Analysis of Provisions of Finance Bill 2023

Chhaparia & Associates
Chartered Accountants

Dear Reader,

It gives us immense pleasure to come out with our booklet on “Analysis of Financial Budget 2023”.

The Budget for F.Y.2023-24 presented by our Hon’ble Finance Minister Smt. Nirmala Sitharaman emphasized on major changes in tax slabs under the new tax regime, big hike in allocation for railways and capital expenditure.

The middle class has been given some relief in terms of tweaks in the new income tax regime clearly pointing out that the government wants a shift towards the new regime from the older one.

With an aim to further improve regional air connectivity, the government will revive 50 additional airports, helipads, water aero drones and advanced landing grounds.

Three centres of excellence for artificial intelligence will be established in top educational institutions. A national digital library will be set up for children and adolescents for facilitating the availability of quality books across geographies, languages and genres. 100 laboratories in engineering institutions will be developing applications using 5G services.

Our current year’s economic growth is estimated to be at 7 percent which 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 her Budget Speech:

“Today as Indians stands with their head held high, and the world appreciates India’s achievements and successes, we are sure that elders who had fought for India’s independence, will with joy, bless us our endeavors going forward..”

The Indian economy is therefore on the right track, and despite a time of challenges, heading towards a bright future.

In this booklet, we have analysed all the important proposals being proposed in the Finance Bill 2023. We are grateful for the efforts of the entire team and specially CA Saurav Agarwal, Aakash Modi, Bhim Prasad, Subham Agarwal, Shreya Sinha, Swati Goyal, Nishant Baheti, Ranat Saraf, Saksham Agarwal, Rithik Jain, Harsh Jaiswal, Jassi Jaiswal and Rithika Jain who have helped in bringing out this publication.

Regards

Regards,

CA K K Chhaparia	**CA Subhash Kumar Baid**	**CA Umang Chhaparia**
CA Nirav Sheth	**CA Mayank Agarwal**	**CA Amit Soni**
CA Ashish Modi	**Mr. Mukesh Kr. Sharma**	**Mr. Saurav Dutta**

Material discussed herein is meant to provide general information only. Readers should seek specific advice before acting on the information provided.

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A. DIRECT TAX PROPOSALS

I. RATES OF INCOME TAX

1. Income Tax Rates (For Assessment Year 2024-25)

1.1. From 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 2024-25 onwards, have the default option to pay tax in respect of the total income at following rates:

1.3. New Tax Rates - Individuals (Resident Individuals), HUF, AOP(Other than co-operative society, BOI, AJP

UptoRs.3,00,000	NIL
Rs.3,00,001 to 6,00,000	5 percent
Rs.6,00,001 to 9,00,000	10 percent
Rs.9,00,001 to 12,00,000	15 percent
Rs.12,00,001 to 15,00,000	20 percent
Above Rs.15,00,000	30 percent

Comments:

- Existing provisions is applicable to the assessee who is an individual or HUF. The proposed amendment in section 115BAC is applicable to Individuals (Resident Individuals), HUF as well as to AOP(Other than co-operative society, BOI, AJP.

- Comparison of Tax Calculation under New tax Regime in case of Individual :

Slab	Tax Amount (A.Y.2023-24)	Tax Amount (A.Y.2024-25)
Upto Rs.3,00,000	2,500	Nil
Rs. 3,00,001 to 6,00,000	22,500	15,000
Rs. 6,00,001 to 9,00,000	60,000	45,000
Rs. 9,00,001 to 12,00,000	1,15,000	90,000
Rs. 12,00,001 to 15,00,000	1,87,500	1,50,000
Above Rs. 15,00,000	1,87,500 + (Total income-15,00,000)*30%	1,50,000 + (Total income-15,00,000)*30%

- It is evident from the above that
  - an individual with annual income of Rs 9 lakh will have to pay only Rs 45,000 in taxes.
  - An individual with income of Rs 15 lakh will have to pay Rs 1.5 lakh tax, down from Rs 1.87 lakh under new tax structure.

- It is relevant to note that New Tax Regime shall be default tax regime unless an option is exercised under proposed section 115BAC(6) .

- 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 relevant to note that provisions of section 115JC- AMT will not apply to such Individuals and HUF having business income. Further, provisions of section 115JD- carry forward and set off of AMT credit will not apply to such Individuals and HUF having business income.

- Assessee opting for taxation under the 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;
    - 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.

- Assessee opting for taxation under the section 115BAC of the Act shall be entitled to the following exemptions/ deductions:
  - Standard deduction as provided under clause (ia) of section 16 of the Act.(For the salaried class and the pensioners including family pensioners, the benefit of the standard deduction has been extended to the new tax regime. From now onwards, the new tax regime will be considered the default tax regime. Each individual having an income of Rs 15.5 lakh or more will thus stand to benefit by Rs 52,500.)
  - Deduction in respect of income in the nature of family pension as provided under clause (iia) of section 57 of the Act
  - Deduction in respect of the amount paid or deposited in the Agniveer Corpus Fund as proposed to be provided under sub- section (2) section 80CCH of the Act,

1.4. <u>Rebate under section 87A</u>

- Under the provisions of section 87A of the Act, an assessee, being an individual resident in India, having total income not exceeding Rs 5 lakh, is provided a rebate of 100% of the amount of income-tax payable i.e., an individual having income till Rs 5 lakh is not required to pay any income-tax.
- From assessment year 2024-25 onwards, an assessee, being an individual resident in India whose income is chargeable to tax under the proposed sub-section (1A) of section 115BAC, shall now be entitled to a rebate of 100% of the amount of income-tax payable on a total income not exceeding Rs 7 lakh.

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

- Other than Senior Citizen and Super Senior Citizen

Up to Rs.2,50,000	NIL
Rs.2,50,001 to 5,00,000	5 percent
Rs.5,00,001 to 10,00,000	20 percent
Above Rs.10,00,000	30 percent

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

Up to Rs.3,00,000	NIL
Rs.3,00,001 to 5,00,000	5 percent
Rs.5,00,001 to 10,00,000	20 percent
Above Rs.10,00,000	30 percent

➢ Super Senior Citizen (80 years and above)

Upto Rs.5,00,000	NIL
Rs.5,00,001 to10,00,000	20 percent
Above Rs.10,00,000	30 percent

1.6. Surcharge: In case of New Tax Regime:

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
- ➢ Note: having a total income (including the income by way of dividend or income under the provisions of section 111A,112, 112A of the Act) exceeding two crore rupees, surcharge will be applicable at the rate of 15% of such income tax.

Comments:

- ➢ Maximum surcharge rate in New regime has been restricted to 25% from the Assessment year 2024-25

1.7. Marginal Relief on Surcharge:

- ➢ 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 2020-21 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
UptoRs.1crore	NIL
>Rs.1crore<Rs.10Crores	7 percent
Rs.10Croresorabove	12 percent

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 is 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
UptoRs.1crore	NIL
>Rs.1crore<Rs.10Crores	2percent
Rs.10Croresorabove	5 percent

1.13. <u>Local Authorities</u>: Tax rate 30%. Cess @ 4% on tax

1.14. <u>Cooperative Societies:</u>

Taxable Income	Tax
UptoRs.10,000	10%
>Rs.10,000 <Rs.20,000	20%
Rs.30,000orabove	30%

Tax rate under section 115BAD and section 115BAE of the Act—

- A co-operative society resident in India has the option to pay tax at 22% for assessment year 2021-22 onwards as per the provisions of section 115BAD of the Act, subject to fulfilment of certain conditions.
- Under proposed new section 115BAE of the Act, a new manufacturing co-operative society set up on or after 01.04.2023, which commences manufacturing or production on or before 31.03.2024 and does not avail of any specified incentive or deductions,

may opt to pay tax at a concessional rate of 15% for assessment year 2024-25 onwards. Surcharge would be at 10% on such tax.

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 crore both resident &non-resident co-operative societies.
- Resident co-operaive 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.

1.16. In line with section 115BAA and section 115BAB introduced via the Taxation Law (Amendment) Act, 2019, 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

1.17. Introduction of section 115BBJ - Tax on winnings from online games:

- the amount of income-tax calculated on net winnings from such online games during the previous year, computed in the prescribed manner, at the rate of 30%; and
- the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the net winnings referred to above;

1.18. The limit of ` 3 lakh for tax exemption on leave encashment on retirement of non-government salaried employees was last fixed in the year 2002, when the highest basic pay in the government was Rs. 30,000/-pm. In line with the increase in government salaries, it is proposed to increase this limit to Rs. 25 lakh.

II. WIDENING AND DEEPENING OF TAX BASE/ ANTI AVOIDANCE

1. Limiting the roll over benefit claimed under section 54 and section 54F

1.1. The existing provisions of section 54 and section 54F of the Income-tax, 1961 (the Act) allows deduction on the Capital gains arising from the transfer of long-term capital asset if an assessee, within a period of one year before or two years after the date on which the transfer took place purchased any residential property in India, or within a period of three years after that date constructed any residential property in India.

1.2. For section 54 of the Act, the deduction is available on the long-term capital gain arising from transfer of a residential house if the capital gain is reinvested in a residential house.

1.3. In section 54F of the Act, the deduction is available on the long term capital gain arising from transfer of any long term capital asset except a residential house, if the net consideration is reinvested in a residential house.

1.4. It is proposed to impose a limit on the maximum deduction that can be claimed by the assessee under section 54 and 54F to rupees ten crore. It has been provided that if the cost of the new asset purchased is more than rupees ten crore, the cost of such asset shall be deemed to be ten crores. This will limit the deduction under the two sections to ten crore rupees.

1.5. Consequentially, the provisions of sub-section (2) of section 54 and sub-section (4) of section 54F that deals with the deposit in the Capital Gains Account Scheme have also been amended.

1.6. It is proposed to insert a proviso to provide that the provisions of sub- section (2) of section 54 and sub-section (4) of section 54F, for the purpose of deposit in the Capital Gains Account Scheme, shall apply only to capital gains or net consideration, as the case may be, upto rupees 10 Crores.

Comments:

- *The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity.*
- *However, it was observed that claims of huge deductions by high-net-worth assessees are being made under these provisions, by purchasing very expensive residential houses. It was defeating the very purpose of these sections.*
- *In order to prevent misuse of the exemptions and to tax capital gains of high net worth assessees, the amendments have been proposed.*
- *Corresponding amendments have also been proposed in provisions of sub-section (2) of section 54 and sub-section (4) of section 54F which deal with the deposit in the Capital Gains Account Scheme 1988 by restricting the claim to Rs.10 crores.*
- *These amendments will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*

- *It remains to be seen as to how would this ceiling impact the demand for high cost real estate properties. With availability of this exemption, the cost of house property was in a way reduced by 20% on date of purchase in form of tax savings. This additional burden with withdrawal of exemption above Rs. 10 crores may result in decreased demand for high cost residential houses.*

2. Bringing the non-resident investors within the ambit of section 56(2)(viib) to eliminate the possibility of tax avoidance

2.1. Section 56(2)(viib) of the Act, inter alia, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'.

2.2. Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for the purposes of the Section 56(2) (viib) of the Act.

2.3. It is proposed to include the consideration received from a non- resident also under the ambit of clause (viib) by removing the phrase 'being a resident' from the said clause. This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status.

Comments:

- *Clause (viib) of sub section (2) of section 56 of the Act was inserted vide Finance Act, 2012 to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section is not applicable for consideration (share application money/ share premium) received from non-resident investors.*
- *Accordingly, the proposed amendment to include the consideration received from a non- resident will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status and further prevent and circulation of unaccounted money from non-residents also.*
- *The proposed amendment will be effective from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*

3. Prevention of double deduction claimed on interest on borrowed capital for acquiring, renewing or reconstructing a property

3.1. As per Section 48 of the Income Tax Act, Income chargeable under the head "Capital gains" shall be computed by deducting the cost of acquisition of the asset and the cost of any improvement thereto from the full value of the consideration received or accruing as a result of the transfer of the capital asset.

3.2. As per the proposed amendment proviso after clause(ii) of the Section 48 will be inserted so as to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA.

Comments:

- *The said amendment is introduced with a view to restrict the deduction for the amount of Interest on Loan for House Property while computing Capital Gains as they had already been claimed as deduction in Section 24 or under Chapter VIA in Section 80EE & 80EEA.*
- *The amendment has been proposed as currently few taxpayers, inspite of claiming deduction of amount of Interest on Home Loan under Section 24 or Section 80EE or Section 80EEA are also considering such amount as a Cost of Improvement while calculation of Capital Gains at the time of transfer of such property resulting to a double tax deduction of the same amount.*
- *With the proposed amendment in place, in future, if assessee claims any interest on loan for house property as cost of improvement, he/she can also be required to prove that the same had not already been claimed as deduction during previous financial years under section 24 or under chapter VIA.*
- *The proposed amendment will take effect from assessment year 2024-25 and will apply to subsequent assessment years.*
- *Since the amendment is prospective, it seems that the assessee who have already claimed double deductions will not be required to pay any tax on the same.*

4. Initiative to promote timely payments to Micro and Small Enterprises

4.1. Section 43B of The Income Tax Act provides a list of expenses allowed as deduction only in the year of actual payment and not in the year when the liability to pay such expense is incurred.

4.2. In the aforesaid section, the clause has been proposed to be inserted including any sum payable by the assessee to a Micro or Small Enterprise beyond the time limit specified in section 15 of the MSME Development Act, 2006.

Comments:

- *The proposed amendment aims at promoting timely payments to micro and small enterprises with a view to enhance liquidity of the MSMEs.*
- *It is worth noting that Medium Enterprises (entities having Investment in Plant & Machinery exceeding 10 crores but not exceeding 50 crores and Turnover exceeding 50 crores but not exceeding 250 crores) are out of the purview of this provision.*
- *It should be noted that the time limit as per Section 15 of MSME Development Act,2006 for written agreement is 45 days whereas it stands at 15 days for non-written agreements.*
- *It is further clarified that the amount shall not be eligible for deduction in the relevant previous year even if the payment is made after the end of previous year but before*

the due date of filing of return of income. However, such payment would be allowed as deduction in the subsequent assessment year in which such amount is actually paid.

5. Defining the cost of acquisition in case of certain assets for computing capital gains

5.1. The existing provisions of the section 55 of the Act, inter alia, defines the 'cost of any improvement' and 'cost of acquisition' for the purposes of computing capital gains.

5.2. However, there are certain assets like intangible assets or any sort of right for which no consideration has been paid for acquisition. The cost of acquisition of such assets is not clearly defined as 'nil' in the present provision. This has led to many legal disputes and the courts have held that for taxability under capital gains there has to be a definite cost of acquisition or it should be deemed to be nil under the Act.

5.3. Since there is no specific provision which states that the cost of such assets is nil, the chargeability of capital gains from transfer of such assets has not found favour with the Courts.

5.4. It is proposed to impose a limit on the maximum deduction that can be claimed by the assessee under section 54 and 54F to rupees ten crore. It has been provided that if the cost of the new asset purchased is more than rupees ten crore, the cost of such asset shall be deemed to be ten crores. This will limit the deduction under the two sections to ten crore rupees.

5.5. Consequentially, the provisions of sub-section (2) of section 54 and sub-section (4) of section 54F that deals with the deposit in the Capital Gains Account Scheme have also been amended.

5.6. It is proposed to insert a proviso to provide that the provisions of sub- section (2) of section 54 and sub-section (4) of section 54F, for the purpose of deposit in the Capital Gains Account Scheme, shall apply only to capital gains or net consideration, as the case may be, upto rupees 10 Crores.

Comments:

- *The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity.*
- *However, it was observed that claims of huge deductions by high-net-worth assessees are being made under these provisions, by purchasing very expensive residential houses. It was defeating the very purpose of these sections.*
- *In order to prevent misuse of the exemptions and to tax capital gains of high net worth assessees, the amendments have been proposed.*
- *Corresponding amendments have also been proposed in provisions of sub-section (2) of section 54 and sub-section (4) of section 54F which deal with the deposit in the Capital Gains Account Scheme 1988 by restricting the claim to Rs.10 crores.*
- *These amendments will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*

- *It remains to be seen as to how would this ceiling impact the demand for high cost real estate properties. With availability of this exemption, the cost of house property was in a way reduced by 20% on date of purchase in form of tax savings. This additional burden with withdrawal of exemption above Rs. 10 crores may result in decreased demand for high cost residential houses.*

6. Preventing permanent deferral of taxes through undervaluation of inventory

6.1. Assessees are required to maintain books of account for the purposes of the Act. The Central Government has notified the Income Computation and Disclosure Standards (ICDS) for the computation of income. ICDS-II relates to valuation of inventory. Section 148 of the Companies Act 2013 also mandates maintenance of cost records and its audit by cost accountant in some cases.

6.2. In order to ensure that the inventory is valued in accordance with various provisions of law, it is proposed to amend section 142 of the Act relating to Inquiry before assessment to ensure the following:-

- To enable the Assessing Officer to direct the assessee to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf. Assessee is then required to furnish the report of inventory valuation in the prescribed form duly signed and verified by such cost accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.

- To provide that the expenses of, and incidental to, such inventory valuation (including remuneration of the cost accountant) shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines and that the expenses so determined shall be paid by the Central Government.

- To provide that except where the assessment is made under section 144 of the Act, the assessee will be given an opportunity of being heard in respect of any material gathered on the basis of such inventory valuation which is proposed to be utilized for assessment.

- To define “cost accountant” to mean a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.

6.3. Further, the following consequential amendments are proposed:–

- To amend section 153 of the Act, so as to exclude the period for inventory valuation through the cost accountant for the purposes of computation of time limitation.

- To amend section 295 of the Act, so as to include in the aforesaid section, the power to make rules for the form of prescription of report of inventory valuation and the particulars which such report shall contain.

Comments:

- *The amendment is proposed to enable the Assessing Officer to get the inventory of the assessee valued by a cost accountant only instead of going for audit of complete books of accounts.*
- *The amendments in section 142 and 153 of the Act will take effect from 1st April, 2023 and will accordingly apply to the assessment year 2023-2024 and subsequent assessment years. The amendment in section 295 of the Act will take effect from 1st April, 2023.*

7. Rationalisation of exempt income under life insurance policies

7.1. Clause (10D) of section 10 of the Act provides for income-tax exemption on the sum received under a life insurance policy, including bonus on such policy. There is a condition that the premium payable for any of the years during the terms of the policy should not exceed ten per cent of the actual capital sum assured.

7.2. It is proposed to tax income from insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above Rs 5,00,000 in a year. Income is proposed to be exempt if received on the death of the insured person. This income shall be taxable under the head “income from other sources”. Deduction shall be allowed for premium paid, if such premium has not been claimed as deduction earlier. The proposed provision shall apply for policies issued on or after 1st April, 2023. There will not be any change in taxation for polices issued before this date.

Comments:

- *It may be pertinent to note that the legislative intent of providing exemption under clause (10D) of section 10 of the Act has been to further the welfare objective by subsidising the risk premium for an individual’s life and providing benefit to small and genuine cases of life insurance coverage. However, over the years it has been observed that several high net worth individuals are misusing the exemption provided under clause (10D) of section 10 of the Act by investing in policies having large premium contributions (as it is acting as an investment policy) and claiming exemption on the sum received under such life insurance policies.*
- *In order to prevent the misuse of exemption under the said clause, Finance Act, 2021, amended clause (10D) of section 10 of the Act to, inter-alia, provide that the sum received under a ULIP (barring the sum received on death of a person), issued on or after the 01.02.2021 shall not be exempt if the amount of premium payable for any of the previous years during the term of such policy exceeds Rs 2,50,000. It was also provided that if premium is payable for more than one ULIPs, issued on or after the 01.02.2021, the exemption under the said clause shall be available only with respect to such policies where the aggregate premium does not exceed Rs 2,50,000 for any of the previous years during the term of any of the policy.*

- *After the enactment of the above amendment, while ULIPs having premium payable exceeding Rs 2,50,000/- have been excluded from the purview of clause (10D) of section 10 of the Act, all other kinds of life insurance policies are still eligible for exemption irrespective of the amount of premium payable.*
- *In order to further curb such misuse the proposed amendment has been included in Finance Bill, 2023.*

III. IMPROVING COMPLIANCE AND TAX ADMINISTRATION

8. Provisions relating to reassessment proceedings

8.1. **Time limit for furnishing return under section 148 of the Act and consequential impact:** Presently, the return under section 148 of the Act need to be furnished within such period as may be specified in notice issued under section 148 of the Act. It has been proposed that the section 148 of the Act may be amended to provide that the notice u/s 148 should specify time period of three months from the end of the month in which notice is issued, within which a return in response to a notice under section 148 of the Act may be furnished. The Assessing officer may further allow extended period beyond three months on the basis of application filed by the assessee. If such return is not furnished within the time allowed, and thereafter, if any return is furnished, such return shall not be deemed to be return u/s 139 of the Act. As a result, the consequential requirement to issue notice u/s 143(2) would not be mandatory for such belated returns.

8.2. **Extension of time limit by 15 days for issue of notice under section 148 of the Act, where search initiated after 15th March of any financial year :** As per the present provisions, in case of a search action under section 132 of the Act or requisition under section 132A of the Act, there is no requirement for proceedings under section 148A of the Act to be conducted prior to re-opening the cases in these cases. In cases where survey under section 133A of the Act is conducted, the Assessing Officer is deemed to have information for the purposes of section 148 of the Act but proceedings under section 148A of the Act need to be conducted prior to issuance of notice under section 148 of the Act.

8.3. It is proposed to insert a proviso in section 149 to provide that in cases where search u/s 132 or requisition u/s 132A is made after 15th March of a financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation of notice u/s 148 of the Act and the notice so issued within the extended period of fifteen days shall be deemed to have been issued on 31st March of such financial year.

8.4. Similar amendment has been made by inserting another proviso to cover survey cases, where the deemed information emerges from statement recorded or documents impounded during summons or survey, in consequence of search. The notice u/s 148/148A can be issued within extended period of 15 days in such cases.

8.5. **Amendment to section 151:** Section 151 of the Act contains provisions relating to the specified authority who can grant approval for the purposes of sections 148 and 148A of the Act.

8.6. It was seen that clause (ii) of the said section was resulting in misinterpretation as well as confusion with regards to the specified authority for the cases where re-opening was being done after three years from the relevant assessment year.

8.7. Therefore, to clarify the position of law in this regard, an amendment has been proposed to provide that the specified authority under clause (ii) of section 151 of the Act shall be Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

8.8. To give further clarity with regards to the specified authority, a proviso is proposed to be inserted in the section 151 to provide that while computing the period of three years for the purposes of determining the specified authority the period which has been excluded or extended as per the provisos in section 149 of the Act from the time limit for issuance of notice under section 148 of the Act shall be taken into account.

8.9. These amendments will take effect from the 1st day of April, 2023

Comments:

- *Presently, the return under section 148 of the Act need to be furnished within such period as may be specified in notice issued under section 148 of the Act. Normally, time allowed to file return under section 148 of the Act is 15 to 30 days from the date of issue of notice under section 148 of the Act. Specific time limit to furnish return in response to notice u/s 148 is not prescribed in the Act.*
- *It has been proposed that section 148 of the Act may be amended to provide that a return in response to a notice under section 148 of the Act shall be furnished within three months from the end of the month in which such notice is issued, or within such further time as may be allowed by the Assessing Officer. This is a welcome amendment to have uniform time limit.*
- *Though the assessee has been extended time limit for furnishing return in response to notice u/s 148, the time limit for passing order u/s 147 thereto has not been extended. Thus, as per section 151(2) of the Act, the time limit of passing order u/s 147 is twelve months from the end of the financial year in which notice u/s 148 was served.*

9. Alignment of timeline provisions under section 153 of the Act

9.1. Vide Finance Act 2021, the time limit for order of assessment under section 143 or section 144 of the Act was 9 months from the end of the relevant assessment year for assessment year 2021-22 and later assessment years.

9.2. Further, vide Finance Act, 2022 sub-section (1A) was inserted in the section 153 of the Act providing that in a case where an updated return under sub-section (8A) of the section 139 of the Act has been furnished by an assessee, an order of assessment or reassessment under section 143 or section 144 of the Act may be made at any time before the expiry of 9 months from the end of the financial year in which such return was

9.3. Further, a notice under section 143(2) of the Act can be served on the assessee up to within months from the end of the relevant assessment year.

9.4. Thus, as per the present provisions, notice u/s 143(2) could have been issued upto 30th June from the end of relevant assessment year, however order u/s 143(3)/144 need to be passed within December. Accordingly, the Assessing Officer was getting only six months time for making assessment.

9.5. It is proposed that the time available for completion of assessment relating to the assessment year commencing on or after the 1st day of April, 2022 shall be twelve months from the end of the assessment year in which the income was first assessable. Consistent with the above, the time available for completion of assessment proceedings in the case of an updated return is also proposed to be increased to 12 months from the end of the financial year in which such return is furnished.

9.6. It is proposed to insert new section 153(3A) to provide that where an assessment or reassessment is pending on the date of initiation of search u/s 132 or requisition u/s 132A, the period available for completion of such assessment/reassessment shall be extended by twelve months.

9.7. These amendments will take effect from the 1st day of April, 2023.

Comments:

- *Practically it is seen that the period of six months is, however, short to complete the entire process of assessment, which, inter alia, includes making investigations, giving assessee opportunities of hearing, bringing on record any material relevant to the case, analysing judicial positions of various legal matters etc.*
- *Further, with the Faceless Assessment, different aspects of the assessment are carried out by different units viz. Assessment Unit, Verification Unit, Technical Unit and Review Unit. As a result, taxpayers' grievances of not being given enough time to explain themselves or provide evidences in their favour may arise. This may also compromise the dispensation of reasonableness of orders as well as natural justice to the assesses.*
- *The proposed amendment to extend the time limit for pending assessment/ reassessment cases in case of search is a welcome move to avoid multicity of proceedings.*
- *Quite often it is seen that at present, in search cases, the assessing officers are issuing notice u/s 148 within few months of passing order u/s 143(3) of the Act, though no fresh information has been received by them after passing order u/s 143(3) of the Act. Now, there is no need for them to pass order for assessment in search cases.*

10. Time limit – where initiation of search and conclusion of last search warrant falls in different financial years

10.1. Prior to the enactment of the Finance Act, 2021, the procedure for conducting such assessment in search cases was laid out in section 153A and the time limit for their completion was laid out in section 153B. Consequent to the changes in 2021, the assessment or reassessment in consequence to search is now performed under section 147 of the Act and provisions of sections 153A and 153B are no longer applicable.

10.2. The timelines for completing assessment or reassessment in search cases is linked to the execution of the last of the authorisations during such procedure, in order to establish the day of conclusion of search proceedings, and what constitutes as last authorisation is provided in section 153B. As the provisions of section 153B are no longer applicable, it is proposed to provide the meaning of execution of last authorisation under section 132 itself.

10.3. It has been proposed that for the purposes of sub-section (9A), (9B) and (9D), the last of authorisation for search shall be deemed to have been executed,—

- in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

- in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.

10.4. This amendment will take effect retrospectively from 1st day of April, 2022.

Comments:

- *It is relevant to note that the proposed amendment will take effect retrospectively from 1st day of April, 2022.*

11. Assistance to authorized officer during search and seizure

11.1. Section 132 of the Act makes provisions related to search and seizure. The section makes detailed provisions for powers of income-tax authority during the search and seizure proceedings, procedure to be followed, requisition of services of other officers for assistance, examination of books of account or other documents, procedure for custody of evidence, provisional attachment etc. The section also provides the timelines to be followed by the income-tax authority during and post search proceedings.

11.2. The section provides that during the course of search, the authorised officer may requisition the services of any police officer or any officer of the Central Government, to assist him for any of the actions required to be performed during the course of such search, and it shall be the duty of such officer to comply. Similarly, there is also a provision that the authorised officer may make a reference to a valuation officer for estimating the fair market value of the property and such reference can be made during the search or within 60 days from the date of executing the last authorisation for search..

11.3. It is proposed to amend relevant provisions of the section to provide that during the course of search the authorised officer, may requisition the services of any other person or entity, as approved by the Principal Chief Commissioner or the Chief Commissioner, the Principal Director General or the Director General, in accordance with the procedure prescribed by the Board in this regard, to assist him for the purposes of the search. Similarly, during and post search enquiries, the authorised officer may make reference to any person or entity or any valuer registered by or under any law for the time being in force, who shall estimate the fair market value of the property in the manner

prescribed and submit a report of the estimate to the authorised officer or the Assessing Officer within sixty days from the receipt of such reference.

11.4. This amendment will take effect from 1st day of April, 2023.

Comments:

- *In the recent past, due to the increased use of technology and digitisation in every aspect including management and maintenance of accounts, digitisation of data, cloud storage etc., the procedure for search & seizure has become complex, requiring the use of data forensics, advanced technologies for decoding data etc., for complete and proper analysis of accounts.*
- *Similarly, there is an increasing trend of undisclosed income being held in a vast variety of forms of assets or investments in addition to immovable property. Valuation of such assets and decryption of information often require specific domain experts like digital forensic professionals, valuers, archive experts etc.*
- *In addition to this, services of other professionals like locksmiths, carpenters etc. are also required in most of the cases, due to typical nature of the operations.*

12. Introduction of the authority of Joint Commissioner (Appeals)

12.1. As per the current scheme for appeals under the Act, the first appellate authority for an assessee aggrieved by any order issued under the Act is the Commissioner (Appeals).

12.2. It has been noted that as the first authority for appeal, Commissioner (Appeals) are currently overburdened due to the huge number of appeals and the pendency being carried forward every year. In order to clear this bottleneck, a new authority for appeals is being proposed to be created at Joint Commissioner/ Additional Commissioner level to handle certain class of cases involving small amount of disputed demand. Such authority has all powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals.

12.3. Accordingly, it is proposed to substitute section 246 of the Act to provide for appeals to be filed before Joint Commissioner (Appeals). Sub-section (1) of the proposed section seeks to provide that any assessee aggrieved by any of the following orders of an Assessing Officer (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals) against—

- An order being an intimation under sub-section (1) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
- An order of assessment, reassessment or recomputation under section 147;
- An order being an intimation under sub-section (1) of section 200A;
- An order under section 201;

- An order being an intimation under sub-section (6A) of section 206C;
- An order under sub-section (1) of section of section 206CB;
- An order imposing a penalty under Chapter XXI; and
- An order under section 154 or section 155 amending any of the orders mentioned above

12.4. It is proposed to insert a proviso under sub-section (1) that an appeal cannot be filed before the Joint Commissioner (Appeals) where an order referred to under this sub-section is passed by or with the approval of an income-tax authority above the rank of Deputy Commissioner.

12.5. Sub-section (2) of the proposed section seeks to provide that where any appeal filed against an order referred to in sub-section (1) is pending before the Commissioner (Appeals), the Board or an income-tax authority so authorised by the Board in this regard, may transfer such appeal and any matter arising out of or connected with such appeal and which is so pending, to the Joint Commissioner (Appeals) who may proceed with such appeal or matter, from the stage at which it was before it was so transferred. This will enable transfer of certain existing appeals filed before the Commissioner (Appeals) to the Joint Commissioner (Appeals).

12.6. The amendments will take effect from 1st April 2023.

Comments:

- *It is pertinent to state that the vital condition in filing the appeal before the Joint Commissioner (Appeals) is that an appeal shall not lie against an order which "is passed by" or "with the approval" of an income-tax authority above the rank of Deputy Commissioner. This literally means that only the orders which are being passed by the "Income Tax Officer" or by the "Assistant/Deputy Commissioner of Income Tax" can be challenged before the Joint Commissioner (Appeals) and that to, only when the approval of the same is also not given by authority above the rank of the Deputy Commissioner. This will largely effect the reassessment order passed under section 143(3) r.w.s 147 for which the approval of JCIT/Addl. CIT is required to be taken U/s 148B of the Income Tax Act.*

- *Similarly, the new forum may not be availed by an assessee which foresee to take the directions of the JCIT/Addl. CIT under section 144A or when the assessment order are passed with the approval of JCIT/Add. CIT under section 153D of the Act.*

- *The first appeal stage was moving at very low pace and it is expected that the new proposed section shall enhance the productivity and efficiency of this forum. Having said that it is relevant to mention that the JCIT/Addl. CIT should hear the appeal of an aggrieved assessee with an open mind of being an appellate authority (pun intended) and not merely in the capacity of the erstwhile assessing officer, else, the said forum shall become an extended assessment proceedings, which is certainly not desired by the assessee and is neither intended by the legislature. This is also in accordance with*

the principles of natural justice and requires to be implemented as per the 'fitness of things' principle.

13. Rationalisation of Appeals to the Appellate Tribunal

13.1. Vide Finance Act, 2021, section 263 of the Act was amended to enable Principal Chief Commissioner and Chief Commissioner to also pass an order of revision under the said section. However, in the absence of any reference to such orders passed under section 263 of the Act in sub-section (1) of the section 253 of the Act, an assessee aggrieved by any order under section 263 of the Act by a Principal Chief Commissioner and Chief Commissioner or an order under section 154 of the Act rectifying such order under section 263 of the Act cannot appeal against such orders to the Appellate Tribunal.

13.2. Therefore, it has been proposed that section 253 of the Act may be amended so that appeal against an order passed under section 263 of the Act by Principal Chief Commissioner or Chief Commissioner or an order passed under section 154 of the Act in respect of any such order shall be made to the Appellate Tribunal.

13.3. Sub-section (4) of the section 253 of the Act allows the respondent in an appeal, against an order of Commissioner (Appeals), to file a memorandum of cross-objections before the Appellate Tribunal. However, it is pertinent to note here that appeal can be made to the Appellate Tribunal against orders of authorities other than Commissioner (Appeals) also, like Principal Commissioner or Commissioner or Principal Director or Director etc. As a result, the respondent, whether it is Revenue or the assessee, cannot file memorandum of cross-objections against an appeal before the Appellate Tribunal by virtue of the provisions of sub-section (4) of section 253 of the Act.

13.4. This creates grievances as well as reduces the fair and equitable dispensation of judgement in such cases. Therefore, it is proposed that an amendment may be made in sub-section (4) of section 253 to enable filing of memorandum of cross-objections in all classes of cases against which appeal can be made to the Appellate Tribunal. For example, where the assessee files an appeal to the appellate tribunal against an order passed by the Assessing Officer in consequence of an order of the Dispute Resolution Panel, the Assessing Officer would be able to file a cross objection to such appeal which cannot be filed presently.

14. Provisions related to business reorganization

14.1. Section 170A of the Act was inserted vide Finance Act, 2022 in order to make provisions for giving effect to the order of business reorganisation issued by tribunal or court or an Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.

14.2. The section provides that in case of business reorganisation, where a return of income has been filed by the successor under section 139 of the Act, such successor shall furnish a modified return within six months from the end of the month in which such order of business reorganisation was issued, in accordance with and limited to the said order.

14.3. Consequently, Rule 12AD had been notified prescribing the form and manner of furnishing such modified return by companies by the Board vide Notification No. 110/2022 dated 19.09.2022.

14.4. The provisions pertaining to business reorganisation and corporate restructuring are also available under other statutes like the Companies Act, 2013. Considering the multiplicity of provisions, certain issues have come to the fore since the insertion of section 170A in the Act last year.

14.5. These pertain to the entities who have previously furnished the return for the relevant assessment year, obligation on the Assessing Officer (AO) for passing or modifying assessment or reassessment orders, the requirement of furnishing modified return etc. In order to avoid any unintended litigation, it is proposed to amend the law to clarify the same.

14.6. Accordingly, it is proposed to substitute section 170A, to provide that notwithstanding anything contained in section 139, in a case of business reorganisation, where prior to the date of order of the tribunal or the High Court or Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016, any return of income has been furnished for any assessment year relevant to a previous year, by an entity to which such order applies, the 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 the form and manner, as may be prescribed, in accordance with and limited to the said order. This would also enable modification of the returns filed by the predecessor wherever required.

14.7. There was no provision of the procedure to be followed by the Assessing Officer after the modified return is furnished by the successor entity. It is therefore being provided that:

- if proceedings of assessment or reassessment for the relevant assessment year have been completed on the date of furnishing of modified return under sub-section (1), the Assessing Officer shall pass an order modifying the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished.

- Where proceedings of assessment or reassessment for the relevant assessment year are pending on the date of furnishing of modified return under sub-section (1), the Assessing Officer shall pass an order assessing or reassessing the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished.

14.8. For the purposes of such assessment or reassessment, unless provided otherwise, all other provisions of the Act shall apply and the tax shall be chargeable at the rate applicable to such assessment year.

14.9. It is also proposed to define the following terms for the purposes of this section:

- “business reorganisation" means the reorganisation of business involving the amalgamation or demerger or merger of business of one or more persons;

- "successor" means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

Comments:

- *This amendment has been proposed to avoid unnecessary complications in assessment of successor and predecessor companies involved in the business reorganisation.*
- *The erstwhile section 170A empowered only the successor entity to file Modified return. However, with the proposed amendment, the successor shall be empowered to file Modified Return of all entities to whom such order of the High Court or Tribunal or Adjudicating Authority applies.*
- *This amendment will take effect from the 1st day of April, 2023. Hence, Modified Returns for entities which are not successor but to whom impact of an order passed before 1st day of April, 2023 applies cannot file Modified Returns under the existing statute.*
- *Also, power of Assessing Officer for considering Modified Returns filed against orders passed prior to 1st day of April, 2023 in case assessment of original returns have been completed or are under process remains ambiguous.*

15. Facilitating TDS credit for income already disclosed in the return of income of past year

15.1. In many instances, tax is deducted by the deductor in the year in which the income is actually paid to the assessee. However, following accrual method, the assessee may have already disclosed this income in earlier years in their return of income. This results in TDS mismatch, since the corresponding income has already been offered to tax by the assessee in earlier years, however, TDS is only being deducted much later when actual payment is being made. The assessee cannot claim the credit of TDS in the year in which tax is deducted since income is not offered to tax in that year. It may also not be possible to revise the return of past year in which the corresponding income was included since time to revise the return of income for that year may have lapsed. This results in difficulty to the assessee in claiming credit of TDS.

15.2. In order to remove this difficulty, it is proposed to insert a new sub-section (20) in section 155 of the Act. This new sub-section applies where any income has been included in the return of income furnished by an assessee under section 139 of the Act for any assessment year (hereinafter referred to as the "relevant assessment year") and tax has been deducted at source on such income and paid to the credit of the Central Government in accordance with the provisions of Chapter XVII-B in a subsequent financial year. In such a case the assessee can make application in the prescribed form to the Assessing Officer within two years from the end of the financial year in which such tax was deducted at source. Then Assessing Officer shall amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year. It has been further provided that the provisions of section 154 of the Act shall, so far as may be, apply thereto, and the period of four years specified in sub-section (7) of that section shall be reckoned from the end of the

financial year in which such tax has been deducted. Further, credit of such tax deducted at source shall not be allowed in any other assessment year.

15.3. Amendment has also been proposed in section 244A of the Act to provide that the interest on refund arising out of above rectification shall be for the period from the date of the application to the date on which the refund is granted.

15.4. These amendments will take effect from 1st October, 2023.

Comments

- *The proposed amendment is a welcome step and it will reduce genuine hardship of the assessee because of TDS mismatch.*
- *It is relevant to note that the proposed amendment is applicable where any return is furnished under section 139 of the Act. Accordingly, the proposed amendment is not applicable which is furnished in response to notice u/s 148 of the Act.*

16. Setoff and withholding of returns in certain cases – Overlapping of section 241A and 245

16.1. Section 241A of the Act deals with withholding of refund in certain cases. As per the section, where a refund becomes due to an assessee under section 143(1) and notice for assessment is issued to him under section 143(2), the Assessing Officer (AO) may withhold such refund till the date of such assessment being made, if he is of the opinion that the grant of refund is likely to adversely affect the revenue.

16.2. The withholding can be done after recording the reasons for doing so and with the prior approval of the Principal Commissioner or Commissioner, and applicable to assessment years on or after 2017-18.

16.3. Section 245 of the Act deals with set off of refunds against tax remaining payable. It provides that where refund is found to be due to any person under any provisions of the Act, the AO or other income-tax authorities mentioned in the section, may, in lieu of payment, set off part or whole of the refund against any sum remaining payable by such person, after giving him an intimation in writing regarding the proposed actions.

16.4. There is an overlap between the two provisions.

16.5. Therefore, it is proposed to integrate the two sections by substituting section 245, so as to provide that where under any of the provisions of this Act, a refund is due to any person, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against any sum remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

16.6. It is also proposed to provide that where a part of the refund has been set off under sub- section (1) or where no amount is set off, and refund becomes due to a person, then, the Assessing Officer, having regard to the fact that proceedings of assessment

or reassessment are pending in such case and grant of refund is likely to adversely affect the revenue, and for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, may withhold the refund till the date on which such assessment or reassessment is made.

16.7. It is also proposed to amend section 241A of the Act to make the provisions of that section inapplicable from 1st April, 2023

16.8. These amendments will take effect from the 1st day of April, 2023.

17. Extension of time for disposing pending rectification applications by Interim Board for Settlement

17.1. Clause (iv) of sub-section (9) of section 245D is proposed to be substituted with a new clause to provide that where the time-limit for amending an order or for making an application for rectification under sub-section (6B) expires on or after 01.02.2021 but before 01.02.2022, such time-limit shall stand extended to 30.09.2023.

17.2. This amendment will take effect retrospectively from the 1st day of February, 2021.

18. Decriminalisation of section 276A of the Act

18.1. Section 276A of the Act makes provision for prosecution with rigorous imprisonment up to two years in the case of a person, being a liquidator who fails to give notice in accordance with sub-section (1) of section 178, or fails to set aside the amount as required by sub- section (3) of the said section or parts with any of the assets of the company or the properties in contravention of the provisions of the said section.

18.2. Section 276A also imposes personal liability on such liquidator for the same non-compliance.

18.3. However, with the operationalization of the Insolvency and Bankruptcy Code, 2016 (IBC), waterfall mechanism for payment of dues is now in place for companies under liquidation and sub-section (6) of section 178 (the parent section) provides that this section shall not have effect when provisions of the IBC are in contrary.

18.4. In view of this, it is proposed to amend section 276A by providing a sunset clause on the section with effect from 31.03.2023. Hence, it is proposed that no fresh prosecution shall be launched under this section on or after 1st April, 2023. The earlier prosecutions will however continue

18.5. This amendment will take effect from 1st April, 2023.

IV. RATIONALISATION OF PROVISIONS

19. Rationalisation of the provisions of Charitable Trust and Institutions

19.1. Repayment of loans and borrowings – application of income?

(i) The Finance Act 2021 made certain changes vide which, application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of section 10(23C) or clauses (a) and (b) of section 11 of the Act. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.

(ii) It has been noted that application from corpus or loan or borrowings may have already been claimed as application prior to 01.04.2021. Hence, allowing such amount to be application again as investment or reposting back in corpus or repayment of loan or borrowing will amount to double deduction.

(iii) It was also noted that, a trust may invest or deposit back the amount in to corpus or repay the loan after many years of application from the corpus or loan and claim such repayment of loan or investment/depositing back in to corpus as application for charitable or religious purposes. Availability of indefinite period for the investment or depositing back to the corpus or repayment of loan will make the implementation of the provisions quite difficult.

(iv) In order to ensure proper implementation of both the exemption regimes, it is proposed to provide that application out of corpus or loans or borrowings before 01.04.2021 should not be allowed as application for charitable or religious purposes when such amount is deposited back or invested in to corpus or when the loan or borrowing is repaid. It is further proposed to provide that if the trust or institution invests or deposits back the amount in to corpus or repays the loan within 5 years of application from the corpus or loan, then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes. It is also proposed to provide that where the application from corpus or loan did not satisfy the conditions as stated above, the repayment of loan or investment/depositing back in to corpus of such amount will not be treated as application.

(v) These amendments will take affect retrospectively from assessment year 2023-24 and subsequent years.

Comments:

- *The amendment being effective from AY 2023-24 itself, it is important that the trusts/institutions do check records to ensure that repayment of loans is not treated as application for charitable purposes, if exemption has been claimed prior to 01.04.2021 on utilisation of such loans.*

19.2. Treatment of donation to other trusts

(i) The income of the trusts and institutions is exempt subject to the fulfilment of certain conditions. Some of such conditions are as follows:
   (a) at least 85% of income of the trust or institution should be applied during the year for the charitable or religious purposes to ensure bare minimum application for charitable or religious purposes.
   (b) Trusts or institutions are allowed to either apply mandatory 85% of their income either themselves or by making donations to the trusts with similar objectives.

(ii) Instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.

(iii) In order to ensure intended application toward charitable or religious purpose, it is proposed that only 85% of the eligible donations made by a trust or institution shall be treated as application only to the extent of 85% of such donation.

(iv) Accordingly, necessary amendments have been proposed that if the donation is paid to other registered trusts/institutions, only 85% of such donation shall be treated as application for charitable or religious purposes.

(v) These amendments will apply in relation to the assessment year 2024-25 and subsequent assessment years.

Comments:

- *Thus, donation to other trusts/institutions are not treated as application in various circumstances. Firstly, it cannot be given out of accumulated fund. Secondly, it cannot be given as corpus donation. Even if such donation do not fall within the first two categories, as per the proposed insertion in the Bill, only 85% of donation to other trusts/institutions is to be treated as application.*

19.3. Combining provisional and regular registration in some cases

(i) (As per the existing provisions being brought in by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 :

(a) New trusts or institutions under section 10(23C) or 12A need to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/ approval shall be valid for a period of 3 years.

(b) Provisionally registered/approved trusts or institutions under both regimes and section 80G regime will again need to apply for regular registration/approval at least six months prior to expiry of period of the provisional registration/ approval or within six months of the commencement of activities, whichever is earlier. Regular registration/approval shall be valid for a period of 5 years.

(c) The trusts and institutions under both regimes and section 80G regime will need to apply at least six months prior to the expiry of regular registration/approval.

(ii) It has also been brought to the notice that trusts and institutions under both the regimes are facing the following difficulties

(a) Trusts or institutions formed or incorporated during the previous year are not able to get the exemption for that year in which they are formed or incorporated since they need to apply one month before the previous year for which exemption is sought.

(b) Besides trusts or institutions, where activities have already commenced, are required to apply for two registrations (provisional and regular) simultaneously.

(iii) In order to ensure rationalisation of the provisions, it is proposed to allow for direct final registration/approval in such cases. To achieve this, following amendments are proposed:

(a) The trusts and institutions shall be allowed to make application for the provisional approval, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought.

(b) After commencement of activities, the trust/institution shall make application for a regular approval under 10(23C) or 12A or 80G, as the case may be.

(c) Such application shall be examined by the Principal Commissioner or Commissioner as per the provisions of the Act.

(d) Where the Principal Commissioner or Commissioner is satisfied about the objects and genuineness of the activities and compliance of other requirements provided in law, registration or approval in such cases shall be granted for 5 years.

(e) The Principal Commissioner or the Commissioner shall pass an order granting or rejecting such applications within 6 months calculated from the end of the month in which such application was received.

(iv) These amendments will take effect from 1st October, 2023.

19.4. Specified violations under section 12AB and fifteenth proviso to clause (23C) of section 10

(i) As per the existing provisions brought in by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the new trusts are required to apply for the provisional registration/approval in Form 10A which is valid for a period of 3 years or till six months from the commencement of activities whichever is earlier. The process of granting the provisional approval/ registration for the new trusts and re-registration/approval for the trusts already registered is automated. Application is filed by the trust or institution on e-filing portal and provisional approval/registration or the approval/registration in such cases is granted in an automated manner without verification.

(ii) It has come to the notice that in some cases, the form furnished by the trusts for provisional approval/registration and for re-registration/approval are defective and since the process of registration/approval/provisional registration/approval is automated, registration has been granted by the CPC. At present the approval/registration and the provisional approval/registration of the trusts can be cancelled by the PCIT/CIT for certain specified violations.

(iii) In order to rationalise the provisions, it is proposed to insert clauses in section 10(23C) and 12AB of the Act, to provide that "specified violation" shall also include the case where the application referred above is not complete or it contains false or incorrect information.

(iv) These amendments will take effect from 1st April, 2023

Comments:

- *There may be instances of bona-fide mistake by the trusts/institutions while furnishing application for provisional registration/re-registration, as the case may be. The proposed provisions in the present form empower the PCIT/CIT to even treat such mistake as 'specific violation' and cancel the registration. The impact of such cancellation can be very alarming as entire corpus may be subject to be treated as accreted income u/s 115TD of the Act. In my view, necessary representation needs to be made with respect to these proposals.*

19.5. Trusts or institutions not filing the application for re-registration/approval in certain cases

(i) As per existing provisions brought in by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, all the existing trusts and institutions registered under section 10(23C) or 12A were required to apply for re-registration/approval on or before 31.03.2021. The due date for re-registration/approval was extended by the Central Board of Direct Taxes till 25.11.2022 vide Circular No. 22 of 2022 dated 01.11.2022. Such re-registration/approval shall be valid for a period of 5 years.

(ii) New trusts and institutions under the first and second regime are required to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/approval shall be valid for a period of 3 years.

(iii) Provisionally registered/approved trusts and institutions under section 10(23C) or 12A will again need to apply for regular registration/approval at least six months prior to expiry of the period of the provisional registration/approval or within six months of the commencement of activities, whichever is earlier.

(iv) The trusts and institutions registered under section 10(23C) or 12A are required to apply at least six months prior to the expiry of re-registration/approval.

(v) Instances have come to the notice where certain trusts and have not applied for the regular registration after taking the provisional registration. It is proposed that on such violation, provisions of accreted income u/s 115TD of the Act shall apply on such trusts or institutions.

(vi) The amendments are proposed to be effective from assessment year 2023-24 and subsequent years.

Comments:

- *There may be instances of bona-fide mistake by the trusts/institutions for not applying for registration or approval in time. The proposed provisions in the present form empower the PCIT/CIT to even treat such mistake as 'specific violation' and cancel the registration. The impact of such cancellation can be very alarming as entire corpus may be subject to be*

treated as accreted income u/s 115TD of the Act. In my view, necessary representation needs to be made with respect to these proposals.

19.6. Alignment of the time limit for furnishing the form for accumulation of income and tax audit report

(i) Section 11(2)(c) of the Act provides that where the trust or institution under the second regime accumulates or sets apart its income, such trust or institution is required to furnish a statement in the prescribed form (Form 10) on or before the due date specified under section 139(1)of the Act.

(ii) Clause (2) of Explanation 1 to sub-section (1) of section 11 of the Act provides that where the trust or institution under the second regime deems certain income to be applied, such trust or institution is required to furnish a statement in the prescribed form (Form 9A) on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the return of income for the previous year.

(iii) The due date for furnishing form 9A and form 10 is same as the due date of furnishing the return of income. The trusts are also required to furnish audit report in form 10B/10BB one month before the due date for furnishing return of income. The auditors are required to report the details of form 10/9A in the audit report. Since the due date for furnishing form 9A/10 is one month before the due date of furnishing the ITR, auditors find it difficult to report.

(iv) In order to rationalise the provisions, it is proposed to provide for filing of Form No. 10A/9A at least two months prior to the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year

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

Comments:

- *Thus, we have three dates of compliance – Firstly Form 10A/9A, then Form 10B and lastly the furnishing of return.*

- *Denial of exemption where return of income is not furnished within time*

  (i) Amendments have been proposed in section 10(23C) and 12A(1) of the Act to provide that exemption shall be available only if the trust or institution has furnished its return within the time allowed u/s 139(1) or 139(4) of the Act. Exemption will not be available if such return is furnished by way of updated return in terms of section 139(8A) of the Act.

  (ii) These amendments will take effect from assessment year 2023-24 and subsequent assessment years

20. New Section 10(46A) providing exemption to development authorities established or constituted under Central/State Act etc

20.1. Existing Section 10(46) of the Act provides exemption to any specified income arising to a body or authority or Board or Trust or Commission, or a class thereof which –

(i) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;
(ii) is not engaged in any commercial activity; and
(iii) is notified by the Central Government in the Official Gazette for the purposes of this clause

20.2. It is proposed to amend the Act so as to exclude income of a body or authority or Board or Trust or Commission, under new section 10(46A), which has been established or constituted by or under a Central or State Act with one or more of the following purposes, namely: -

(i) dealing with and satisfying the need for housing accommodation;
(ii) planning, development or improvement of cities, towns and villages;
(iii) regulating, or regulating and developing, any activity for the benefit of the general public
(iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created.

20.3. These amendments will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

Comments:

- *It is worth referring to Hon'ble Supreme Court of India in the case of Assistant Commissioner of Income-tax (Exemptions) vs Ahmedabad Urban Development Authority in Civil Appeal No 21762 of 2017 wherein, vide its order dated 19.10.2022, it has been held that in sub-clause (b) of clause (46) of section 10 of the Act, "commercial" has the same meaning as "trade, commerce, business" in clause (15) of section 2 of the Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity".*

- *The judgement running into 149 pages has analyzed full evaluation of law, including different modifications made over the years, as well as juris prudence including a vast number of Supreme Court and High Court rulings. The Supreme Court decided what is the correct interpretation of proviso to Section 2 (15) of the Act. According to Supreme Court it is acceptable to engage in a commercial activity if that generates accidental profits and if those gains are used to further the institutions primary philanthropic goals. This is known as "feeding back". The Supreme Court further added in this case that the charges charged by the institution should not constitute unfair "cess fee or other consideration". As a result, the Revenue was directed to determine the aforesaid facts from tax payer's records on annual basis. In this order the Supreme Court endeavored to clear the confusion and held that the Charitable Institution promoting "general public utility" are not permitted to engage in trade and commerce or business unless it is actually*

done so in the purpose of actually carrying out general public utility and the charges for such activity should be not be significantly higher beyond the cost.

- *This judgement seems to be the reason behind the proposed amendment. The proposed amendment seeks to distinguish body or authority which have been established or constituted under a Central or State Act with the certain objectives mentioned in the proposed Bill. Thus, institution providing civic amenities, housing accommodation etc may continue to get exemption under proposed Section 10(46A) irrespective of the fact whether such activities constitute commercial activity or not. However, other institutions shall still continue to be governed by Section 10(46) of the Act, and thus may not get the blanket exemption for commercial activity.*

21. Increasing threshold limits for presumptive taxation schemes

21.1. Section 44AD of the Act, provide for a presumptive income scheme for small businesses, it applies to certain resident assessees (i.e., an individual, HUF or a partnership firm other than LLP) carrying on eligible business and having a turnover or gross receipt of two crore rupees or less. Under this scheme, a sum equal to 8% or 6% of the turnover or gross receipts is deemed to be the profits and gains from business subject to certain conditions. If assessee has claimed to have earned higher sum than 8% or 6%, then that higher sum is taxable.

21.2. Section 44ADA of the Act provides for a presumptive income scheme for small professionals. This scheme applies to certain resident assessees (i.e., an individual, partnership firm other than LLP) who are engaged in any profession referred to in sub-section (1) of section 44AA, and whose total gross receipts do not exceed fifty lakh rupees in a previous year. Under this scheme, a sum equal to 50% of the gross receipts is deemed to be the profits and gains from business. If assessee has claimed to have earned higher sum than 50%, then that higher sum is taxable.

21.3. Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceeds one crore rupees in any previous year. The limit is raised to ten crore rupees where at least 95% of receipts/payments are in non-cash mode. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipts in profession exceeds, fifty lakh rupees in any previous year. Those opting for and fulfilling the conditions laid in the presumptive scheme are exempt from audit under this section.

21.4. It is proposed to increase the threshold limits for presumptive scheme in section 44AD from two crores to three crores and section 44ADA from fifty lakhs to seventy five lakhs of the Act on fulfilment of certain conditions.

Comments:

- *Section 44AD and 44ADA was introduced to provide relief to the small businessmen/professionals from maintaining books of accounts.*
- *The proposed amendment to increase the threshold limits of section 44AD and section 44ADA is a further step in ease of compliance and provide relief to small business and professionals.*

- *Further the condition that the aggregate amount received in cash by the businesses and professionals should not exceed 5% of the total Gross Receipt to avail increased threshold limit under section 44AD and 44ADA is being introduced to promote non-cash transactions.*
- *Accordingly, the proposed amendment to include the consideration received from a non- resident will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status and further prevent and circulation of unaccounted money from non-residents also.*
- *The proposed amendments are being inserted as proviso to the existing provisions of the Act, without amending or modifying the existing provisions.*
- *These amendments will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-2025 and subsequent assessment years.*

22. Providing clarity on benefits and perquisites in cash

22.1. Section 28 of the Act provides for income that shall be chargeable to income-tax under the head "Profits and gains of business or profession". Clause (iv) of this section brings to chargeability the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

22.2. This provision was inserted through the Finance Act 1964 and the Circular no 20D dated 7th July 1964 issued to explain the provisions of this Act stated clearly that the benefit could be in cash or in kind.

22.3. It is proposed to amend clause (iv) of section 28 of the Act to clarify that provisions of said clause also applies to cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind.

Comments:

- *Since the Circular No 20D dated 7th July, 1964 issued to explain the provisions of this section 28(iv) stated clearly that the benefit could be in cash or in kind, therefore, the intention of the legislation while introducing this provision was also to include benefit or perquisite whether in cash or in kind.*
- *However, Courts have interpreted that if the benefit or perquisite are in cash, it is not covered within the scope of this clause of section 28 of the Act.*
- *In order to align the provision with the intention of legislature and in order to put rest to Court litigations on this matter, the proposed amendment has been included in the Finance Bill, 2023.*
- *This amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-2025 and subsequent assessment years.*
- *Since amendment is prospective, whether the amendment provides strength to assessee's contention for the period prior to 1st April, 2024 or not, remains to be seen.*

23. Provisions pertaining to 15% concessional tax to promote new manufacturing co-operative society

23.1. The Taxation Laws (Amendment) Act, 2019, inter-alia, inserted section 115BAB in the Act which provides that new manufacturing domestic companies set up on or after 01.10.2019, which commence manufacturing or production by 31.03.2023 and do not avail of any specified incentive or deductions, may opt to pay tax at a concessional rate of 15 per cent. The time for commencing manufacturing or production has been extended to 31.03.2024 by the Finance Act, 2022.Further company opting for such concessional rate will not get further deductions or exemptions.

23.2. Representation has been received for providing a level playing field between new manufacturing co-operative societies and new manufacturing companies by providing for the concessional tax regime of 15% to new manufacturing co-operative societies as well.

23.3. In view of the above, it is proposed to insert a new section 115BAE to the Act in which concessional tax regime is being provided for the new manufacturing cooperative societies as well. However the conditions for claiming concessional tax rate of 15% for the new manufacturing cooperative society will be materially similar to that which are applicable to the new manufacturing domestic companies.

Comments:

- *Earlier benefit of 15% concessional rate of tax was only applicable to new manufacturing domestic companies. However in the proposed amendment the government has widen its scope through introduction of Section 115BAE which deals with providing concessional benefit to new manufacturing co-operative societies as well.*
- *However it is to be considered that once the company or co-operative society has exercised such option then later it cannot be withdrawn.*
- *Conditions for claiming concessional tax given under Section 115BAB for new domestic manufacturing companies is materially similar to the conditions given under Section 115BAE for new manufacturing co-operative societies.*
- *These amendments shall be effective from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*

24. Provisions pertaining to Penalty for cash loan/ transactions against primary co-operatives

24.1. Section 269SS of the Act provides that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is Rs. 20,000 or more.

24.2. Similarly, section 269T provides that no loan or deposit shall be repaid otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is Rs. 20,000 or more. Certain exceptions have, however, been specified in the provisions.

24.3. Request was received to bring parity to Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural and Rural Development Bank ("PCARD") for limits on cash transactions with banking companies with regards to sections 269SS and 269T of the Act as they are involved in granting loans and accepting deposits from the rural segment.

24.4. Present provisions state that every person including PACS and PCARD are liable for penalty on accepting loan or deposit in cash exceeding Rs.20,000 as per Section 269SS as well as repayment of loan and deposit in cash exceeding Rs.20,000 under section 269T. Since PACS and PCARD are providing credit facilities at the grass-root level, relaxation may be made for them under the aforesaid provisions.

24.5. To provide relief to the low-income groups and facilitate easier conduct of business operations in such areas it has been proposed that an amendment may be made in the section 269SS of the Act by raising the limit of Rs. 20,000 to Rs. 2 lakh for PACS and PCARD. This will imply where such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member or such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member. The penalty would be leviable only if the amount of a loan or deposit is Rs. 2 lakh or more.

24.6. In continuation of the above, it is also proposed to amend the provisions to section 269T of the Act and increase the limit of Rs. 20,000 to Rs. 2 lakh in the case of PACS and PCARD. As a result, in a case where a deposit is paid by a PACS or a PCARD to its member or a loan is repaid to a PACS or a PCARD by its member, payment shall be made by an account payee cheque or account payee bank draft or online transfer through a bank account if the amount of such or deposit is more than Rs. 2 lakh. Penalty shall be imposable if the amount of such loan or deposit exceeds Rs. 2 lakh.

Comments:

- *Since the Primary Agricultural Credit Societies (PACS) and Primary Co-Operative Agricultural and Rural Development Bank (PCARD) are involved in granting loans and accepting deposits from the rural segment, the proposed amendment aims at providing relief to the lower income groups and to facilitate easier conduct of business operations in the rural areas.*
- *Primary Agricultural Credit Societies (PACS) and Primary Co-Operative Agricultural and Rural Development Bank (PCARD) are involved in granting loans and accepting deposits to or from its members.*
- *Section 269SS and 269T provides that if, any person accepts or repays any loan or deposits for an amount exceeding Rs 20,000, then such acceptance or repayment shall be made only by an account payee cheque or bank draft or online bank transfer.*
- *In continuation to the above, it has been proposed to increase the limit of Rs 20,000 to Rs 2 lakhs in case of PACS and PCARD. Penalty shall be imposable if the amount of loan or deposit exceeds Rs 2 lakhs.*
- *The main aim of Government here is to promote credit facilities being provided to the rural population. It is aimed to provide easy access of the credit facilities to the lower income groups in the rural areas.*

- *This amendment shall be effective from 1st April. 2023.*

25. Special provision for taxation of capital gains in case of Market Linked Debentures

25.1. It has been noticed that a variety of hybrid securities that combine features of plain vanilla debt securities and exchange traded derivatives are being issued through private placements and listed on stock exchanges. It is seen that such securities differ from plain vanilla debt securities.

25.2. 'Market Linked Debentures' are listed securities. They are currently being taxed as long- term capital gain at the rate of 10% without indexation. However, these securities are in the nature of derivatives which are normally taxed at applicable rates. Further, they give variable interests as they are linked with the performance of the market.

25.3. In order to tax the capital gains arising from the transfer or redemption or maturity of these securities as short-term capital gains at the applicable rates, it is proposed to insert a new section 50AA in the Act to treat the full value of the consideration received or accruing as a result of the transfer or redemption or maturity of the "Market Linked Debentures" as reduced by the cost of acquisition of the debenture and the expenditure incurred wholly or exclusively in connection with transfer or redemption of such debenture, as capital gains arising from the transfer of a short term capital asset.

25.4. Further, it is also proposed to define the 'Market linked Debenture' as a security by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices and include any securities classified or regulated as a Market Linked Debenture by Securities and Exchange Board of India.

Comments:

- *Presently, MLDs are mostly listed, and as listed securities they have 2 advantages:*
    - *First, there are exempt from withholding tax. This is one of the carve-outs in sec. 193.*
    - *Secondly, the holding period for capital gain purposes is 12 months, as opposed to 36 months in case of normal capital assets. This comes from sec. 2 (42A) of the Act.*
- *If a listed security is held for at least 12 months, and transferred or redeemed thereafter, the gain will be taxed as long-term capital gain, with a rate as low as 10%. Market-linked debentures is a concept that prevails world-over, with different names such as equity-linked bonds, index-linked bonds, etc. However, in India, the issuance of MLDs was being exploited as a tax arbitrage device.*
- *In the case of plain-vanilla NCDs, an investor is taxed on the regular interest payouts as per his/ her slab rates. While in case of listed MLDs, the investor is able to reduce his holding period to merely 12 months to claim the benefit of a long-term capital asset. With the Finance Minister's Budget proposals, the tax arbitrage goes away. If the tax arbitrage goes away, will the regulatory benefits be strong enough to hold the market for MLDs – the answer does not seem positive.*

- *The Budget proposes a double whammy for MLDs:*
    - *first, irrespective of the holding period, the tax will be a short-term capital gain, thereby hiking the rate of tax to the slab rate as may be applicable.*
    - *Secondly, the withholding tax exemption also goes away, which is proposed in case of all listed bonds, and without a grandfathering exemption. For capital gain treatment for MLDs, a new section 50AA is proposed to be inserted, to provide that irrespective of the holding period, capital gains on MLDs will be taken as "short-term capital assets".*
- *Interestingly, even if the tenure of the MLDs is 36 months or longer (which is the usual holding period for qualifying as a long-term capital asset), the MLDs will still be treated as short-term capital assets.*
- *Therefore, if the issuer/investor is desirous of achieving the classification as an MLD, and getting the various benefits under SEBI Regulations, then the issuer/ investor will have to reconcile with the entire income being taxed as short-term capital gain.*
- *This is, however, not to result in the coupons on the MLDs being taken as capital gains, as the capital gain treatment is applicable only to the consideration received on (a) transfer, (b) redemption or (c) maturity of the instrument. However, ironically, many of the MLDs do not have significant coupons – they typically have a redemption premium which makes up for the return.*
- *This amendment will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*

26. Rationalization of provisions related to the valuation of residential accommodation provided to employees

26.1. As per clause (2) of section 17 of the Act, "perquisite" inter alia includes value of rent-free accommodation or value of any concession in the matters of rent provided to employees by the employer. The employer may be either Central/State Government or other than that, with different methodologies of valuation of perquisites for the two categories of employers.

26.2. However, the methodology to compute the value of rent-free accommodation is prescribed in Rule 3 of the Income-tax Rules, 1962 (the Rules), while the methodology to compute the value of any concession in the matters of rent provided to employees by the employer is prescribed in the Explanations to the clause (2) of section 17.

26.3. It is proposed to amend the Explanation 1 to sub-clause (ii) of clause (2) of section 17 of the Act so as to provide that accommodation shall be deemed to have been provided at a concessional rate if the value of the accommodation computed in the prescribed manner exceeds the rent recoverable from, or payable by, the assessee.

26.4. Further, it is proposed to delete the Explanation 2, Explanation 3 and Explanation 4 of sub-clause (ii) of clause (2) of section 17 of the Act to rationalize the section and specify the method of computation for the value the accommodation provided to employee by his employer through proper prescription of the Rules.

Comments:

- *In order to rationalize this provision by prescribing a uniform methodology in the Rules for computing the value of perquisite and to clearly classify the two categories of perquisites with respect to accommodation provided by the employers, it is proposed to amend sub-clauses (i) and (ii) of clause (2) of section 17 of the Act. It is proposed to take the power of prescription of the method for computation of the value of rent-free accommodation provided to the assessee by his employer and the value of any accommodation provided to the assessee by his employer at a concessional rate.*
- *This amendment is proposed to take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*

27. Ease in claiming deduction on amortization of preliminary expenditure

27.1. Section 35D of the Act provides for amortization of certain preliminary expenses which are incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit. This includes expenditure in connection with preparation of feasibility report, project report etc.

27.2. The section inter-alia provides that the work in connection with the preparation of feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services would need to be carried out either by the assessee himself or by a concern which is approved by the Board.

27.3. In order to ease the process of claiming amortization of these preliminary expenses it is proposed to amend section 35D of the Act to remove the condition of activity in connection with these expenses to be carried out by a concern approved by the Board.

27.4. Instead, the assessee shall now be required to furnish a statement containing the particulars of this expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner.

27.5. This amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-2025 and subsequent assessment years.

Comments:

- *The proposed amendment has been brought in with an intent to ease the process of claiming amortization of preliminary expenses incurred in relation to preparation of feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services.*
- *The proposed amendment would mean that the specified activities can now be carried out by any body or organization, even if the same is not approved by Board. The assessee would have to furnish a statement, as may be specified, in order to claim the deduction under section 35D.*
- *The proposed amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-2025 and subsequent assessment years.*

28. No capital gains tax if physical gold converted to E-Gold Receipt and vice versa

28.1. The Hon'ble Finance Minister, Mrs. Nirmala Sitharaman, announced in the Union Budget, 2021 that SEBI would be given the responsibility to become the regulator of gold exchanges. Accordingly, SEBI had approved a framework to facilitate spot trading of the yellow metal in India. Consequently, with the formation of gold exchanges, India has already joined the league of countries like the UK, China and Turkey, which already have gold exchanges, for spot gold prices.

28.2. As per SEBI's framework, Electronic Gold Receipt or EGR represent gold. Similar to stock or securities, the EGR is also having features of trading, clearing as well as settlement in stock exchanges and are being held in the dematerialised form. SEBI has registered various corporate entities as Vault Managers who are involved in accepting gold, safeguarding it, storing it and creating EGRs.

28.3. It is also proposed that the cost of acquisition of the EGR for the purpose of computing capital gains shall be deemed to be the cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued, and the holding period for the purpose of capital gains, would include the period for which gold was held by the assessee prior to its conversion into EGR.

28.4. Similarly, provision for conversion from gold to EGR is also proposed.

Comments:

- *In order to promote the concept of Electronic Gold, it is proposed to exclude the conversion of physical form of gold into EGR and vice versa by a SEBI registered Vault Manager from the purview of 'transfer' for the purposes of Capital gains by way of insertion of new clause in section 47 of the Act.*
- *Where an Electronic Gold Receipt issued by a Vault Manager, becomes the property of the person as consideration of a transfer, as referred in the newly inserted clause in section 47, the cost of acquisition of the asset for the purpose of the said transfer, shall be deemed to be the cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued in terms of the proposed new sub-section (10) to section 49 of the Income Tax Act.*
- *Similarly, where the gold released against an Electronic Gold Receipt, which becomes the property of the person as consideration for a transfer, as referred in the newly inserted clause in section 47, the cost of acquisition of the asset (being gold) for the purpose of the transfer shall be deemed to be the cost of the Electronic Gold Receipt in the hands of such person.*
- *The holding period for the purpose of capital gain shall include the period for which the Gold was held by the assessee prior to conversion into the Electronic Gold Receipt and similarly the period for which the Electronic Gold Receipt was held by the assessee prior to conversion into the Gold by insertion of new clause (hi) in Explanation 1 of sub-section (42A) of section 2.*
- *These amendments will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*

29. Relief to start-ups in carrying forward and setting off of losses

29.1. Section 79 of the Act restricts carrying forward and setting off of losses in cases of companies, other than the companies in which the public is substantially interested. It prohibits setting off of carried forward losses if there is change in shareholding. The carried forward loss is set off only if at least 51% shareholding (as on the last date of the previous year) remains same with the company on the last date of the previous year to which the loss belongs.

29.2. However, some relaxation has been provided in case of an eligible start-up as referred to in section 80-IAC of the Act. The condition of continuity of at least 51%shareholding is not applicable to the eligible start-up, if all the shareholders of the company as on the last day of the year, in which the loss was incurred, continue to hold those shares on the last day of the previous year in which the loss is set off. There is an additional condition that the loss is allowed to be set off, under this relaxation, only if it has been incurred during the period of seven years beginning from the year in which such company is incorporated.

29.3. The time period for loss of eligible start-ups to be considered for relaxation is proposed to be increased from seven years to ten years from the date of incorporation.

29.4. Consequently, it is proposed to amend the proviso to sub-section (1) of section 79 of the Act so that the carried forward loss of eligible start-ups shall be considered for set off under this proviso, if such loss has been incurred during the period of ten years beginning from the year in which such company was incorporated.

Comments:

- *As per Section 80-IAC of the IT Act, 1961, an eligible start-up is allowed hundred per cent deduction from the GTI of profits and gains from eligible business for the period of 3 consecutive years out of 10 years beginning from the year in which the eligible start-up is incorporated*
- *Proviso to Section 79 allows an eligible start-up to carried forward and set off of losses incurred during the period of 7 years beginning from the year of incorporation, even if the condition mentioned in section 79 (1) is not satisfied.*
- *This amendment has proposed to change the time limit of 7 years in proviso to section 79(1) to 10 years in order to align the same with the sub section 2 of section 80-IAC.*

30. Preventing Misuse of presumptive schemes u/s 44BB & 44BBB

30.1. Section 44BB of the Act provides for presumptive scheme in the case of a non-resident assessee who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils. Under the scheme, a sum equal to 10% of the aggregate of the amounts specified in sub-section (2) of the said section is deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

30.2. Section 44BBB of the Act provides for presumptive scheme in the case of a non-resident foreign company who is engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government. Under this scheme, a sum equal to ten per cent of the amount paid or payable (whether in or out of India) to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning is deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

30.3. It is proposed to insert a new sub-section to section 44BB and to section 44BBB of the Act to provide that notwithstanding anything contained in sub- section (2) of section 32 and sub-section (1) of section 72, where an assessee declares profits and gains of business for any previous year in accordance with the provisions of presumptive taxation, no set off of unabsorbed depreciation and brought forward loss shall be allowed to the assessee for such previous year.

Comments:

- *It is seen that taxpayers opt in and opt out of presumptive scheme in order to avail benefit of both presumptive scheme income and non-presumptive income. In a year when they have loss, they claim actual loss as per the books of account and carry it forward. In a year when they have higher profits, they use presumptive scheme to restrict the profit to 10% and set off the brought forward losses from earlier years. Conceptually, if assessee is maintaining books of account and claiming losses as per such accounts, he should also disclose profits as per accounts. There is no justification for setting off of losses computed as per books of account with income computed on presumptive basis.*
- *To avoid such misuse of 44BB & 44BBB by taxpayers, the proposed amendments has inserted which will not allow to set off unabsorbed depreciation and brought forward losses against the profit declared under section 44BB and 44BBB.*
- *These amendments will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-2025 and subsequent assessment years.*

31. Facilitating certain strategic disinvestment

31.1. Section 79 of the Income Tax 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.

31.2. Section 79 of the Income Tax Act was amended in the Finance Bill 2022 to facilitate strategic disinvestment of public sector companies, providing that provisions of section 79 (1) shall not apply to an erstwhile public sector company.

31.3. Sub-section (2) of the said section provides certain circumstances in which 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.

- 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.

- The terms “erstwhile public sector company” and “strategic disinvestment” shall have the meaning assigned to in clause (ii) and (iii) of the Explanation to clause (d) of sub-section (1) of Section 72A respectively.

31.4. Section 72A of the Income Tax Act relates to provisions on carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger. Sub-section (1) of section 72A provides that in specified cases, accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the accumulated loss and unabsorbed depreciation of amalgamated company for the previous year in which the amalgamation was affected.

31.5. Conditions have also been laid down in the said section to facilitate carry forward and set off of loss and unabsorbed depreciation in the case of strategic disinvestment. ‘Strategic disinvestment’ has been defined as “sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding below fifty-one per cent along with transfer of control to the buyer”.

31.6. Section 72AA of the Act relates to carry forward of accumulated losses and unabsorbed depreciation allowance in a scheme of amalgamation in certain cases, which, inter-alia, includes amalgamation of one or more banking company with any other banking institution.

31.7. To facilitate further strategic disinvestment, it is proposed to amend the definition of ‘strategic disinvestment’ in section 72A of the Act so as to provide that strategic disinvestment shall mean sale of shareholding by the Central Government, the State Government or Public Sector Company in a public sector company or a company which results in:

- reduction of its shareholding below fifty-one per cent, and

- transfer of control to the buyer.

31.8. The first condition shall apply in case the shareholding was above fifty one percent before such sale of shareholding. The requirement of transfer of control may be carried out by either the Central Government or State Government or Public Sector Company (or any two of them or all of them).

31.9. It is also proposed to amend section 72AA of the Act to allow carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of one or more banking company with any other banking institution or a company subsequent to a strategic disinvestment, if such amalgamation takes place within 5 years of strategic disinvestment.

Comments:

- *The Hon'ble Finance Minister in her Budget Speech clearly stated that the proposed amendments have been made in order "to allow carry forward of losses on strategic disinvestment including that of IDBI Bank".*
- *45.48% of IDBI Bank shares are currently held by the Central Government and 49.24% of IDBI Bank shares are currently held by LIC of India. In such a scenario, any disinvestment in IDBI Bank would not fall under the existing definition of 'Strategic Disinvestment' as neither the Central Government nor the State Government own more than 51% shares of the company.*
- *In view of the above, 'strategic disinvestment' has been proposed to be amended to include disinvestment by public sector undertaking (such as LIC of India) making the disinvestment of IDBI Bank eligible for carry forward of losses by way of transfer of control by the Central Government of India and a public sector company (being LIC of India) together.*
- *Further, amendments have also been proposed to enable carry forward and set off losses of a banking company even if the scheme of amalgamation is not sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 and instead the same has been done between banking companies and institutions subsequent to a strategic disinvestment and within a period of five years from such strategic disinvestment as defined in the proposed amended Section 79.*
- *This amendment will take effect from 1st April, 2023 and will accordingly apply to the assessment year 2023-24 and subsequent assessment years.*

32. Tax avoidance through distribution by business trusts to its unit holders

32.1. Finance (No.2) Act, 2014 introduced a special taxation regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT) [commonly referred to as business trusts]. The special regime was introduced in order to address the challenges of financing and investment in infrastructure. The business trusts invest in special purpose vehicles (SPV) through equity or debt instruments.

32.2. Keeping in mind the business structure, the special taxation regime under section 115UA of the Act, inter-alia, provides a pass-through status to business trusts in respect of interest income, dividend income received by the business trust from a special purpose vehicle in case of both REIT and InvIT and rental income in case of REIT. Such income is taxable in the hands of the unit holders unless specifically exempted.

32.3. Sub-section (1) of section 115UA of the Act, inter-alia, provides any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by the business trust.

32.4. Further, Sub-section (3) of section 115UA of the Act, inter-alia, provides that if the "distributed income" received by a unit holder from the business trust is of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act i.e., is either rental income of the REIT or interest or dividend received by the business trust from the SPV, then, such distributed income or part thereof shall be deemed to be income of such unit holder.

32.5. It has been noticed in certain cases that business trusts distribute sums to their unit holders which are categorized in the following four categories:

- Interest;
- Dividend;
- Rental income;
- Repayment of debt.

32.6. As has been stated above, interest, dividend and rental income have been accorded a pass-through status at the level of business trust and are taxable in the hands of the unit holder. However, in respect of the distributions made by the business trust to its unit holders which are shown as repayment of debt, it is actually an income of unit holder which does not suffer taxation either in the hands of business trust or in the hands of unit holder.

32.7. It is proposed to make such sum received by unit holder taxable in his hands. However, provision is also proposed for a situation when the sum received by unit holder represents redemption of unit held by him.

32.8. Hence it is proposed to amend the Act by way of,-

- insertion of clause (xii) in sub-section (2) of section 56 of the Act to provide that income chargeable to income-tax under the head "income from other sources" shall also include any sum, received by a unit holder from a business trust, which is not in the nature of income as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act; and is not chargeable to tax under sub-section (2) of section 115UA of the Act;

- It is also proposed to insert a proviso to the said clause to provide that where the sum received by a unit holder from a business trust is for redemption of unit or units held by him, the sum received shall be reduced by the cost of acquisition of the unit or units to the extent such cost does not exceed the sum received;

- Further proposal has been made to insert of sub-section (3A) in section 115UA of the Act to provide that the provisions of sub - sections (1), (2) and (3) of this section,

shall not apply in respect of any sum, as referred to in clause (xii) of sub-section (2) of section 56 of the Act, received by a unit holder from a business trust;

- It is also proposed to insert of sub-clause (xviic) in clause (24) of section 2 of the Act to provide that income shall include any sum referred to in clause (xii) of sub-section (2) of section 56 of the Act.

32.9. These amendments will take effect from 1st April, 2024 and will accordingly apply to assessment year 2024-25 and subsequent assessment year

Comments:

- *It may be noted that dual non-taxation of any distribution made by the business trust i.e. which is exempt in the hands of the business trust as well as the unit holder, is not the intent of the special taxation regime applicable to business trusts. Accordingly, the amendment has been proposed in various section.*

33. Rationalization of the provisions of the Prohibition of Benami Property Transactions Act, 1988 (the PBPT Act)

33.1. Under the existing provisions of section 46 of the PBPT Act, any person, including the Initiating Officer (IO), aggrieved by the order of the Adjudicating Authority, may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date of the order. The order often takes time to reach the office of the Initiating Officer or the approving authority and, it is difficult to file an appeal within the prescribed time limit and leads to delay in such filing.

33.2. Hence, it is proposed that the provisions of section 46 of the PBPT Act may be amended to allow the filing of appeal against the order of the Adjudicating authority within a period of 45 days from the date when such order is received in the office of the Initiating Officer or the aggrieved person as the case may be. Similar change is also proposed with reference to the order passed by an authority under section 54A of the PBPT Act.

33.3. Under the existing provisions of section 2(18) of the PBPT Act, the 'High Court', for the purpose of filing appeal against the order of the Adjudicating authority, have been defined as Jurisdiction of such High Court within which either the aggrieved party ordinarily resides or carries on business or personally works for gain, or if the aggrieved party is Government then, jurisdiction of the High Court within which the respondent, or any respondent in case of multiple respondents resides, or carries on business or works for gain. It has been observed that the non-residents against whom proceedings under PBPT Act have been initiated and who does not fall in the category of appellant or respondent mentioned in the definition, do not fall under the jurisdiction of any High Court.

33.4. Hence, to enable the determination of High Court jurisdiction for the non-resident appellants or respondents, it is proposed to amend section 2(18) of the PBPT Act to modify the definition of 'High Court' by inserting a proviso so as to provide that where the aggrieved party does not ordinarily reside or carry on business or personally work for gain in the jurisdiction of any High Court or where the Government is the aggrieved

party and any of the respondents do not ordinarily reside or carry on business or personally work for gain in the jurisdiction of any High Court, then the High Court shall be such within whose jurisdiction the office of the Initiating Officer is located.

33.5. These amendments will take effect from the 1st day of April, 2023.

Comments

- *The proposed amendment has been made to allow the filing of appeal against the order of the Adjudicating authority within a period of 45 days from the date when such order is received in the office of the Initiating Officer or the aggrieved person as the case may be in place of existing provisions under section 46 of the PBPT Act which states that appeal needs to be filed against the order of the Adjudicating Authority with in a period of 45 days from the date of the order.*

- *Further, under the existing provision of section 2(18) of the PBPT Act enables to file an appeal only to the ordinary resides. However, the proposed amendment has been made where it was seen that the non-resident can also file an appeal against the order of the Adjudicating Authority*

V. PROVISIONS RELATING TO TDS / TCS

34. Increasing rate of TCS of certain remittances

34.1. Section 206C of the Act provides for TCS on business of trading in alcohol, liquor, forest produce, scrap etc. Sub-section (1G) of the aforesaid section provides for TCS on foreign remittance through the Liberalised Remittance Scheme and on sale of overseas tour package.

34.2. The aforesaid section is proposed to be amended as follows:

Sl. No.	Type of remittance	Present rate	Proposed rate
(i)	Overseas tour package	5% without any threshold limit.	20% without any threshold limit.
(ii)	Any other case	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	20% without any threshold limit.

Comments:

- *The increase in TCS on Overall Tour Package from 5% to 20% can be seen as a step to encourage domestic travel in the country.*
- *The proposed amendment for removal of upper limit of amount (previously Rs.7 lacs) aims at increasing the overall tax base by taking into the purview large number of individuals who are trading and investing in International Stocks & Cryptocurrencies as well it can be seen as a step taken by government towards achievement of an estimate of Fiscal Deficit from 8.5% of GDP to 4.5% of GDP by 2025-26.*

- *It should be noted that increase in the TCS rate of 5% to 20% and the removal of upper limit of amount will also affect many retail investors who invest in International stocks as 20% of there capital will get blocked with government and it will adversely impact platforms offering services of International Stock and International Crypto exchanges.*
- *The said amendments will take effect from 1st July,2023.*

35. TDS and taxability on net winnings from online games

35.1. It was proposed to amend the provisions of sections 194B and 194BB as follows :

- To amend section 194B and 194BB of the Act to provide that deduction of tax under these sections shall be on the amount or aggregate of the amounts exceeding ten thousand rupees during the financial year;
- To amend section 194B of the Act to include "gambling or betting of any form or nature whatsoever" within its scope;
- To amend section 194B of the Act to exclude online games from the purview of the said section from the 1st day of July, 2023, since a new section 194BA is proposed to be introduced for deduction of tax at source on winnings from online games from that date;
- To insert a new section 194BA in the Act, with effect from 1st July 2023, to provide for deduction of tax at source on net winnings in the user account at the end of the financial year. In case there is withdrawal from user account during the financial year, the income-tax shall be deducted at the time of such withdrawal on net winnings comprised in such withdrawal. In addition, income-tax shall also be deducted on the remaining amount of net winnings in the user account at the end of the financial year. Net winnings shall be computed in the prescribed manner.
- To insert a new section 194BA in the Act, with effect from 1st July 2023, to provide for deduction of tax at source on net winnings in the user account at the end of the financial year.
- To provide in the proposed section 194BA that in a case where the net winnings are wholly in kind 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 the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings;
- To provide the definition of "computer resource", "internet", "online game", "online gaming intermediary", "user", "user account" in the proposed section 194BA;
- To amend section 115BB of the Act to exclude income from winnings from online games from the purview of the said section from the assessment year 2024-25, since it is proposed to introduce section 115BBJ to tax winnings from online games from that assessment year;

- To insert a new section 115BBJ in the Act with regard to tax on winnings from online games to provide that where the total income of an assessee includes any income by way of winnings from any online game, the income-tax payable shall be the aggregate of the amount of income-tax calculated on net winnings from such online games during the previous year, computed in the prescribed manner, at the rate of thirty per cent.

- To provide the definition of “computer resource”, “internet”, “online game” in proposed section 115BBJ.

Comments:

- *In order to mitigate attempts made by tax deductors to avoid the tax deduction by splitting a winning into multiple transactions each below Rs 10,000/- (which was against the intention of the legislature), it was necessary to bring amendments in sections 194B and 194BB. The proposed amendment provides that deduction of tax under these sections shall be on the amount or aggregate of the amounts exceeding ten thousand rupees during the financial year.*
- *Due to rise in users of online gaming, government has proposed insertion of new section 115BBJ in the Act, which provides for taxation on winnings from online games at the rate of 30%.*
- *The government also proposes insertion of Section 194BA for provisions of TDS on Net Winnings from Online Games. TDS will be deducted on Net Winnings in User Accounts at the end of financial year. If there is withdrawal from user account during the financial year, TDS shall be deducted at the time of withdrawal from user account.*
- *Further Section 194B to include “gambling or betting of any form or nature”.*
- *Applicability of above Amendments/New Sections are as follows :*

Particulars	***Applicable w.e.f.***
Amendment in Sec 194B & 194BB	*1.4.2023*
Amendment in Sec 115BB	*1.4.2024*
New Section 194BA	*1.7.2023*
New Section 115 BJJ	*1.4.2024*

36. Alignment of provisions of section 45(5A) with the TDS provisions of section 194-IC

36.1. The existing provisions of the sub-section (5A) of section 45 of the Act, inter alia, provide that in case of a capital gain arising to an assessee (individual and HUF), from the transfer of a capital asset, being land or building or both, under a Joint Development agreement (JDA), the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.

36.2. Further, for computing the capital gains amount on this transaction, the full value of consideration shall be taken as the stamp duty value of his share, as increased by the consideration received in 'cash'.

36.3. It is proposed to amend the provisions of sub-section (5A) of section 45 so as to provide that the full value of consideration shall be taken as the stamp duty value of his/its share as increased by any consideration received in 'cash or by a cheque or draft or by any other mode'.

Comments:

- *It had been noticed that the taxpayers were inferring that any amount of consideration which is received in a mode other than cash, i.e., cheque or electronic payment modes would not be included in the consideration for the purpose of computing capital gains chargeable to tax under sub-section (5A) of section 45.*
- *Hence, non-payment of tax on such consideration received in a mode other than cash was becoming prevalent leading to litigations.*
- *However, this is not in accordance with the intention of law as is evident from the provisions of section 194-IC of the Act which, inter alia, provides that tax shall be deducted on any sum by way of consideration (other than in kind), under the agreement referred to in sub-section (5A) of section 45, paid to the deductee in cash or by way of issue of a cheque or draft or any other mode.*
- *In order to remove this ambiguity in the provisions of section 45(5A) read with section 194-IC, the amendment has been proposed.*
- *The proposed amendment shall take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*
- *The prospective applicability of the proposed amendment has left ambiguity in interpretation of law for period before 1st day of April, 2024.*
- *Further, it is important to note here that taxing of receipt of money in 'cash' by Individuals and HUFs against specified agreements could never have been the intention of law as any receipt in cash of an amount in excess of Rs. 2,00,000/- would in any case have attracted penalty of 100% under the provisions of section 269ST.*

37. Providing clarity on TDS deduction on benefits and perquisites in cash

37.1. Section 194R of the Act inserted by the Finance Act 2022 provides for deduction of tax on benefit or perquisite provided to a resident arising from business or exercise of a profession.

37.2. Sub-section (1) of said section provides for tax deduction at source at the rate of 10% of the value or aggregate of value of such benefit or perquisite. The responsibility of tax deduction at source has been fixed on a person who is responsible for providing to a resident any benefit or perquisite, whether convertible into money or not, arising from a business or the exercise of a profession by such resident.

37.3. First proviso to sub-section (1) provides that 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 or perquisite shall before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite.

37.4. Sub-section (2) provides for issuance of guidelines by CBDT (with the approval of the Central Government) for the purpose of removing difficulties. Accordingly Circular No 12 dated 16th June, 2022 was issued. This circular, inter-alia, provides that tax under section 194R is required to be deducted whether the benefit or perquisite is in cash or in kind.

37.5. Accordingly, it is proposed to clarify by way of insertion of an Explanation to section 194R of the Act to provide that provisions of sub-section (1) apply to benefit or perquisite whether in cash or in kind or partly in cash and partly in kind.

Comments:

- *The amendment is consequential in nature to the proposed amendment to section 28(iv).*
- *This amendment will take effect from 1st April, 2023.*

38. Relief from special provisions for higher rate of TDS/TCS for non-filers if income-tax returns

38.1. Section 206AB of the Act provides for special provision for higher TDS for non-filers of income-tax returns. Similarly, section 206CCA of the Act provides for special provision for higher TCS for non-filers of income-tax returns. These non-filers in these sections are referred to as "specified person".

38.2. These sections define "specified person" to mean a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted or collected (as the case may be)-

(i) for which the time limit for furnishing the return of income under sub-section (1) of section 139 has expired; and

(ii) the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in the said previous year.

38.3. The provisos to these definitions exclude a non-resident from the definition of specified person, if the non-resident does not have a permanent establishment in India.

38.4. There may be certain persons who are not required to furnish the return of income. Hence, in order to provide relief in such cases, it is proposed to amend the definition of the "specified person" in sections 206AB and 206CCA of the Act so as to exclude a person who is not required to furnish the return of income for the assessment year relevant to the said previous year and who is notified by the Central Government in the Official Gazette in this behalf.

Comments:

- *The proposed amendment is to exclude the persons who are not required to furnish the return of income from the category of non- filers.*
- *This amendment will take effect from 1st April, 2023.*

39. Extending the scope for deduction of tax at source to lower or nil rate

39.1. Section 197 of the Act relates to grant of a certificate of tax deduction at lower or nil rate. It provides for assessee to apply to the Assessing Officer for TDS at zero rate or lower rate, if the tax is required to be deducted under sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC, 194M, 194-O and 195 of the Act. If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or zero rate, he is required to give an appropriate certificate to the assessee.

39.2. Section 194LBA of the Act, inter-alia, provides that business trust shall deduct and deposit tax at the rate of 5% on interest income of non-resident unit holders. Representations have been received that in some cases rate of deduction may be required to be reduced due to some exemption, for example exemption under section 10(23FE) of the Act allowed to notified Sovereign Wealth Funds and Pension Funds. However, since certificate for lower deduction under section 194LBA of the Act cannot be obtained under section 197 of the Act, benefit of exemption is not available at the time of tax deduction.

39.3. To remove this difficulty, it is proposed to amend sub-section (1) of section 197 of the Act to provide that the sums on which tax is required to be deducted under section 194LBA of the Act shall also be eligible for certificate for deduction at lower rate.

Comments:

- *Previously, Section 194LBA was not included in the list of sections for which Assessing Officer can issue Lower or Nil Tax Deduction Certificate under Section 197 of the Act.*
- *Provisions of Section 10(23FE) provides exemption in respect of any income of a specified person (Specified Person includes Wholly Owned Subsidiary of Abu Dhabi Investment Authority, Sovereign Wealth Fund and Pension Fund) in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or share capital or unit, if the investment is made on or after the 1st day of April, 2020 but on or before the 31st day of March, 2024, held for at least three years and is in business trust.*
- *With exempt income under Sec 10(23FE) of the Act, the tax liability in hands of non resident is reduced to extent or nil. There was need to include Sec 194LBA in the list sections given in Section 197 and to reduce the difficulties of tax payers to claim refund of TDS, the above amendment is made which provides that with if assesses i.e., unit holders is having Lower or Nil Rate Tax Deduction Certificate, then Payer, i.e. Business Trust won't deduct TDS u/s 194 LBA at the time of payment of interest to the non-resident unit holders.*
- *This amendment will take effect from 1st April, 2023.*

40. Increasing threshold limit for co-operatives to withdraw cash without TDS

40.1. Section 194N of the Act provides that a banking company or a co-operative society engaged in carrying on the business of banking or a post office, which is responsible for paying any sum to any person (referred to as the recipient) shall, at the time of payment of such sum in cash, deduct an amount equal to two per cent of such sum, as income-tax. The requirement to deduct tax applies only when the payment of amount or aggregate of amount in cash during the year exceeds one crore rupees.

40.2. However, in case of a recipient who is a non-filer tax is to be deducted at the rate of 2% on any sum exceeding Rs. 20 lakh but not exceeding Rs. 1 crore in aggregate during the financial year and, at the rate of 5% on sum exceeding Rs. 1 crore in aggregate during the financial year.

40.3. Non-filer means a recipient who has not filed any income-tax return for all of the three assessment years relevant to the three previous years immediately preceding the previous year in which such payment is received.

40.4. It is proposed to amend section 194N of the Act by inserting a new proviso to provide that where the recipient is a co-operative society, the provisions of this section shall have effect, as if for the words “one crore rupees”, the words “three crore rupees” had been substituted.

Comments:

- *Due to nature of activities conducted/run by Co-Operative Societies, Cash Withdrawals are generally very high.*
- *However, the primary motive of co-operative societies is not profit-making. To protect the interests of weaker sections, a Cooperative Society is formed. It is a voluntary association of people, whose motive is the welfare of the contributors and have social goals.*
- *To reduce the hardship of TDS on Cash Withdrawals for Co-Operative Societies, it is proposed to enable co-operatives to withdraw cash upto Rs. 3 crore in a year without being subjected to TDS on such withdrawal.*
- *This amendment will take effect from 1st April, 2023.*
- *Hence, the tax rates under 194N will be as follows :*

Nature of Assessee	***20 lakhs – 1 crore***	***1 crore – 3 crore***	***> 3 crore***
Co-Operatives – Non Filers	*2%*	*2%*	*5%*
Co-Operatives – Regular Filers	-	-	*2%*
Any Person than Co-Operatives – Non-filers	*2%*	*5%*	*5%*

Any Person than Co-Operatives – Regular Filers	*-*	*2%*	*2%*

- *However, the existing provision of exemption to persons notified under this section from applicability of this section still remains same.*

41. Removal of exemption from TDS on payment of interest on listed debentures to a resident

41.1. Section 193 of the Act provides for TDS on payment of any income to a resident by way of interest on securities.

41.2. The proviso to section 193 of the Act provides exemption from TDS in respect of payment of interest on certain securities. Clause (ix) of the proviso to the aforesaid section provides that no tax is to be deducted in the case of any interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India.

41.3. It is seen that there is under reporting of interest income by the recipient due to above TDS exemption. Hence, it is proposed to omit clause (ix) of the proviso to section 193 of the Act.

Comments:

- *This section is applicable only for resident assesses.*
- *There was huge evasion of taxes by under-reporting of interest income. Government has applied TDS provisions in phased manner to get revenue directly from the payer and curb the loss of tax revenue. Consequently, this budget removes exemption of tax deduction on payment of interest on listed debentures to a resident u/s 193.*
- *The rate of tax deduction has been specified at 10%.*
- *This amendment will take effect from 1st April, 2023.*

42. Excluding non-banking financial companies (NBFC) from restriction on interest deductibility

42.1. Section 94B of the Act provides restriction on deduction of interest expense in respect of any debt issued by a non-resident, being an associated enterprise of the borrower. It applies to an Indian company, or a permanent establishment of a foreign company in India, who is a borrower. If such person incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession", the interest deductible shall be restricted to the extent of 30% of its earnings before interest, taxes, depreciation and amortisation (EBITDA). Proviso to this section brings within its scope certain debt issued by a lender who may not be an associated enterprise of the borrower.

42.2. Sub-section (3) of this section excludes certain companies that are engaged in the business of banking or insurance from its scope.

42.3. It is proposed to amend sub-section (3) of section 94B of the Act to provide a carve out to certain class of NBFCs and to provide that nothing contained in sub-section (1) of section 94B of the Act shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance or such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf.

42.4. It is also proposed to provide that for the purposes of this section, “non-banking financial company” shall have the same meaning as assigned to it in clause (vii) of the Explanation to clause (viia) of sub-section (1) of section 36 of the Act.

Comments:

- *The above amendment provides relief from disallowance of interest expenses or similar nature (like gurantee commission, etc) incurred by an Indian company or a permanent establishment of a foreign company in India which is engaged in the such class of non-banking financial companies as may be notifed in respect of any debt issued by a non-resident, being an associated enterprise. .*
- *This amendment will take effect from 1st April, 2024 and will accordingly apply to assessment year 2024-25 and subsequent assessment years.*

43. Tax treaty relief at the time of TDS under section 196A of the Act

43.1. Section 196A of the Act provides for TDS on payment of certain income to a non-resident (not being a company) or to a foreign company, at the rate of 20%. The income is required to be in respect of units of a Mutual Fund specified under clause (23D) of section 10 of the Act or from the specified company referred to in the Explanation to clause (35) of section 10 of the Act.

43.2. In order to provide the relief requested by taxpayers, it is proposed to insert a proviso to sub-section (1) of section 196A of the Act. This proviso seeks to provide that the TDS would be at the rate which is lower of the rate of 20% and the rate or rates provided in agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A of the Act, in case of a payee to whom such agreement applies and such payee has furnished the tax residency certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A of the Act.

Comments:

- *In view of representations received from Non-Residents of Countries which with India has signed tax treaties and some tax treaties providing rates lower rates than 20%, the proposed budget makes amendment in structure of rates of TDS from existing “fixed 20%” to “Lower of – (a) 20% or (b)Rates Provided in DTAA" in respect of payment of certain income in respect of units by any person(UTI/MF) to non-resident (not being a company) or to a foreign company.*
- *This amendment will take effect from 1st April, 2024 and will accordingly apply to assessment year 2024-25 and subsequent assessment years.*

44. TDS on payment of accumulated balance due to an employee

44.1. Section 192A of the Act provides for TDS on payment of accumulated balance due to an employee under the Employees' Provident Fund Scheme, 1952. The existing provisions of section 192A of the Act, inter-alia, provide for deduction of tax at the rate of 10% of the taxable component of the lump sum payment due to an employee. Further, no deduction of tax is to be made where the amount of such payment or the aggregate amount of such payment to the payee is less than fifty thousand rupees.

44.2. The second proviso to section 192A of the Act provides that any person entitled to receive any amount on which tax is deductible shall furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax, failing which tax shall be deducted at the maximum marginal rate.

44.3. It is proposed to omit the second proviso to section 192A of the Act, so that in case of failure to furnishing of PAN by the person relating to payment of accumulated balance due to him, tax will be deducted at the rate of 20% as in other non-PAN cases in accordance with section 206AA of the Act, instead of at the maximum marginal rate.

Comments:

- *It was observed that many low-paid employees do not have PAN and thereby TDS is being deducted at the maximum marginal rate in their cases under section 192A, which was a harsh provision. Though Tax Liability was very less or negligible, they had to face hardships of filing income tax return (ITR) and claim return of TDS. Many times, it happened that employee has not filed ITR and ended up paying tax at such higher rate of tax.*
- *To reduce the difficulties faced by employees without PAN, government has reduced the TDS rates in case of Non-PAN Employees from Maximum Marginal Rate to "20% or as per Sec 206CCA of Act", as applicable. Hence, it is welcome amendment.*
- *This amendment will take effect from 1st April, 2023.*

45. Amendments in consequence to new provisions of TDS

45.1. Section 271C of the Act has provisions for penalty for failure to deduct tax at source. Under this section, a person who has failed to deduct whole or part of tax as required under provisions of Chapter XVII-B (Tax Deduction at Source - TDS) or pay the whole or part of tax as required under section 115-O (Tax on distributed profits) or under proviso to section 194B (tax on winnings from crossword, lottery, puzzles etc) is liable to pay penalty of sum equal to the amount of tax he failed to deduct or pay. Section 276B of the Act makes provisions for prosecution for failure to pay tax to the credit of Central Government under Chapter XII-D (as required under section 115-O) or under XVII-B (deduction at source).

45.2. Section 194S makes provisions for deduction of tax on payment on transfer of virtual digital asset (VDA) owing to their very nature, payments related to benefit or perquisite or VDA may also be wholly in kind or partly in cash and partly in kind. Accordingly, the first proviso to section 194R provides that in case the benefit or perquisite or VDA has a "in kind" component, then the person responsible shall ensure that required amount of tax has been paid, before releasing the benefit or perquisite. In addition, section

194BA is proposed to be inserted in the Act vide the Bill to provide for TDS on net winnings from online games.

45.3. In the case of VDA, since the consideration for transfer could be in exchange of another VDA (fully "in kind") or partly in kind, the first proviso to section 194S provides that the person responsible for paying the consideration shall ensure that the required amount of tax has been paid, before releasing the consideration.

45.4. Presently, the provisions for penalty and prosecution do not clearly mandate a penalty or prosecution for a person who does not pay or fails to ensure that tax has been paid in a situation where the benefit or perquisite is passed in kind. Therefore, to enable such penalty and prosecution, it is proposed to amend section 271C inserting two new sub- clauses under clause (b) in sub-section (1) providing reference to the first proviso to section 194R and the first proviso to section 194S. Similar amendments are also proposed in section 276B.

45.5. Further, in consequence to the proposal to insert section 194BA in the Act, it is proposed to insert a new sub-clause under section 271C and section 276B providing reference to sub- section (2) of section 194BA.

Comments:

- *In recent years, crypto currency and online games has gained immense popularity. Exchange of Virtual Digital Assets and Winnings from Online Games may be fully or partly in kind.*
- *Presently, the provisions for penalty and prosecution do not clearly mandate a penalty or prosecution for a person who does not pay or fails to ensure that tax has been paid in a situation where the benefit or perquisite is passed in kind. There was an ambiguity relating to transactions relating to failure of TDS u/s Sections 194S and 194R in tax laws. To remove the ambiguity and enable more penalty and prosecution, it is proposed to amend section 271C inserting three new sub- clauses covering sections 194S, 194R and proposed 194BA in the Finance Bill, 2023.*
- *Similar changes have been also been proposed in Section 276B by inserting three new sub- clauses covering sections 194S, 194R and proposed 194BA in the Finance Bill, 2023.*
- *Applicability of above Amendment is proposed as follows :*

Particulars	***Applicable w.e.f.***
Amendment relating 194S & 194R	*1.4.2023*
Amendment relating 194BA	*1.7.2023*

VI. OTHERS

46. Extension of date of incorporation for eligible start-up for exemption

46.1. The existing provisions of the section 80-IAC of the Act, inter alia, provides for a deduction of an amount equal to hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years, beginning from the year of incorporation, at the option of the assessees 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 2023.

46.2. It is proposed to amend the provisions of section 80-IAC of the Act so as to extend the period of incorporation of eligible start-ups to 1st day of April 2024.

Comments:

- *In order to further promote the development of start-ups in India and to provide them with a competitive platform, it is proposed to amend the provisions of section 80-IAC of the Act so as to extend the period of incorporation of eligible start-ups to 1st day of April 2024.*
- *This amendment will take effect from the 1st day of April, 2023 and shall accordingly, apply in relation to the assessment year 2023-24 and subsequent assessment years.*

47. Extension of deeming provision under section 9 to gift to not-ordinarily resident

47.1. Section 9(1) of The Income Tax Act provides a list of incomes which are deemed to accrue or arise in India.

47.2. As per the old provisions of Section 9(1)(viii) any sum of money exceeding fifty thousand rupees, received by a non-resident without consideration from a person resident in India, on or after the 5th day of July, 2019, shall be income deemed to accrue or arise in India.

47.3. The said provisions are proposed to be amended by including resident but not ordinarily resident into the purview of the said provision.

Comments:

- *The proposed amendment will take effect from assessment year 2024-25 and will apply to subsequent assessment years.*
- *Currently, the gifts made by a Resident to a person who is also a Resident is taxable under Section 56(2)(x) but the gifts made to a Resident but not ordinarily resident is out of the purview of Income Tax Act as it was neither received in India nor it was included in the definition of Income deemed to accrue or arise in India.*
- *The aforesaid clause has been proposed to be included with a view to bring such gifts made by residents to a person who is resident but not ordinarily resident under the tax net.*

- *Thus, the said amendment will result in a larger tax base and subsequently increase the collection of taxes as well as transparency regarding flow of resources outside India. Further, it will also help in planning relating to forex reserves.*
- *The proposed amendment can also be seen as step to include large number of individuals recently leaving India to pursue their careers abroad as they don't fulfill the conditions to be classified as non-residents.*

48. Penalty for furnishing inaccurate statement of financial transaction or reportable account

48.1. Section 285BA of the Act makes it mandatory for a person responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed, under any law for the time being in force, to furnish a statement in respect of such specified financial transaction or such reportable account to the prescribed income-tax authority. Further, vide Finance (No. 2) Act, 2014, section 271FAA was inserted in the Act in Chapter XXI to provide for penalty for furnishing inaccurate statement of financial transaction or reportable account.

48.2. It is proposed to insert a new sub-section (2) in the said section 271FAA which shall provide that if there is any inaccuracy in the statement of financial transactions submitted by a prescribed reporting financial institution and such inaccuracy is due to false or inaccurate information submitted by the reportable account holder, a penalty of five thousand rupees shall be imposable on such financial institution, in addition to the penalty leviable on such financial institution in the said section, if any.

48.3. Further, it has been proposed that the reporting financial institution may recover the amount so paid on behalf of the reportable account holder or retain out of any moneys that may be in its possession or may come to it from every such reportable account holder any amount paid as penalty under the proposed section.

Comments:

- *The proposed amendments shall take effect from 1st day of April, 2023 and shall be applicable to all statements furnished under section 285BA(1) on or after 1st day of April, 2023.*
- *It is pertinent to note here that self-certifications by reportable persons and the account holders are mandated under the Rule 114H of the Income-tax Rules, 1962 for different purposes.*
- *This includes, inter alia, cases where new accounts are opened (to certify the country of tax residence), cases involving curing of indicia for pre-existing accounts (to certify the country of tax residence) and cases of entities to certify whether they are Passive Non-Reporting Financial Entities.*
- *The reporting financial institutions has to rely upon such self certification while preparing such statements under section 285BA(1).*
- *However, there is no penal provision for the submission of a false self-certification by the reportable account holder which in turn may lead to furnishing of an incorrect*

statement under section 285BA. Therefore, there was a need to introduce a provision for penalizing false self-certification in the Act and hence the proposed amendment.

49. Reducing the time provided for furnishing TP Report

49.1. Section 92D of the Act, inter-alia, provides that every person who has entered into an international transaction or a specified domestic transaction shall keep and maintain the information and documents as provided under rule 10D of the Income-tax Rules, 1962 (the Rules).

49.2. As per sub-section (3) of section 92D of the Act, the Assessing Officer (AOs) or the Commissioner (Appeals) may during the course of any proceedings under the Act require such person to furnish any information or document, as provided under rule 10D of the Rules, within a period of 30 days from the date of receipt of a notice issued in this regard. It has been further provided that on an application made by the assessee the time period of 30 days may be extended by an additional period of 30 days.

49.3. It is proposed to amend sub-section (3) of section 92D of the Act to provide that,-

- the Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under the Act, require any person referred to section 92D(1)(i) of the Act i.e., who has entered into an international transaction or specified domestic transaction, to furnish any information or document referred therein, within a period of ten days from the date of receipt of a notice issued in this regard; and

- the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person who has entered into an international transaction or specified domestic transaction, extend the period of ten days by a further period not exceeding thirty days

Comments:

- *In several instances due to limited time available for TP proceedings, it may not be practically possible to provide minimum 30 days for producing these information or documents which in any case is already in possession of the assessee.*
- *Accordingly, the time period allowed for submission of information or documents in respect of international transactions or a specified domestic transaction is required to be rationalised so as to provide the AOs a reasonable amount of time to examine the information/documents submitted and complete the pending proceeding.*
- *The proposed amendment aims to reduce the time limit to furnish any information or document related to international transaction or specified domestic transaction to 10 days from the date of receipt of a notice which may be extended to further period not exceeding 30 days in place of existing effective time limit of 60 days (30 days from the receipt of notice + Additional period of 30 days for further extension to reply to notice).*

50. Non-Banking Financial Company (NBFC) categorization

50.1. Section 43B of the Act provides, inter-alia, that any sum payable by the assessee as interest on any loan or borrowing from a Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company shall be allowed as deduction on payment basis. It can be allowed on accrual basis if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

50.2. Section 43D of the Act provides, inter-alia, for special provision in case of income of deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company.

50.3. Interest income in relation to certain categories of bad or doubtful debts received by such deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier.

50.4. Section 43B and section 43D of the Act currently use two erstwhile categories of NBFC namely, Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company. Such classification for non-banking financial companies is no longer followed by the Reserve Bank of India for the purposes of asset classification.

50.5. In view of the above, it is proposed to amend section 43B and section 43D of the Act, to substitute the words, “a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company”, for the words “such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf”.

Comments:

- *The amendments are clarificatory in nature and have been made to align the Income Tax Act with the amendments made in the classification of NBFCs by the Reserve Bank of India.*
- *These amendments will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-2025 and subsequent assessment years.*

51. Provisions pertaining to Agnipath Scheme, 2022

51.1. In order to allow deduction from the computation of total income of Agniveer, any contribution made by him or the Central Government to his Agniveer Corpus Fund account and to exempt from tax any payment received by Agniveer or his nominee, from the Agniveer Corpus Fund.

51.2. It is proposed to insert a new clause (12C) in section 10 of the Act to provide that any payment received from the Agniveer Corpus Fund by a person enrolled under the Agnipath Scheme, 2022, or the nominee of such person shall be exempted from income tax.

51.3. It is further proposed to insert a new section 80CCH to the Act to provide that an assessee, being an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund on or after the 1st day of November, 2022, shall be allowed a deduction of the whole of the amount deposited by him and also the amount contributed by the Central Government to his account in the Agniveer Corpus Fund, from his total income.

51.4. It is also proposed to insert a new sub-clause in clause (1) of section 17 of the Act so as to provide that the contribution made by the Central Government in the previous year, to the Agniveer Corpus Fund account of an individual enrolled in the Agnipath Scheme referred to in section 80CCH shall be considered as salary of that individual. A corresponding deduction of the same has been provided as mentioned above.

51.5. Further, it is proposed to provide that in the new tax regime of section 115BAC an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund shall get a deduction of the government contribution to his Seva Nidhi.

Comments:

- *For the purposes of this proposed clause (12C) of section 10 and section 80CCH, it is proposed to define 'Agnipath scheme' as a scheme for the enrolment in Indian Armed Forces introduced by the Central Government, and 'Agniveer Corpus Fund' as a fund defined in para 2(c) of Agnipath Scheme notified by the Central Government.*
- *The following scheme has been introduced for the purpose of generating employment among the youngsters by giving them technical skills.*
- *These amendments will take effect from the 1st day of April, 2023 and will apply in relation to assessment year 2023-24 and subsequent assessment years.*

52. Relief to sugar co-operatives from past demand

52.1. To encourage co-operative movement in sugar sector, a new clause (xvii) was inserted to amend sub-section (1) of section 36 of the Act to provide that the amount paid for purchase of sugarcane by the co-operative societies engaged in the manufacture of sugar at a price which is equal to or less than the price fixed by or fixed with the approval of the Government shall be allowed as deduction for computing business income of the sugar co-operative factories. The said amendment came into force through the Finance Act 2015 on 01.04.2016 and was applicable from Assessment Year 2016-17 onwards. Pending demands and litigation still persisted in respect of AYs prior to 2016-17.

52.2. It is also proposed to amend section 155 of the Act to insert a new sub-section (19). It shall provide that in the case of a sugar mill co- operative, where any deduction in respect of any expenditure incurred for the purchase of sugarcane has been claimed by an assessee and such deduction has been disallowed wholly or partly the Assessing Officer shall, on the basis of an application made by such assessee in this regard, recompute the total income of such assessee for such previous year. The Assessing Officer shall allow such deduction to the extent such expenditure is incurred at a price which is equal to or less than the price fixed or approved by the Government for that previous year. Also, the provision of section 154 shall, so far as may be, apply thereto,

and the period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of previous year commencing on the 1st day of April, 2022.

Comments:

- *The above-mentioned measure comes with the intention of promoting a cooperative-based economic development model, especially for small and marginal farmers, and other marginalised sections.*
- *This is expected to provide them with a relief of almost Rs 10,000 crore.*
- *This amendment will take effect from the 1st day of April, 2023.*

53. Specifying time limit for bringing consideration against export proceeds into India

53.1. The existing provisions of the section 10AA of the Act, inter alia, provides 15-year tax benefit to a unit established in a SEZ which begins to manufacture or produce articles or things or provide any services on or after 01.04.2005. The deduction is available for units that begin operations before 01.04.2020, which has been extended to 30.09.2020 through the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and is allowed in the specified manner therein.

53.2. However, the said section does not provide for the condition to file return before due date provided under sub-section (1) of section 139 of the Act for claiming deduction as is provided for similar deductions. Section 143(1) however provides that the deduction under section 10AA shall be eligible if such return is filed before the due date. Hence, it is proposed to align the two provisions by inserting a proviso to sub-section (1) of section 10AA of the Act to provide that no deduction under the said section shall be allowed to an assessee who does not furnish a return of income on or before the due date specified under sub-section (1) of section 139.

53.3. Further, it has been observed that there is no time- limit prescribed in the Act for timely remittance of the export proceeds from sale of goods or provision of services by SEZ Units for claiming deduction under the said section as is provided under other similar export related deductions in the Act. Hence, it is proposed to insert a new sub-section to provide that the deduction under section 10AA of the Act shall be available for such unit, if the proceeds from sale of goods or provision of services is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

53.4. Also, it is proposed that if the export proceeds from sale of goods or provision of services shall be deemed to have been received in India where such proceeds from sale of goods or provision of services are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

53.5. Further, it is proposed to substitute clause (i) of Explanation 1 of the said section to define the term “convertible foreign exchange” and give reference to new sub section (4A) in the definition of “Export Turnover”.

53.6. Further, it is also proposed to make consequential amendment in sub-section (11A) of section 155 of the Act, to insert section 10AA to allow the Assessing Officer to amend the assessment order later where the export earning is realized in India after the permitted period.

Comments:

- *The proposed amendments shall take effect from 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.*
- *The proposed changes are aimed at realization of export turnover against which exemption had already been provided and ensuring timely compliance in the form of filing of return of income.*
- *With the proposed amendment, no exemption shall be available if the assessee claiming such exemption is filing belated return of income.*

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

54.1. In order to incentivize operations from IFSC, the following amendments is being proposed:

(i) To extend the date for transfer of assets of the original fund, or of its wholly owned special purpose vehicle, to a resultant fund in case of relocation to 31st March, 2025 from current limitation of 31st March, 2023 in clause (b) of the Explanation to clause (viiad) of section 47 of the Act.

(ii) To exempt any income distributed on the offshore derivative instruments, entered into with an offshore banking unit of an International Financial Services Centre as referred to in sub-section (1A) of section 80LA, which fulfils such conditions as may be prescribed. It has also been provided that such exempted income shall include only that amount which has been charged to tax in the hands of the IFSC Banking Unit under section 115AD.

(iii) To amend the definition of “Specified Fund”, “Resultant Fund” and “Investment Fund” to include the reference of IFSCA (Fund Management) Regulations, 2022 in the Act which has came into force from May 19, 2022.

Comments:

- *The above amendment has been proposed to incentivize the units located in International Financial Services Centre (IFSC) under the Act to make it a global hub of financial services sector.*
- *Presently the Income of non-residents on transfer of Offshore Derivative Instruments (ODI) entered into with IFSC Banking unit is exempt under section 10 (4E) of the Act. Under the ODI contract, the IFSC Banking Unit (IBU) makes the investments in permissible Indian Securities. Income earned by the IBU on such investments is taxed as capital gains, interest, dividend under section 115AD of the Act.*
- *After the payment of tax, the IBU passes such income to the ODI holders. The income distributed to ODI holders are also taxed in India. Hence this distributed income is taxed twice in India i.e. first when received by the IBU and second, when the same*

income is distributed to non-resident ODI holders. Therefore, in order to remove the double taxation, it is proposed to amend clause (4E)

- *The above amendments referred to in para 3.1(i) and 3.1(iii) will take effect from the 1st day of April, 2023 and accordingly apply to assessment year 2023-24 and subsequent assessment years. The amendment in Para 3.1(ii) will take effect from the 1st day of April, 2024 and accordingly apply to assessment year 2024-25 and subsequent assessment years*

55. Removal of exemption of news agency under clause (22B) of section 10

55.1. Clause (22B) of section 10 of the Act, inter-alia, provides exemption to any income of a notified news agency which is set up in India solely for collection and distribution of news. This is subject to condition that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

55.2. The exemption available to news agencies under clause (22B) of section 10 of the Act is proposed to be withdrawn from the assessment year 2024-25.

55.3. In view of the above, it is proposed to insert fourth proviso to clause (22B) of section 10 of the Act so as to provide that nothing contained in clause (22B) of section 10 of the Act shall apply to any income of the news agency, of the previous year relevant to the assessment year beginning on or after the 1st day of April, 2024.

Comments:

- *The proposed amendment is in line with the stated policy of the Government of phasing out of exemptions and deductions under the Act gradually.*
- *The proposed amendment will take effect from 1st April, 2024 and will accordingly apply to assessment year 2024-25 and subsequent assessment years.*
- *It is pertinent to note in this regard that as on date only the Press Trust of India (PTI) is a notified news agency under section 10(22B) of the Act and hence withdrawal of exemption would not have wide scale implications.*

B. INDIRECT TAX PROPOSALS

I. GOODS AND SERVICE TAX

56. AMENDMENTS AT A GLANCE

56.1. Clause 2(d) and Clause 2A(c) in section 10 of the CGST Act is being amended so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy.

56.2. A new sub-section (1B) in section 122 of the CGST Act is being inserted so as to provide for penal provisions applicable to Electronic Commerce Operators in case of

contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers

56.3. The amendments made in section 10 and section 122 of the CGST Act enables registered suppliers under composition levy to make an intra-state supply of goods and not services through E-Commerce Operators (ECOs).

56.4. In the case of E-Commerce Operators (ECOs) who allow the supply of goods and services or both by an unregistered person, allow an inter-state supply of goods and services or both through a person who is not eligible to make inter-state supply has liable to a penalty of Rs.10,000 or the amount of tax involved (if the supply had been made by a registered person) in such supply, whichever is higher.

56.5. Second proviso section 16(2) of the CGST Act,2017 has been proposed to be amended to provide for payment of tax along with interest u/s 50 in respect of Input Tax Credit availed and payment not made to supplier within 180 days.

56.6. Further, third proviso to above sub-section has also been proposed to be amended to specifically provide that upon payment made to supplier, the Input Tax Credit can be availed.

56.7. Explanation to sub-section (3) of section 17 of the CGST Act is being amended so as to restrict availment of input tax credit in respect of certain transactions specified in para 8(a) of Schedule III of the said Act, as may be prescribed, by including the value of such transactions in the value of exempt supply.

56.8. Section 17(5) of the CGST Act, 2017 has been amended to restrict the claim of the input tax credit in respect of goods or services or both received by a taxable person, which is used or intended to be used for activities relating to his/her obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

56.9. Section 23(1) and (2) of the CGST Act are being amended, with retrospective effect from 01st July 2017, to provide that persons for compulsory registration in terms of section 22(1) and 24 of the CGST Act need not register if such person comes under the purview of section 23(1) i.e. persons engaged exclusively in the business of exempt supply of goods or services or an agriculturist, to the extent of supply of produce out of cultivation of land.

56.10. A new sub-section (5) in section 37 of the CGST Act is being inserted so as to provide a time limit upto which the details of outward supplies under sub-section (1) of the said section for a tax period can be furnished by a registered person. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

56.11. A new sub-section (11) in section 39 of the CGST Act is being inserted so as to provide a time limit upto which the return for a tax period can be furnished by a registered person. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

56.12. A new sub-section (2) in section 44 of the CGST Act is being inserted so as to provide a time limit upto which the annual return under sub-section (1) of the said section for a financial year can be furnished by a registered person. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

56.13. A new sub-section (15) in section 52 of the CGST Act is being inserted so as to provide a time limit upto which the statement under sub-section (4) of the said section for a month can be furnished by an electronic commerce operator. Further, it seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for an electronic commerce operator or a class of electronic commerce operators.

56.14. Sections 37, 39, 44, and 52 of the CGST Act, 2017 are being amended to restrict the filing of belated returns GSTR-1, GSTR-3B, GSTR 9, GSTR -9A and GSTR-8 statements to a maximum period of three years from the due date of filing of the relevant return or statement.

56.15. The amendment in Section 54(6) of the CGST Act i.e. Provisional refund of 90% of the total amount claimed in cases of zero-rated supplies, is being amended to remove the reference to the provisionally accepted input tax credit to align the same with the present scheme of availing of the self-assessed input tax credit as per section 41(1) of the CGST Act. Currently provisionally accepted Input Tax Credit are not eligible for a provisional refund.

56.16. Section 132 and section 138 of CGST Act are being amended, inter alia:

- to raise the minimum threshold of tax amount for launching prosecution under GST from ` one crore to ` two crore, except for the offence of issuance of invoices without supply of goods or services or both;
- Reduce the compounding amount from the present range of 50 per cent to 150 per cent of tax amount to the range of 25 per cent to 100 per cent;
- Decriminalize certain offences specified under clause (g), (j) and (k) of sub-section (1) of section 132 of CGST Act, 2017, viz.- 1)obstruction or preventing any officer in discharge of his duties; 2) deliberate tempering of material evidence; 3) failure to supply the information.

56.17. A new section 158A in the CGST Act is being inserted so as to provide for prescribing manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

56.18. Schedule III of the CGST Act is being amended to give retrospective applicability to Para 7, 8 (a) and 8 (b) of the said Schedule viz High seas Sale, Supply of warehoused goods before clearance and Supply by endorsement of documents of title before

clearance for home consumption, with effect from 01st July, 2017, so as to treat the activities/ transactions mentioned in the said paragraphs as neither supply of goods nor supply of services. It is also being clarified that where the tax has already been paid in respect of such transactions/ activities during the period from 01st July, 2017 to 31st January, 2019, no refund of such tax paid shall be available.

56.19. Proviso to section 12(8) of the IGST Act is being omitted so as to specify the place of supply of services by way of transportation of goods to a registered person, shall be the location of recipient and else shall be location at which goods are handed over for their transportation, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

56.20. Currently as per proviso to Section 12(8) in cases where the transportation of goods is to a place of outside India, the place of supply is regarded as place of destination of such goods.

II. CUSTOMS

57. AMENDMENTS AT A GLANCE

57.1. The number of basic customs duty rates on goods has been reduced from 21 to 13, other than textiles and agriculture.

57.2. The basic customs duties, cesses, and surcharges on items like Articles of precious metals, toys, bicycles, Electric Kitchen Chimney and naphtha have been increased to 25%, 70%, 35%, 15% & 2.5% respectively.

57.3. The basic customs duty on heat coils used to make electric kitchen chimneys has gone down from 20% to 15%.

57.4. In order to simplify the tax structure, the tariff rates (without any changes to the effective rates of customs duty), base metals, silver or gold, clad with silver, gold or platinum respectively have been reduced from 12.5% to 10%.

57.5. Basic customs duty rates on certain agricultural products and by products used in the manufacturing of Aquatic feed like Fish Lipid oil, Algal Prime have been decreased from 30% to 15% and for Fish meal and Krill meal from 15% to 5%.

57.6. Customs duties on camera lenses and their parts that are used to make camera modules for cell phones have been cut to zero, and the reduced duty on lithium-ion cells used in batteries has been extended for another year.

57.7. The customs duty exemption on the import of specified capital goods and machinery required for the manufacture of lithium-ion cells used in the batteries of electrically powered vehicles (EVs) has been extended until March 31, 2024.

57.8. The customs duty exemption on the import of specified drugs, diagnostic kits or Life saving drugs, diagnostic kits has been extended until March 31, 2025.

57.9. The customs duty exemption on the import ofosed bonafide personal and household effects of a deceased person has been extended for a period of 5 years, i.e. until March 31, 2028.

57.10. The basic customs duty exemptions regarding entry pertaining to “Monofilament Yarn” and catering cabin equipment, food and drinks of the Indian Airlines Corporations have been withdrawn/ discontinued with effect from 31.03.2023

57.11. The NCCD (National Calamity Contingent Duty) on some cigarettes has been raised by about 16% w.e.f 02.02.2023.

57.12. The Rates of Cigarettes (Rs/ Thousand), exceeding 65 millimeters but not exceeding 70 millimeters have been increased from 250 to 290, resulting to an increase of almost 16%.

57.13. To avoid tax cascading on blended compressed natural gas, excise duty on GST-paid compressed biogas contained in it has been waived w.e.f 02.02.2023.

BUDGET AT A GLANCE

1. Other Macroeconomic Estimates

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

2. Fiscal Deficit (FD) is the adverse fiscal balance which is a difference between the Revenue Receipts Plus Non-Debt Capital Receipts (NDCR) i.e. total of the non-debt receipts and the total expenditure. FD is reflective of the total borrowing requirement of Government. Revenue Deficit (RD) refers to the excess of revenue expenditure over revenue receipts. Effective Revenue Deficit (ERD) is the difference between Revenue Deficit and Grant-in-Aid for Creation of Capital Assets. Primary Deficit is measured as Fiscal Deficit less interest payments. Effective Capital Expenditure (Eff-Capex) refers to the sum of Capital Expenditure and Grants-in-Aid for Creation of Capital Assets.

3. The receipts and expenditure depicted in this document are net of receipts and recoveries as explained in the reconciliation statements provided in the Receipt Budget and Expenditure Profile Document.

4. In RE 2022-23, the total expenditure has been estimated at ₹41,87,232 crore and is more than Actuals of FY 2021-22 by ₹3,93,431 crore. The total capital expenditure in RE 2022-23 is estimated at ₹7,28,274 crore.

5. The total expenditure in BE 2023-24 is estimated at ₹45,03,097 crore of which total capital expenditure is ₹10,00,961 crore. Budget 2023-24 reflects continuing strong commitment of the Union Government to boost economic growth by investing in infrastructure development leading to an increase in capital expenditure by 37.4 per cent over RE 2022-23. Effective Capital Expenditure, at ₹13,70,949 crore in BE 2023-24, shows an increase of 30.1 per cent over RE 2022-23.

6. 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 2023-24 is ₹17,97,537 crore, which shows an increase of ₹1,43,056 crore over Actuals of FY 2021-22.

BUDGET AT A GLANCE

(₹ in Crore)

		2021-2022 Actuals	2022-2023 Budget Estimates	2022-2023 Revised Estimates	2023-2024 Budget Estimates
1	**Revenue Receipts**	**2,169,905**	**2,204,422**	**2,348,413**	**2,632,281**
2	Tax Revenue (Net to Centre)	1,804,793	1,934,771	2,086,662	2,330,631
3	Non Tax Revenue	365,112	269,651	261,751	301,650
4	**Capital Receipts**	**1,623,896**	**1,740,487**	**1,838,819**	**1,870,816**
5	Recovery of Loans	24,737	14,291	23,500	23,000
6	Other Receipts	14,638	65,000	60,000	61,000
7	Borrowings & Other Liabilities	1,584,521	1,661,196	1,755,319	1,786,816
8	**Total Receipts (1+4)**	**3,793,801**	**3,944,909**	**4,187,232**	**4,503,097**
9	**Total Expenditure (10+13)**	**3,793,801**	**3,944,909**	**4,187,232**	**4,503,097**
10	On Revenue Account of which	3,200,926	3,194,663	3,458,959	3,502,136
11	Interest Payments	805,499	940,651	940,651	1,079,971
12	Grants in Aid for creation of Capital Assets	242,646	317,643	325,588	369,988
13	On Capital Account	592,874	750,246	728,274	1,000,961
14	**Effective Capital Expenditure (12+13)**	**835,520**	**1,067,889**	**1,053,862**	**1,370,949**
15	**Revenue Deficit (10-1)**	**1,031,021**	**990,241**	**1,110,546**	**869,855**
		(4.4)	**(3.8)**	**(4.1)**	**(2.9)**
16	**Effective Revenue Deficit (15-12)**	**788,375**	**672,598**	**784,958**	**499,867**
		(3.3)	**(2.6)**	**(2.9)**	**(1.7)**
17	**Fiscal Deficit [9-(1+5+6)]**	**1,584,521**	**1,661,196**	**1,755,319**	**1,786,816**
		(6.7)	**(6.4)**	**(6.4)**	**(5.9)**
18	**Primary Deficit (17-11)**	**779,022**	**720,545**	**814,668**	**706,845**
		(3.3)	**(2.8)**	**(3.0)**	**(2.3)**

Notes :

(i) Nominal GDP for BE 2023-24 has been projected at ₹ 3,01,75,065 crore assuming 10.5% growth over the estimated normal GDP of ₹ 2,73,07,751 crore as per the First Advance Estimates of F.Y. 2022-23.

(ii) Individual items in this document may not sum up to the totals due to rounding off.

(iii) Figures in parenthesis are as a percentage of GDP.

Chhaparia & Associates

Chartered Accountants

"Shantiniketan Building"
8, Camac Street, Suite 502 & 703
Kolkata - 700 017
Phone : (+91-33) 2282-4241 / 4213 / 6444
E.mail ID : kkc@teamcna.in

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