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ahead of the curve

BUDGET ASSAYER

Union Budget 2021 - 2022

This Report BUDGET ASSAYER is published by Cyril Amarchand Mangaldas.

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A Thought Leadership Publication

We now present this report to enable readers to have an overview of the systems and legal rules and regulations that are essential for business operations in India.

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FOREWORD

The Union Budget for 2021-22 was perhaps the most anxiously awaited one of recent times. The ‘never before’ budget faced the nation’s mounting expectations for a roadway to economic reset in the backdrop of COVID-induced unprecedented hardship. While the jury on the Budget is yet to be out, the markets and the industry have generally welcomed the budget more for its intent rather than its content! The Budget seems to have delivered on its promises, generating confidence for a year of revival centred around inclusive growth and development, asset monetization, disinvestment and privatization, and most crucially, enhanced healthcare. The Finance Minister hoisted the coming year onto six pillars of development, carefully navigating stressed industries and bad debts without periphrasis, while managing not to upset the common man’s apple cart with additional tax burdens.

The Budget has instigated widespread cheer at a macro level, underlining that times of distress bring out the best in our leaders. The many measures announced across sectors have evoked grandiose responses from the markets and endorsement of economists and industry champions. Among the green ticks, there has been no increase in tax rates, and enhanced benefits have been accorded to the salaried middle-class such as the novel LTC cash voucher scheme. Tax holidays for start-ups which were scheduled to expire this financial year have been given life for another year, and so have affordable housing-related tax incentives. The Budget has also taken a plug-the-loopholes approach, rationalising for implementation, the existing tax rules that have tended to create chaos among taxpayers and tribunals alike, such as the framework for claiming depreciation on goodwill, taxability of slump exchanges, and the equalisation levy.

Recognizing that foreign funding is a key capital source to be tapped, IFSC units have been further incentivized, while sovereign wealth funds and foreign pension funds have been blessed with relaxations that make last year’s tax exemptions more realistic and attainable. Hiking the FDI limits for the insurance sector will ensure increased M&A activity in the sector as well as allow the sector to avail foreign capital. The Budget also clarifies that FPIs may avail lower DTAA rates on dividends under the new dividend taxation regime, thereby eliminating the unease that a recent Supreme Court decision had triggered.

In terms of compliance, there has been a further increase in the threshold requirement to undertake audit, which would be welcomed by taxpayers largely reliant on digital transactions. ‘Faceless’, the new mantra of the Indian tax administration, is now proposed to be extended to the appellate tribunal level. Acclimatizing to the new faceless era, tax assessment timelines have also been significantly condensed as per digital standards. The government has also taken an unprecedented decision in doing away with the Authority for Advance Rulings and the Settlement Commission.

However, more than what the FM was able to deliver in the Budget, it is also important to note what she did not do. Contrary to public speculations, she did not come up with any special levy or additional taxes. She continued with a stoical approach towards economy, allowing organic growth rather than introducing any dynamic changes. In spite of a very strong lobby to overhaul the capital gains scheme or to come up with a new COVID levy, she resisted such temptations. There is no proposal for reduction of GST in pandemic-affected sectors such as automobiles, travel, hospitality, and real estate. While the Budget was certainly one that caused no harm, it did not bring major relief either in these avenues.

In continuation of our tradition, we bring to you our annual Budget Assayer, a compilation of our efforts to assay the tax proposals in the Budget in terms of content, quality and repercussions for the taxpayers. We hope you will find our work informative and helpful in your investments and decision-making.

We would appreciate your feedback on our work and look forward to receiving your comments at cam.publications@cyrilshroff.com.

Yours Sincerely,

Cyril Shroff
Managing Partner

Mumbai

SECTION A:

ANALYSIS OF THE PROPOSED CHANGES IN DIRECT TAXES

I

Transactional Taxation

1. No more depreciation on goodwill – *Smifs Securities reversed*

Presently, the provisions related to cost of goodwill for the purpose of capital gains were classified into two categories: self-generated goodwill and acquired goodwill. While the cost of the former was considered as NIL, the cost of the latter for the purposes of calculation of capital gains was recorded at the amount paid to acquire business in excess of the net assets received on such acquisition. Thus, the cost of acquired goodwill was recorded in the books of accounts.

However, when it comes to the claim of depreciation on goodwill, the same was neither expressly allowed nor denied under the definition of block of assets and depreciation provided under section 32 of the IT Act. However, generally depreciation used to be claimed on the same under section 32 of the IT Act by classifying it as intangible asset covered along with know-how, patents, copyrights, trademarks, licenses, *franchises as any other business or commercial rights of similar nature.*

While this issue was a hot issue and was almost regularly debated before the tax authorities, the SC in 2012 in its decision of ***Smifs Securities Ltd.***[1] came with its landmark decision and allowed depreciation on acquired goodwill.

This Finance Bill seeks to nullify the rationale of the SC by excluding all kinds of goodwill from the ambit of depreciation. The Finance Bill specifies that goodwill, in general, is not a depreciable asset. It may see appreciation or in the alternative no depreciation to its value based on how the business runs. So, there may not be a justification to claim depreciation on goodwill like that in case of other intangible assets and plant and machinery. Importantly, the Finance Bill also proposes to deny the depreciation which are already being claimed on acquired goodwill.

Accordingly, the Finance Bill proposes a number of amendments in various sections of the IT Act in order to clarify that goodwill is not a depreciable asset and hence, depreciation will not be allowed on goodwill. These include amendment to the meaning of the term "block of assets" under section 2(11), meaning of depreciation to provide that goodwill of business shall not be considered as a depreciable asset. Further, the Finance Bill also proposes that in case depreciation has already been claimed on acquired goodwill till FY 2020-21, the amount of depreciation claimed shall be reduced for the purpose of calculation of purchase price of goodwill, and no further depreciation shall be allowed on it henceforth.

This amendment is expected to have a significant impact on M&A transactions since the price paid over the net assets bought by the acquirer attributed towards goodwill, which used to be claimed as depreciation expense, will no longer be available. This will also increase the

1 CIT v. Smifs Securities Ltd. (2012) 348 ITR 302 (SC).

discrepancy between the book depreciation and the tax depreciation because depreciation shall continue to be claimed in the books of account as per Indian and US GAAP. This may also impact M&A deals in a big way, especially such deals where a significant value was being paid to brands / other intangible assets. It will also enable some of these entities to come up with their own creative accounting and tax policies to not treat them as goodwill for the purposes of tax.

The proposed amendment has been made effective from FY 2020-21 onwards.

2. Slump Exchange is a Slump Sale – *Bharat Bijlee reversed*

A transfer of a business undertaking by way of sale for a lumpsum consideration is the definition provided for 'slump sale' in section 2(42C) of the IT Act. Slump sale is subject to capital gains tax in a special method under section 50B of the IT Act, wherein the gains are computed as the difference between the sale consideration and the *net worth* of the business undertaking, as opposed to the underlying *cost of acquisition* of each asset. Slump sale is also exempted from the levy of GST laws.

The definition of the term 'slump sale' was subject to litigation widely, especially in case of slump exchange, where the consideration for transfer of an undertaking was discharged through exchange of another asset (typically by issuance of shares of the buyer entity). It was contended by the taxpayers that exchange cannot be considered as sale for the purposes of section 2(42C) of the IT Act. Bombay HC in the case of ***Bharat Bijlee***[2] had held, upholding the decision of the Mumbai ITAT, that slump exchange cannot be considered as 'slump sale' as per section 2(42C) of the IT Act. Ultimately, the entire transaction was not subject to capital gains tax on the rationale that there was no mechanism in the IT Act to tax the slump exchange. Few other courts have also followed the said decision of Bombay HC.

The Finance Bill seeks to plug the loophole. The proposed definition states that any transfer of a business undertaking, by any means, shall be regarded as slump sale. An explanation has also been inserted to clarify that the word transfer shall have its meaning as defined in section 2(47) of the IT Act.

The proposed amendment has been made effective from FY 2020-21 onwards.

3. Tax neutral conversion of urban cooperative banks to banking company

RBI vide circular dated 27 September 2018, had permitted voluntary transition of primary cooperative banks [Urban Cooperative Banks or "**UCB**"] into a banking company by way transfer of assets and liabilities.

Section 44DB of the IT Act currently provides that in cases of business reorganization of cooperative banks, deductions under section 32, 35D, 35DD and 35DDA will be apportioned between the predecessor co-operative bank and the successor cooperative bank in the

2 CIT v. Bharat Bijlee [2014] 365 ITR 258.

proportion of the number of days before and after the date of business reorganization. Transfer of a capital asset by the predecessor cooperative bank to the successor co-operative bank, as well as transfer of shares by the shareholders in the predecessor co-operative bank, in a case of business reorganization, is also not regarded as transfer under section 47.

The Finance Bill proposes to amend section 44DB to expand its scope to extend the benefits available under section 44DB to conversion of UCB into a banking company. Consequential amendments have also been proposed to section 47 exempting conversion of UCB into banking company from the scope of "transfer" for levy of capital gains.

The tax incentives will boost the RBI permitted transition of UCB into a banking company.

These proposed amendments have been made effective from FY 2020-21 onwards.

II

Taxation of Dividends

4. No advance tax liability on dividend income

In terms of section 208 of the IT Act, where any taxpayer has a tax liability of INR 10,000 or more in a FY, then such taxpayer is required to pay advance tax. The due dates for deposition of advance tax are as follows:

Due dates	Quantum of tax
15 June	15% of advance tax
15 September	45% of advance tax
15 December	75% of advance tax
15 March	100% of advance tax

Section 234C of the IT Act, *inter-alia*, provides that if a taxpayer fails to pay the requisite amount of advance tax before the due dates, then the taxpayers are required to pay simple interest @ 1% per month on the amount of shortfall. The section further provides that such interest would not be payable if the shortfall in advance tax is on account of failure to estimate the amount of capital gains, winnings from lottery, games etc., or where income arises under the head profits and gains from business or profession for the first time, and the taxpayer has paid tax on such incomes in subsequent tax installments or by 31 March. The Bill proposes to extend such exclusion to dividend income (other than deemed dividends) as well.

The intention behind not levying interest on taxes attributable to above stated incomes is that the nature of such incomes is such that they cannot be accurately determined / estimated by the taxpayers. Dividend income was exempt in the hands of the taxpayers and taxable in the hands of the company. However, Finance Act 2020 abolished the DDT regime and bought back the classical system of taxation of dividends (dividends taxable in the hands of the shareholders). As dividend income by nature is uncertain and is contingent on the commercial decision of the company, the taxpayers could not estimate the potential dividend income accurately.

As taxpayers who were paying advance tax would never be in a position to accurately determine their actual income and accordingly, their advance tax liability and hence; to expect them to pay interest for incorrect estimation of income maybe too harsh.

The proposed amendment has been made effective from FY 2020-21 onwards.

5. No withholding tax on payment of dividends to business trusts

Section 10(23FC) of the IT Act, inter alia, provides that dividend income received by business trust, i.e. REITs and InvITs, from a SPV, would not from part of the total income of such REITs and

INVITs. However, as per section 194 of the IT Act, any company distributing dividends is required to withhold tax while making dividend payments to its shareholders. Therefore, as per the literal interpretation of the section 194, a SPV making dividend payments to REITs and INVITs is required to withhold tax, even though the dividend income of REITs and INVITs is exempt under section 10(23FC).

Such withholding tax on dividends received by the business trusts led to cash flow issues for such trusts, especially because such business trusts are required to distribute at least 90% of their income. Notably, section 194A(3)(xi) of the IT Act, specifically provides that no tax is required to be withheld on interest payments (which are exempt under section 10(23FC) of the IT Act) by a SPV to REITs / INVITs. Thus, there was a demand from the industry that SPVs should be specifically exempt from withholding tax on dividends paid to business trust.

The Government has decided to accept this demand and accordingly, the Bill provides that SPVs will not be required to deduct tax at source while distributing dividends to business trusts, i.e., INVITs and REITs. The proposal is a welcome one for the taxpayers, as it clarifies that when dividend income of the business trust is exempt in its hands, then the SPV making payment of such dividends need not withhold tax while making such payments. The said proposal would also aid in the ease of doing business, as the SPVs would not be required to comply with the tax withholding related compliances. The proposal would bring in line the withholding tax requirement on payments of dividends by SPV to business trusts, with the withholding tax requirements on payments of interest income by SPV to business trusts, considering that both the incomes are exempt in the hands of the business trust under section 10(23FC) of the IT Act.

Separately, it is pertinent to note that the Bill also provides that a company need not withhold tax on payments of dividends to any other person, as may be notified by the Central Government in the Official Gazette. Such provision grants the power to the executive to determine the category of persons whose dividend income may be exempted from withholding tax requirements. In the absence of such power, if any other person’s dividend income is required to be exempted from withholding tax requirements under section 194 of the IT Act, an amendment is required to be made in the IT Act.

The proposed amendment has been made effective retrospectively from 01 April 2020.

III

International Taxation

6. Introduction of the term "liable to tax"

Presently, the IT Act does not define the term "liable to tax" although it is used in a number of provisions of the IT Act like the residency provisions given under amended section 6, section 10(23FE), the provisions in the DTAA entered by India with various countries, etc.

What constitutes 'liable to tax' forming part of definition of the term 'resident' in the DTAAs has been matter of widespread litigation[3]. More particularly, whether the person who is exempt from taxation in one country could be considered as 'resident' for the purposes of DTAA and whether the beneficial provisions could be availed by such person.

Finance Bill proposes to define *"liable to tax" as "in relation to a person, means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided."*

It may be said that the intention provided behind introducing the said definition in relation to the term "liable to tax" being used in the IT Act is valid and seeks to provide certainty to the meaning.

However, the Memorandum specifically states that this definition has been provided for the purposes of DTAA as well. The term "a liability of tax on a person" may be interpreted to mean that the person should have some obligation to pay taxes in a country to qualify as 'resident' under the DTAA. This may lead to unintended consequences as certain charitable institutions (or other tax-exempt entities) may not be able to claim the benefit of the DTAAs. On the other hand, the term "any law" forming part of the proposed section may actually work in favour of the taxpayers as the liability to pay any tax (not just income tax) would be sufficient for invoking the benefit of DTAAs, which is lower than the thresholds prescribed under the DTAAs.

In any case, extending the meaning of a term used in the DTAA through insertion of definition in the IT Act seems a bit far-fetched in the sense that the DTAA is a bilateral document which shows the understanding of the countries signatory of the concerned DTAA. A subsequent unilateral amendment in the IT Act cannot seek to ascribe the said meaning in the term used in the DTAA. The same has been held in various judgments regarding royalty wherein the explanation retrospectively introduced in the definition of royalty under section 9 of the IT Act have been said to be not applicable to the meaning of the term royalty as given in the DTAA. In a similar manner, the use of the meaning of the term 'liable to tax' for the purpose of the DTAA is questionable and may be expected to lead to litigation.

The proposed amendment has been made effective from FY 2020-21 onwards.

3 In Re: Mohsinally Alimohammed Rafik, In re [1995] 213 ITR 317; In Re: Cyrille Eugene Pereira, [1999] 239 ITR 650; In Re: Abdul Razak Meman, [2005] 276 ITR 306; DIT v. Green Emirates Shipping,[2006]100ITD 203

7. Equalization Levy on e-commerce operators

Vide the Finance Act, 2020, non-resident e-commerce operators, making sales and services in India (irrespective of whether the source of income is accrued or arisen in India), were brought under the ambit of Equalization Levy ("**EL**"). The said amendment created a widespread uproar in the industry on the allegation that taxing of non-resident e-commerce operators is extra-territorial in nature. It may also be noted that United States Trade Representative ("**USTR**") has found the inclusion of non-resident e-commerce operators under the ambit of EL is in violation of the Trade Act of 1974 as the US companies were forced to pay additional taxes against the settled principles of international taxation.

In addition to the above controversy, the language incorporated into the provisions of EL were also subject to multiple interpretations.

The instant Finance Bill seek to provide certain clarifications with effect from FY 2020-21. They are as follows:

a. *Payments which are taxable as royalty or FTS are not subjected to EL*

Under the plain interpretation of existing provisions, EL could be applied on cases where the non-resident is subject to royalty/FTS. As per section 10(50) of the IT Act, transactions subject to EL would not be taxed again under the IT Act. Therefore, it appeared that the taxpayer has an option to pay EL at 2% (where there would not be any foreign tax credit) or pay income tax at 10% (where the taxpayer is entitled foreign tax credit).

It may be noted that the existing provisions relating EL specifically excluded the transactions which were connected to the PE, but similar exemption was not provided to transactions in the nature of royalty/FTS. Finance Bill attempts to clarify that if the consideration received or receivable for specified services and for e-commerce supply or services are taxable as royalty or FTS under the IT Act, read with the notified tax treaties, then such consideration should not be taxable under the EL provisions.

b. *The terms 'online sale of goods' & 'online provision of services' have been defined:*

The term "e-commerce supply or services" has been defined to include "online sale of goods" or "online provision of services". The Finance Bill now proposes to define these terms viz. "online sale of goods" or "online provision of services" to include one or more of the following online activities, namely:

a. acceptance of offer for sale; or

b. placing of purchase order; or

c. acceptance of the purchase order; or

d. payment of consideration; or

e. supply of goods or provision of services, partly or wholly;"

In this digital era, almost all the transactions would fall under any one of the afore-mentioned limbs. Therefore, on a literal interpretation, all transactions undertaken by a non-resident with a resident in India would fall under the instant definition.

Therefore, there is an urgent need to clarify quickly that *only the transactions where the offer and acceptance are concluded online without any human intervention* shall only be considered as "online sale of goods" or "online provision of services". Otherwise, the literal interpretation of the definition provided by this Finance Bill would create several unintended consequences as it would lead to levy of EL not just to e-commerce operators but every other transaction undertaken by a non-resident.

c. ***EL must be paid on a gross basis***

The EL applies on consideration received or receivable from e-commerce supply or services. The "consideration received or receivable from e-commerce supply or services" has not been defined earlier, this Finance Bill seeks to define the same as:

- consideration for sale of goods irrespective of whether the e-commerce operator owns the goods;
- consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator"

This definition is similar to the TDS obligations imposed on the domestic e-commerce operators under section 194-O of the IT Act, wherein TDS is imposed on the domestic e-commerce operator on the gross amount collected from the ultimate customers.

However, applying the same rationale to EL could be very onerous as non-resident e-commerce operator is not going to get any foreign tax credit. Further, as per the proposed definition, in case of facilitation of sale, EL would be levied not just on the commission component of e-commerce operator but on the entire consideration, which will include the consideration payable to the sellers and accordingly, will create a cascading effect. Therefore, in effect, EL is levied on both the e-commerce facilitator as well as the seller and no credit would be available to either of them.

d. ***Clarification on income-tax exemption:***

The scope of EL provisions were made applicable from 1 April 2020. However, section 10(50) of the IT Act provided exemption from levy of income tax from FY 2020-21. The Finance Bill proposes to correct this mismatch to provide for income-tax exemption would be available from 1 April 2020.

8. Withholding tax on payments to Foreign Institutional Investors ("FIIs")

Section 196D(1) of the IT Act provides that where the FIIs receive any income (other than interest income on certain rupee denominated bonds and government securities, under section 194LD; and capital gains) in respect of certain prescribed securities, then the persons while making or crediting such payments to the FIIs, are required to withhold tax at the rate of 20%. Further, in terms of section 90 of the IT Act, if the provisions of the relevant DTAA are more beneficial to a taxpayer, then such taxpayer may avail the benefits of the reduced rates, as provided under the concerned DTAAs.

As section 196D(1) provide for a specific rate of withholding at the rate of 20%, the literal reading of the section leads to the interpretation that even if such FIIs are eligible for benefit of reduced rates under the relevant DTAAs, the payer would still be liable to withhold tax at the rate of 20% and not at the reduced rates provided in the DTAA. The interpretation is also supported by the SC ruling in the case of ***PILCOM***[4], wherein SC while dealing with withholding tax requirements for non-resident sports association under section 194E of the IT Act, observed that tax was required to be withheld at the specific rate provided under the said provision and not at the beneficial rate provided under the DTAA.

Notably, section 195 of the IT Act, *inter-alia*, provides that where any person is making any payment to a non-resident, which is chargeable to tax under the IT Act, then the person responsible for paying such sum to a non-resident is required to withhold tax at the 'rates in force'. The phrase 'rates in force' has been defined in section 2(37A) of the IT Act to mean the rates provided under the IT Act or the rates provided under the relevant DTAA. Therefore, while withholding tax under section 195, the payer is required to take into account the beneficial rates provided under the concerned DTAA, certain provisions like section 196D does not use this phrase and provide for a specific rate, the payers may proceed to deduct tax at the rate of 20% and not at the reduced rate prescribed under the DTAA.

Where taxes are deducted at a higher rate instead of the beneficial rate provided in the DTAA, the cash flow in the hands of the FII is reduced. Further, such taxpayers are also required to claim the refund of the excess taxes deducted, through filing of income tax returns. This results in additional paperwork, and compliance burden, both at the end of the taxpayer and the tax administration.

Pursuant to the above concerns, the Bill proposes to amend section 196D of the IT Act to provide that where the FII is eligible for a reduced rate under a DTAA and such FII furnishes a tax residency certificate from his country of residence, then the payer is required to withhold tax at the rate of 20% or the lower rate provided in the concerned DTAA. The amendment is a relief for the non-resident taxpayers as it ensures that the cash flows of the FIIs are not adversely affected, and they do not have to go through the hassle of filing income tax returns solely for the purpose of claiming refund of extra tax withheld under section 196D.

Please note that while the proposed amendment addresses the issue under section 196D, similar issues are also there under other provisions (like sections 196B, 196C, etc.) wherein the non-resident may be entitled to a lower rate under the DTAA as against the specific rate provided under the IT Act.

The proposed amendment has been made effective from FY 2020-21 onwards.

4 PILCOM v. CIT, West Bengal [(2020) 116 taxann.com 394 (SC)].

IV

Assessment and Appellate Proceedings

9. ITAT proceedings to become faceless

By way of Finance Act, 2019, the Government had announced that a scheme for faceless assessment vide electronic medium would be formally launched as a result of which CBDT introduced the E-assessment Scheme, 2019 making scrutiny assessments undertaken under section 143(3) of the IT Act online by eliminating the interface between tax officer and the taxpayer. In consonance with its intention to expand the scope of faceless assessments, the government vide Finance Act 2020 and vide Tax Amendment Act, 2020 further expanded the scope of faceless assessments by bringing other forms of assessments and income tax proceedings within its ambit as also making the first appeal process i.e. appellate proceedings before the CIT(A) faceless. All this was done with a view to impart greater efficiency, transparency and accountability to various income tax proceedings conducted under the IT Act.

The Finance Bill proposes to take some drastic steps in furtherance to the above to make the proceedings before the ITAT, which is a quasi-judicial body, faceless. As per the Bill, the said measures are intended to reduce cost of compliance for taxpayers, increase transparency in disposal of appeals and help in achieving even work distribution in different benches resulting in best utilization of resources.

To give effect to the above, the Finance Bill proposes to make certain amendments in section 255 of the IT Act thereby empowering the Central Government to notify a scheme to dispose the appeals before the ITAT in a faceless manner and section to issue directions for the same by 31 March 2023.

It should be appreciated that the appeal proceedings before the ITAT form a very crucial part of the overall appeal process under the IT Act. Since ITAT is the final fact-finding authority, it shall be important to frame the scheme in such a way that the appellant is able to put forward all its arguments and submissions in a similar manner as has been done in the physical proceedings.

In cases when appeals pertaining to several assessment years are clubbed together because their primary issues are similar, it has been seen that the amount of documentation involved is usually very bulky, and huge paperbooks are filed for the consideration of ITAT. Hence, the faceless proceedings shall have to ensure that there are no technical issues limiting the right of the appellant from presenting its case properly.

The FM in her Budget Speech has stated that a National Faceless Income Tax Appellate Tribunal Centre shall be established and all the communication between the ITAT and the appellant shall be made electronically and that wherever personal hearing is needed, it shall be done through videoconferencing. However, a detailed scheme is yet to be notified to understand the nature and extent of opportunity that would be made available to an appellant under the scheme to be heard in his matter. Therefore, it still needs to be seen as to whether a scheme for faceless ITAT proceedings designed by the Government would inspire confidence in the minds of the appellants.

At the time of introduction of faceless assessments and faceless first appeal as discussed above, various issues with respect to lack of transparency and regarding a hearing being allowed only at the discretion of the IRA in a faceless system, had arisen in the minds of several taxpayers. In this regard, the Delhi HC has also recently admitted a writ petition[5] challenging the faceless appeals scheme due to certain issues including the issue of oral hearing being discretionary under the prescribed scheme and being violative of the appellant's right to a hearing. Hence, once a detailed scheme is announced in respect of faceless ITAT proceedings, it needs to be analyzed whether it can be said to be in accordance with the basic principles of natural justice for instance whether a proper opportunity of being heard is provided therein or not.

It is also pertinent to note that unlike the first appellate system, which is still under the administrative control of the CBDT where appropriate rules and regulations can be formulated by the executive, the ITAT does not function at the direction of the executive and the number of processes / systems that have to be introduced, shall have to be done after getting the same validated by the ITAT. It will be interesting to see how the specific rules and regulations are drafted and how the Government gets the consent of the ITAT. Having said the above, this is definitely a step in the right direction and hopefully, it will go a long way in reducing the overall time spent by a taxpayer to get his tax cases finalized!

The proposed amendment will be made effective from 01 April 2021.

10. Discontinuance of ITSC

The Finance Bill now proposes to discontinue the ITSC with immediate effect from 01 February 2021 onwards. The ITSC, *inter-alia*, provided a one-time opportunity window to the tax defaulters/evaders, including a person whose income have been found to be evaded through the search and seizure proceedings, to settle the cases with the IRA by merely paying the taxes and immunity from penal and prosecution proceedings were granted. This door seems to have been shut now.

The Bill also seeks to constitute an Interim Board for Settlement ("**Interim Board**") to replace the ITSC and to take care of the cases pending before the ITSC. To take care of the pending applications that were already filed before the ITSC before the amendment, the Bill proposes to bring the following amendments:

i. Fresh applications cannot be filed for settlement of cases before ITSC under section 245C of the IT Act, on or after 01 February 2021.

ii. Where an order required to be passed by the ITSC to declare an application invalid under section 245(2C) of the IT Act on or before 31 January 2021 has not been passed, such application shall be deemed to be valid and treated as a pending application.

iii. Interim Board has been setup for settlement of pending applications which would consist of three members, each being an officer of the rank of Chief Commissioner, as may be

5 Lakshya Budhiraja Vs Union of India [W.P.(C) No. 8044/2020]

nominated by the Board. The decision of the majority shall differ if members differ on an opinion.

iv. Powers of ITSC viz. provisional attachment, inspection of reports etc. shall apply mutandis mutandis to the Interim Board.

v. The taxpayer will still have an option to withdraw the pending application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the AO in this regard. In case of no withdrawal being made within such timeline, the pending application shall be deemed to have been received by the Interim Board on the date on which it is allotted to the Interim Board.

vi. Where the assessee exercises the option to withdraw a pending application, the proceedings before the ITSC shall abate and the income-tax authority before whom the proceeding was originally pending shall dispose of the case on merits;

vii. For the purposes of computation of time-limit for completion of such proceedings under IT Act, the period commencing from the date of making application to ITSC till the date on which application is withdrawn shall be excluded.

viii. Further, as per section 245M of IT Act, the IRA cannot use the material produced by the taxpayer before the ITSC or any evidence recorded by the ITSC in the course of proceedings before it against the assessee. However, material collected by AO himself or through his own enquiry or through other IRA may be used by the AO irrespective of whether same material was also produced by the assessee before the ITSC.

ix. In order to conduct proceedings in respect of pending applications before the Interim Board in a faceless manner, the Government has been empowered to make a scheme in this regard and it may direct that provisions as set out above may apply with such modifications as may be required for this purpose. However, no such direction shall be issued after the 31 March 2023.

It may be noted that an assessee should be cautious while exercising the option of withdrawal of application. While the AO is not allowed *per se* to use the material furnished by assessee before the ITSC against him, in the assessment proceedings, it may still be advisable to be cautious keeping in view the nature of information furnished before the ITSC initially.

The proposed amendment has been made effective from 01 February 2021.

11. AAR to become BoAR and would be under the control of IRA

A scheme of advance rulings was introduced in the IT Act vide Finance Act, 1993 through which a body in the form of AAR exercising quasi-judicial powers was setup to provide an option to eligible persons to determine the tax consequences of a transaction in advance with an objective to avoid litigation at subsequent stages. It was intended to bring certainty and avoid long drawn litigation as rulings rendered by the AAR were binding on the applicant as well as the IRA.

Earlier its scope was restricted to only transactions involving non-residents, however, its scope eventually got widened to include certain transactions which met a specified threshold for instance those who had undertaken one or more transactions of the value of INR 1 billion or more.

However, due to serious functional difficulties, it was observed that the AAR could not function at all for prolonged periods of time in the past. The constitution of AAR and the prevailing rules for its functioning were such that the Chairman and/ or Vice Chairman of the AAR were crucial posts, essential for its functioning. However, such positions remained vacant on several occasions for long periods of time, which resulted in complete disruption of the working of the AAR. The Chairman and Vice Chairman of the AAR had to be former judges of the HC/SC and due to inability of the government to fill these posts in the past on a timely basis, the AAR has remained non-functional on several occasions for considerable amount of time. This has led to heavy pendency of cases before it with no progress whatsoever, which defeated the intent of constituting a body such as AAR, which was to provide clarity on tax aspects of a transaction in advance and in a timely manner.

The FM proposes to replace AAR with a new body i.e. Board of Advance Rulings ("**BoAR**") to ensure faster disposal of cases. The Bill proposes to setup BoAR with a different composition of members altogether and a new set of framework to render advance rulings under the IT Act. While the same persons who were earlier eligible to make an application to AAR will be eligible to apply to BoAR, the Bill has brought the following changes in the overall mechanism of obtaining advance rulings under the IT Act:

i. As per Section 245O of IT Act, which will cease to have effect from the specified date which is yet to be notified, retired judges of the SC or Chief Justice of the HC or a retired judge of HC having served in that capacity for at least seven years were only eligible for appointment as Chairman of AAR while only retired judges of HC were eligible for appointment as Vice Chairman of AAR, in addition to other members of AAR which consisted of eligible officers from the Indian Revenue Service and Indian Legal Service.

   Henceforth, as per the newly introduced Section 245 OB in IT Act, every BoAR shall consist of two members not below the rank of Chief Commissioner.

ii. The Bill also proposes to amend Section 245Q of IT Act to ensure a smooth transfer of pending proceedings such that any application pending before the AAR before a specified date which is yet to be notified shall be transferred to BoAR for further proceedings.

iii. The procedure and timeline for obtaining advance ruling as prescribed under Section 245R of IT Act will continue to apply in case of BoAR However, the Bill proposes to give further powers to Central Government vide said provision to the extent that it can lay down a new mechanism for rendering advance rulings such as eliminating interface between the BoAR and applicant to the extent technologically feasible, changes in which respect are yet to notified.

iv. Advance rulings given by BoAR would no longer be binding on the applicant or the IRA which is in complete contrast to the earlier provisions wherein advance rulings were binding on the applicant and the IRA under Section 245S of IT Act, which provision will also cease to have effect from a specified date which is yet to be notified.

v. Earlier there was no statutory right to appeal against an order passed by AAR. However, in this regard the SC in the case of ***Columbia Sportswear Company***[6] had already held that the binding nature of advance ruling would not affect the jurisdiction of the SC under Article 136 of the Constitution or of the HC under Articles 226 and 227 of the Constitution to entertain a challenge to an advance ruling pronounced by AAR.

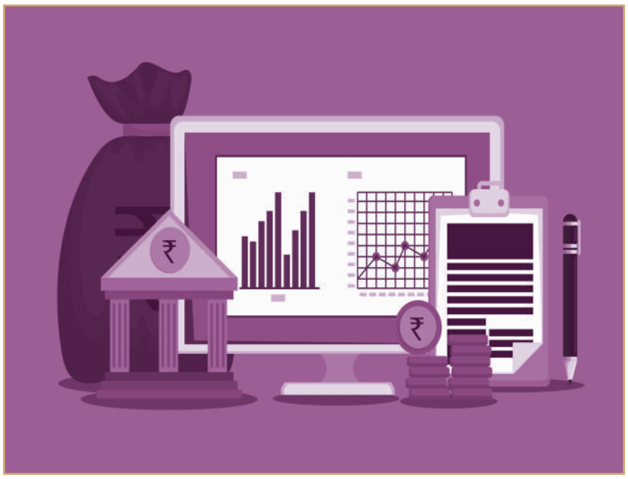
   The Bill provides that an appeal may be filed by the applicant or the AO (on the directions of the Principal Commissioner or Commissioner) before the HC against a ruling of the BoAR within the prescribed timeline. Therefore, any application pending before AAR before a specified date, which is yet to be notified, shall be taken up by BoAR as per amended Section 245Q of IT Act, in which case the applicants or IRA will now be able to file a statutory appeal before the HC under Section 245W of IT Act.

vi. The power of the AAR as laid down under Section 245T of IT Act to declare an advance ruling as void in case it is obtained by an applicant by fraud or misrepresentation of facts will continue to be available with the BoAR.

The above stated reforms could prove to be a welcome step in view of the increasing number of applications pending before the AAR due to its low disposal rate and apparent lack of adequate number of presiding officers to deal with the caseload due to large number of unfilled vacancies. It may be noted that these issues were duly highlighted by the SC in its recent ruling in ***National Co-Operative Development Corporation***[7] pronounced on 11 September 2020 wherein it discussed such issues at length and had made a specific recommendation to the Central Government to analyze the present system of advance rulings and bring suitable reforms. Therefore, the Government's measures in this regard are appreciable and further notifications with respect to this amendment are highly awaited. However, one can also not lose sight of the fact that in case of BoAR, advance rulings would be rendered by officers from the IRA, not below the rank of Chief Commissioner. In cases involving substantial tax additions and high tax demands, it is usually believed that having members completely independent from the IRA adjudicate over them inspires more confidence in the applicants planning to approach them.

Moreover, this change has also reduced the status of the ITAT to a non-entity. While appeals can be filed before the HCs, it is generally known that the HCs do not deal with the facts and with this change, the tax authorities have taken full control over the factual narrative. Moreover. The AAR used to function as another independent sounding board who was able to understand the law and give its views on a subject matter without any fear or favor. With the AAR getting squeezed out and with the BoAR consisting of revenue authorities, it remains to be seen how this new setup is able to inspire confidence among the taxpayers.

6 Columbia Sportswear Company vs Director of Income Tax, Bangalore Special Leave Petition (C) No. 31543 of 2011 (TS-549-SC-2012).
7 National Co-Operative Development Corporation vs. Commissioner of Income Tax, Delhi-V, Civil Appeal No. 5105-5107 of 2009 SC



The proposed amendment will be effective from 01 April 2021.

12. Aligning procedure related to assessment with the faceless assessment scheme

Under the provisions of section 142 of IT Act, the AO is empowered to conduct an inquiry in case of any taxpayer even before the initiation of assessment proceedings. For instance, if a taxpayer had failed to furnish income tax return within the prescribed timeline under IT Act, the AO has powers to issue a notice to such person asking for submission of such income tax return.

The Government has been taking various measures to enable faceless proceedings and centralized issuance of notices under the IT Act where physical interface with the taxpayer is not required. In furtherance to this, the Finance Bill proposes provide that besides the AO, the prescribed income tax authority may also serve a notice to a taxpayer.

The proposed amendment will be effective 01 April 2021.

13. Revision of timelines for reopening of assessment proceedings

As per the Finance Bill, the timeline for issuing a notice for reassessment to an assessee has been reduced to 3 years from 6 years. However, in case there is evidence with the AO for income escaping assessment of INR 5 million or more, a notice for reassessment can be issued upto 10 years from the relevant AY. Even for search and seizure cases initiated post 31 March 2021, the Finance Bill proposes that now it shall be deemed that income chargeable to tax has escaped assessment for 3 years preceding the relevant AY in which a search is conducted by the AO, instead of the earlier requirement of 6 years for carrying out assessment in search and seizure cases.

Further, as per the amendments proposed in the Finance Bill, a notice for reassessment may be issued only where the AO has information that income chargeable to tax has escaped assessment. Also, such notice may now be issued only with the prior approval of specified authority. In this regard it has been provided that AO can be said to have information that income chargeable to tax has escaped assessment where:

i. information pertaining to the assessee is flagged in accordance with the risk management strategy (computer based) formulated by the CBDT for the relevant AY or

ii. final objection is raised by the Comptroller and Auditor General of India that assessment in case of the assessee is not as per the provisions of the IT Act.

In addition to the above, it has been provided in the Finance Bill that prior to issuance of a notice for reassessment (except for search and seizure cases), certain conditions need to be fulfilled by the AO as provided hereunder:

i. conduct of enquiry with respect to the information which suggests that the income chargeable to tax has escaped assessment for relevant AY, with prior approval of specified authority

ii. providing an opportunity of being heard to the assessee by issue of a show cause notice as to why a notice for reassessment should not be issued to the assessee

iii. take into consideration assessee's reply in respect of the above, if any

iv. passing an order within one month from the end of the month in which the reply is received from assessee, on the basis of material available on record with the prior approval of specified authority. Where no reply is received from the assessee, such order needs to be passed within one month from the end of the month in which time allowed by AO to furnish a reply expires.

It may be noted in respect of the above that specified authority shall be the Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant AY; and; Principal Chief Commissioner or Principal Director General (or where there is no Principal Chief Commissioner/Principal Director General, Chief Commissioner or Director General), if more than three years have elapsed from the end of the relevant AY.

The Finance Bill intends to provide ease of doing business and reduce overall litigation of assessees by way of reduction in timelines for re-assessment in normal cases and for search and seizure cases. It has also put in place additional safeguards by increasing the onus on the AO prior to initiation of any reassessment proceedings by laying down specific conditions to be satisfied prior to issuance of a reassessment notice and by providing for specific approvals to be obtained from higher authorities within the IRA. It needs to be seen whether such additional requirements would be conducive in reducing tax litigation or not, however for the time being, it may be said that the alteration made in such timelines is a positive measure.

The proposed amendment will be effective from 01 April 2021.

V

Incentivizing Real Estate & Infrastructure

14. Incentives to affordable rental housing projects

Section 80-IBA of the IT Act presently provides that if the gross total income of an assessee includes any profit and gains derived from the business of developing and building affordable housing project, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business shall be allowed subject to certain conditions. One of the conditions required to be fulfilled is that the project has been approved by the competent authority after 1 June 2016 but on or before the 31 March 2021.

The Finance Bill proposes to extend the tax holiday provided under Section 80-IBA to projects approved on or before 31 March 2022.

Further, to support the migrant laborers and to provide them with affordable rental housing projects, the Finance Bill also proposes to extend tax holiday period under this provision, to the rental housing projects notified by the Central Government in the official gazette on or before 31 March 2022 and subject to the fulfilment to such other conditions as may be prescribed.

The affordable rental housing projects are part of Pradhan Mantri Gareeb Awas Yojna. The proposed amendment to increase the tax holiday duration and to extend the holiday to rental housing projects is in line with the third pillar of Atam Nirbhar Bharat mission of inclusive development.

The proposed amendment will be effective from FY 2021-22 onwards.

15. Extension of sanction of loan for affordable housing

As per the affordable housing initiative, Finance Act, 2019, had amended the IT Act to insert Section 80EEA which provides deduction of up to INR 0.15 million in respect of interest on loan taken for a residential house property from any financial institution. The availability of deduction is subject to the loan being sanctioned during the period from 1 April 2019 and ending on 31 March 2021. Finance Bill proposes to extend the benefit of deduction for loan sanctioned up to 31 March 2022 by making necessary amendments to Section 80EEA.

The proposed amendment will be effective from FY 2021-22 onwards.

16. Issuance of zero-coupon bonds by Infrastructure Debt Funds

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

With a view to incentivise infrastructure investment, Infrastructure Debt Funds ("**IDFs**"), incorporated and registered as NBFCs, are currently allowed a 100% tax exemption under Section 10(47) of the IT Act, subject to certain conditions. This includes that the IDF shall only issue rupee denominated bonds or foreign currency bonds in accordance with the directions of the RBI and the relevant foreign exchange regulations. Despite RBI regulations authorizing issue of other bonds by IDFs, the IT Act exemptions are restrictive. The Bill proposes to amend Rule 2F of the IT rules to permit IDFs to issue non-interest paying zero-coupon bonds that are issued at a deep discount and redeemed at face value. Consequential amendments are also proposed to the definition of zero coupon bonds under Section 2(48) of the IT Act. The proposal is expected to provide a great boost for the infrastructure sector, since the IT Act currently recognizes only zero-coupon bonds issued by infrastructure capital companies, infrastructure capital funds, public sector companies and scheduled banks.

The proposed amendments will be effective from FY 2021-22 onwards.

17. Increasing safe harbour limit for home buyers and real estate developers

As part of increased focus on the affordable housing initiative, the Finance Bill has further proposed amends to grant further incentives to home buyers and real estate developers selling residential unit.

Section 43CA of the IT Act provides that where consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable by the authority shall, for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The section also provides that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed 110% of the consideration received or accruing from the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

The Finance Bill proposes to increase the safe harbour threshold from existing 10% to 20% under Section 43CA of the IT Act subject to the following conditions being satisfied:

i. The transfer of residential unit takes place during the period from 12 November 2020 to 30 June, 2021;

ii. The transfer is by way of first time allotment of the residential unit to any person;

iii. Consideration received / accruing does not exceed INR 20 million.

The increase in the safe harbour limit has been done with an intent to boost the demand in the real-estate sector and to incentivise the real-estate developers to liquidate their unsold inventory at a lower rate to actual users.

Section 56(2)(x) of the IT Act provides that on or after 1 April 2017 where any person receives, from any person or persons, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding INR 50,000 the difference between the stamp duty value and the consideration received shall be charged as *"income from other sources"*. The Section also provides that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds 10% of the consideration or INR 50,000, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head *"income from other sources"*.

Consequent to increasing the safe harbour limit under Section 43CA, the Finance Bill also proposes to increase the threshold prescribed under Section 56(2)(x) from 10% to 20%. Thus, the stamp duty value of the property shall be deemed to be the value of consideration only if the variation between the stamp duty value and the actual consideration is 20%.

The proposed amendment will be effective from FY 2021-22 onwards.

VI

Expanding Incentives to IFSC

18. Increased tax incentives to units setup in IFSC

The Government of India had setup IFSC with an objective of bringing back those financial services transactions that were being carried on outside India by overseas financial institutions and overseas branches/ subsidiaries of Indian financial institutions to the Indian shores. However, IFSCs had not yielded the result to the satisfaction and expectations of the Government. Several incremental benefits had been proposed in the last few Finance Acts and a few more are also being proposed through the present Finance Bill to incentivize setting up of units at the IFSC.

The Finance Bill proposes to make the following tax incentives for units setup in IFSC:

i. *Relaxation of eligibility criteria for Investment Funds*

Section 9A of the IT Act provides that fund management activity carried out by an eligible fund manager in India on behalf of an eligible investment fund, will not constitute a business connection in India of the said fund. The eligible investment fund and the fund manager are required to fulfil certain conditions in order to avail the benefit of exemption from investment fund being treated as a business connection.

The Finance Bill proposes to amend Section 9A to grant powers to Central Government to specify one or more conditions), that shall not apply or apply with modifications to the eligible investment fund or fund manager, if the fund manager of the fund manager is located in an IFSC. This is subject to the condition that the fund manager would have commenced its operations in the IFSC, on or before 31 March 2024.

ii. *Extending benefits to investment divisions of offshore banking unit*

Finance Act, 2019 introduced Section 10(4D) of the IT Act with effect from 1 April 2020, which provided exemption to any eligible Category III AIFs located in an IFSC on any income accruing, arising or received by such AIFs on transfer of specific capital assets, which happened on a recognized stock exchange located in any IFSC, where the consideration for such transaction is paid in convertible foreign exchange. The scope of this exemption was increased by the Tax Amendment Act, 2020, extended to include income accruing or arising from transfer of securities (other than shares of company resident in India) or any income from securities issued by a non-resident which does not accrue or arise in India or prescribed income from securitisation trust.

The Finance Bill proposes to extend the exemption to income accrued or arisen to or received by an investment division of offshore banking unit, to the extent attributable to it. For the purposes of this proposed exemption, investment division of offshore banking unit has been defined as investment division of a banking unit of a non-resident located in an IFSC, which would have commenced its operations on or before 31 March 2024.

Additionally, definition of 'specified fund' has been expanded to include investment division of offshore banking unit which has been granted Category III AIF by SEBI, would have commenced its operations on or before 31 March 2024 and fulfilled other conditions like maintenance of separate accounts for its investment divisions, etc.

The Finance Bill also proposes to exempt any income accrued to or arisen to or received by the non-resident from transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC which would have commenced its operations on or before 31 March 2024 and fulfilled such other conditions as maybe prescribed.

Category III AIFs were also included within the special tax regime applicable to Foreign Portfolio Investors ("**FPIs**") under section 115AD of the IT Act, vide Tax Amendment Act, 2020 . Finance Bill further proposes to amend section 115AD to make the provision of this section applicable to investment division of an offshore banking unit in the same manner as it applies to Category III AIFs, to the extent of income that is attributable to the investment division of such banking unit.

iii. *Incentivizing relocation of funds in IFSC*

The Finance Bill proposes to include clause (23FF) to section 10 to exempt any capital gains arising or received by a non-resident on account of transfer of share of a company resident in India, by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation and where capital gains on such shares would not have been chargeable to tax had that relocation not taken place.

For the purposes of this newly inserted clause:

a. Original fund is proposed to be defined as fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils certain conditions which inter alia include that the fund is a resident of a country or specified territory with which an agreement under section 90 or 90A, has been entered into or in a country or specified territory notified by the Central Government and its activities are subject to applicable investor protection regulation in the country or specified territory in which it is established or incorporated or is a resident.

b. Resultant fund is established or incorporated in India in form of a company, LLP or a trust which is located in an IFSC and is registered with SEBI as a Category I, II or III AIF.

c. Relocation has also been defined as transfer of assets from original fund to resultant fund on or before 31 March 2023, where consideration for such transfer is in the form of a share or unit or interest in the resulting fund to the shareholder or unit holder of the original fund in the same proportion in which the share or unit or interest was held by the shareholder or unit holder.

   Corresponding amendments have also been made to section 47 of the IT Act through insertion of clause (viiac) which exempts transfer of capital asset from original to resultant fund in the process of relocation and also exempts such transfer in the hands of shareholder or unit holder or interest holder through insertion of clause (viiad).

Consequential amendments have also been made to section 49 (clarifying computation of cost of acquisition of assets transferred as part of relocation), section 56(2)(x) (clarifying that this provision will not apply to any sum of money or property received as part of relocation of assets from original to resultant fund), section 79 (exempting transfer of assets as part of relocation from original to resultant fund), etc.

The exemption under clause (23FF) and corresponding amendments to sections 47, 49, 56 and 79, specifically targets the objective of relocation of funds from outside India to within the IFSC.

iv. *Incentivizing aircraft leasing activities in the IFSC*

Finance Bill proposes to insert clause (4F) to Section 10 to provide exemption to a non-resident in the nature of royalty on account of lease of an aircraft in the relevant FY paid by the unit of an IFSC, if such unit is eligible to avail deduction under Section 80-LA of IT Act in the relevant FY and commences operation on or before 31 March 2024.

In continuation of incentivising units setup in IFSC, Section 80-LA of the IT Act provides for tax holiday for units of an IFSC for a period of 10 consecutive AYs out of 15 AYs beginning from the AY relevant to the FY in which the permission under Banking Regulations Act, SEBI Act or any other relevant laws have been obtained.

Moreover, to reduce ambiguity and ease of compliance, Finance Bill proposes to amend sub-section (1A) of Section 80-LA to provide deduction to a unit of IFSC if is registered under IFSC Authority Act, 2019, as against any other law currently provided in the relevant sub-section.

Further, income arising from transfer of an asset, being an aircraft or aircraft engine, which was leased by a unit setup in IFSC to a domestic company engaged in the business of operation of aircraft before such transfer, shall also be eligible for 100% deduction subject to condition that the unit would have commenced operation by the 31 March 2024.

Incentives of IFSC were mostly centred around Category III AIFs set up in the IFSC. The Finance Bill has significantly expanded the scope of these exemptions to also include investment divisions of offshore banking units. Further, incentivisation has also been done in terms of tax holiday for capital gains income for aircraft leasing companies set up in IFSC and tax exemption for aircraft leasing rentals paid non-resident lessors. Incentivisation has also been done for relocation of foreign funds to IFSC. With such incentivisation, one can hope for a conducive environment, IFSC in India may witness a growth at par with financial hubs of Hong Kong, Singapore, etc.

These proposed amendments will be effective from FY 2021-22 onwards.

VII

Incentivising Funds

19.Relaxations of exemption to Wealth Funds and Pension Funds

With an objective to boost investments in the infrastructure sector, the Finance Act, 2020 announced certain exemptions for certain specified investors like a wholly owned subsidiary of the Abu Dhabi Investment Authority, certain Sovereign Wealth Funds ("**SWFs**") and certain Pension Funds ("**PFs**") which have been notified by the Central Government and satisfy certain prescribed conditions. As per the said provision, dividends, interest or long-term capital gains arising from investment in India to such specified investors was exempted from tax in India, subject to the satisfaction of following conditions:

(a) investment is made before 01 March 2020 and is locked in for at least 3 years;

(b) investment is made in:

- business trusts, i.e. REITs or InvITs whose units are listed on a stock exchange;
- an entity carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility (as defined in section 80-IA(4)(i) of the IT Act) or such other business as may be notified ("**Infra Entities**");
- Category I or Category II AIF holding 100% investment in Infra Entities

The conditions listed above were very stringent. Pursuant to the demands from the industry and in order to rationalize the existing provisions and remove practical difficulties to ensure that such conditions are fulfilled, the Bill proposes to relax a number of these conditions. Key relaxations have been discussed below:

i. *Investment into a Category-I or Category-II AIF*

As stated above, one of the conditions was that the AIFs in which specified investors invested, had to make 100% investment in Infra Entities. The Bill proposes to relax this condition by providing that the AIFs must hold 50% investment (as against 100%) in Infrastructure Entities; and the AIFs may also invest in InvITs. Further, the Bill clarifies that where the aggregate investment of AIFs in Infra Entities is less than 100%, only proportionate exemption shall be available under the said clause.

ii. *Investment through a holding company*

The Bill proposes to permit specified investors to make investments through an Indian holding company structure subject to the following conditions:

(a)Holding company is a domestic company, set up and registered on or after 1 April 2021; and

(b)The holding company holds minimum of 75% investment in Infra Entities;

Further, the Bill clarifies that where the aggregate investment of the holding company in Infra Entities is less than 100%, then exemption under the said clause would be limited to

the income attributable to the investments in Infra Entities. The relaxation is a welcome measure as it enables specified investors to invest through holding company structures. However, since the benefits of such relaxation are available only when the entity has been set up on or after 01 April 2021, the existing holding structures cannot be utilized by the specified investors.

iii. *Investment in NBFCs, etc.*

Currently, the specified investors are not allowed to make investments in NBFC. The Bill proposes to permit specified investors to make investments in NBFCs registered either as infrastructure finance companies or infrastructure debt funds, which have a minimum 90% lending to Infra Entities. Further, the Bill clarifies that where lending of the concerned NBFCs in the Infra Entities is less than 100%, then exemption under the said clause would be limited to the income attributable to investments in Infra Entities. This is a welcome measure and would provide flexibility to the specified investors to invest in the eligible NBFCs.

iv. *Loans / borrowing by specified investors*

Currently, one of the conditions of the exemption stipulate that the earnings from investment does not result in any benefit to any private person, and therefore, specified investors were prevented from taking loans from any private persons. The Bill proposes to allow specified investors to take loans / borrowings, provided that such loans are not used for the purpose of making investment in India.

v. *Commercial activities by specified investors*

One of the conditions specify that the SWF cannot undertake any 'commercial activity' in or outside India if they seek to avail the tax benefit in India. However, what constitutes 'commercial activities' has not been defined in the proposed amendment. The Bill proposes to substitute this condition with a condition that SWF/PFs shall not participate in 'day to day' operations of investee entities. In this regard, the Finance Bill also clarifies that if the SWF/ PF appoints a director and executive director for monitoring the investment, that would not amount to participation in day-to-day operation of the investee company. Further, the term "investee" is proposed to mean a business trust or a company or an enterprise or an entity or a category I or II AIF or an InvIT or a domestic company or an NBFC (which is eligible as discussed under point 3 above), in which the SWF / PF has directly or indirectly made the investment.

These are welcome moves as they allow the SWFs / PFs to appoint the necessary personnel in the investee company to monitor the investments, thereby enabling them access to world class knowledge, best practices and experiences, in addition to allowing them access to monitor their investments. Further, the new condition allows SWFs/ PFs to carry out commercial operations outside India.

vi. Taxability of PFs in home countries

One of the existing conditions in the IT Act prescribes for a PF to be eligible for exemption under section 10(23FE), it should not be liable to tax in its home jurisdiction. This condition could render some PFs who were liable to tax in their home country but whole of their income is subsequently exempted from tax, ineligible for benefits under section 10(23E). Taking note of this, the Bill proposes to relax this condition by providing that if the PF is liable to tax but all its income is exemption from taxation by the home country under whose laws it is created or established, then such PF shall also be eligible for the benefits available to specified investors under the IT Act.

Notably, the Bill also proposes to insert section 2(29A) in the IT Act, which defines the phrase “liable to tax” in relation to a person, to mean that there is a liability of tax on such person under any law for the time being in force in any country and shall include a case where subsequent to imposition of tax liability, an exemption has been provided.

The clarification is the welcome one as it equates the PFs whose whole income is exempt from tax to the PFs who are not liable to tax in the first instance. This will result in expansion in the number of PFs who are eligible to claim benefits under section 10(23FE) and therefore, would incentivize more PFs to invest in infrastructure sector in India.

The proposed amendments have been made effective from FY 2020-21 onwards

VIII

Disinvestment of Public Sector Undertakings

20. Disinvestment of public sector undertakings ("PSUs")

In continuing efforts towards strategic disinvestment of public sector units ("**PSUs**"), FM had announced as part of AtmaNirbhar Package last year, that the government will soon come out with a policy of strategic disinvestment of PSUs. In her Budget speech, the FM laid down a road map for disinvestment in all strategic and non-strategic sectors. The key objective of the disinvestment policy is to minimise the presence of Central Government Public Sector Enterprises ("**CPSEs**") and create a new investment space for private sector. The proceeds of disinvestment shall be used to finance various social sector and developmental programs of the government. FM categorically referred that two public sector banks and one general insurance company are among the intended to be divested during the forthcoming year.

To promote strategic investment of PSUs, amendments have also been proposed under the IT Act to lubricate the process with tax incentives.

The first tax incentive to promote strategic disinvestment of PSU is to deem the transfer of assets by the PSU to the resulting company as tax neutral demerger.

Section 2(19AA) of the IT Act defines Demerger for the purposes of IT Act and lays down essentials of a tax neutral demerger. The Finance Bill proposes to introduce explanation 6 to section 2(19AA) to state the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger provided that following conditions are satisfied:

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

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

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

Once the above conditions are satisfied, such reconstruction or splitting of the public sector company shall also be deemed to be a tax neutral demerger.

In order to relax the conditions for carrying forward of losses for disinvested PSU in case of amalgamation, the Finance Bill proposes amendments to section 72A of the IT Act which provides for carry forward and set off of losses and unabsorbed depreciation in cases of amalgamation or demerger.

Sub-section 1 clause (c) of section 72A presently states that in case of an amalgamation of one or more public sector companies or companies engaged in the business of operation of aircraft with one or more public sector companies engaged in similar business, the accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or allowance of depreciation for the amalgamated company for the FY in which the amalgamation was effected.

The Finance Bill proposes to amend clause (c) and broaden its scope to remove the limitation of being engaged in the business of operation of aircraft. Thus, in case of amalgamation of any public sector company or companies with one or more public sector company or companies, the accumulated loss and unabsorbed depreciation of the amalgamating public sector company shall become the accumulated loss and unabsorbed depreciation of the amalgamating company.

Further, the Finance Bill also proposes to insert clause (d) to sub-section (1) of Section 72A to provide that in case of an amalgamation of an erstwhile public sector company which satisfies the following conditions i.e.:

i. the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and

ii. the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends;

the accumulated loss and unabsorbed depreciation of the amalgamating public sector companies shall be carried forward to the amalgamated company.

The Finance Bill also proposes to insert a proviso to clarify that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d) proposed to be inserted, which is deemed to be loss or unabsorbed depreciation of the amalgamated company, shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceased to be a public sector company as a result of strategic disinvestment.

The term “erstwhile public sector company” for the purposes of clause (d) has been defined as company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government.

The term “strategic disinvestment” has also been defined to mean sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below 51%, along with transfer of control to the buyer.

The proposed amendments have been made effective from FY 2020-21 onwards.

IX

Continuing Incentivization of Start-ups

21.Extending tax holiday for start-ups

Section 80-IAC of the IT Act provides for a deduction of an amount equal to hundred per cent of the profits and gains derived from an eligible business of an eligible start-up for three consecutive years out of ten years, at the option of the assessee. The availability of deduction is only available to eligible start-ups fulfilling certain conditions specified in Explanation (ii) to section 80-IAC. These conditions *inter alia* include that the eligible start-up is required to be incorporated on or after 1 April 2016 but before 1 April 2021.

The Finance Bill proposes amend explanation (ii) to section 80-IAC to extend the availability of the deduction under section 80-IAC to start-ups which are incorporated before 1 April 2022.

Section 54GB of the IT Act exempts capital gains arising from the transfer of long term capital assets, being a residential property, owned by the eligible assessee provided he utilises the net consideration received for subscription in equity shares of an eligible start-up. The eligible start-up is also required to purchase a new asset within one year from the investment by the assessee.

Finance Bill proposes to extend the date for transfer of residential property for availing benefit under section 54GB to 31 March 2022.

The said proposals are in furtherance of the long-term objective of the government to incentivise the setting up of start-ups and investments in start-ups. The proposals are also significant in light of the much-needed post-pandemic boost for start-ups.

The proposed amendments have been made effective from FY 2020-21 onwards.

X

Easing Compliance on MSMEs

22.Exemption from tax audit

Under section 44AB of the IT Act, every person carrying on business is required to get their accounts audited if, their (i) total sales, (ii) gross receipts or (iii) turn over exceeds INR 10 million in any FY. Finance Act, 2020 amended this section and increased the threshold for getting the accounts tax audited, in case of a person carrying on business, from INR 10 million to INR 50 million. This increased threshold is applicable only if aggregate of all receipts and payments in cash during the relevant financial year do not exceed 5% of such receipt / payments. In the continuance of efforts to reduce compliance burden for small and medium enterprises and to further increase the non-cash transactions to promote digital economy, the Bill proposes to amend section 44AB of the IT Act to further increase the threshold to INR 100 million.

The proposal is in line with the objective of the government to reduce compliance burden on various medium and small-scale enterprises. The reduction in the threshold for audit will reduce the cost of doing the business and permit entities to utilize the available resources in an optimal manner.

However, as the increased threshold is applicable only on the fulfillment of condition that cash receipts and cash payments cannot exceed 5% of the total receipts and total payments respectively; the relaxation may have limited application. Further, the amendment may not benefit enterprises engaged in those sectors, where dealings continue to take place in cash. Taxpayers while computing the limit of 5% need to be cautious, as inclusion / exclusion of certain transactions such as capital contributions by an individual / partnership firms, capital / revenue expenditure, direct cash deposit into bank account by customers, receipts / payments in bearer cheques, cash deposits and drawings from bank accounts, etc., while computing the 5% limit may be unclear. Increased importance to non-cash transactions will have to be promoted with a more robust approach to development of digital infrastructure and guidance on adoption of technology across the supply chain and among the consumers so that people are keen to gravitate towards digital transactions.

The proposed amendments have been made effective from FY 2020–21 onwards.

XI

Withholding Tax Compliance

23.TDS on purchase of goods

Chapter XVIIB of the IT Act does not apply to purchase of goods by a person. The Finance Bill proposed to introduce a new provision (i.e. section 194Q of the IT Act) which shall be applicable on payment made by a buyer towards purchase of goods whose aggregate value exceeds INR 5 million in a year, from a resident seller. The rate of TDS is 0.1% and is applicable only on amount paid in excess of INR 5 million. Further, the obligation of TDS would be applicable on the buyer whose total sales or turnover from the business carried on by him exceeded INR 100 million in the previous FY.

This provision was not applicable if TDS/ TCS is required to be deducted/ collected under any other provision of the IT Act except when sellers were required to collect taxes under section 206C(1H) of the IT Act.

The proposed amendment is similar to another provision introduced the previous year (i.e. section 206(1H) wherein the sellers were required to collect TCS from buyers. The conditions prescribed here is very similar to the erstwhile conditions and thus, for the same transaction, seller may have to collect TCS under section 206(1H) and the buyer may to deduct TDS under the proposed section.

It may be noted insertion of section 206(1H) has triggered a lot of discussion, when it was introduced, as to whether the definition of 'goods' would include shares or not. The CBDT Circular No. 17 of 2020 had created further ambiguity.

This proposed amendment will be effective from 01 July 2021 onwards.

24.TDS and TCS on income tax return filing defaulters at higher rates

The Finance Bill proposes to include an onerous obligation on the tax collector under Chapter XVII-B of the IT Act as it mandates the collector to verify whether the payee has filed its income tax return during the preceding two financial years. In case the payee had not filed its income tax return, the collector shall have to collect taxes at higher rates.

The Finance Bill proposes for mandatory deduction of TDS (except where tax is required to be deducted in case of salaries, lottery, horse race, income from investment in securitization trust) on any sum paid or payable or credited by a person (deductor) to a specified person (who had defaulted in filing of ITR in the past 2 years), at higher of the following three rates: (i) twice the rate applicable in the relevant provision; (ii) twice the rates in force; and (iii) 5%.

Similarly, the Finance Bill also proposes for mandatory collection of TCS on any sum received by a person collecting TCS from a specified person, at higher of the following two rates: (i) at twice the rate specified in the relevant provision; and (ii) 5%.

This higher rate of TDS and TCS is applicable to a specified person who has not furnished ITR for the two FYs immediately prior to the FY in which tax is to be deducted and for which the time limit for filing of ITR under section 139(1) of the IT Act has expired. Further, the aggregate of TDS and TCS for the payee is more than INR 50,000 for both the two above-mentioned FYs.

In case the provisions of section 206AA of the IT Act are attracted i.e. the PAN has not been furnished, then the TDS shall be required to be deducted at the higher of the rate prescribed under section 206AA and section 206AB of the IT Act. Similarly, it has been provided that in case the provisions of section 206CC of the IT Act are attracted i.e. the PAN has not been furnished, then the TCS shall be required to be collected at the higher of the rate prescribed under section 206CC and section 206CCA of the IT Act.

These provisions will not apply to a specified person being a non-resident who do not have a PE in India.

Further, a consequential amendment has also been made in section 194-IB of the IT Act which provides for deduction of tax in case of rent exceeding INR 50,000 per month at the rate of 5%. This section provides that if the provisions of section 206AA are applicable, i.e. where PAN has not been furnished by the payee, then the deduction shall not exceed the amount of rent payable for the last month of the previous year or last month of tenancy. This concession has been extended to deduction of tax under section 206AB as well.

While the intent of these provisions seems to be the aim towards motivating the timely filing of income tax returns, this provision does trade into a few conflicting areas. For example, why would a payee like to talk about its taxable status with the payor? Would the payor have to insist on a copy of the previous two years' returns or a mere declaration be enough? Who will be responsible for the secrecy of the information being provided by the payee? Further, this is likely to increase the compliance burden of the collector.

This proposed amendment will be effective from 01 July 2021 onwards.

XII

Rationalising VsV provisions

25. Extension of VsV to small taxpayers

As a part of Central Government's endeavor to simplify tax administration, relax compliance burden, and lessen litigation, the Bill proposes to set up one or more Dispute Resolution Committees ("**DRCs**") by inserting section 245MA into the IT Act. In terms of this section, any class of persons, as may be prescribed by CBDT, may opt for dispute resolution through DRC in respect of any dispute arising from a "specified order", on satisfaction of certain specified conditions.

Specified order for such purposes has been defined to mean an order (including draft order), where; (i) aggregate value of variations proposed or made in such order does not exceed INR 1 million; (ii) such order is not based on search or seizure operations; or on the basis of information received under section 90 or section 90A of the IT Act for prevention of evasion or avoidance of income-tax; and (iii) where total income of the taxpayer as per the income tax return for the concerned FY does not exceed INR 5 million. Further, "specified conditions" in relation to a person has been defined to mean a person:

i. in respect of whom no order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 or;

ii. who has not been prosecuted / convicted for any offence punishable under the provisions of the Indian Penal Code, 1860, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Transactions Act, 1988, the Prevention of Corruption Act, 1988 or the Prevention of Money Laundering Act, 2002; or

iii. who has not been prosecuted / convicted by an income-tax authority for any offence punishable under the provisions of this Act or the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, or

iv. who has not been notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992; or

v. who fulfils such other conditions, as may be prescribed.

Where the dispute is resolved through DRC, the Bill grants the power to the DRC to reduce or waive any penalty imposable under the IT Act or grant immunity from prosecution for any offence punishable under the IT Act, subject to such conditions as may be prescribed. The Bill also provides that for the purposes of dispute resolution through DRC and to provide greater efficiency, transparency and accountability, the Central Government may notify a scheme; and may also issue directions before 31 March 2023 to relax / modify any provision of the IT Act. Such notifications / directions shall be required to be tabled before both the Houses of Parliament.

The Bill proposes that such scheme should have the following features: faceless dispute resolution proceedings to the extent technologically feasible; optimum utilization of the resources through economies of scale and functional specialization; and introducing a dispute resolution system with dynamic jurisdiction. Notably, these features are in line with the features of various recently implements such as Faceless Assessment Scheme, 2019, Faceless Appeal Scheme, 2020 and Faceless Penalty Scheme, 2021. The common thread that runs through these schemes is to enhance transparency by eliminating physical interaction between the taxpayers and the tax authorities, to the extent possible.

The FM in her Budget Speech stated that VsV has proved instrumental in resolution of tax disputes, and the DRC has been proposed to further reduce litigation. The memorandum to the Bill explains that the intention behind introduction of DRC is to provide tax certainty by settling the issues at the initial stage. Considering the limits prescribed to be eligible for dispute resolution through DRC, the move aims at providing a quick dispute resolution mechanism to the small and medium taxpayers. As the mechanics of the scheme are yet to be introduced, the viability of recourse to such DRC for the taxpayers remains to be seen. While undoubtedly, setting up of DRC is a step in the right direction, it is quintessential for the Government to take note of various measures / schemes that have been introduced in the past with the same objective but failed to live up to the expectations; and therefore, ensure that the dispute resolution through DRC does not suffer the same fate.

The proposed amendment has been made effective from FY 2020-21 onwards.

26. Clarification regarding VsV

The direct tax amnesty scheme, VsV was enacted on 17 March 2020, in order to reduce pending income tax litigation, and generate timely revenue for the Government. VsV covered any appeal pending before the HC, SC, ITAT, DRP, revisionary order, etc. within its ambit. However, VsV was silent on whether an application filed before the special dispute mechanism scheme i.e. ITSC can be covered or not under the scope of VsV, i.e. there was neither an express prohibition nor an express allowance for cases pending before ITSC or which are further pending before HC or SC.

In order to remove any ambiguity regarding the scope of VsV, the provisions of VsV providing for the definitions of "appellant", "disputed tax" and "tax arrear" are proposed to be amended so as to specify that the provisions shall not include and shall be never deemed to have included a writ petition or a special leave petition or any appeal arising out of an order of ITSC.

While not including any cases pending before the ITSC was in line with the theme of VsV since there is no order of demand in case of a case pending before the ITSC, the fact that VsV has proposed to exclude the appeals filed before SC, HC, etc. is contrary to the basic tenet under which VsV has been devised i.e. to settle the pending litigation. Hence, by not including such cases, the Finance Bill has not served the purpose of reducing the pending litigation arising out of cases filed before ITSC.

The proposed amendment has been made effective retrospectively from 17 March 2020.

XIII

Charitable Trusts

27.Exemptions to certain educational and health institutions

In terms of section 10(23C)(iiiad) of the IT Act, any income received by any university or other education institution, existing solely for educational purposes and not for purposes of profit is exempt from tax, if the aggregate annual receipts of such university or educational institution do not exceed the prescribed amount of annual receipts. Similarly, section 10(23C)(iiiae) of the IT Act provides that any income received by any hospital or other institution for the (i) reception and treatment of persons suffering from illness or mental defectiveness; or (ii) for the reception and treatment of persons during convalescence; or (iii) of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit is exempt if the aggregate annual receipts of such hospital or institution do not exceed the prescribed amount of annual receipts. Rule 2BC of the IT Rules provides the amount of annual receipts for the purposes of section 10(23C)(iiiad) and 10(23)(iiiae) to be INR 10 million.

The Bill proposes to increase the annual receipts from INR 10 million to INR 50 million. The Bill further clarifies that if any institution receives income under both, section 10(23C)(iiiad) and 10(23C)(iiiae), then the aggregate limit for such institution would be INR 50 million and not INR 100 million. The proposed amendment is introduced with the objective to provide incentives to small charitable trusts and institutions, which provide education and health services, by reducing compliance burden. The FM in her budget speech stressed on the importance of robust health and education infrastructure in a country; and these measures seem to have been introduced to promote and improve health and education infrastructure in the country.

The proposed amendment will be effective from FY 2021-22 onwards.

28.Application of corpus would not be considered as application of income

The charitable trusts exempted under section 10(23C) and section 11 of the IT Act are required to mandatorily apply 85% of its income towards their charitable objectives and can accumulate only the remaining 15% of the income every year.

The donations towards corpus are not considered as income of the charitable trust. Accordingly, the trusts are not required to mandatorily apply these donations. However, as and when such corpus was applied, the trusts are allowed to claim such application as application of income. The Finance Bill seeks to prevent the trusts from claiming application of corpus as application of income by making suitable amendments in section 11 and 10(23C) of the IT Act.

Similarly, the trusts can claim the application of borrowed money/loan as application of income. Thereafter, the repayment of such narrowed money/loan can also be claimed as application of income. The Finance Bill proposes to amend the relevant provisions to state that repayment of loans will only be considered as application of income but not the initial application of loans.

These proposed amendments will be effective from FY 2021-22 onwards.

XIV

Personal Taxation

29.Taxability of interest on employee contribution to Provident Fund

Presently, the IT Act provided an exemption to the employee from tax for payment from a provident fund ("**PF**") to which Provident Funds Act, 1925 applies or from a fund set up and notified by government. Also, there is an exemption with respect to the accumulated balance due and becoming payable to an employee recognized PF, to the extent of satisfaction of conditions provided in rule 8 of Part A of the Fourth Schedule.

Since there is no monetary limit up to which the exemption is available, it has been noticed that this provision has been used by some employees by voluntarily contributing a very high amount to PF, and thus, have unduly benefited those who can contribute more towards the PF.

The Finance Bill proposes that the exemption available to an employee as mentioned above shall not apply to interest income accrued to the extent it relates to contribution to PF made by the employee exceeding INR 0.25 million in a FY.

It is relevant to note that in Finance Act, 2020, a combined upper limit of INR 0.75 million was put in respect of deduction available to employee for employer's contribution to PF, approved superannuation fund and National Pension Scheme. Further, the surcharge rate was also increased to 37% for individuals having total income in excess of INR 50 million.

With this proposal, the government has continued to put more tax burden on high salary individuals and has, at the same time, showed its intent of supporting the middle class and low-income class, by restricting the exemption that could have been availed by high salaried individuals only.

The proposed amendment will be effective from FY 2021-22 onwards.

30.Benefits of LTC Cash Scheme incorporated in IT Act

Any travel concession or assistance granted by an employer or a former employer to an employee and their family in connection with their proceeding to leave to any place in India, is exempt from tax in the hands of employee under Section 10(5) of the IT Act.

On account of COVID-19 pandemic and consequent nationwide lockdown resulting in disruption of travel, several employees were not able to utilise the leave travel allowance available in their salary structures. Given the same, the Hon'ble FM had notified Leave Travel Concession ("**LTC**") cash voucher scheme ("**the Scheme**") in October 2020, which allowed payment of cash allowance equivalent to the deemed LTC fare to employees. The scheme was initially limited to the Central Government employees only and was later extended to employees in the private sector as well. The LTC paid to employees under the Scheme was made tax exempt subject to the fulfilment of certain conditions. The Scheme was enacted with the intent to incentivise individuals to utilise their unclaimed LTC amounts and to boost consumer demands. The Scheme also provided that the legislative amendments to the provisions of IT Act shall be proposed in due course.

In continuation of the same, the Finance Bill proposes to incorporate the benefits of the Scheme into the IT Act by inserting second proviso to Section 10(5) of the IT Act which proposes to extend the exemption to any value in lieu of any travel concession or assistance received by or due to an employee subject to fulfilment of certain conditions including the condition of incurring a certain amount of expenditure within a period. The memorandum to Finance Bill also proposes to prescribe the conditions for availing the exemption, under the IT Rules, in due course of time. The conditions proposed in the memorandum for availing the exemption, *inter alia*, include:

i. The employees exercise the option for the deemed LTC fare in lieu of applicable LTC block year 2018-21;

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

iii. "specified period" means the period commencing from 12 October 2020 and ending on 31 March 2021;

iv. the amount of exemption shall not exceed INR 36,000 per person or one-third of specified expenditure, whichever is less;

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

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

These conditions are similar to conditions prescribed under the Scheme.

The Finance Bill also proposes to insert an explanation to Section 10(5) to clarify that where an individual claims and is allowed exemption under second proviso in connection with a prescribed expenditure, no exemption shall be allowed under this clause in respect of same expenditure to any other individual.

It may also be pertinent to note that the CBDT had clarified that the benefits of LTC cash voucher scheme are not available to employees opting for the new concessional tax regime, given that exemption under Section 10(5) is not available to individuals opting for concessional tax rates.

The proposed amendment has been made effective from FY 2020-21 onwards.

31. Relief to Non-Resident Indians on income from retirement funds

Various taxpayers who are now resident in India, have retirement funds in certain foreign countries. These retirement funds were opened by these residents, when they were resident of foreign countries and non-residents of India. Currently, the withdrawal from such funds may be taxed in India on accrual basis, and also in the foreign country on receipt basis. In light of the mismatch in the financial year (for example US considers calendar year for taxes) concept and even the point at which an income is taxed, retirement benefits accumulated by these residents may be taxed differently.

Taking note of the genuine hardships arising from such treatment of the income and owing to the various representations received in this regard, the Bill proposes to insert section 89A in the IT Act, to provide that income of a specified person from certain specified accounts, would be taxed in such year and in such manner as may be notified by the Government, provided such account was opened by the taxpayer in such prescribed country when he/she was non-resident in India and resident of that country.

Specified person has been defined to mean an Indian resident who opened a specified account in a country notified by the Central Government, while being a non-resident in India and resident in that country. Further, “specified account” has been defined to mean an account maintained in a notified country by the specified person in respect of his retirement benefits and the income from such account is not taxable on accrual basis but is taxed by such country at the time of withdrawal or redemption.

The said provision will provide relief to those taxpayers, usually NRIs, who return to / settle in India after their retirement from jobs in foreign countries. However, the manner in which such relief would be provided remains to be seen.

The proposed amendments will be made effective from FY 2021-22 onwards.

XV

Miscellaneous

32.Rationalization of MAT provisions

Under the existing provisions of calculation of MAT under section 115JB of the IT Act, a foreign company having a PE in India and hence, preparing books of accounts in India, is allowed to reduce the income in the nature of capital gains on transactions in securities, and interest, royalty and FTS chargeable to tax at special rates on a gross basis, from the calculation of book profits for the purpose of MAT, provided the rate of tax applicable on such income is less than the MAT rate due to the applicability of such provisions. Hence, there is no MAT on such income.

Since the income in the nature of dividend has also been made taxable in the hands of shareholders pursuant to abolishment of DDT, the Finance Bill proposes that the above provision available for reduction of income in the nature of interest, royalty and FTS from the book profits be extended to the dividend income earned by a foreign company preparing its books of accounts in India, on satisfaction of similar conditions i.e. where the rate of tax on such income is less than the MAT rate.

Separately, the current computation of book profits under the MAT provisions, does not provide for any adjustment on account of transfer pricing issues i.e. additional income of past year(s) included in books of account of current year on account of secondary adjustment or Advance Pricing Agreement entered by an taxpayer. The Finance Bill proposes that where there is an increase in the book profit of the income of an FY due to income of past year(s) on account of secondary adjustment under section 92CE of the IT Act or Advance Pricing Agreement entered by a taxpayer under section 92CC of the IT Act, the AO shall re-compute the book profit and tax payable of the past years in the prescribed manner. The taxpayer will have to make an application in this regard to the AO. Further, the procedure and time periods applicable for "rectification proceedings" under section 154 will be applicable in this case.

This will benefit the taxpayers in offering the income as per the normal provisions and as per MAT in the same year and shall seek to remove any anomaly on account of mismatch in the year in which the said income is subjected to tax under the normal provisions and MAT provisions.

The proposed amendments have been made effective from FY 2020-21 onwards.

33.Assets/Monies distributed to retiring partners taxable – *Savitri Kudur reversed*

Disputes involving whether capital gains taxes are leviable on sums/assets paid to retiring partners has been a subject matter of litigation for several decades now as there is no clarity on whether the cash proceeds given to retiring partners should be taxed in the hands of the partner or in the hands of partnership firm as section 45(4) was silent about it. The decision of

Bangalore ITAT in the case ***Savitri Kudur***[8] had held that section 45(4) does not apply to cases where cash consideration was discharged to retiring partners. Therefore, it held that the same needs to be analyzed basis the position existing before the insertion of section 45(4) of the IT Act, wherein the SC in the case of ***Mohanbhai & Pamabhai***[9] had held that cash consideration given to the retiring partners to the extent of amount lying in their capital accounts is not taxable as it merely represents the interest of the retiring partner in the firm. The said decision even held that capital account of the retiring partner can be revalued before being given to the retiring partner. In cases where excess cash consideration, over and above the amount lying in the capital account, is given to the retiring partner, the same shall be taxable in the hands of the retiring partner but not in the hands of the firm. The said decision was widely followed by the industry.

The Finance Bill seeks to completely overhaul the provisions of section 45(4) of the IT Act to reverse all the positions taken by the ITAT in the case of Savitri Kudur to provide as follows:

- Money distributed at the time of dissolution / reconstitution of the partnership firm would be taxed in the hands of partnership firm (not in the hands of the retiring partner) as capital gains.
- The cost of acquisition would be amount lying in the capital account of the retiring partner. Revaluation of capital accounts is prohibited.

These proposed amendments have been made effective from FY 2020-21 onwards.

34. Belated payments of employee contributions disallowed

In terms of various social security legislations in India such as Employees' Provident Fund and Miscellaneous Provisions Act, 1952, and Employees' State Insurance Act, 1948 and schemes made thereunder, namely the Employees' Provident Fund Scheme and the Employees' Pension Scheme, both the employer and the employees are required to make specified contributions to certain specified funds for the benefit of the employees.

Section 43B of the IT Act provides a list of certain deductions, which are available only when an actual payment is made with respect to certain expenses. Clause (b) of the said provision, inter alia, prescribes that any sum payable by an employer by way of contribution to any provident fund or gratuity fund or any other fund for the welfare of employees, shall be allowed as a deduction in the FY in which such sum is actually paid by the employer. However, the said provision would not be applicable where such sum is paid by the taxpayer on or before the due date for furnishing its income tax return in respect of the FY in which the liability to pay such sum was incurred, and the evidence of such payment is furnished by the taxpayer along with such income tax return. In other words, the deduction with respect to the employer's social security contribution is available to the employer if such sum is paid on or before the due date for filing of income tax return for the concerned FY.

8 Savitri Kudur v. DCIT (ITA No. 1700/Bangalore/2016 dated May 03, 2019).
9 ACIT v. Mohanbhai & Pamabhai 165 ITR 166.

Further, with respect to the contributions received by the employer from its employees, section 2(24)(x) of the IT Act provides that any sum received by an employer from his employees as contributions to any provident fund or any fund set-up under the provisions of the Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees, shall be treated as income of the employer. Further, section 36(1)(va) of the IT Act provides that an employer may claim deductions with respect to any sum received by it from its employees as social security contributions, if such sums are deposited by the employer with the concerned authorities within the prescribed due dates. As per the explanation to this section, the due dates for such purpose, would mean the dates prescribed under the relevant legislation / scheme.

While some of the HCs[10] have applied the above-stated understanding and considered the due dates under the specific social security legislations for purposes of grant of deduction under section 36(1)(va), some other HCs[11] have taken a contrary view. This other set of HCs have held that the deduction under section 36(1)(va) of the IT Act, would be available even if the employee's contributions have been deposited after the due dates prescribed in the concerned statute, so long as the same is deposited before the due date of filing of income tax return for the concerned FY, by applying the rationale of section 43B of the IT Act. In other words, the courts have extended the concept of due date with respect to employer's contributions under the proviso to section 43B to the deduction for employee's contributions under section 36(1)(va).

In this regard, the Bill proposes to add explanations to section 36(1)(va) and section 43B of the IT Act to clarify that the due date for the purposes of employee contributions would be the due date provided under the specific social security legislation and not the due date for furnishing of income tax return for the relevant FY. The memorandum to the Bill also clarifies that employee's contribution is employee's own money and the employer holds this contribution on behalf of the employee in the fiduciary capacity; and by late deposit of employee's contribution, the employers are unjustly enriched. The memorandum to the Bill also states that the section 36(1)(va) was inserted as a measure of penalizing employers who mis-utilize employee's contributions and cannot be equated with employer contribution under section 43B.

The amendment is an extremely draconian provision that will not allow employers deductibility in respect of any of the employees' contribution collected by the employer in case the said amount is not deposited within the specific time period, thereby explicitly overruling all the precedents. It remains to be seen whether the taxpayers would be willing to accept such a provision or would they try to get the courts to decide on the legislative propriety of bringing such contentious issues through a legislative amendment.

The proposed amendment has been made effective from FY 2020-21 onwards.

10 CIT v. Gujarat State Road Transport Corporation, (2014) 41 taxmann.com 100 (Gujarat HC); Unifac Management Services (India) (P) Ltd. v. DCIT, (2018) 100 taxmann.com 244 (Madras HC); CIT v. Merchem Ltd. (2015) 61 taxmann.com 119 (Kerala HC);

11 Essae Teraoka (P) Ltd. v. DCIT, (2014) 43 taxmann.com 33 (Karnataka HC); CIT v. Hindustan Organic Chemicals Ltd. (2014) 48 taxmann.com 421 (Bombay HC); CIT v. Rajasthan State Ganganagar Sugar Mills Ltd. (2017) 88 taxmann.com 522 (Rajasthan HC).

35. Rationalization of due dates for filing income tax returns

(a) Due dates for partnership firms to file income tax returns

Section 139 of the IT Act, inter alia, provides the due dates for filing income tax returns, for all kinds of taxpayers. The due date for furnishing income tax returns for taxpayers whose accounts are required to be audited is 31 October of the next FY. As the partners can finalize their income tax returns, only once the income tax return of the firm has been finalized, the said deadline of 31 October is also applicable to the partners of the firm, whose accounts are required to be audited.

i. Partnership firms required to furnish transfer pricing report

The due date for furnishing of income tax return in case of taxpayers who are required to furnish a transfer pricing report from an accountant for entering into international transaction or specified domestic transaction under section 92E of the IT Act, is 30 November of the next FY. Consequently, if a firm is required to furnish a transfer pricing report, then the due date for filing income tax return is 30 November. However, there is no provision in the IT Act, which states the due date for filing of income tax return for the partners of such firm would be 30 November. The Bill proposes to provide for this, by extending the due date of filing of income tax return for such partners to 30 November of the next FY.

ii. Where a partner of the firm is covered under Portuguese Civil Code

Section 5A of the IT Act provides that where the husband and wife are governed by the system of community of property under the Portuguese Civil Code, 1860, then their income under all heads of income (other than income under the head salary) shall be apportioned equally between the spouses and the income so apportioned shall be included separately in the total income of the husband and the wife. Therefore, if a spouse, governed by Portuguese Civil Code, is a partner in a firm, then until the income tax return of the firm has been filed, it may not be possible for either of the spouses to file their income tax return. Consequently, the Bill proposes to extend the due date for filing of income tax return for the spouse of a partner of a firm whose accounts are required to be audited, to 31 October of the next FY.

(b) Due dates for filing belated / revised returns

Currently, section 139(4) and 139(5) of the IT Act, respectively, provide that the belated income tax returns and revised returns may be furnished before the end of next financial year or before completion of assessment, whichever is earlier. In light of the technological advancements, and paradigm shift towards the faceless assessments, the Bill proposes to reduce the deadline for the filing of belated or revised returns of income by three months. Therefore, belated or revised returns may now be filed before 31 December of the next financial year (as against 31 March of the next FY), or before the completion of the assessment, whichever is earlier. The taxpayers should be mindful of the revised timelines and should be more proactive in filing their income tax returns, within the prescribed timelines.

(c) Relaxation in conditions for defective returns

Section 139(9) of the IT Act, inter alia, provides that the tax authorities may consider an income tax return furnished by the taxpayer as defective, if certain prescribed conditions are not fulfilled. Various representations have been made by the taxpayers demanding that such conditions be relaxed, as the prescribed conditions are very stringent and resultantly, large number of income tax returns have been rendered defective. Owing to these demands, the Bill proposes to grant the power to the CBDT to relax / modify the applicability of such conditions to a specific class of taxpayers, through a notification in the official Gazette. While the amendment appears to be a favourable one for the taxpayers, it may not be helpful until such relaxations / modifications and the class of taxpayers are actually notified by CBDT. Notably, if these defects are not cured by the taxpayer within the prescribed time period, then the income tax return is treated as an invalid return and it is considered that the taxpayer has failed to furnish its income tax return.

These proposed amendments have been made effective from FY 2020-21 onwards.

36. Refund on Income Declaration Scheme, 2016 ("IDS") shall be without interest

The IDS, which came into effect from 01 June 2016 and was open till 30 September 2016, provided an opportunity to persons who had not paid full taxes in the past to declare their domestic undisclosed income and assets and pay tax, interest and penalty on the same. Initially, the IDS provided that any amount of tax and surcharge paid or penalty paid in pursuance of a declaration shall not be refundable. However, through an amendment made by way of Finance Act, 2019, the IDS provided that the Government may specify the class of persons to whom tax, surcharge and penalty paid in excess of declaration, may be refundable.

The Finance Bill now proposes to amend the said section to specify that the above refund of excess tax, surcharge and penalty paid shall be made without payment of any interest. While the IRA is generally required to pay 0.5% per month interest on refund on excess income tax under section 244A of the IT Act, the fact that IDS was a limited period scheme for past defaulters to come clean, this amendment has been made to specify that the Government is not willing to give any special treatment and shall not pay interest on such refund of excess tax, surcharge and penalty paid.

The proposed amendment has been made effective retrospectively from 01 June 2016.

37. Processing of income tax return and assessment

(a) Expanding the scope of amounts to be verified on processing of income tax return

Under the existing provisions of section 143(1) of the IT Act, at the time of processing of income tax return filed by an assessee under section 139 of the IT Act, or in response to a notice issued under section 142(1) of the IT Act, the total income or loss is computed after making adjustments for the specific situations provided in points (i) to (vi) therein. These points inter-alia, include the situations wherein inconsistencies may be automatically detected between the computation of income and other documents available for the assessee like tax audit report, Form 26AS, etc.

At present, the provision allows for disallowance of expenditure indicated in the tax audit report but not considered in the computation of income. However, it did not provide considering any increase in income mentioned in the tax audit report, but not considered in the computation of income.

Further, while disallowance of deduction claimed under the prescribed sections claiming deduction i.e. section 80-IA to section 80-IE, etc., is provided for in case the income tax return is furnished beyond the due date, it did not take into account other sections of Chapter VIA Part C, under which the deductions are available only in case the income tax return is filed within the time prescribed under section 139(1) of the IT Act, in accordance with section 80AC of the IT Act introduced by Finance Act, 2018.

With a view to streamline the intimation generated on processing of income tax return in accordance with the provisions of the IT Act, the Finance Bill proposes that not only disallowance of expenditure, but even an increase in income indicated in the tax audit report, but not considered in the computation of income shall be adjusted in calculating the total income. Further, the deductions claimed under Chapter VIA Part C shall be disallowed in case the income tax return is not filed within the time prescribed under section 139(1) of the IT Act.

(b) Reduction in time limit available for processing of income tax return

As per the existing provisions of section 143(1) of the IT Act, the time limit available with the income tax authorities for processing the income tax return filed by an assessee and sending intimation therein is one year from the end of the FY in which the income tax return is filed by the assessee.

In line with the other amendments proposed due to advancement of technology, the FM has proposed to amend the provision so as to reduce the time limit under section 143(1) of the IT Act from one year to nine months from the end of the FY in which the income tax return is filed by the assessee.

(c) Reduction in time limit available for initiating assessment proceedings

At present, the time limit available for initiating assessment proceedings under section 143(2) of the IT Act is 6 months from the end of the FY in which the income tax return is furnished. The Finance Bill proposes to reduce this time limit from 6 months to 3 months from the end of the FY.

The assessment procedure has been completely overhauled by the introduction of the Faceless Assessment Scheme, 2019. The assessment procedure is now conducted in a completely faceless and jurisdiction-less way where all internal and external communication is made electronically and different aspects of the assessment procedure like verification, scrutiny of books of accounts etc. are carried on by different units. The person-to-person interface between the taxpayer and the IRA has been eliminated. This team-based approach for assessment with a dynamic jurisdiction is technologically driven and very efficient. Therefore, it is possible to reduce the time limit for initiating the assessments.

(d)Reduction of time limit for completing assessment

In continuation with reduction in time-limit by 3 months for initiating the assessment, the Finance Bill proposes also to reduce time-limit for completing the assessment by 3 months. Presently, the time limit for completion of assessment proceedings under sections 143 or 144 of the IT Act is 12 months for AY 2019-20 and subsequent assessment years.

The Finance Bill proposes the time for completing of assessment to 9 months from the end of the assessment year in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.

The proposed amendments will be effective from 01 April 2021.

38.Section 44ADA of the IT Act not available to an LLP

The provisions of section 44ADA of the IT Act which provides for presumptive taxation at 50% of the total receipts presently applies to an assessee carrying on a specified profession under section 44AA(1) of the IT Act whose total gross receipts do not exceed INR 5 million in a previous year.

Since an LLP is mandatorily required to maintain books of accounts under the provisions of LLP Act, the Finance Bill proposes to clarify that LLPs are excluded from the above-mentioned presumptive taxation scheme by amending that the above provision is applicable only in case of an individual, HUF or partnership firm and is not applicable in case of an LLP.

The proposed amendment has been made effective from FY 2020-21 onwards.

XVI

Other Legislations

39. Adjudicating Authority under Benami Act

Presently, the transitional provision given in section 71 of the Prohibition of Benami Property Act, 1988 ("**Benami Act**") provided that till the time the Adjudicating Authority as mentioned in section 7 of the Benami Act is appointed and Appellate Tribunal is established, the respective authorities established under Prevention of Money Laundering Act, 2002 may discharge the functions under Benami Act.

It has now been proposed in the Finance Bill that the Competent Authority under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Adjudicating Authority under the Benami Act which shall commence discharging the function from 01 July 2021.

The time limit available with the Adjudicating Authority under the Benami Act to pass an order is one year from the end of the month in which the reference was made to it. However, in order to give some time to the Competent Authority to start its functioning under the Benami Act in a proper manner, the Finance Bill provides that where the time limit for passing an order expires during the period beginning from 01 July 2021 and ending on 29 September 2021, the time limit for passing such order shall stand extended to 30 September 2021.

While the reasoning for such a change in the authority is not expressly provided, one may expect that the same has been done with the intention of ensuring the execution of powers under the Benami Act in a better manner.

The proposed amendment will be effective from 01 July 2021.

SECTION B:

ANALYSIS OF THE PROPOSED CHANGES IN INDIRECT TAXES

XVII

Substantive changes in Customs Act

The amendments in the Customs Act shall come into effect from the date when the Finance Act is notified

40.Sunset Clause for exemptions

The Bill proposes that any exemption on payment of customs duty would cease to be applicable on March 31 after two years from the date of such grant or variation, unless otherwise specified.

With respect to the exemption notification existing on the date when Finance Bill, 2021 receives the assent of the President, it has been notified that such notification would cease to be effective from April 01, 2023.

This amendment would lead to customs duty rationalization by removing outdated exemptions and is in line with the announcement, made by Hon'ble Finance Minister, of reviewing around 400 exemptions from October 01, 2021. The amendment also brings certainty in the timelines for availability of exemptions which may allow the companies to plan their imports. However, this may substantially impact several importers who have been availing benefits of legacy exemptions by increasing their duty liability.

41.Time limit for completion of proceedings prior to issuance of SCN

The Bill proposes to provide a limitation of 2 years from the date of initiation of audit, search, seizure or summons, for issuance of SCN (extendable by 1 year by Principal Commissioner of Customs or the Commissioner of Customs on sufficient cause being shown and for reasons to be recorded in writing.) The proposed section also provides that for calculating the aforementioned time limit, the duration of stay granted by any court/tribunal or period involved in seeking information from an overseas authority through a legal process would be excluded.

The time limit would not be applicable to proceedings initiated prior to the date on which the Finance Bill, 2021 receives the assent of the President.

Currently, there is no prescribed time limit for issuance of show cause notices pursuant to departmental inquiries and investigations. As on date, several importers/exporters have been facing prolonged and long drawn investigations which hampers the day-to-day activities. This amendment would bring certainty in the timelines for the continuation of proceedings initiated after the bill receives assent.

42.Change in timeline for filing BoE

The Bill proposes to amend Section 46(3) of the Customs Act to ensure mandatory filing of BoE, i.e. before the date of arrival (including holidays) of a conveyance. At present, the BoE is required to be filed within two days after the conveyances arrive at a customs station. The Bill also seeks to substitute the proviso, which currently allows filing of BoE 30 days in advance from the date when conveyance arrives at the customs station, to empower the CBIC to provide different time limits for presentation of BoE in specific cases, to ensure faster clearance.

It has also been proposed that in case of late presentation with no sufficient cause for such delay, late presentation charges would be payable by the importer.

This amendment would potentially reduce the clearance time for goods to be cleared for home consumption.

43. Introduction of deterrent measures

a. Ground for confiscation of goods attempted to be improperly exported: The Bill proposes to introduce a new sub-section in Section 113(ja) of the Customs Act to render such goods which are entered into the customs station for export under a wrongful claim of remission/refund, liable to confiscation.

b. Penalty for fraudulent utilization of ITC: Penalty up to five times the refund claimed may be levied in cases where any person has obtained any invoice by fraud, collusion, willful misstatement or suppression of facts to utilise ITC for discharging any duty or tax on export under claim of refund of such duty.

With the aforesaid amendments, the Government proposes to bring additional stringent measures to deter the exporters from filling of wrongful claims of refund/ remission and to ensure extension of refund benefits to genuine exporters only. While the amendment is designed to prevent revenue leakage on account of fraud, it is hoped that genuine exporters do not face the brunt of such stringent measures.

44. Digitalization of additional services

a. Amendment of documents: The Bill proposes to introduce a proviso to Section 149 of Customs Act to allow amendment or the corresponding authorization for amendments to be done electronically through the customs automated system. The proposed introduction would pave way for the officers to allow the amendments online. However, this would be subject to risk evaluation through appropriate selection criteria.

b. Introduction of Common Portal: The CBIC is proposed to be empowered to notify a common portal called the Common Customs Electronic Portal for facilitating registration, filing of bill of entry, shipping bill, other documents and forms, payment of duty and for any other purposes as prescribed along the lines of the GSTN portal.

c. Service of departmental communications: Service of order, summons, notice or any other communication under the Customs Act can now be done through the common portal and it would be considered as a valid mode of service in terms of the new sub section (ca) in Section 153 of the Customs Act.

These amendments reiterate the Government's objective to reduce interaction between the taxpayers and Government by digitalization of services.

45. Increase in power of Commissioner Appeals regarding seizure of Gold

The Bill proposes to allow the proper officer, in case of seizure of gold in any form, to make the application to the Commissioner (Appeals) having jurisdiction (instead of magistrate as mandated for seizure of other goods), for the following purposes:

a. certifying the correctness of inventory prepared by officer,

b. taking photographs and certifying photographs as true,

c. allowing to draw representative samples.

Once the Commissioner (Appeals) allows the application, the proper officer can dispose of the goods in the manner prescribed by the Central Government.

In this regard, corresponding amendments have also been proposed to the following provisions of the Customs Act:

a. Section 5 to empower the Commissioner Appeals to exercise powers in relation to processing the application pertaining to seizure of gold apart from the power to summon person to give evidence and produce documents[12] and Appeals and Revision[13].

b. Explanation to Section 139 to allow documents such as inventories, photographs and lists certified by Commissioner Appeals as admissible evidence.

This amendment would potentially reduce timeline in case of seizure of gold.

12 Section 108 of Customs Act.
13 Chapter XV of Customs Act.

XVIII

Substantive changes in the CT Act

46.Changes in relation to safeguard duty, countervailing duty and antidumping duty

a. Retrospective applicability in case of circumvention: The Bill proposes to amend Section 9(1A) and 9A(1A) of the CT Act to allow Government to impose countervailing/ antidumping duty to counter circumvention, retrospectively from the date of initiation of the inquiry.

b. Anti-absorption measure: The Bill proposes to insert new provisions Section 9(1B) and 9A (1B) in the CT Act to allow the Government to modify the rate of countervailing/ antidumping duty retrospectively from a date from the date of initiation of the inquiry as an anti-absorption measures. This amendment has finally built in the anti-absorption provisions in the Indian framework in line with the principles followed by other WTO members.

c. Applicability of safeguard/circumvention/antidumping duty to an EOU or SEZ unit: The Bill proposes to insert a new provision Section 9(2A) and 9A(2A) in the CT Act to allow Government to impose circumvention/antidumping duty in case of goods imported by an EOU or SEZ unit where certain conditions are fulfilled. The Bill also proposes to amend Section 8B(6) of the CT Act which provides that safeguard duty would not be applicable to EOU or SEZ unless certain conditions are fulfilled.

   The notification for levy of safeguard/ antidumping/countervailing duty would be applicable on goods imported by SEZ unit or EOU, in either of the following scenarios:

   (i) Where it is specifically made applicable in such notification or to such undertaking or unit; or

   (ii) Where such article is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

   The Bill also proposes to harmonize the definition of SEZ unit under the CT Act and SEZ Act, 2005.

d. Revised tenure of circumvention duty post review: The Bill proposes to amend provisos to Section 9(6) and 9A(5) of CT Act to provide for further imposition of countervailing/ antidumping duty after review, for a revised period upto five years. This amendment provides flexibility to the government to impose duties for a period of less than five years taking into account the particular circumstances.

e. Temporary revocation of countervailing/ antidumping duty: A third proviso to Section 9(6) and 9A(5) of CT Act is also proposed to be inserted to provide a limitation on period of revocation i.e. up to one year at a time where countervailing/antidumping duty is revoked temporarily.

In certain situations, due to limitations prescribed under the statute, the Government was unable to impose countervailing/ antidumping duty after review for a period less than 5 years or temporarily revoke duty, when the same was not required or user industry was facing hardship because of increased cost. With the aforesaid proposals, the Government seems to bring additional measure to safeguard the interest of both domestic industry and user industry. Such additional measures also reflect the intention and objectives of the Government to prevent any sort of injury to domestic manufacturers, even when goods are imported through SEZ or EOU. It would provide the much-needed impetus to domestic industry.

f. <u>Amendment in Rules</u>: The changes with respect to rules shall be effective from February 02, 2021 (except the provision for final findings).

   The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, ("**Safeguard Rules**") are amended to provide for following:

   i. manner of application of safeguard measures, including tariff-rate quota, duty or any other measures;

   ii. to represent the evidence of adjustment instead of positive adjustment for the efforts being taken, or planned to be taken, or both, by domestic industry;

   iii. details of import to be provided in public notices regarding initiation of safeguard investigations;

   iv. principles for determination of serious injury or threat injury in safeguard investigations;

   v. requirement to hold consultations with members of WTO before imposition of safeguard measures;

g. The Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on subsidized Articles and for Determination of Injury) Rules, 1995 ("**Counter-vailing Duty Rules**") and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 ("**Anti-dumping Rules**") are amended to provide for following:

   a) final findings are to be issued in countervailing/ antidumping review proceedings or review proceeding for circumvention, by the designated authority, at least three months prior to expiry of the countervailing/ antidumping duty under review (with effect from the July 01, 2021);

   b) The Central Government may on recommendation of designated authority resort to provisional assessment in anti-circumvention investigation for imposition of countervailing/ antidumping and may ask a guarantee from the importer during the pendency;

      The notifications also insert technical changes like application of certain provision *mutatis mutandis* on review proceedings.

47.Changes in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 ("IGCR Rules")

The IGCR Rules have been amended to allow manufacturing of products through 100% outsourcing of the materials imported at a concessional rate of customs duty under the relevant notification except gold. The amendment also allows removal of imported capital goods that have been used for the specified purpose to be cleared on payment of differential duty, along with interest, on a depreciated value.

Several importers outsource a part of manufacturing through job work due to lack of capability to produce a specific part or equipment. However, they were unable to avail the benefit of concessional duty rates as jurisdictional customs officer did not endorse letters submitted by importers intending to manufacture goods through job workers. The changes introduced would reduce the problems faced by various companies who were unable to avail the benefit of concessional duty to manufacture product using job work.

XIX

Changes in rates of Customs Duty on various goods

48. Introduction of Agriculture Infrastructure and Development Cess ("AIDC")

The Bill has introduced a levy of AIDC at the specified rate on the import of specified items, such as, apples, crude palm oil, soya bean, fermented drinks, urea, coal, silver, gold, etc., w.e.f. February 02, 2020. However, goods imported under customs duty exemptions available under FTA, EOU as well as advance authorization schemes are exempted from the levy of AIDC.

Social Welfare Surcharge ("**SWS**") would be applicable on AIDC but the same is exempted for gold and silver.

The AIDC would be used for the purposes of financing the agriculture infrastructure and other development expenditure.

To save the importers from additional tax burden, the BCD on such goods has been reduced to counter the levy of AIDC. The list of products is as follows:

Sr. No.	Description	BCD	AIDC
1.	Apples	15%	35%
2.	Crude Palm Oil	15%	17.5%
3.	Crude Soya-bean oil	15%	20%
4.	Crude Sunflower seed oil	15%	20%
5.	Peas (Pisum sativum)	10%	40%
6.	Kabuli Chana	10%	30%
7.	Bengal Gram (desichana)	10%	50%
8.	Chick Peas (garbanzos)	10%	50%
9.	Lentils	10%	20%
10.	Wine	50%	100%
11.	Vermouth and other wine of fresh grapes, flavoured	50%	100%
12.	Other fermented beverages for example, Cider, Perry, Mead, sake, mixture of fermented beverages or fermented beverages and non alcoholic beverages	50%	100%
13.	Brandy, bourbon, whiskey, scotch etc.	50%	100
14.	Various types of Coal	1%	1.5%
15.	Lignite, whether or not agglomerated	1%	1.5%

Sr. No.	Description	BCD	AIDC
16.	Peat, whether or not agglomerated	1%	1.5%
17.	Urea	Nil	5%
18.	Ammonium nitrate	2.5%	5%
19.	Muriate of potash, for use as manure or for the production of complex fertilisers	Nil	5%
20.	Diammonium phosphate, for use as manure or for the production of complex fertilisers	Nil	5%
21.	Cotton (not carded or combed)	5%	5%
22.	Silver (including imports by eligible passengers)	7.5%	2.5%
23.	Silver Dore	6.1%	2.5%
24.	Gold (including imports by eligible passengers)	7.5%	2.5%
25.	Gold Dore	6.9%	2.5%

i. Exemption in SWS

Import of Crude or roughly trimmed or Blocks Marble or travertine are now exempted from the levy of SWS w.e.f. February 02, 2021.

The concessional rate of SWS on import of Motor spirit commonly known as petrol, High speed diesel (HSD), Silver and Gold has been rescinded w.e.f. February 02, 2021.

ii. Exemption in Health Cess

Import of medical devices by international organizations and diplomatic missions are now exempted from the levy of Health Cess w.e.f. February 02, 2021.

iii. Rescinding of redundant notifications

The Government has rescinded various notifications which are no longer relevant or have become redundant, such as notifications to provide exemption of customs duty on import of specified goods for following:

b. items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for the initial setting up of a solar power generation project or facility;

c. Tags and labels, or printed bags of foreign origin imported for repairs and return

d. goods imported for organising FIFA under 17 and world cup for 2017.

iv. Rescinding or temporary revocation of antidumping / countervailing duty

The Government by passing certain notifications has rescinded countervailing duty on “Flat Products of Stainless Steel” originating or exported from Indonesia w.e.f. February 02, 2021.

The Government by passing certain notifications has temporarily revoked the imposition of antidumping / countervailing duty for following products w.e.f. February 02, 2021:

Sr. No.	Type	Product	Country originating in or exported from	Period
1.	Antidumping duty	Straight Length Bars and Rods of Alloy Steel	People's Republic of China	February 02, 2021 to September 30, 221
2.		High-Speed Steel of Non-Cobalt Grade	Brazil, People's Republic of China and Germany	
3.		Flat rolled product of steel, plated or coated with alloy of Aluminium and Zinc	People's Republic of China, Vietnam and Republic of Korea	
4.	Countervailing Duty	Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products	People's Republic of China	

Antidumping duty on Cold-Rolled Flat Products of Stainless Steel of width 600mm to 1250mm and above 1250mm of non-bonafide usage originating in or exported from People's Republic of China, Republic of Korea, European Union, South Africa, Taiwan, Thailand and United States of America is being discontinued upon expiry of the antidumping duty as per sunset review.

v. New Tariff Classifications

Four new tariff items have been introduced in the First Schedule of the CT Act to provide specific entries for plants, food items, wood products, carpet, tobacco, chemicals, clothing, glass fibers, press machines, smart phones, LED, electronic waste and scrap, unmanned aircrafts, lasers, etc. w.e.f. January 01, 2022.

vi. Rate changes

a) The First Schedule to the CT Act has been amended to revise the BCD rates on various finished goods, with immediate effect from February 02, 2021. Further, certain amendments to prune the exemptions provided on import of goods have also been introduced through notifications. These changes have been made effective from the date of the Finance Bill or the date mentioned in notifications i.e. February 02, 2020, as the case may be, unless specially mentioned in the table. Item wise changes in rates of duty have been tabularized as below:

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
1.	Denatured Ethyl Alcohol	2.5%	5%	#
2.	Residues and waste from the food industries; prepared animal fodder	Nil-20%	15%	#
3.	Boron Ore	Nil	2.5%	#
4.	Boron Concentrate	10%	2.5%	$
5.	Naptha	4%	2.5%	$
6.	Bis-phenol A	Nil	7.5%	#
7.	Epichlorohydrin	2.5%	7.5%	#
8.	Diphenylmethane 4,4-diisocyanate (MDI)	Nil	7.5%	#
9.	Caprolactam	7.5%	5%	$
Plastic and articles thereof				
10.	Builder's ware of plastics, not elsewhere specified or included	10%	15%	$
11.	Polycarbonates	5%	7.5%	#
12.	Nylon Chips	7.5%	5%	$
13.	Other plastic used not for mobile parts	10%	15%	#
Leather				
14.	Wet blue chrome tanned leather, crust leather, finished leather of all kinds, including splits and sides of the aforesaid	Nil	10%	$
Textiles				
15.	Raw Silk	10%	15%	#
16.	Silk Yarn	10%	15%	#
17.	Cotton, not carded or combed	Nil	5%	#
18.	Cotton Waste	Nil	10%	#
19.	Nylon Fibre and Yarn	7.5%	5%	$
Glass, Metals and its product				
20.	Safety glass , consisting of toughened (tempered) or laminated glass other than those used in motor vehicle (w.e.f. February 02, 2021)	10%	15%	#

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
21.	Cut and polished synthetic stones (including cubic zirconia)	10%	15%	#
22.	Silver (including Silver Dore and Gold (including Gold Dore)[14]	10%	20%	#
23.	Spent catalyst or ash containing precious metals	11.85%	9.17%	$
24.	Base metals clad with silver or Gold or Platinum, or silver clad with Gold or Platnium, or Gold clad with platinum, not further worked than semi-manufactured	12.5%	10%	$
	Platinum, unwrought or in semi-manufactured form, or in powder form			
	Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal			
	Coin			
25.	Gold or silver findings	20%	10%	$
	Iron and Steel			
26.	Scrap of iron or steel including stainless steel and alloy steel	5%/2.5%	Nil	$
27.	Primary/Semi-finished products of iron or non-alloy steel	10%	7.5%	$
28.	Flat Products of iron or nonalloy steel and alloy steel	10%/ 12.5%	7.5%	$
29.	Long Products of iron or nonalloy steel, stainless steel and alloy steel	10%	7.5%	$
30.	Specified inputs for manufacturing cold rolled grain oriented steel (CRGO) : a) Magnesium Oxide (MgO) coated cold rolled steel coils b) hot rolled coils	2.5%	Nil (subject to end use condition	$

14 While BCD on these goods have been reduced, simultaneously AIDC is being imposed.

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
	c) cold-rolled Magnesium Oxide (MgO) coated and annealed steel d) hot rolled annealed and pickled coils e) cold rolled full hard			
31.	Screws, bolts, nuts etc	10%	15%	#
32.	Copper waste and scrap	5%	2.5%	$
	Machinery			
33.	Tunnel boring machines ("TBM")	Nil	7.5%	#
34.	Parts & components for manufacture of TBMs such as pulley tackle and hoist, fork lift trucks, lifts, skip hoist etc.	5%	2.5% (with actual user condition)	$
35.	Compressor of Refrigerator and Air conditioner w.e.f. February 02, 2021.	12.5%	15%	#
36.	Solar Inverter	10%	20%	#
37.	Inputs or raw materials of following goods: a) machines capable of connecting to an automatic data processing machine or to a network b) Ink cartridges, with or without print head assembly c) Ink spray nozzle w.e.f. April 01, 2021	Nil	2.5%	#
38.	Former, bases, bobbins, brackets; CP wires; P.B.T.; Phenol resin moulding powder; Lamination/ El silicon steel strips for manufacture of transformers	Nil	5-20%	#
39.	Solar lanterns or solar lamps	5%	15%	#
40.	Parts of electronics toys for manufacture of electronic toys	5%	15% with end use condition	#
41.	All parts for use in the manufacture of LED lights, fixtures including LED lamps, LED drivers and MCPCB (Metal Core Printed Circuit Board) of LED light.	5%	10%	#
42.	Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with	7.5%	10%	#

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
	connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors (except usb Cable and Optical fibre cables)			
43.	BCD on components or parts, including engines, of aircraft of heading 8802 imported for: (a) manufacture of such aircrafts; (b) manufacture of parts of such aircrafts by Public Sector Units under Ministry of Defence	5-20%	Nil	$
Mobile Parts				
44.	Printed circuit board assembly (PCBA), Camera Module, Connectors, wired headset, USB Cable, microphone and receiver, etc. w.e.f. April 01, 2021	Nil	2.5%	#
45.	Metal Shield	Nil	10%/15%	#
46.	Camera Lens	Nil	10%	#
47.	Mobile parts such as Battery cover, Front Cover, Front Cover (with Zinc Casting), Middle cover, Side Key, Screw, Microphone rubber case, Sensor rubber case/ sealing gasket including sealing gaskets/cases from rubbers like SBR, EPDM, CR, CS, Silicon and all other individual rubbers or combination/combination of rubbers, PU case/ sealing gasket. Other articles of polyurethane foam like sealing gaskets/ case, sealing gaskets/ cases from PE, PP, EPS, PC and all other individual polymers or combination/ combinations of polymers, SIM sockets/Other Mechanical items (Metal), SIM sockets/Other Mechanical items (Plastic), Back Cover, Conductive cloth, Heat Dissipation sticker Battery cover, Sticker battery slot, Protective Film for main lens, LCD Conductive Foam, LCD Foam, BT Foam, Key Pad	Nil	7.5%-15%	#

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
48.	Inputs or raw materials (other than PCBA and Moulded Plastics) for use in the manufacture of charger or adapter of cellular mobile phone	Nil	10%	#
49.	PCBA of charger or adapter	10%	15%	#
50.	Moulded Plastics of charger or adapter	10%	15%	#
51.	Inputs or parts of PCBA and Moulded Plastic of charger or adapter of cellular mobile phone	Nil	5%-15%	#
52.	inputs or raw materials for use in manufacture of Lithium-ion battery and battery pack (including PCBA of Lithium-ion battery and battery pack) w.e.f. April 01, 2021	Nil	2.5%	#
53.	Base stations, unclassified machines for the reception, conversion and transmission or regeneration of voice, images or other data and other machines	Nil	20%	#
Automobile parts				
54.	Parts of electrical lighting or signaling equipment, windscreen wipers, defrosters and demisters, of a kind used for motor vehicles w.e.f. February 02, 2021.	10%	15%	#
55.	Specified auto parts (other than Bicycle parts and components)	10%	15%	#
56.	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	10%	15%	#
57.	Instrument panel clocks and clocks of a similar type for vehicles, aircraft, spacecraft or vessels	10%	15%	#
Project Imports				
58.	High Speed Rail Projects are being included in the list of projects eligible for benefit under Project Imports Scheme.	Parts applicable rate	5%	$

XX

Substantive changes in GST

49. Scope of "Supply" broadened

The Bill proposes to expand the scope of 'supply under Section 7 of the CGST Act to include activities or transactions by a person (other than individuals) towards its members or constituents for a valuable consideration. A corresponding change has also been proposed in Schedule II to the CGST Act to omit entry 7 which currently classifies a transaction between an unincorporated association or body of persons to its members for consideration as a supply of goods. This amendment would be effective retrospectively from July 01, 2017.

The concept of mutuality, wherein unincorporated persons such as cooperative societies, association of persons, clubs, etc., and their members were not considered distinct persons for the purpose of taxation, has been subject matter of litigation since the erstwhile service tax regime and was recently upheld by the Supreme Court.[15] The proposed amendment clearly seeks to do away with the concept of mutuality under GST.

However, this amendment has the potential to unsettle taxpayers given its retrospective applicability from July 01, 2017. This may create a huge fiscal and compliance burden on taxpayers by allowing the government to call into question the transactions undertaken in the last 3 years.

50. Additional condition for availment of ITC

Section 16 of the CGST Act lays down the conditions and restrictions for availing ITC on supplies of goods and/ or services used in course of business. The Bill proposes to restrict the availment of ITC to those cases alone where the details of the invoice or debit note issued by the supplier have been furnished by the supplier in Form GSTR 1.

At present, a registered person can claim ITC basis the tax invoice or a debit note issued by the supplier. However, if the supplier fails to furnish the details of the tax invoice/ debit note in Form GSTR 1, the recipient would be entitled to only 5%of the eligible ITC in respect of such tax invoice/ debit note.

The proposed condition appears to be onerous and excessive as it would make availment of ITC by the recipient contingent on the actions of the supplier on which the recipients have no control. The recipients would have no remedy available even though they have paid taxes to the suppliers, which would ultimately lead to a blockage of supply chain.

51. Audit of Accounts and Reconciliation Statement

The GST legislations[16] provide that every registered person whose aggregate turnover in a financial year exceeds INR Twenty million[17], is required to submit annual accounts and

15 *State of West Bengal & Ors. v Calcutta Club Limited; [2019 (29) G.S.T.L. 545 (S.C.)]*
16 Section 35(5) and Section 44 of the CGST Act read with Rule 80 of the CGST Rules
17 For FY 2018-19 and 2019-20, the threshold was INR fifty million

reconciliation statement which is audited by a chartered accountant or a cost accountant. The Bill proposes to remove this and provides for self-certification of a reconciliation statement.

The amendment also proposes to provide the Commissioner with the power to exempt a class of taxpayers from filing annual returns. It would provide the government with the necessary powers to supplement the beneficial incentives that have been provided to the small and medium sized business owners during these unprecedent times, by exempting them from filing annual returns.

The proposed amendment only provides for a sliver of relief to the taxpayers. The taxpayers would still be required to reconcile the value of supplies declared in the return furnished for the financial year along with the annual financial statement for every financial year electronically. As the format of such statement is still not prescribed, the ease of compliance still remains suspect.

52. Interest on net cash liability to be applicable retrospectively

The Bill proposes to amend under Section 50 of the CGST Act, retrospectively from July 01, 2017, to charge interest on net cash liability i.e. only on that on that portion of tax which is paid by debiting the electronic credit ledger. Section 50 was amended on August 25, 2020, which clarified that the interest would be charged only on the net cash liability. However, this amendment was made prospectively leading to resistance from the taxpayers who were being charged interest on the entire amount of the delayed tax for period prior to such amendment.

While the government recently clarified[18] that in spite of the prospective nature, no recoveries would be made for the past period, the present amendment proposing to provide statutory backing to such clarification through the Budget, comes as a huge relief to the taxpayers who have been issued demands of interest on delayed payment of total tax liability, without any differentiation of tax discharged through ITC. However, as no clarity has been provided in relation to taxpayers, who have paid interest on the total tax liability in the past, this amendment is likely to lead to a flood of refund claims of the excess interest charged.

53. Clarification in the scope of "self assessed tax"

Section 59 of the CGST Act allows the registered persons to self-assess the taxes payable under the GST legislations and furnish GSTR 3B return for each tax period along with the payment of such self-assessed tax.

The Bill proposes to insert an explanation to Section 75(12) of the CGST Act and clarify that the scope of "self assessed tax" would include tax payable in respect of outward supplies, the details of which are included in GSTR 1 but not in GSTR 3B. The proposed amendment would

18 Clarification issued by CBIC No. CBEC-20/01/08/2019-GST dated September 18, 2020

empower the authorities to initiate recovery proceedings against the assessess who have a higher tax liability as per GSTR 1 than reported in GSTR 3B.

This appears to be an ill-thought-out amendment as it fails to consider that GSTR 1 reflects value of reverse charge supplies as taxable supply at the end of the supplier. In light of non-operationalization GSTR 2 and GSTR 3 which would have led to an automated reconciliation, widening the definition of "self assessed tax" would lead to harassment of taxpayers facing a genuine mismatch between their returns due to different reporting formats.

In light of the amendment, it is imperative that the government introduces consequential amendments in the GST legislations to avoid issues arising out of genuine mismatch between the GST forms. The government needs to contemplate overhauling the forms to bring in the system of automated reconciliation to make this amendment effective.

54. Provisional Attachment

Section 83 of the CGST Act provides for the provisional attachment of property only during pendency of certain proceedings such as for non-filing of return[19], for assessment of unregistered persons[20], for tax unpaid or short paid or erroneously refunded whether by reason of fraud or otherwise[21].

The Bill proposes to enhance the powers of the government to provisionally attach the property during pendency of any proceedings in relation to assessment, inspection, search, seizure and arrest or for demand and/or recovery of tax. The provisional attachment would remain valid for the entire period starting from the initiation of any proceeding till the expiry of one year from the date of the order made thereunder.

Given the aggressive nature of the revenue department leading to increased instances of property being attached; this proposed amendment seeking to expand such powers may lead to undue harassment of taxpayers

55. Delinking of proceedings under Section 129 with the confiscation of goods/ conveyances under Section 130

Section 129 of the CGST Act (dealing with proceedings relating to detention, seizure and release of goods and conveyances in transit) is proposed to be delinked from Section 130 of the CGST Act (dealing with confiscation of goods or conveyances.) such that proceedings under the former provision would be restricted to improper transit or storage of goods in transit, whereby the goods shall be released only on payment of the penalty amount prescribed in the Bill. The Bill proposes to omit the provision allowing release of goods consequent upon execution of Bond and furnishing of security. The tax applicable on such goods, or the interest will not have to be paid in order to release the goods. The Bill proposes to make a corresponding change in Section 74 of the CGST Act so as make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.

19 Section 62 of the CGST Act.
20 Section 63 of the CGST Act.
21 Section 73 and 74 of the CGST Act.

The amendment also proposes to impose stringent timelines for issuance of a notice for the penalty payable under Section 129 (7 days from the date of detention), as well as for issuance of order (7 days from the date of issuance of notice) and payment of penalty (15 days from the date of issue of notice). This highlights the intention of the government to undertake a stringent approach to prevent delayed compliance and expedite the proceedings in relation to seizure/ detention.

This amendment will also allow the government to proceed separately against the person liable to pay tax as well as against other people liable to pay penalty under Section 129 and Section 130 of the CGST Act.

56. Higher pre-deposit for filing appeal against penalty orders

The Bill proposes to insert a proviso to provide a higher amount of pre-deposit for an appeal against an order passed for payment of penalty for releasing goods and/ or conveyances detained under Section 129. In such cases, the appellant will be required to pre-deposit an amount equivalent to 25% of the penalty imposed.

This amendment seems to be in line with the delinking of proceedings under Section 129 and Section 130 of the CGST Act. The amount of pre-deposit prescribed in all other cases would continue to be 10% of the tax amount in dispute.

57. Power given to the Commissioner to call for information

The Bill proposes to enhance the powers of the Commissioner to call for information from any person in relation to any matter under the CGST Act. However, the proposed amendment mandates building an adequate protection for taxpayers by barring the Commissioner from using such information obtained, without giving an adequate opportunity of hearing to the taxpayers. The Commissioner would also be barred from publishing the information without the written consent of the concerned person.

These additional safeguards proposed in the Bill would prevent disclosure of information are extremely important specially in the light of the reckless leakage of information witnessed in the past which adversely affected numerous businesses due to publicizing of business sensitive information.

58. Additional safeguards built for zero rating of supplies

The Bill proposes to amend Section 16 of the IGST Act and zero rate the supply of goods and/ or services to an SEZ developer or Unit only when the said supply is for authorized operations. This amendment would create an additional burden on suppliers to undertake diligence before each supply to ascertain that the goods and/ or services are intended for authorized operations.

Any person making zero rated supplies would be liable to deposit the refund obtained on such supplies along within applicable interest if the sale proceeds in form of foreign exchange remittances are not received within 30 days after the expiry of time limit to realize the proceeds under FEMA. The amendment comes on the heels of Rule 96B of the CGST Rules, which mandated that the exporter of goods was required to repay the amount refunded to him in proportion to the unrealized export proceeds.

The Bill also proposes to give the power to the government to specify classes of persons who can make zero rated supplies and claim refund on payment of IGST. This amendment is likely to provide the government with the necessary powers to provide tax benefits to the small and medium sized busines owners and incentivize them to scale up their production.

XXI

Changes in Excise

The Bill proposes changes in the fourth schedule to the Central Excise Act by way of addition of new tariff items so as to bring them in lines with the upcoming Harmonised System 2022 Nomenclature. Additionally, AIDC will also be imposed as additional duty of excise on petrol and diesel, the Basic Excise Duty and Special Additional Duty of Excise on such products is being reduced to ensure that the effective rate of tax remains the same.

59.Amendment in the Fourth Schedule

e. Tariff items 2709 10 00 *(Petroleum oils and oils obtained from bituminous minerals)*, 2709 20 00 *(Petroleum crude)* and the entries are being substituted relating thereto as under and will be made effective from April 01, 2021:

Tariff Item	Description of goods	Unit	Rate of duty
2709	Petroleum oils and oils obtained from bituminous minerals, crude		
2709 00 10	Petroleum crude	Kg.	Nil
2709 00 20	Other	Kg	.....

f. Chapter 24 is being amended with effect from January 01, 2022 to introduce new tariff items and prescribe the rates for these tariff items:

Tariff Item	Description of goods	Unit	Rate of duty
2404 11 00	Products intended for inhalation without combustion, containing tobacco or reconstituted tobacco	Kg.	81%
2404 19 00	Products intended for inhalation without ombustion, Other	Kg.	81%c

g. These tariff items are also inserted in Schedule VII of the Finance Act, 2001 whereby National Calamity Contingent Duty of 2% is proposed to be levied on it.

h. It is proposed that tariff rate of 14%+ Rs. 15.00 per litre against tariff item 2710 20 10 *(Automotive diesel fuel, containing Bio-diesel, conforming to standard IS 1460)* and 2710 20 20 *(Diesel fuel blend [B6 to B20] conforming to standard IS 16531)* may be prescribed and made effective from January 01, 2020, retrospectively.

60. Imposition of Agriculture Infrastructure and Development Cess

The Bill has proposed to levy an Agriculture Infrastructure and Development Cess as an additional duty of excise on Petrol and High speed diesel. Consequently, the Basic Excise Duty and Special Additional Excise Duty on Petrol and High-speed diesel is being reduced. The revised duty structure is as follows:

Sr. no	Item	BED (Rs./Ltr)	SAED (Rs./Ltr)	AIDC (Rs./Ltr)
1.	Petrol (unbranded)	1.4	11	2.5
2.	Petrol (branded)	2.6	11	2.5
3.	High Speed Diesel (unbranded)	1.8	8	4
4.	High Speed Diesel (branded)	4.2	8	4

As the name suggests, the AIDC will be used to finance the improvement of agriculture infrastructure and other development expenditure. The levy of AIDC will come into effect immediately from February 2, 2021.

XXII

Changes in Sales Tax

The Bill proposes to amend Section 8(3)(b) of the CST Act to provide that the goods leviable to CST would now include all such goods which are purchased by the registered dealer for use in the manufacturing/ processing for sale of goods specified under Section 2(d) i.e. for sale of petroleum crude, motor speed, natural gas, etc. Section 8(3)(b) previously only taxed those goods which were intended for use in telecommunications network, mining, and generation and/ or distribution of electricity.

This amendment proposes to overcome the anomaly whereby Form C was required to be issued for goods covered under the CST Act even where such goods were used for manufacturing goods taxable under the GST legislations.

Glossary

ABBREVIATION	MEANING
AAR	Hon'ble Authority for Advance Rulings
ACIT	Learned Assistant Commissioner of Income Tax
AIF	Alternate Investment Fund
AO	Learned Assessing Officer
AY	Assessment Year
BCD	Basic Customs Duty
BEPS	Base Erosion and Profit Shifting
Bill/ Finance Bill	Finance Bill, 2021
CA ,1956	Companies Act, 1956
CA, 2013	Companies Act, 2013
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CBIC	Central Board of Indirect Taxes and Customs
CCR	CENVAT Credit Rules, 2004
CEA	Central Excise Act, 1944
CENVAT	Central Value Added Tax
CESTAT	Hon'ble Customs, Excise and Service Tax Appellate Tribunal
CETA	Central Excise Tariff Act, 1985
CIT	Learned Commissioner of Income Tax
CIT(A)	Learned Commissioner of Income Tax (Appeal)
Customs Act	The Customs Act, 1962
DCIT	Learned Deputy Commissioner of Income Tax
DDT	Dividend Distribution Tax
DGCEI	Directorate General of Central Excise Intelligence
DIT	Learned Director Income Tax
DTAA	Double Taxation Avoidance Agreement

Glossary

ABBREVIATION	MEANING
FA	The Finance Act, 1994
FTDR Act	Foreign Trade (Development and Regulation) Act, 1992
FY	Financial Year
FM	Finance Minister
Finance Bill	The Finance Bill, 2021
FTS	Fees for Technical Services
GAAP	Generally Accepted Accounting Principles
GAAR	General Anti Avoidances Rules
GST	The Goods and Service Tax
HC	Hon'ble High Court
HUF	Hindu Undivided Family
IFSC	International Financial Services Center
INR	Indian Rupees
InvIT	Infrastructure Investment Trust
IRA	Indian Revenue Authorities
ITC	Input Tax Credit
IT Act	Income Tax Act, 1961
IT Rules	Income Tax Rules, 1962
ITAT	Hon'ble Income Tax Appellate Tribunal
ITSC	Income Tax Settlement Commission
Ltd.	Limited
LLP	Limited Liability Partnership
M&A	Mergers and Acquisitions
MAT	Minimum Alternate Tax
MLI	Multilateral Instruments
MSME	Micro, Small & Medium Enterprises
NBFC	Non-Banking Financial Companies

Glossary

ABBREVIATION	MEANING
OECD	Organisation for Economic Co-operation and Development
PAN	Permanent Account Number
PE	Permanent Establishment
PSU	Public Sector Unit
Pvt.	Private
REIT	Real Estate Investment Trust
RBI	Reserve Bank of India
SC	Hon'ble Supreme Court
SCN	Show Cause Notice
SPV	Special Purposes Vehicle
SEBI	Securities Exchange Board of India
Tax Amendment Act, 2020	Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020
TDS	Tax Deduction at Source
TCS	Tax Collection at Source
UOI	Union of India
US	United States of America
UTGST	Union Territory Goods and Services Tax
UTGST Act	Union Territory Goods and Services Act, 2017
VAT	Value Added Tax
VsV	Direct Tax Vivad se Vishwas Act, 2020

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