the clause for transaction specified therein.

30.2. The Finance Ministry had released a press statement dated: 25.06.2021 where it was announced that income-tax shall not be charged on the amount received by a taxpayer for medical treatment from employer or from any person for treatment of COVID-19 during FY 2019-20 and subsequent years.

30.3. It was further announced that in order to provide relief to the family members of such taxpayer, income-tax exemption shall be provided to ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of COVID-19 during FY 2019-20 and subsequent years. The exemption shall be allowed without any limit for the amount received from the employer and the exemption shall be limited to Rs. 10 lakh in aggregate for the amount received from any other persons.

30.4. It is proposed to insert a new sub-clause in the proviso to state that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his

medical treatment or treatment of any member of his family in respect of any illness relating to COVID-19 subject to such conditions, as may be notified by the Central Government, shall not be forming part of "perquisite".

30.5. Further, it is proposed to amend the proviso to Clause (x) of sub-section (2) of section 56 and insert two new clauses in the proviso so as to provide that-

- any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, in respect of any illness related to COVID-19 subject to such conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person;

- any sum of money received by a member of the family of a deceased person, from the employer of the deceased person (without limit), or from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees, where the cause of death of such person is illness relating to COVID-19 and the payment is, received within twelve months from the date of death of such person, and subject to such other conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person.

Comments:

- *The proposed amendment is aimed at enacting the legislative intent expressed in the press release dated 25.06.2021 and to ensure that no tax is levied on amount received for medical treatment and upon death on account of CoVid 19.*
- *The conditions for claiming the amount received from employer for treatment of CoVid 19 related diseases as exempt perquisites are yet to be notified and shall have to be checked before claiming the same as exempt.*
- *Similar conditions are to be notified for other proposed exemptions also.*
- *It is imperative to note here that the limit of Rs. 10,00,000/- is applicable only in case amount is received by the family members of the deceased person from any person other than the employer of the deceased and not in case the amount is received from the employer.*
- *This amendment will take effect from 1st day April, 2020 and will accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years.*
- *In view of the above, returns filed by the assessee for the previous year 2020-21 without considering the above press release may need to be revised before 31.03.2022 in view of the proposed amendment.*

31. Tax Incentives to International Financial Services Centre (IFSC)

31.1. In order to further incentivize operations from IFSC, it is proposed to provide the following a number of additional incentives such as to amend clause (4E) of section 10 of the Act to extend the exemption under the said clause to the income accrued or arisen to or received by a non-resident as a result of transfer of offshore derivative

instruments or over-the-counter derivatives entered into with an Offshore Banking Unit of an International Financial Services Centre, referred to in sub- section (1A) of section 80LA.

31.2. It is also proposed to amend clause (4F) of section 10 to extend the exemption under the said clause to the income of a non-resident by way of royalty or interest, on account of lease of a ship in a previous year, paid by a unit of an International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, if the unit has commenced its operations on or before the 31st March, 2024.

31.3. It is also proposed to define "ship" to mean a ship or an ocean vessel, an engine of a ship or an ocean vessel, or any part thereof.

31.4. It is also proposed to insert clause (4G) in section 10 to provide exemption to any income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Offshore Banking Unit, in any International Financial Services Centre, referred to in sub- section (1A) of section 80LA, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

31.5. It is also proposed to amend the Explanation to clause (vii b) of section 56 of the Act to provide that specified fund shall also include Category I or a Category II Alternative Investment Fund which is regulated under the International Financial Services Centres Authority Act, 2019.

31.6. It is also proposed to amend clause (d) of sub-section (2) of section 80LA of the Act to provide that in addition to the income arising from the transfer of an asset being an aircraft, the income arising from the transfer of an asset, being a ship, which was leased by a unit of the International Financial Services Centre to any person shall also be eligible for deduction under section (1A) of the said section, subject to the condition that the unit has commenced operation on or before the 31st day of March, 2024.

Comments:

- *The above amendments will contribute to the process of making International Financial Services Centre in our country a global hub of financial services sector.*
- *This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.*

32. Incentives to National Pension System (NPS) subscribers for state government employees

32.1. Any contribution by the Central Government or any other employer to the account referred to in section 80CCD of the Act (NPS account), is allowed as a deduction to the assessee in the computation of his total income, if it does not exceed 14% of his salary where such contribution is made by the Central Government.

32.2. This limit is presently 10% of his salary where such contribution is made by any other employer.

32.3. It is proposed to increase the limit of deduction under section 80CCD of the Act from the existing 10% to 14% in respect of contribution made by the State Government to the account of its employee.

Comments:

- *The proposed amendment is aimed at providing equal treatment to both the Central and State government employees and ensuring that the State Government employees also get full deduction of the enhanced contribution by the State Government.*
- *This amendment will take effect retrospectively from 1st April, 2020 and will accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years; so as to ensure no additional tax liability arises on any contribution made in excess of 10% during such time.*
- *However, for assessee who had filed the return of income for AY 2020-21 claiming only 10% deduction u/s 80CCD, no mechanism of filing a revised return has been provided.*
- *Also, for assessee who have already filed their return of income for AY 2021-22 claiming only 10% deduction u/s 80CCD, it is advisable to file revised returns on or before 31st March, 2022 to take the proposed benefit.*

VIII. TDS / TCS PROVISIONS

33. Rationalization of provisions of TDS on sale of immovable property

33.1. Section 194-IA of the Act provides for deduction of tax on payment on transfer of certain immovable property other than agricultural land. Sub-section (1) of the said section provides for deduction of tax by any person responsible for paying to a resident any sum by way of consideration for transfer of any immovable property (other than agricultural land) at the time of credit or payment of such sum to the resident at the rate of one per cent. of such sum as income-tax thereon.

33.2. Sub-section (2) provides that no deduction of tax shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

33.3. As per the provisions of the said section, TDS is to be deducted on the amount of consideration paid by the transferee to the transferor. This section does not take into account the stamp duty value of the immovable property, whereas, as the provisions of section per 43CA and 50C of the Act, for the computation of income under the head “Profits and gains from business or profession” and “capital gains” respectively, the stamp duty value is also to be considered.

33.4. Thus there is inconsistency in the provisions of section 194-IA and sections 43CA and 50C of the Act.

33.5. In order to remove inconsistency, it is proposed to amend section 194-IA of the Act to provide that in case of transfer of an immovable property (other than agricultural land), TDS is to be deducted at the rate of one per cent. of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher.

33.6. In case the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than fifty lakh rupees, then no tax is to be deducted under section 194-IA.

33.7. Stamp duty value shall have the meaning assigned to it in clause (f) of the Explanation to clause (vii) of sub-section (2) of section 56.

Comments:

- *Section 194-IA provides for TDS to be deducted by the buyer at one percent on purchase of immovable property (except Agricultural land) of Rs. 50 Lacs or more.*
- *Deduction of TDS under this section is done on the actual transaction value of such immovable property without considering the stamp duty valuation of the property. However, the seller in its computation takes into effect the stamp duty valuation for computation of capital gains or profit or gains from business.*
- *The proposed amendment in the section provides that the buyer shall now be required to deduct TDS under section 194-IA on the higher of:*
    - *Actual Transaction Value or*
    - *Stamp Duty Value of such Property.*
- *If both actual transaction value and stamp duty value is below Rs. 50 Lacs then TDS under this section is not required to be deducted.*
- *Illustration:*

  Mr. A sells a residential flat to Mr. B for Rs. 45 Lacs. The stamp duty valuation of such flat is Rs. 55 Lacs. Will Mr. B be required to deduct TDS under the proposed section 194-IA?

  Answer: Yes Mr. B shall be required to deduct TDS under section 194-IA @ 1% on Rs. 55 lacs even though the actual transaction value was less than Rs. 50 Lacs. However, before the proposed amendment, Mr B was not required to deduct any TDS. Further there is additional burden on Mr. B to take out the stamp duty valuation on record for deduction of TDS.
- *This amendment will take effect from 1st April, 2022.*

34. Rationalization of provisions of section 206AB and 206CCA to widen and deepen tax-base

34.1. In order to widen and deepen the tax-base and to nudge taxpayers to furnish their return of income, Finance Act, 2021 inserted sections 206AB and 206CCA in the Act. The said sections provide for special provision for deduction and collection of tax at source respectively, in case of specified persons at higher rates specified therein.

34.2. “Specified person” has been defined to mean a person who has not filed the returns of income for both the two assessment years relevant to the two previous years immediately preceding the financial year in which tax is required to be deducted or collected, for which the time limit for filing return of income under sub-section (1) of section 139 has expired; and 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. Government has provided online utility to taxpayers to check whether the person is specified person or not.

34.3. Further, the provisions of section 206AB are not applicable in relation to transactions on which tax is to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.

34.4. In order to ensure that all the persons in whose case significant amount of tax has been deducted do furnish their return of income, it is proposed to reduce two years requirement to one year by amending sections 206AB and 206CCA of the Act to provide that "specified person" to mean as a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is Rs. 50,000 or more in the said previous year.

34.5. However, in order to reduce the additional burden on individual and Hindu undivided family (HUF) taxpayers covered under section 194-IA, 194-IB and 194M of the Act for whom simplified tax deduction system has been provided without requirement of TAN, it is proposed that the provisions of section 206AB will not apply in relation to transactions on which tax is to be deducted under the said sections of the Act.

34.6. In addition to above, it is also proposed to rectify a drafting error in sections 206AB and 206CCA wherein the terms "deductor" and "collectee" respectively were used incorrectly. Further, since the returns are now being furnished electronically, it is also proposed that in place of 'filing' of return, the term 'furnishing' of return may be substituted.

34.7. Further, as a consequential amendment in section 194-IB it is also proposed to omit the reference of section 206AB from sub-section (4) of the said section.

Comments:

- *Specified person under section 206AB and 206CCA has been defined as a person who:*
    - *has not filed the ITR of 2 previous financial years to the year in which TDS/TCS needs to be deducted/collected and*
    - *aggregate of TDS and TCS of such person is more than or equal to 50,000/- in each of these two previous years.*
- *In the above scenario, TDS/TCS needs to be deducted/collected at twice the rate in force or five percent (whichever is higher).*
- *Specified Person prescribed under section 206AB and 206CCA excludes non-residents. Further this section also excludes TDS deducted on salary, provident fund payment, winning from lottery and Horse Races, securitisation trust and cash withdrawals above 20 lacs.*
- *The amendments in the Finance Bill 2022 further excludes Individuals & HUF taxpayers (having no TAN number) from the provisions of section 206AB and 206CCA with respect to TDS covered under section:*

- *194IA -purchasing of land or property*
- *194IB -rent payment exceeding Rs. 50 thousand per month to Individual/HUF*
- *194M -payment to professional/ commission or brokerage payment exceeding Rs. 50 lacs.*

- *Further the period of 2 previous financial year has now been reduced to only immediate proceeding financial year in both section 206AB and 206CCA.*
- *Introduction of section 206AB and 206CCA has only increased the complexity of tax deductor/ collector. Simplification of 206AB and 206CCA with respect to Individuals and HUF's was very much required to avoid additional burden on such tax payers.*
- *This amendment will take effect from 1st April, 2022.*

35. Amendment in the provisions of section 248 of Income-tax Act and insertion of new section 239A

35.1. Section 248 of the Act provides that in a case where, under an agreement or other arrangement, a person who has deducted tax on any income paid to a non- resident, other than interest, under section 195 of the Act, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income, if he claims that such tax is to be borne by him since no tax was required to be deducted on such income.

35.2. Such appeal can be filed after making payment of tax so deducted to the credit of the Government account. Further, section 249 of the Act lays down that an appeal under section 248 of the Act should be filed within 30 days of making payment of such tax to the Government account.

35.3. To obtain a refund of the tax deducted and paid by a person, where it was not deductible, as per the provisions of section 248 of the Act, a taxpayer has no recourse to approach the Assessing Officer with such request. He has to necessarily enter the appellate process by filing an appeal before the Commissioner (Appeals). At the same time, the agreement or arrangement, under which the tax has been deducted and paid, is not brought on the record of the Assessing Officer or examined by him.

35.4. In view of the above, it is proposed that a new section 239A may be inserted in the Act to provide that such a person, who has made the deduction of tax under such an agreement or arrangement and borne the tax liability, when no tax deduction was required, may file an application for refund of such tax deducted before the Assessing Officer.

35.5. Such person can, if he is not satisfied with the order of the Assessing Officer, go into appeal against such order before the Commissioner (Appeals), under section 246A of the Act. Accordingly, the provisions of section 248 of the Act will not apply in cases where the date of tax payment, to the credit of Central Government is on or after 01.04.2022.

Comments:

- *Earlier, a person, who has made the deduction of tax under such an agreement or arrangement and borne the tax liability, when no tax deduction was required has no option but to file an appeal before the Commissioner (Appeals) in terms of provisions of section 248 of the Act. It is now proposed to insert new section 239A in the Act to provide that a person, who has made the deduction of tax under such an agreement or arrangement and borne the tax liability, when no tax deduction was required, may file an application for refund of such tax deducted before the Assessing Officer.*
- *Accordingly, the provisions of section 248 of the Act will not apply in cases where the date of tax payment, to the credit of Central Government is on or after 01.04.2022 and introduction of section 239A will take effect from 1st April, 2022.*
- *This amendment will take effect from 1st April, 2022.*

36. TDS on benefit or perquisite of a business or profession

36.1. As per clause (iv) of section 28 of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite. However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income.

36.2. Accordingly, in order to widen and deepen the tax base, it is proposed to insert a new section 194R to the Act to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite. For the purpose of this section, the expression 'person responsible for providing' has been proposed to mean a person providing such benefit or perquisite or in case of a company, the company itself including the principal officer thereof.

36.3. Further, in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit of perquisite shall, before releasing the benefit or perquisite, ensure that tax has been paid in respect of the benefit or perquisite.

36.4. No tax is to be deducted if the value or aggregate value of the benefit or perquisite paid or likely to be paid to a resident does not exceed twenty thousand rupees during the financial year.

36.5. Further, the provisions of the said section shall not apply to an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided.

Comments:

- *The proposed insertion of Section 194R will curb the escaping of Income Tax in case of any benefit or perquisite, whether convertible into money or not received by any resident person carrying business or profession.*
- *Where any person is providing any benefit or perquisite, whether convertible into money or not received to any person carrying business or profession will require to deducted tax at source at a rate of ten percent if the value or aggregate value of the benefit or perquisite exceed twenty thousand rupees during the financial year.*

37. Consequence of failure to deduct / collect or payment of tax – Computation of Interest

37.1. Section 201 of the of the Act deals with the consequences of persons who fail to deduct tax or after deducting, fail to deposit the same to the credit of the Central Government. Sub-section (1A) of the said section provides that if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay the same to the credit of the Central Government, then he shall be liable to pay simple interest at the rates specified therein.

37.2. Similarly, sub-section (7) of section 206C of the Act provides that if any person who is liable to collect tax at source does not collect it or after so collecting fails to pay the same to the credit of the Central Government, then he shall be liable to pay interest at rates specified therein.

37.3. It has been observed that computation of interest under the said provisions in case where the default for deduction/collection of tax or payment of tax continues is subject matter of frequent litigation.

37.4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to:

- amend sub-section (1A) of section 201 to provide that where any order is made by the Assessing Officer for the default under sub-section (1) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard;
- amend sub-section (7) of section 206C to provide that where any order is made by the Assessing Officer for the default under sub-section (6A) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard.

Comments:

- *The proposed amendment may cause genuine hardships to the assessee as computation of interest payable on non-deduction or non-payment of TDS/TCS has been left to the discretion of the Assessing Officer alone.*
- *In case of genuine errors or omissions on part of the Assessing Officer, consequent litigations may follow defeating the overall objective of reduction of litigations.*
- *This amendment will take effect from 1st April, 2022.*

IX. OTHERS

38. Rationalisation of the provision of Charitable Trust and Institutions

38.1. Two Regimes of the provision of Charitable Trust and Institutions

- Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or any trust or institution registered u/s 12AA or 12AB of the Act is exempt subject to the fulfilment of the conditions provided under various sections. The exemption to these trusts or institutions is available under the two regimes

  38.1..1. Regime for any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 (hereinafter referred to as trust or institution under first regime); and

  38.1..2. Regime for the trusts registered under section 12AA/12AB (hereinafter referred to as trust or institution under the second regime).

38.2. Books of account to be maintained by the trusts or institutions under both the regimes

- Where the total income of any trust or institution under the second regime, as computed under this Act without giving effect to the provisions of section 11 and section 12 of the Act, exceeds the maximum amount which is not chargeable to income-tax in any previous year, it is required to get its accounts audited. Similar provision exists for the trusts or institutions under the first regime in the tenth proviso to clause (23C) of section 10 of the Act.

- However, there is no specific provision under the Act providing for the books of accounts to be maintained by such trusts or institutions. In order to ensure proper implementation of both the exemption regimes, it is proposed to amend clause (b) of sub-section (1) of section 12A of the Act and tenth proviso to clause (23C) of section 10 of the Act to provide that where the total income of the trust or institution under both regimes, without giving effect to the provisions of clause (23C) of section 10 or section 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed.

- These amendments will take effect from 1st April, 2023 and will accordingly apply to the assessment year 2023-24 and subsequent assessment years.

38.3. Penalty for passing on unreasonable benefits to trustee or specified persons

- Under section 13 of the Act, trusts or institution under the second regime are required not to pass on any unreasonable benefit to the trustee or any other

specified person. In order to discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 271AAE in the Act to provide for penalty on trusts or institution under both the regimes which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is notice again in any subsequent year. The proposed section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.

- The proposed new section seeks to provide that, if during any proceeding under the Act, it is found that a person, being any trust or institution under the first or the second regime, has violated the provisions of twenty-first proviso to clause (23C) of section 10 (proposed to be inserted by the Finance Bill and discussed in subsequent paragraphs) or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty,

  38.3..1. a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13 where the violation is noticed for the first time during any previous year; and

  38.3..2. a sum equal to two hundred percent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.

- These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

38.4. <u>Reference to the Principal Commissioner or Commissioner (PCIT/CIT) for the cancellation of registration/approval</u>

- Registration or approval of non-genuine trusts or institution under automated approval system: First and second provisos to clause (23C) of section 10 of the Act were substituted by new provisos by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 w.e.f. 01.04.2021. These provisos provided that the application for the approval of any trust or institution under the first regime, shall be made to the jurisdictional Principal Commissioner or Commissioner and such Principal Commissioner or Commissioner shall grant approval after examination of the application. Earlier such applications were required to be filed before the prescribed authority.

- Similarly, provisions of clause (ac) of sub-section (1) of section 12A provide that application for the trusts or institution under the second regime shall be made to the principal Commissioner or Commissioner. The provisional registrations or provisional approval or re-registrations or approvals in certain cases, under these

clauses, are granted in an automated manner and the respective rules have been amended accordingly.

- The Finance Bill has inserted provisions whereby the Principal Commissioner or Commissioner may pass an order in writing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violation mentioned in the Finance Bill to ensure that non-genuine trusts or institutions do not get exemption provided by these provisions.

- These provisions are applicable from 1st April 2022.

38.5. Differences in the provisions related to reference for the cancellation of trusts under the both the regimes

- Provisions of sub-section (3) of section 143 provide that no order under this sub-section shall be made, denying the benefits of clause (23C) of section 10, unless the Assessing Officer has intimated the Central Government or prescribed authority the contravention of the provisions of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 and approval granted to such trust or institution has been rescinded. There is no such provision in cases of trusts or institutions under second regime.

38.6. Accumulation provisions

- Under the existing provisions of the Act, a trust or institution is required to apply 85% of its income during any previous year. However, if it is not able to apply 85% of its income during the previous year, it is allowed to accumulate such income for a period not exceeding 5 years as per the following provisions, namely:

  38.6..1. sub-section (2) of section 11 of the Act for the trusts or institution under the second regime; and

  38.6..2. third proviso to clause (23C) of section 10 of the Act for trusts or institution under the first regime.

- However, the accumulation of income, as per the provisions of sub-section (2) of section 11 of the Act is allowed subject to the fulfilment of certain conditions while there are no such conditions specifically provided under the third proviso to clause (23C) of section 10 of the Act;

- Similarly, sub-section (3) of section 11 of the Act provides for the specific previous year in which the accumulated income will be subjected to tax in case of different types of violations. It, inter alia, provides that if the accumulated income is not applied within 5 years, it shall be taxed in the 6th year. While, on the other hand, there are no such specific provisions under clause (23C) of section 10 of the Act and therefore, if the accumulated income is not applied within 5 years, the same shall be taxed in the 5th year itself

- In order to bring consistency in the two regimes, necessary amendments have been proposed

- These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

38.7. Bringing consistency in the provisions relating to payment to specified person

- Under section 13 of the Act, trusts or institutions under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. It is proposed to insert twenty first proviso in clause (23C) of section 10 of the Act to provide that where the income or part of income or property of any trust or institution under the first regime, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be the income of such person of the previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to trust or institution under the first regime.

- This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

38.8. The provisions of section 115TD to apply to any trust or institution under the first regime

- Chapter XII-EB was introduced by the Finance Act, 2016. It provides for the taxation of accreted income of the trust in certain cases. A society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization.

- In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act was brought about for imposing a levy in the nature of an exit tax which is attracted when the organisation is converted into a non-charitable organisation or gets merged with a non-charitable organisation or a charitable organisation with dissimilar objects or does not transfer the assets to another charitable organisation.

- Accordingly, a new Chapter XII-EB consisting of Sections 115TD, 115TE and 115TF was inserted in the Act.

- The provisions of the Chapter XII-EB have been made applicable to only the trusts or institutions under the second regime. However, the provisions are not applicable to any trust or institution under the first regime.

- Hence, it is proposed to amend the provisions of section 115TD, 115TE and 115TF of the Act to make them applicable to any trust or institution under the first regime as well.

- These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

38.9. Filing of return by person claiming exemption under clause (23C) of section 10 of the Act

- According to clause (ba) of sub-section (1) of section 12A of the Act, If a trust or institution under the second regime does not furnish return of income in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section, then provisions of sections 11 and 12 are not applicable. There is no similar provision in the other regime.

- Hence, it is proposed to insert twentieth proviso to clause (23C) of section 10 of the Act to provide that for the purpose of exemption under this clause, any trust or institution under the first regime is required to furnish the return of income for the previous year in accordance with the provisions of sub-section (4C) of section 139 of the Act, within the time allowed under that section.

- This amendment will take effect from the 1st April, 2023, and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

38.10. Providing clarity on taxation in certain circumstances

- There are various conditions prescribed for availing exemption under the two regimes. There is a need for clear provisions in the Act listing out how income is to be computed in case of non-compliance. Hence, it is proposed to provide for the same so that there is no dispute and the law is applied consistently.

38.11. Allowing certain expenditure in case of denial of exemption

- Different provisions mandate denial of exemption to the trusts or institutions under both the regimes. Some of the provisions under which exemption is not available for its violation are as follows:

  38.11..1. Having commercial receipts in excess of 20% of the annual receipts in violation of the provisions of proviso to section 2(15);

  38.11..2. Not getting the books of account audited;

  38.11..3. Not filing the return of income presently specifically provided under the second regime only;

- There is presently lack of clarity on computation of taxable income in case of non-availability of exemption in these cases. For example, if the exemption is denied to the trust or institution for the late submission of the audit report, its entire receipts may be subjected to taxation and no deduction for any application may be allowed. In order to bring clarity in the computation of the income chargeable to tax in such cases, necessary amendments have been proposed in the Finance Bill

- These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

38.12. Taxation of certain income of the trusts or institutions under both the regimes at special rate

- Denying exemption to the trust, for small amount of income applied in violation to the provisions referred in clause (a) and (b) above creates difficulties to the trusts or institutions under both the regimes as there is ambiguity about the manner of taxation of such income. Further, there is need for special provision to ensure that the income applied in violation is taxed at special rate without deduction. Accordingly, in order to rationalise the provisions, the following amendments are proposed:

- It is proposed to amend clause (c) of sub-section (1) of section 13 of the Act to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income.

- It is also proposed to insert twenty first proviso in clause (23C) of section 10 to specifically provide that where the income of any trust under the first regime, or any part of the such income or property, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be income of such person of the previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to it.

- It is proposed to amend clause (d) of sub-section (1) of section 13 of the Act to provide that only the that part of income which has been invested in violation to the provisions of the said clause shall be liable to be included in total income.

- It is proposed to insert Explanation 4 in third proviso to clause (23C) of section 10 of the Act to specifically provide that income accumulated which is not utilized for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart.

- All the above income are also required to be taxed at special rate. Hence, it is proposed to insert new section 115BBI in the Act providing that where the total income of any assessee being a trust under the first or second regime, includes any income by way of any specified income, the income-tax payable shall be the aggregate of-

  38.12..1. the amount of income-tax calculated at the rate of thirty per cent on the aggregate of specified income; and

  38.12..2. the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to in clause (i).

- The sub-section (2) of this new section seeks to provide that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act in computing specified income.

- These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

38.13. Voluntary Contributions for the renovation and repair of temples, mosques, gurudwaras, churches etc notified under clause (b) of sub-section (2) of section 80G

- Donations for the renovation and repair of temples, mosques, gurudwaras, churches etc notified under clause (b) of sub-section (2) of section 80G of the Act are received for specific purposes. However, it is not clear if such donations are treated as corpus donations or are required to be applied or can be accumulated for a maximum period of 5 years.

- In order to provide clarity, it is proposed to insert Explanation 3A in sub-section of section 11 of the Act to provide that where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G, any sum received by such trust or institution as a voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of the trust or the institution, subject to the condition that the trust or the institution,

  38.13..1. applies such corpus only for the purpose for which the voluntary contribution was made;

  38.13..2. does not apply such corpus for making contribution or donation to any person; and

  38.13..3. maintains such corpus as separately identifiable;

  38.13..4. invests or deposits such corpus in the forms and modes specified under sub- section (5) of section 11.

- It is also proposed to insert Explanation 3B in sub-section (1) of section 11 of the Act to provide that for the purposes of Explanation 3A, where any trust or institution has treated any sum received by it as forming part of the corpus and subsequently any of the conditions specified in clause (a), (b), (c) or clause (d) thereof are violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.

- It is also proposed to insert Explanation 1A in the third proviso to clause (23C) of section 10 of the Act to provide that where the property held under a trust or institution referred to in sub-clause (v), includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G of the Act, any sum received by such trust or institution as a voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may be treated by such trust or institution, at its option, as forming part of corpus of the trust or institution, subject to the condition that the trust or institution,

38.13..1. applies such corpus only for the specific purpose for which the voluntary donation was made;

38.13..2. does not apply such corpus for making contribution or donation to any person;

38.13..3. maintains such corpus as separately identifiable; and

38.13..4. invests or deposits such corpus in the forms and modes specified under sub- section (5) of section 11.

- It is also proposed to insert Explanation 1B in the third proviso to clause (23C) of section 10 of the Act providing that for the purposes of Explanation 1A, where any trust or institution referred to in sub-clause (v) has treated any sum received by it as forming part of the corpus and subsequently any of the conditions specified in clause (a), (b), (c) or clause (d) thereof are violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.

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

38.14. Clarifying that application will be allowed only when its actually paid

- Trust or institution under both the regimes are required to apply 85% of their income for the purposes specified. As is evident from the word "application", it means actually paid. This is the position which has been held by different courts also. Accordingly it is being clarified by inserting Explanations "[Explanation 3 to clause (23C) of section 10 and Explanation to section 11] to provide that any sum payable by any trust under the first or second regime shall be considered as application of income in the previous year in which such sum is actually paid by it irrespective of the previous year in which the liability to pay such sum was incurred by such trust according to the method of accounting regularly employed by it. It is further proposed to insert proviso to the proposed Explanations [Explanation 3 to clause (23C) of section 10 and Explanation to section 11] to provide that where during any previous year, any sum has been claimed to have been applied by such trust, such sum shall not be allowed as application in any subsequent previous year.

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

38.15. Consequential Amendments

Reference to prescribed authority under clause (23C) of section 10

- First and second proviso to clause (23C) of section 10 of the Act were substituted by new provisos by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from the 1st April, 2021. These provisos provided that the application for the approval of any trust under the first regime,

shall be filed before the jurisdictional Principal Commissioner or Commissioner and such Principal Commissioner or Commissioner shall grant approval after examination of the application. Earlier such applications were required to be filed before the prescribed authority. Accordingly necessary amendments were carried out. However, the reference to prescribed authority continues at certain places in the clause (23C) of section 10 of the Act.

- It is, therefore, proposed to substitute the reference to prescribed authority with Principal Commissioner or Commissioner in sub-clause (iv), (v), (vi) and (via) and nineteenth proviso to clause (23C) of section 10 of the Act.

- This amendment will take effect from 1st April, 2022.

38.16. Amendment to sub-section (1A) of section 35

- Sub-section (1A) to section 35 of the Act was inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from the 1st April, 2021. It mandated the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 of the Act to file the statement of donations received by these entities from the donors. However, an inadvertent drafting error has crept in in the sub-section. The present language reads that no deduction shall be allowed to the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35, if such statement of donations is not filed. However, that was not the intention of the law. The deduction claimed by the donor needs to be dis-allowed in such cases. In section 80G of the Act similar provisions were introduced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from the 1st April, 2021, whereby the deduction claimed by the donor under this section was disallowed in case the donee fails to furnish the statement of donations.

- Hence, it is proposed to amend sub-section (1A) of section 35 of the Act to provide that the deduction claimed by the donor with respect to the donation given to any research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 of the Act shall be disallowed unless such research association, university, college or other institution or company files the statement of donations.

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

39. Amendment in Provisions of Section 119 of Income Tax Act

39.1. Section 119 of the Act empowers the Board to issue orders, instructions and directions to other income-tax authorities for proper administration of the Act. Clause (a) of sub-section (2) of the said section gives powers to the Board to provide relaxation of provisions of certain sections of the Act such as 115P, 115S, 115WD, , 139, 1211, 234A, 234B, 234C, 234E, etc.by way of general or special orders, in respect of any class of incomes or class of cases, for the purpose of proper administration of the work

of assessment or collection of revenue or initiation of proceedings for the imposition of penalties and such other issues, in public interest.

39.2. Section 234F of the Act which falls under Chapter XVII-F provides that in case a person fails to furnish return of income under section 139 within the prescribed time, he shall be liable to pay a fee of five thousand rupees. Currently this section is not expressly mentioned in clause (a) of sub-section (2) of section 119 of the Act. Hence, no relaxation can be made by the Board with respect to this section and the levy of this fee.

39.3. Therefore, considering the genuine hardships faced by certain classes of persons in filing return of income and not to impose a fee for a default which is beyond their control, it is proposed to insert section 234F and include it in the list of sections mentioned in clause (a) of sub-section (2) of section 119 of the Act, so as to enable the Board to issue such orders or instructions, as deemed fit.

Comments:

- *This amendment is aimed at providing the Board (CBDT) the power to waive off late fee levied u/s 234F under specific circumstances as it may deem fit.*
- *While section 234F acts as a deterrent against those who do not comply with obligations imposed under the Act, it also leads to an unintended consequence of levying fee on persons who face genuine difficulties in filing return of income within the specified time, like members of the armed forces stationed in remote regions with no access to the requisite infrastructure.*
- *Hence, the proposed amendment is a welcome move, and it is reasonably expected that relief from late fees shall be given in cases of genuine hardships faced by the assessee without having to extend time limit u/s 139 for filing of return of income.*
- *This amendment shall be effective from 1st April, 2022.*

40. Condition of releasing of annuity to a disabled person

40.1. The existing provision of section 80DD, inter alia, provide for a deduction to an individual or HUF, who is a resident in India, in respect of

- expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or
- amount paid to LIC or any other insurer or administrator or specified company in respect of a scheme for the maintenance of a disabled dependant.

40.2. Sub-section (2) of the aforesaid section provides that the deduction shall be allowed only if the payment of annuity or lump sum amount is made to the benefit of the dependant, in the event of the death of the individual or the member of the HUF in whose name subscription to the scheme has been made.

40.3. Sub-section (3) of the aforesaid section provides that if the dependant with disability, predeceases the individual or the member of the HUF, the amount deposited in such

scheme shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

40.4. It is proposed to allow the deduction under the said section also during the lifetime, i.e., upon attaining age of sixty years or more of the individual or the member of the HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued. Further, it is proposed that the provisions of sub-section (3) shall not apply to the amount received by the dependent, before his death, by way of annuity or lump sum by application of the condition referred to in the proposed amendment.

Comments:

- *In the Writ Petition No. 1107 of 2017 Ravi Agrawal versus Union of India and Another, Justice A.K. Sikri observed that that there could be harsh cases where handicapped dependents may need payment of annuity or lump sum basis even during lifetime of their parents/guardians.*
- *It was further observed that the Centre may take into consideration all the aspects, including those where a disabled dependent might need payment on annuity or lump sum basis even during the lifetime of the parents or guardians.*
- *The proposed amendment has been made consequent to the above judgment of the judiciary and to ensure relief to the handicapped dependents.*
- *This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.*

41. Facilitating strategic disinvestment of public sector companies

41.1. Section 79 of the Act provides for carry forward and set-off of losses in case of certain companies. Sub-section (1) of the said section, inter-alia, provides that where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of year or years in which the loss was incurred.

41.2. It is proposed to amend section 79 of the Act to provide that the provisions of sub-section (1) shall not apply to an erstwhile public sector company subject to the condition that the ultimate holding company of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least fifty one per cent of the voting power of the erstwhile public sector company in aggregate.

41.3. It is further proposed to provide that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.

Comments:

- *This would facilitate the strategic disinvestment of public sector companies.*
- *However, in a case where a strategic disinvestment does not lead to the formation of any ultimate holding company, the provisions of section 79(1) should apply and the company shall not be allowed to carry forward and set off brought forward losses.*
- *Also, there is no time limit for the continued satisfaction of the mentioned condition whereby the ultimate holding company has to hold at least fifty one percent of the voting power. This may result in long standing disputes and difficulty in reorganization for years to come for such entities in which a disinvestment is carried out.*
- *In a way, the above stringency shall restrict the complete disinvestment of loss making public sector undertakings.*
- *This amendment will take effect from 1st day April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.*

42. Widening the scope of reporting by producers of cinematograph films or persons engaged in specified activities

42.1. Under section 285B, the producer of cinematographic films is obliged to furnish within 30 days from the end of the financial year or from the date of completion of the film, whichever is earlier, a statement containing particulars of all payments over Rs. 50,000/- in the aggregate made by him or due from him to each person engaged by him.

42.2. It is proposed to widen the scope of section 285B to include persons engaged in specified activities to expand the reporting requirements in Form 52A. “Specified Activities” would mean event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Comments:

- *Earlier the reporting requirements were restricted to cinematographic films only. The proposed amendment has expanded the scope of specified activities to be reported to include various other entertainment platforms and productions.*
- *This amendment is largely targeted to cover the wide scale growth of documentaries and OTT platforms and to ensure reporting of transactions incurred during production of such content.*
- *This amendment will take effect from 1st April 2022.*

B. INDIRECT TAX PROPOSALS

43. GST Proposals

43.1. A new clause (ba) to sub-section (2) of section 16 of the CGST Act is being inserted to provide that input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38, effectively to do away with provisional claim of Input tax credits.

43.2. Section 41 of the CGST Act is being substituted so as to do away with the concept of "claim" of eligible input tax credit on a "provisional" basis and to provide for availment of self- assessed input tax credit.

Comments:

- *These amendments is aimed at allowing ITC claim only to the extent of eligible ITC reflected in GSTR 2B of the assessee.*
- *The proposed amendments have been brought in to enact all previous notifications issued in this regard and to make sure that the purpose of such notifications is spelt out in the Statute itself.*
- *The proposed amendments have been also brought in to negate the impact of various High Court judgements on this issue on the ground that Notifications cannot override the Act.*

43.3. Sub-section (4) of section 16 of the CGST Act is being amended so as to provide for an extended time for availment of input tax credit by a registered person till 30th day of November of the following financial year from the existing time limit of 30th September of the following financial year.

43.4. In correspondence to amendment made to sub- section (4) of the Section 16 of the CGST Act, Sub-section (2) of section 34 of the CGST Act is being amended so as to provide for an extended time for issuance of credit notes in respect of any supply made in a financial year till 30th day of November of the following financial year from the existing time limit of 30th September of the following financial year.

Comments:

- *The above amendments have been brought in to extend the time limit of claiming ITC and issuing credit notes for a further period of two months.*
- *The impact of this extension on filing of annual returns needs to be seen as now assessee has to consider credit notes issued till 30th November and then file Annual Return within a period of one month, i.e., 31st December.*

43.5. Clause (b) and (c) of sub-section (2) of section 29 of the CGST Act are being amended so as to provide that the registration of a person is liable for cancellation, where -

- a person who has opted composition scheme and paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return,

- a person, other than those paying tax under section 10, has not furnished returns for such continuous tax period as may be prescribed.

Comments:

- *The period of default before which registration can be cancelled has been extended in case of composition taxable persons from the existing time period of three tax periods, i.e., three quarters to the revised time period of three months beyond the due date of furnishing return for an entire financial year.*
- *This shall reduce instances of cancellation of GST registration followed by plea to restore such registration by the assessee.*
- *In any case, late fees and interest is payable in case of delay in submission of returns to deter the assessee from delaying the same. Cancellation within such short period was in any way an extreme move which has been done away with.*
- *In case of other assessee, the relevant notification shall be awaited. Going by the stand of the Government in case of composition taxable persons, it appears that the existing time limit of six months shall be extended in this case also.*

43.6. Section 37 of the CGST Act is being amended so as to do away with two-way communication process in return filing, provide for an extended time upto 30th day of November of the following financial year for rectification of errors in respect of details of outward supplies furnished under sub-section (1).

43.7. Section 38 of the CGST Act is being substituted to remove reference of earlier GSTR-2 and replace it with GSTR-2A and GSTR-2B with new heading as 'Communication of details of inward supplies and input tax credit'.

43.8. Sections 42, 43 and 43A of the CGST Act relating to matching concept, reversal of Tax are being removed so as to do away with two-way communication process in return filing.

Comments:

- *The above amendments also do away with the original mechanism of GST returns consisting of GSTR 1, 2 and 3 and to continue with the existing mechanism of GSTR 1, 2A, 2B and 3B only.*
- *The above amendments have been brought in to extend the time limit of correcting errors and filing amendments to output tax for a further period of two months.*
- *As mentioned earlier, the impact of this extension on filing of annual returns needs to be seen as now assessee has to consider credit notes issued till 30th November and then file Annual Return within a period of one month, i.e., 31st December.*

43.9. Section 39 of the CGST Act is being amended so as to revise the due date to file GSTR – 5 by non resident taxable persons to 13th of next month from 20th of next month.

43.10. Section 47 of the CGST Act is being amended so as to provide for levy of late fee for delayed filing of GSTR – 8 by e-commerce operator subject to collect tax at source under section 52.

43.11. Sub-section (3) of section 50 of the CGST Act is being substituted retrospectively, with effect from the 1st July, 2017, so as to provide for levy of interest on input tax credit wrongly availed and utilized.

44. Customs Proposals

44.1. Increased basic customs duty on solar cells from 20% to 25%.

44.2. Increased basic customs duty on solar modules from 20% to 40%.

44.3. Increased basic customs duty on Electronic Loudspeakers, headphones and earphones from 15% to 20%.

44.4. Basic customs duty to be reduced for specified items and corresponding exemption/concessional notifications to be omitted with effect from the 1st day of May 2022. Some specified items are detailed below:

- Reduced duty on coal & coke from 10% to 5%.
- Reduced duty on Motor spirit commonly known as petrol, High speed diesel from 10% to 2.5%.
- Reduced duty on Aviation Turbine fuel from 10% to 5%.
- Reduced duty on woven fabrics containing 85% or more by weight of cotton from 25% to 10%.
- Reduced duty on jute or other textile bast fibres from 25% to 10%.

44.5. The Customs duty rate structure on capital goods and project imports has been comprehensively reviewed and exemption on capital goods/ project imports are being phased out in a gradual manner.

44.6. The Basic Customs Duty rates are being rationalized on the following items. Some specified items detailed below:

- Reduced duty on Cocoa Beans, whole or broken, roasted or not from 30% to 15%.
- Reduced duty on methanol from 10% to 2.5%.
- The revised rates will be applicable from 1st May 2022 onwards.

44.7. Two new tariff items, that is, 2710 12 43 and 2710 12 44, falling under Chapter 27, have been inserted in the Fourth Schedule to the Central Excise Act, 1944, relating to E12 and E15 fuel blends, conforming to the new BIS specification [IS 17586] that has been issued for Ethanol Blended Petrol with percentage of ethanol up to twelve (E12) and fifteen (E15) percent respectively. This will align the Fourth Schedule to the Central Excise Act, 1944, with the similar proposed amendment in the sub-heading 2710 12 in the First Schedule to the Customs Tariff Act, 1975.

44.8. A scheme for duty-free imports for the purpose of use in goods meant for export, based on end-use monitoring is being introduced for bonafide exporters subject to the requirement of exporting value added products manufactured using inputs imported under these exemptions, within a period of six months for items like decorative papers, motifs, back of photo frames, etc. to be used in manufacture of handicraft products meant for exports & buckles, buttons, locks etc. to be used in manufacture of leather or synthetic footwears, or other leather products meant for exports.

44.9. In order to promote blending of Motor Spirit (commonly known as Petrol) with ethanol/methanol and blending of High Speed Diesel with bio-diesel, an additional Basic Excise Duty of Rs. 2 per litre on Petrol and Diesel, would be levied with effect from the 1st day of October, 2022.

44.10. Sub-secton (2) under Section 28J is being substituted so that advance ruling under sub-section(1) of 28J is now valid for a period of three years or till there is change in law or facts on the basis of which advance ruling has been pronounced, whichever is earlier.

C. BUDGET AT A GLANCE

45. Other Macroeconomic Estimates

45.1. 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.

45.2. 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.

45.3. Budget 2022-23 reflects firm commitment of the Government to boost economic growth by investing in infrastructure development. This is substantiated by increase in capital expenditure by 35.4% (₹ 1,96,010 crore) over BE 2021-22.

45.4. In RE 2021-22, the total expenditure has been estimated at ₹ 37,70,000 crore and is more than Actual (2020-21) by ₹ 2,60,164 crore

45.5. 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 2022-23 is ₹ 16,11,781 crore, which shows an increase of ₹ 2,91,728 crore over Actual (2020-21).

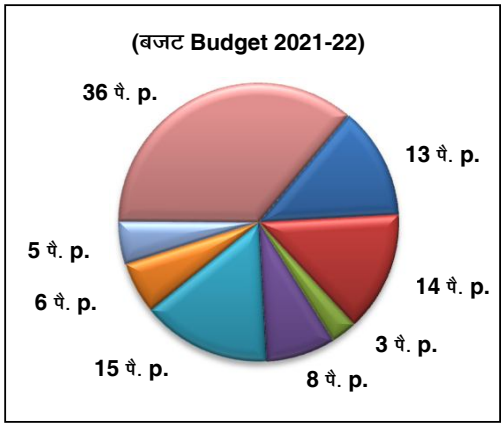
BUDGET AT A GLANCE

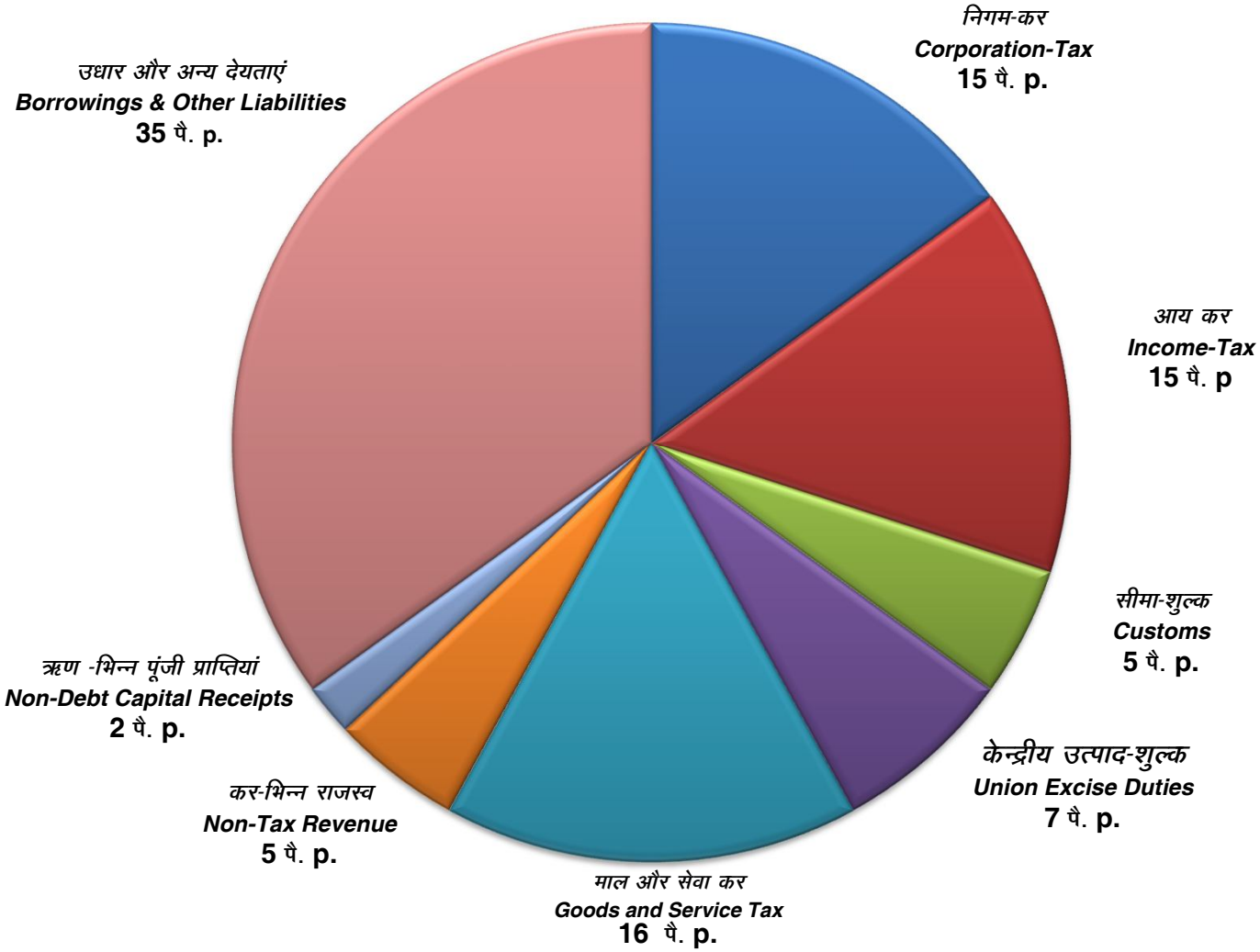
(₹ in Crore)

		2020-2021	2021-2022	2021-2022	2022-2023
		Actuals	**Budget Estimates**	**Revised Estimates**	**Budget Estimates**
1	**Revenue Receipts**	**1,633,920**	**1,788,424**	**2,078,936**	**2,204,422**
2	Tax Revenue (Net to Centre)	1,426,287	1,545,396	1,765,145	1,934,771
3	Non Tax Revenue	207,633	243,028	313,791	269,651
4	**Capital Receipts**	**1,875,916**	**1,694,812**	**1,691,064**	**1,740,487**
5	Recovery of Loans	19,729	13,000	21,975	14,291
6	Other Receipts	37,897	175,000	78,000	65,000
7	Borrowings & Other Liabilities	1,818,291	1,506,812	1,591,089	1,661,196
8	**Total Receipts**	**3,509,836**	**3,483,236**	**3,770,000**	**3,944,909**
9	**Total Expenditure**	**3,509,836**	**3,483,236**	**3,770,000**	**3,944,909**
10	On Revenue Account of which	3,083,519	2,929,000	3,167,289	3,194,663
11	Interest Payments	679,869	809,701	813,791	940,561
12	Grants in Aid for creation of Capital Assets	230,865	219,112	237,685	317,643
13	On Capital Account	426,317	554,236	602,711	750,246
14	**Effective Capital Expenditure**	**657,182**	**773,348**	**840,396**	**1,067,889**
15	**Revenue Deficit**	**1,449,599**	**1,140,576**	**1,088,352**	**990,241**
		(7.3)	**(5.1)**	**(4.7)**	**(3.8)**
16	**Effective Revenue Deficit**	**1,218,734**	**921,464**	**850,667**	**672,598**
		(6.2)	**(4.1)**	**(3.7)**	**(2.6)**
17	**Fiscal Deficit**	**1,818,291**	**1,506,812**	**1,591,089**	**1,661,196**
		(9.2)	**(6.8)**	**(6.9)**	**(6.4)**
18	**Primary Deficit**	**1,138,422**	**697,111**	**777,298**	**720,545**
		(5.8)	**(3.1)**	**(3.3)**	**(2.8)**

रुपया कहां से आता है Rupee Comes From

(बजट Budget 2022-23)





टिप्पणियां:-1. *कुल प्राप्तियों में करों और शुल्कों में राज्यों का हिस्सा शामिल है, जिन्हें पृष्ठ 1 पर सारणी में घटा दिया गया है*

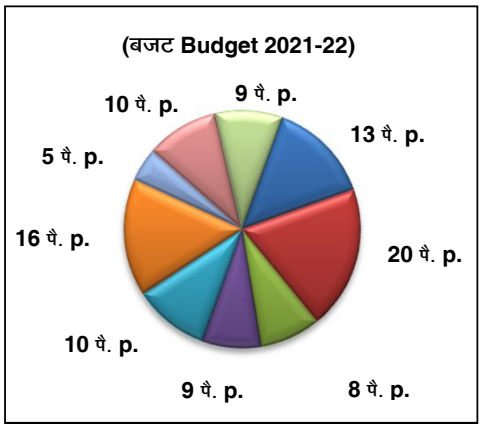
2. आंकड़ों को पूर्णांकित किया गया है।

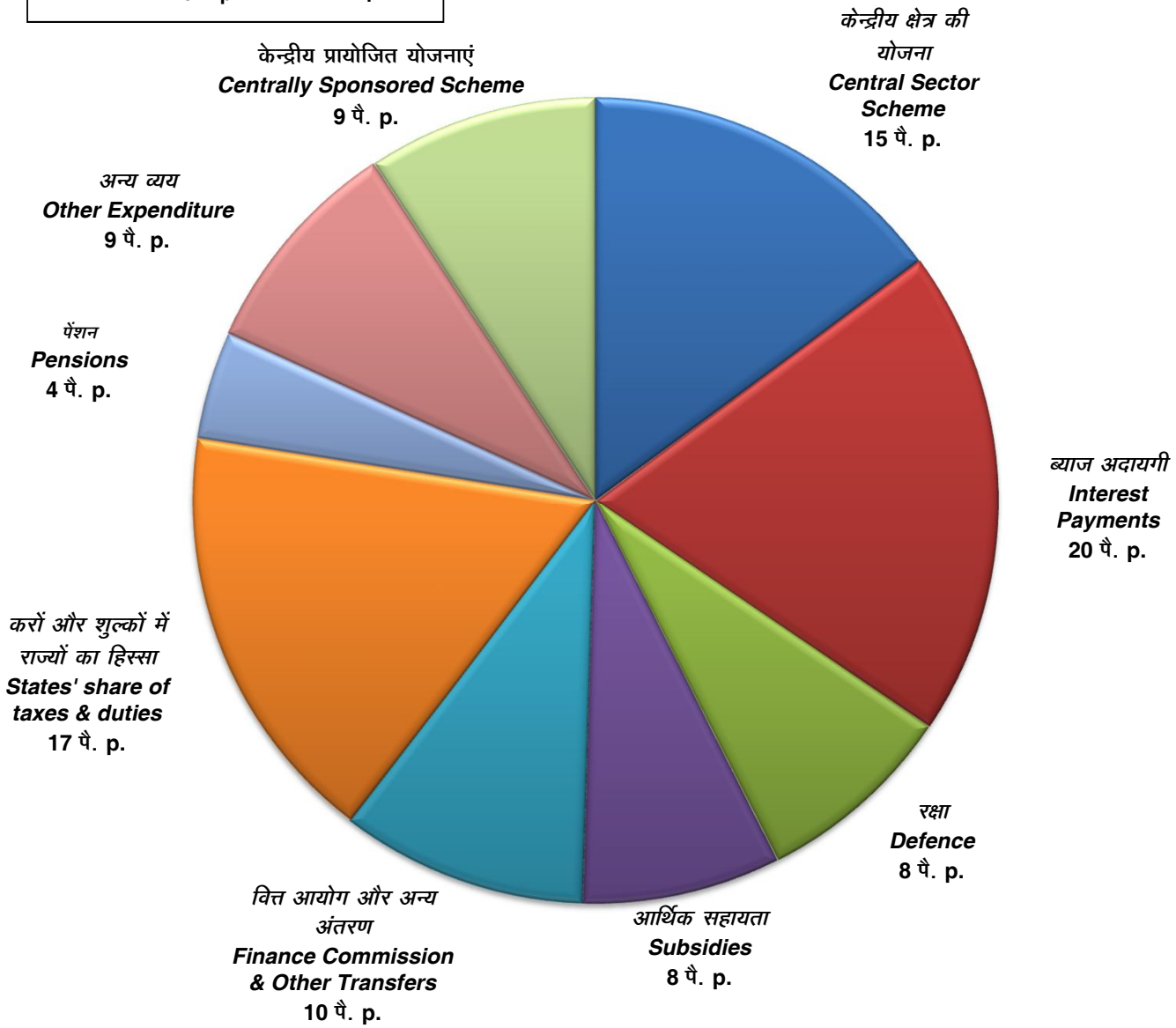
Notes:-*1.* ***Total receipts are inclusive of States' share of taxes and duties which have been netted in the table on page1.***

2. ***Figures have been rounded off.***

रुपया कहां जाता है Rupee Goes To

(बजट Budget 2022-23)





टिप्पणी :-1. कुल व्यय में करों और शुल्कों में राज्यों का हिस्सा शामिल है, जिन्हें पृष्ठ 1 पर सारणी में प्राप्तियों में से घटा दिया गया है।

2. आंकड़ों को पूर्णांकित किया गया है।

Note:-

1. Total expenditure is inclusive of the States' share of taxes and duties which have been netted against receipts in the table on page 1.

2. *Figures have been rounded off.*

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