cyril amarchand mangaldas

ahead of the curve

BUDGET ASSAYER

Union Budget 2022 - 2023

This Report BUDGET ASSAYER is published by Cyril Amarchand Mangaldas. This Report has been updated till 05 February 2022.

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 2022-2023 has been presented on the backdrop of India's sharp economic growth of 9.2%, highest among large economies. While the jury on the Budget is yet to be out, the markets and the industry have generally been positive.

Contrary to the speculations, no decrease on corporate tax rates or on individual tax rates have been proposed. However, capping the super-rich surcharge at 15% on capital gains is a welcome move. This should promote the private investments into start-up ecosystem. The corporate tax rates have largely been untouched. Tax holidays for start-ups which were scheduled to expire this financial year have been given life for another year. Similarly, the deadline for commencement of manufacturing of newly incorporated companies have also been extended by a year.

With blustering waves of virtual assets hitting the shores of India, a new scheme for taxation of virtual digital assets has been proposed which could dissuade investors from looking at these investments. The Budget has also recognised that foreign investments are the key capital source to be tapped by capping surcharge payable by various consortiums at 15%.

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

Cyril Shroff
Managing Partner

Mumbai

SECTION A:

ANALYSIS OF THE PROPOSED CHANGES IN DIRECT TAXES

I

Taxation of Cryptocurreny

1. Virtual Digital Assets

Different types of digital assets have gained tremendous popularity in recent times and the volumes of speculative trading in such digital assets have increased substantially. Further, a market is emerging where the payment for the transfer of a virtual digital asset can be made through another such asset. Keeping in mind these developments, the Government has proposed to introduce a new dedicated scheme for taxation of such new forms of investments.

The Finance Bill, through an amendment to section 2(47) of the IT Act, proposes an exhaustive but fairly detailed definition of a new term "virtual digital asset" which would include the following (irrespective of the terminology or nomenclature):

- any information or code or number or token,
- generated through cryptographic means or otherwise,
- can be transferred, stored or traded electronically.

Additional conditions (one of which needs to be satisfied):

- providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or
- functions as a store of value or a unit of account (including its use in any financial transaction or investment, but not limited to investment scheme).

The proposed new phrase is very wide encompassing all forms of digital assets including Cryptocurrencies, Non-Fungible Tokens, etc. It is also proposed to add virtual digital assets to the expression 'property'.

The Finance Bill proposes to charge tax on income generated from transfer of virtual digital assets at 30% through insertion of a new provision in the form of section 115BBH of the IT Act. The effective tax rate may be as high as 42.74% where the income is more than INR 50 million on account of the highest rate of surcharge at the rate of 37%. The proposed section also provides that no deductions would be allowed in computing the income arising from such assets, other than their cost of acquisition. The proposed scheme denies set-off of any loss arising from the transfer of virtual digital asset along with set-off of losses incurred against any other income. This is similar to the tax treatment of winnings from lotteries and online gaming. Carry forward of any losses to subsequent years is also not permitted.

The Finance Bill also proposes to tax gifting of virtual digital assets specifically targeting cases where such assets are transferred at no consideration i.e. by way of a gift. By virtue of the proposed amendment, any gift of virtual digital asset, would be deemed to be an income in hands of the recipient which shall be subject to tax at rate of 30% (plus applicable surcharge and cess).

It is, however, pertinent to note that not all gifts are taxable under section 56(2)(x) of the IT Act. Section 56(2)(x) of the IT Act provides exemptions in case of receipt of property (i) from a relative, (ii) under will or inheritance, (iii) from any trust or charitable institution registered under IT Act, etc. In such cases, receipt of virtual digital assets may not be taxable.

The Finance Bill has also proposed to insert section 194S of the IT Act with the intention of widening the tax base from the transactions so carried out in relation to virtual digital assets. The proposed Section prescribes deduction of tax on payment for transfer of virtual digital asset to a resident at the rate of 1%. The proposed TDS will be imposed on the buyer of such digital assets however, individuals, who are not subject to tax audit, purchasing digital assets are exempted from undertaking TDS compliances if the value of acquisition is less than INR 50,000. It is also proposed that in case tax is deductible under section 194-O of the IT Act as well as under section 194S of the IT Act, then tax would be deducted under section 194S of the IT Act and not under section 194-O of the IT Act. The proposed TDS under section 194S of the IT Act shall be effective from July 1, 2022. It has also been proposed that the CBDT shall come up with further guidelines concerning taxation of virtual digital assets, ironing out any leftover creases.

These withholding tax obligations may create practical difficulties for the buyers as they may not have the identity of the sellers in cases where cryptos are bought through exchanges. Similarly, the parties may face practical difficulties in trading of cryptocurrencies i.e. buying a crypto in exchange of another crypto. In such a case, withholding tax obligation may fall on both the parties. The Government should provide necessary guidelines to address these issues.

The proposed taxation of virtual digital asset has categorised income from virtual digital assets similar to that of gambling. The proposed provisions resemble attributes of taxation of speculative income. It is also evident that the government wants to disincentivise the general public from indulging in dealing with virtual digital assets. The high tax slab, gift tax on transfer of virtual digital assets, harsh set-off rules, and lack of any applicable deduction paint a grim picture for the future of these assets in India.

The Government has also leapt forth by dipping its toes in blockchain technology through the introduction of blockchain-powered digital rupee, which is expected to be announced by the RBI during FY 2022-23. The move reflects a positive outlook towards the use of advanced technology as well as legitimise digital currency while encouraging people to avoid indulging in speculating over other non-official trade of virtual digital assets.

The proposed amendments will be effective from FY 2022-23 onwards.

II

Business Taxation

2. Succession of business

Presently, section 170 of the IT Act provides that in case of succession of a business, the predecessor is assessed for the income before the succession whereas the successor is assessed for income earned after the date of succession. However, in case the predecessor cannot be found, then the successor shall be liable for assessment of that year upto the date of succession and one previous year and shall be considered as liability of the successor.

Though the liability from the date of succession is of the successor, in case of a business reorganization i.e. a merger or a demerger, which are controlled by High Court or National Company Law Tribunal, the process of succession takes time and is often effective from a prior date i.e. appointed date. Consequently, the issue that arises, is that during the pendency of the court proceedings concerning the reorganization, income tax proceedings/assessments are carried on and completed by the predecessor entity. However, the period through which the income tax assessments are carried on against the predecessor entity (i.e., when the scheme of arrangement is pending before the relevant court), is often after the "appointed date" set out in the scheme. The SC in the case of *Marshall Sons & Co (India) Ltd*[1] and subsequently the ITAT in the case of *AIMIL*[2] had held that the appointed date will be considered as the date of transfer and that the transferee shall only be responsible for the demerged undertaking from the appointed date. Therefore, tax assessment proceedings/assessments against the predecessor entity were regarded as illegal, since the predecessor taxpayer ceases to exist the moment the scheme of arrangement (i.e., the reorganization application) is approved, which could take place while the income tax assessment is still ongoing. Such proceedings could be termed as invalid since the predecessor ceases to exist upon receipt of approval of the Court/ Tribunal.

In order to avoid any challenge in such scenarios, the Finance Bill seeks to introduce section 170(2A) of the IT Act to provide that the assessment made on a predecessor in case of a business reorganization during the pendency of the business reorganization (after filing application for reorganization and before receiving orders for the same) shall be deemed to have been made on the successor.

Another long standing practical difficulty on such business reorganizations was with respect to income tax return related compliances. During this interim period, the predecessor entity files its tax returns accounting for the business being succeeded (as if the business is still part of the predecessor entity). Once the reorganization is approved, the business becomes that of the successor entity from the 'appointed date', which is a prior date (for which the predecessor would have already filed the returns, for that period). To rectify this issue, the Finance Bill proposes to allow entities going through business reorganizations to file

1 Marshall Sons & Co (India) Ltd v. ITO (1997) 11 SCL 6
2 DCIT v. AIMIL (2008) 25 SOT 49

modified returns for the period between (i) date of issuance of approval order, and (ii) date of effectiveness of order (i.e., when the reorganization application is pending before the relevant court). Finance Bill has also introduced a new section 170A according to which, the successor entity is granted a period of 6 months from the end of the month in which the approval order is issued, to file a modified return with the tax authorities.

Further, where the Court / Tribunal or the adjudicating authority in case of a insolvency and bankruptcy cases recast the tax liability to ensure future viability of sick businesses, the Finance Bill seeks to insert a new section 156A of the IT Act, whereby the pending demands issued under section 156 of the IT Act may be modified by the AO.

All the above amendments may be helpful is ensuring the smooth transitioning in cases of business reorganization.

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

3. Cess and Surcharge on income tax to be disallowed under section 40(a)(ii) of the IT Act

Presently, section 40(a) of the IT Act provides disallowances which have to be added to the profits to arrive at the taxable income which includes any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.

The issue of whether the term tax levied on profits or gains shall include surcharge and cess or not, is widely disputed. Bombay HC in the case of *Sesa Goa Limited*[3] and Rajasthan HC in the case of *Chambal Fertilizers & Chemicals Ltd.*[4] had held that education cess can be claimed as a deduction since there is a difference between the term cess and tax. However, Kolkata ITAT in the case of ***Kanoria Chemicals and Industries Ltd.***[5] had referred to the judgment of SC in the case of ***K Srinivasan***[6] and held that education cess is not to be allowed as a deduction since, it is also in the form of tax.

The Finance Bill seeks to reverse these decisions by stating that the term tax shall be deemed as to have always included the cess and surcharge on such tax, which are also required to be disallowed while calculating the taxable income.

In spite of the government claiming that they do not want to introduce any provision retrospectively, this proposed amendment will be effective from FY 2005-06 onwards.

4. Section 14A disallowance even in the absence of any exempt income

Section 14A of the IT Act is one of the most litigated provisions under the IT Act. It inter alia provides that no deduction is allowed in respect of expenditure incurred by an assessee for earning income which is not taxable under the IT Act.

3 Sesa Goa Ltd. v. Additional Commissioner of Income-tax, Panaji, Goa [2020] 117 taxmann.com 548
4 Chambal Fertilisers & Chemicals Ltd. v. Joint Commissioner of Income-tax, Range-2, Kota [2019] 107 taxmann.com 484 (Rajasthan)
5 ITA No. 2184/Kol/2018 (TS-1129-ITAT2021 Kol)
6 (1972) 83 ITR 346

The issue become extremely litigious after the CBDT had issued a Circular specifying that disallowance has to be made even in the year in which no exempt income has been actually earned. The Delhi HC, Allahabad HC and Gujarat HC in the cases of ***Cheminvest Ltd.***[7], ***Shivam Motors (P.) Ltd.***[8] and ***Corrtech Energy (P.) Ltd.***[9] had respectively ruled that no disallowance is required in the absence of any tax-free income.

With an intention to overrule these precedents, Finance Bill proposes to amend section 14A as non-obstante to the provisions of the whole IT Act. Further, it also introduces a explanation to specify that the disallowance is to be made even in the year in which no exempt income has accrued or arisen during a financial year, and the expenditure has been incurred in that year in relation to earning exempt income.

Now that the contents of the Circular have been introduced by way of Explanation in the section, it shall have a binding force and the taxpayers shall now have to comply with them.

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

5. Expenses for offences or prohibited expenses to be disallowed under section 37 of the IT Act

Section 37 of the IT Act provides for allowability of revenue and non-personal expenses which have been incurred for the purpose of business and profession. The explanation to the section further provides that any expense incurred in contravention of any law for the time being in force shall not be allowed as a deduction while computing the business income.

As certain Courts had adopted varied views regarding admissibility of expenses incurred in violation of provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the Finance Bill analysed the detailed reasoning provided by the Mumbai ITAT in the case of ***Macleods Pharmaceuticals***[10]. The Finance Bill now seeks to clarify by introduction of Explanation 3 to section 37 of the IT Act that expenses incurred to provide any benefit or perquisite or otherwise, in violation of any law, shall be inadmissible under section sub-section (1) of section 37 of the IT Act. The memorandum to the Finance Bill specifically mentions that freebies given by pharma companies to doctors and professionals are deemed to be in violation of the medical conduct regulations and hence, shall not be allowed as an expense.

Further, explanation to section 37 of the IT Act presently provides that any expense incurred which is an offence or is prohibited under the law shall not be allowed as a deduction. However, there was no clarity whether such disallowance was limited to offences or expenses prohibited in India only or whether such expenses incurred outside India should also be disallowed under section 37 of the IT Act. The Finance Bill now seeks to clarify that any expense incurred which is an offence under foreign law or prohibited by any law in India or outside India or for compounding of an offence for violation of a domestic law or a foreign

7 Cheminvest Ltd. v. Commissioner of Income-tax-IV [2015] 61 taxmann.com 118 (Delhi)
8 Commissioner of Income-tax v. Shivam Motors (P.) Ltd. [2015] 55 taxmann.com 262 (Allahabad)
9 Commissioner of Income-tax - I v. Corrtech Energy (P.) Ltd. [2014] 45 taxmann.com 116 (Gujarat)
10 ITA Nos. 5168 & 5169/Mum/2018

law shall not be allowed as a deduction while computing the business income.

The above amendments are in line with the intent of the legislation that any expenses incurred for prohibited activities or offences committed anywhere should not be allowed as a deduction while calculating the business income.

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

6. Scope of section 43B of the IT Act widened to include interest on debentures

Presently, section 43B of the IT Act, inter-alia, provides for deduction for interest on loans from banks or NBFC only upon actual payment of such interest. Further, the explanation to the section specifically clarifies that any conversion of such interest into loan or borrowing shall not be deemed to have been actually paid.

However, the SC in the case of ***M.M. Aqua Technologies Ltd.***[11] had recently held that issuance of debentures in lieu of the existing interest accrued and payable, amounted to constructive discharge of interest liability as there was extinguishment of liability. However, it is also to be noted that the explanation inserted in this section was prospective whereas the case related to a year after which the explanation was inserted in the section. Thus, the benefit of section 43B was allowed to the assessee. The Government believes that this interpretation is not in consonance with the purpose of section which intended to ensure actual payment rather than an accrual entry or adjustment in the books.

Accordingly, the Finance Bill seeks to now plug this loophole by amending the relevant explanation to the section 43B of the IT Act to provide that the conversion of interest into debenture or any other instrument by which liability to pay is deferred to a future date, shall not be deemed to have been paid and hence, cannot be allowed as a deduction under section 43B of the IT Act.

The proposed amendments will be effective from FY 2022-23 onwards.

7. Plugging the loopholes in dividend and bonus tripping provisions

Currently, section 94 of the IT Act provides for certain anti-bonus stripping and anti-dividend stripping provisions. Dividend stripping and bonus striping are primarily attempts by a taxpayer to reduce its tax liability, by investing in a security before the record date (for declaration of dividend or issue of additional security) and getting the dividend or additional security, and exiting immediately after the record date at a value where the taxpayer accrues a capital loss.

Sections 94(7) and 94(8) of the IT Act provided that subject to certain conditions, taxpayers resorting to bonus stripping and dividend stripping would not be allowed to book capital losses. Further, in case of bonus stripping, such loss would also be deemed to the cost of acquisition of the bonus unit received. However, the existing bonus stripping provisions

11 M.M. Aqua Technologies Ltd. v. Commissioner of Income-tax, Delhi-III [2021] 129 taxmann.com 145 (SC)

were only applicable to units of mutual funds. Similarly, the dividend stripping provisions did not apply to units of new pooled investment vehicles such as InvIT or REIT or AIFs.

With an intention to prevent this loophole being exploited by the taxpayers, the Finance Bill proposes to amend section 94(7) and 94(8) of the IT Act, to expand the applicability of these anti-evasion provisions to bonus stripping and dividend stripping undertaken in respect of stocks, shares, units of REIT, InvIT and AIFs.

The proposed amendments will be effective from FY 2022-23 onwards.

8. Withdrawal of concessional rate of taxation for dividend income from foreign companies

Currently, section 115BBD of the IT Act provides for a concessional tax rate of 15% on the dividend income received by a domestic company from a foreign company, where such Indian company holds 26% or more in nominal value of the equity share capital of the foreign company. This beneficial rate was aligned to the 15% DDT on dividend distributed by the domestic companies.

However, the DDT regime was abolished by Finance Act, 2020, and dividend distributed by domestic companies is now taxable in the hands of the shareholders at the applicable rates. Thus, while the dividend distributed by Indian companies are subject to tax rates ranging up to 30%, dividend received from foreign companies may be subject to tax at 15% rate under section 115BBD of the IT Act.

In order to restore the parity between the tax rates applicable to dividends received by Indian companies from foreign companies, vis-a-vis dividend received from domestic companies, the Finance Bill proposes to withdraw the beneficial regime under section 115BBD of the IT Act.

It would be relevant to note that despite the withdrawal of this regime, domestic companies may continue to claim deduction with respect to onward distribution of dividends received from both, foreign and domestic companies, under section 80-M of the IT Act.

The proposed amendments will be effective from FY 2022-23 onwards.

9. Additional taxes on goodwill

Vide the Finance Act 2021, the Government had denied the tax depreciation on goodwill on a retroactive basis which had left the business community hard done. The amendment was made to the effect that from AY 2021-2022, goodwill of a business or profession would not be considered as a depreciable asset and no expense can be claimed on account of depreciation on goodwill of a business or profession. In case where depreciation had been claimed by the taxpayer prior to AY 2021-22, then the depreciation so obtained by the taxpayer shall be reduced from the cost of acquisition of the goodwill.

It is now proposed that reduction of goodwill from the block of assets would be deemed to be considered as transfer under the IT Act and accordingly, would be subject to capital gains taxes in the hands of the company. This may be targeted at business reorganization wherein the parties tend to reduce goodwill. The proposed amendment is effective from the on-going financial year. Accordingly, the reduction of goodwill that took place before this Budget was presented (i.e. from April 01, 2021 till date) should also be offered for capital gains taxes in this AY.

The proposed amendments will be effective retrospectively from FY 2020-21 onwards.

10. All kinds of transfer of an undertaking is slump sale

Finance Act, 2021 had introduced changes in the taxability of slump sale. The definition of slump sale was amended to expand its scope to cover all forms of transfer under slump sale.

However, inadvertently, in the last sentence of the definition of slump sale, there is still a reference to the word 'sales' instead of 'transfer'.

The Finance Bill now seeks to correct this anomaly by amending the provision of clause (42C) of section 2 of the IT Act, to substitute the word “sales” with the word “transfer”.

The proposed amendments will be effective retrospectively from FY 2020-21 onwards.

III

Assessment and Appellate Proceedings

11. Voluntary compliance mechanism - Filing updated tax return

Presently, the provisions related to filing of return provide an opportunity to file a revised or belated return in case there is an omission to file or default in filing the return. While earlier, there used to be a timeline of one year from the end of the year in which the return is filed/ due to be filed, with the advent of technology, the timeline available to file a revised or belated return was drastically reduced to the end of the relevant assessment year. Thus, in case of any discovery of income after the end of the relevant assessment year, there was no provision to file the return of income.

The Finance Bill seeks to provide time for filing of an "Updated Income Tax Return" by introducing section 139(8A) of the IT Act whereby the taxpayer may file a return of income, irrespective of whether the return of income was previously filed or not. However, the Updated Income Tax Return should not be a loss return and in case the income tax return was filed earlier, then the tax liability in the Updated Income Tax Return should not be reduced and the refund claim should not increase. The Updated Income Tax Return may be filed within a period of two years from the end of the relevant year of filing of return, upon satisfaction of prescribed conditions (like no pending proceedings or search or seizure or information in AO's possession related to proceedings under other laws like black money, money laundering, etc.) and payment of prescribed amount of additional tax and interest i.e. 25% or 50%.

This amendment is expected to have a significant positive impact in ensuring voluntary compliance by taxpayers i.e. filing of income tax returns in cases wherein the taxpayers become aware of additional income arising in their hands and want to be on the right side of the law. However, the number of conditions to be met by a taxpayer before being eligible to file an Updated Income Tax Return under this provision are huge which may deter those who may like to comply. It may have been better if the number of conditions imposed therein could have been lesser.

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

12. Overhauling of faceless assessments

As part of the Government's larger objective of streamlining the processes under the ITA to increase efficiency, the Government sought to make the assessment processes electronic, by eliminating the human interaction between taxpayers and the authority (to the extent it was technologically feasible). The rationale was to optimize the usage of the department's limited resources, through a team-based assessment system across jurisdictions. Section 144B was introduced to the IT Act as part of this policy through 'Taxation and Other Laws

(Relaxation and Amendment of Certain Provisions) Act, 2020 (with effect from April 01, 2022).

Section 144B of the IT Act sets out a detailed procedure to be followed by taxpayers and the tax department to conduct entirely faceless assessments; and its introduction marked the end of the 'Faceless Assessment Scheme' of 2019. However, given the technical and procedural challenges to implementing the faceless assessment procedures for such a large scale of taxpayers, various difficulties were pointed to the tax authorities through the course of FY 2021-22. The tax department too faced several challenges in implementing entirely faceless assessments; in so far as sub-section (9) to section 144B of the IT Act, which nullified assessments made through the faceless assessment process under section 144B of the IT Act, if the procedure laid down in the section was not followed. Given its recent introduction (and thus the time it would need to operate smoothly), this created an impediment for the tax authorities, as a large number of disputes raised under sub-section (9) were on account of technical issues, and not procedural lapses (leading to unnecessary litigation).

In order to resolve the technical, procedural and legal issues emanating from the implementation of section 144B of the IT Act, the Finance Bill proposes to rationalize the procedure laid down in section 144B of the IT Act through several amendments. Further, it has also been proposed to omit sub-section (9), which made the assessment void on non-adherence to the procedure set out in section 144B of the IT Act. While this may ease the burden on the tax authorities, not requiring the tax authorities to follow the exact procedure laid down within section 144B, it may question the veracity and independent nature of the faceless assessments made under the section; thereby leading to a slippery slope. Whether these amendments will succeed in curbing the procedural and technical issues from the current section 144B of the IT Act, is yet to be seen.

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

13. Postponement of faceless appeals & transfer pricing proceedings

From the year 2020, the Government had been taking multiple steps to completely overhaul the manner of completion of assessments and appeals under the IT Act. However, the schemes introduced by the CBDT have been continuously running into practical difficulties. The Government has successfully utilised lockdowns to make the entire assessment and first appellate procedure virtual, even though the tax-paying community was largely sceptical about it.

Recently, the Bombay HC warned the tax department that they may have to bear costs, if cases are disposed of without granting personal hearings, even after requisitions from taxpayers. Another public interest litigation was filed in the Bombay HC, challenging the constitutional validity of the faceless appeal scheme. The case is on hold since the Government has indicated that it would make certain amends. The scheme for the virtualisation of the second appeal forum has also been put on hold.

The Finance Bill now proposes that directions pertaining to the faceless schemes in relation to proceedings with the transfer pricing officer and the faceless schemes pertaining to ITAT would be postponed till March 31, 2024.

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

14. Reducing the litigations on identical question of law pending in HC or SC

Section 158AA of the IT Act provides that in case an identical question of law is already pending for adjudication by the SC in a past year for the same assessee, then the Commissioner or Principal Commissioner may direct the AO to file an application before the Hon'ble ITAT intimating that the appeal in the later year may be filed later basis the outcome in the past case. This was subject to acceptance by the assessee on the identical question.

The Finance Bill now seeks to extend the above by introducing section 158AB of the IT Act whereby if an appeal by the IRA is pending on an identical question of law before the jurisdictional HC or the SC for any other assessee in any past assessment year, and the collegium (comprising of two or more Chief Commissioners/ Principal Commissioners or Commissioners of Income Tax) opines that the question of law in the recent case is identical to the pending appeal, then the Commissioner or Principal Commissioner may direct the AO not to file an appeal before the ITAT or HC, till the outcome of the earlier case. This shall be possible only if acceptance is received from the assessee that the pending question of law is indeed identical with the question arising in its own case. However, in case the acceptance is not received, then the Commissioner or Principal Commissioner shall be required to proceed with the filing of the appeal.

With the introduction of this section which is more comprehensive, the Finance Bill also seeks to withdraw the earlier section 158AA of the IT Act which was intended to reducing litigation in the case of same assessee across two different assessment years.

This is a positive step towards providing an ease of doing business. Where the assessee is also in acceptance with the fact that the questions are identical, it may save the cost of undertaking the repetitive litigation on same issue by the IRA and will help in saving bandwidth of the management time and resources involved. However, since the next course of action shall be decided basis the outcome of other assessee's case for which the manner of litigating is not in the hands of the other assessee, this may prolong the agony for the taxpayer as it may increase the number of years taken to resolve any litigation.

It is also important to note that the CBDT had also increased the monetary limits below which the IRA shall not file appeals before the appellate authorities. This coupled with the current amendment shall help in reducing the anticipated future tax litigations.

The proposed amendment will take effect from FY 2021-22 onwards.

15. Finalisation of assessment pursuant to order of Dispute Resolution Committee

Finance Act, 2021 had proposed setting up of Dispute Resolution Committee ("DRC") with an objective to simplify tax administration and relax compliance burden and litigation and providing a quick dispute resolution mechanism for small and medium taxpayers. This resolution is available only in specified cases where the assessment order (including draft assessment order in transfer pricing cases) meets certain conditions (i) the variations proposed do not exceed INR 1 million, (ii) not based on search or seizure operations, (iii) not based on information received under section 90/ section 90A of the IT Act related to tax evasion and (iv) total income as per return does not exceed INR 5 million. While the provisions introduced in this regard provided for powers to issue a notice of demand or to reduce or waive penalty, it had not provided the mechanism to the AO to issue an order giving effect to the directions of DRC.

The Finance Bill now seeks to enable the AO to pass or modify or issue an order of assessment, reassessment or recomputation, in conformity with the directions of DRC. This will help in streamlining the process of DRC.

It is a welcome move as the matters undertaken by the DRC can now reach their conclusion.

The proposed amendments will take effect from FY 2021-22 onwards.

16. Rationalisation of procedure for carrying out assessment and reassessment

The Government has been eagerly taking steps over the last few years for simplification of various procedures under the IT Act. As part of a series of such measures, the Finance Bill proposes to:

A. Remove the requirement of seeking a prior approval from a "specified authority" before issuance of a notice to an assessee to show cause as to why a notice under section 148 of IT Act should not be issued to him on the basis of information that income chargeable to tax has escaped assessment .

   Further, a separate requirement of seeking approval for issuance of re-assessment notice under section 148 of IT Act will not apply where an order has already been passed under clause (d) of section 148A of IT Act stating that it is a fit case for issuance of reassessment notice under section 148 of IT Act with the prior approval of specified authority.

   The said measures may help to reduce redundancy or duplication of efforts within the Income Tax Department at the time of conducting assessment proceedings, where one step of approval has already been obtained in a given case.

B. Procedure in search cases aligned to regular assessment cases:

   (i) In search cases under section 132 it has been provided that books of accounts seized by the AO during the course of search proceedings shall not be retained beyond 30 days from the date of assessment order. The Finance Bill proposes to extend said provision to cases of assessment or reassessment as well as re-computation under section 143(3), 144 and 147 of IT Act

(ii) Provisions of section 132B of IT Act which govern the application of seized assets during the course of search proceedings and provide for the calculation of interest on money seized till the date of completion of search proceedings have been amended to cover reassessment or re-computation proceedings as well.

C. Insertion of a new provision i.e. section 148B in the IT Act providing that any order of assessment or reassessment or re-computation under the IT Act shall not be passed by an AO below the rank of Joint Commissioner of Income Tax in cases where clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply i.e. in search and survey cases, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

The proposed amendments in (A) to (C) will be effective from FY 2022-23 onwards.

D. In case of an assessee in whose case a) a search is initiated under section 132 or b) requisition is made under section 132A, to whom any money, bullion etc or any books of account or documents seized or requisitioned pertains to or any information contained therein relates to, in computing the period of limitation under:

a) Section 153 of IT Act with respect to assessment, re-assessment or re-computation proceedings

b) Section 153B of IT Act with respect to cases of search or requisition

The Finance Bill proposes that the period (not exceeding 180 days) between the date of search or requisition and the date on which such books or other documents or any money, bullion, etc. is handed over to the AO shall be excluded.

E. Section 271AAB of IT Act contains the provisions for imposition of penalty in cases where search has been initiated under section 132 of IT Act. The said provision provides for imposition of a lesser penalty in case the assessee pays the taxes and furnishes the ROI in respect of the undisclosed income before a specified date i.e. before the due date of filing of ROI of assessee or before the date mentioned in notice for search under section 153A of IT Act.

The Finance Bill proposes to amend the definition of the term "specified date" mentioned hereinabove to also include the date mentioned in notice for reassessment under section 148 of IT Act.

F. The Finance Bill proposes to enhance the scope of information under section 148 or section 148A of IT Act which can lead AO to believe that income chargeable to tax has escaped assessment and notice for reassessment may be issued, to include:

a) an audit objection to the effect that the assessment has not been made in accordance with the provisions of IT Act

b) information received from a foreign country with which India has an agreement as referred to in section 90 or 90A of the IT Act i.e. DTAA

c) information collected by the AO under section 135A of IT Act under faceless scheme

d) information requiring action in consequence of an order of a tribunal or court

G. For issuance of notice under section 148 of IT Act, the extended timeline of ten years where income escaping assessment exceeds INR 5 million is applicable where income is represented in the form of an

a) "asset"

The scope of such provisions has been proposed to be widened vide the Finance Bill to include income represented in the form of:

b) an expenditure in respect of a transaction or in relation to an event or occasion; or

c) an entry or entries in the books of account.

A new sub-section 1A has been inserted in section 148A of IT Act which provides that where income chargeable to tax represented in the form of a) or b) above has escaped assessment and such investment was made in more than one year within the period of 10 years referred above, notice for reassessment under section 148 shall be issued for every such AY.

H. Proviso to section 148A of IT Act lays down instances where a prior enquiry under section 148A of IT Act before issuing notice of reassessment under section 148 of IT Act shall not be required.

The Finance Bill proposes to add another instance in this regard such that where the AO has received any information under the faceless scheme notified under section 135A by calling for information under section 133 or collecting information under section 133B etc, provisions of section 148A of IT Act shall not be applicable.

It must be noted that most of these provisions have been introduced to reduce the administrative compliances that are required to be undertaken by the tax authorities. However, based on experience, it will have to be seen how these provisions are actually put to use by the tax authorities as the results of the immediate past have not been very encouraging. It will also have to be ascertained how the judiciary interprets these provisions since they may get into encroaching upon the rights of the taxpayers in a significant manner.

The proposed amendments in (D) to (H) will be effective from FY 2021-22 onwards.

17. Refund of TDS deducted on payments made to non-residents

Under section 248 of the IT Act, an appeal can be filed by a deductor of tax at source where the TDS under section 195 of IT Act (i.e. non-resident payee) is to be borne by the deductor. As per the provisions of section 248 of IT Act, where tax is not deductible on a non-resident in case of any income (other than interest income) however TDS is deducted as also deposited, such deductor cum assessee can file an appeal before the CIT(A) to be declared as not liable to make such a deduction to obtain a refund.

Where a person availed the provisions of section 248 of IT Act and approached the CIT(A) in its appellate jurisdiction, it entailed that the jurisdictional Assessing Officer did not get an opportunity to examine the facts and circumstances of a particular case at the first level. This implied that unlike various other proceedings under the IT Act, in case of such proceedings for obtaining TDS refund, there was no detailed examination undertaken at the first level itself i.e. by the AO, and instead the matter was directly taken up the first appellate authority i.e. the CIT(A).

In order to bring such proceedings at par with other proceedings under the IT Act and ensure a detailed examination by the AO, the Finance Bill proposes to introduce a new provision i.e. section 239A of IT Act to provide for filing of a fresh application before the AO in such cases for a TDS refund.

The Finance Bill proposes to discontinue the current mechanism of obtaining such refunds by way of an appeal before the CIT(A) and instead proposes that such an application for claiming refund of TDS may be filed before the AO instead within 30 days of date of payment of such TDS. The AO after making necessary enquiries may accept or reject such an application after providing an opportunity of being heard to an applicant. Necessary amendments have also been brought in section 246A of IT Act such that an order passed under the newly introduced provision section 239A of IT Act has been made appealable and an appeal can be filed before the CIT(A) under section 246A of IT Act

It may be noted that an order will need to be passed by the AO within six months from the end of the month of receiving such an application.

It is a positive step to allow for quicker and easier resolution of claims as the taxpayers and directly approach the AO and get the requisite refunds within a short span of time. This will go a long way in structuring the cross-border transactions where, typically, detailed clauses pertaining to the manner of withholding tax compliances would be forming part of the definitive agreements.

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

18. Exemption from penal fee under section 234F in case of genuine hardship

Section 119(2)(a) of the IT Act presently provides for issuance of general or special orders under certain specified sections for ensuring proper administration of work or initiation of proceedings or imposition of penalties, etc. in public interest.

The Finance Bill proposes to add section 234F of the IT Act to the list of sections mentioned under section 119(2)(a) of the IT Act so as to ensure that the fee of INR 5,000 levied under section 234F of the IT Act for failure to file the income tax return, may not be levied in cases of genuine hardships. Thus, CBDT has been authorized to issue instructions regarding this section, as it deems fit.

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

19. Amendment in definition of income tax authority under section 133A of the IT Act

Section 133A of the IT Act presently enables an income-tax authority to enter any place of business or profession or charitable activity within his jurisdiction to verify the books of account or other documents, cash, stock, etc., which may be useful for or relevant to any proceeding.

For this purpose, the meaning of the term income tax authority was limited to the positions mentioned in explanation to the section who are subordinate to Director General of Income Tax (Investigation) or Chief Commissioner of Income Tax (TDS) only.

The Finance Bill now seeks to amend the definition of income tax authority to include the positions subordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner, as the case may be, specified by CBDT. This shall ensure the flexibility in conducting proceedings under the IT Act.

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

IV

Incentivizations

20. Extension of lower rate for new manufacturing companies

Section 115BAB was introduced through the Taxation Laws (Amendment) ordinance, 2019 with the intention to attract investment, create jobs and trigger overall economic growth. The Section provides for an option of concessional rate of taxation @ 15% for new domestic manufacturing companies provided that they do not avail of any specified incentives or deductions and fulfil certain other conditions.

However, the cumulative impact of persistence of the Covid-19 pandemic resulted in some delay in setting up/registration of new domestic companies and the commencement of manufacturing or production, if they have been set up and registered. With the aim to provide relief to such companies Finance Bill proposes to extend the date of commencement of manufacturing or production of an article or things, from 31st March 2023 to 31st March 2024 by making necessary changes to Section 115BAB of the IT Act.

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

21. Extension of Deductions 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 of the IT Act. 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 2022.

However, due to Covid-19 pandemic there have been delays in setting up the start-ups. Thereby to nullify the delay and promote the start-up ecosystem, Finance Bill has proposed to extend the period of incorporation of start-ups to March 31, 2023 by making necessary changes to section 80 IAC of the IT Act.

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.

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.

There has not been any corresponding proposal in the Finance Bill to extend the date for transfer of such residential property for availing benefit under section 54GB of the IT Act.

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

22. Rationalisation of the tax rate applicable to Co-operative Societies

Section 115JC of the IT Act provides for AMT payable by co-operative societies, which is at the rate of 18.5%. However, vide the Taxation Laws (Amendment) Act, 2019, MAT for companies has been reduced to 15%.

Therefore, in order to provide parity between co-operative societies and companies, the Finance Bill proposes to reduce the AMT rate at which co-operative societies are liable to income-tax to 15% by modifying section 115JC(4) of the IT Act. Consequently, the Finance Bill also proposes to amend the definition of AMT provided under section 115JF of the IT Act. The Finance Bill also proposes to reduce tax rate of 18.5% to 9% for units located in an IFSC and derives its income solely in convertible foreign exchange.

This change would help in enhancing the income of co-operative societies and its members who majorly belong from rural and farming communities. The changes would also help in promoting the Government's objective of attracting units in IFSC.

The proposed amendments will be effective from FY 2022-23 onwards.

23. Facilitating strategic disinvestment of public sector companies

The Finance Act, 2021, introduced section 72A(1)(d) of the IT Act, for the carry forward of accumulated losses and unabsorbed depreciation of the erstwhile public sector company (which ceases to be a public sector company as a result of strategic disinvestment) on its amalgamation with another company, subject to satisfaction of conditions specified therein. Subsequently, The CBDT issued a press release and notification in September 2021 to exempt strategic disinvestments from the applicability of other provisions of the Act i.e. impact on carry-forward of unabsorbed tax losses on change in shareholding as per section 79 of the IT Act.

Section 79 of the IT Act provides that where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of year or years in which the loss was incurred. Sub-section (2) of the said section provides certain circumstances in which the provisions of sub-section (1) shall not apply.

In order to facilitate the strategic disinvestment of public sector companies, the Finance Bill proposes not to apply provisions of section 79 (1) of the IT Act to an erstwhile public sector company subject to condition that the ultimate holding company, immediately after the completion of strategic disinvestment, continues to hold, directly or indirectly, at least 51% of the voting power of the erstwhile public sector company in aggregate. The Finance Bill further proposes that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.

This would result in smooth disinvestment process as shares in some public sector companies undergoing strategic disinvestment are held by other public sector companies instead of the Government itself.

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

24. Increased tax incentives to units setup in IFSC

The IT Act contains several incentives for units located in IFSC, inter-alia including 100 percent tax holiday under section 80LA of the IT Act, reduced minimum alternate tax, concessional withholding tax on interest income, exemption from capital gains tax on transfer of specified securities, special tax regime for Category-III AIFs in IFSC etc. Several reforms have been made on the regulatory front as well which includes relaxation of diversification norms, flexibility in co-investment, undertaking leverage by AIFs set up in IFSC, relaxations for foreign portfolio investors etc.

The Finance Bill proposes several changes in the IT Act to make it a global hub for financial services sector:

- *Exemption from income arising from offshore derivative instruments or over-the-counter derivatives:* The IT Act exempts any income which accrues or arises to or is received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit ("OBU") of an IFSC from tax. The Finance Bill proposes to extend this exemption to income arising from offshore derivative instruments or over-the-counter derivatives entered with an OBU.
- *Incentives for AIFs in IFSC:* Section 56(2)(viib) of the IT Act provides that where a closely held company issues shares at a premium to Indian residents, the amount of money received by the closely held company in excess of the fair market value of the shares of the company is considered as income from other sources. However, provisions of section 56(2)(viib) of the IT Act are not applicable where consideration for issuance of shares is received by a Category I/ II AIF registered with the Securities Exchange Board of India.

The Finance Bill proposes to clarify that this exemption is available to Category I/ II AIF registered with the IFSCA as well.

- *Incentive for encouraging portfolio management in IFSC:* The Finance Bill proposes to introduce an exemption to exempt any income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an OBU in the IFSC, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India. Portfolio managers operating in IFSC are permitted to invest in securities and financial products in IFSC, India or foreign jurisdiction (as defined in the CMI Regulations).

- *Incentives for ship leasing:* Last year, the FM introduced a competitive tax regime for aircraft leasing in GIFT City. In order to promote ship leasing in the IFSC, the Finance Bill proposes the following:

  a. Extension of tax holiday to income arising on transfer of ship which was leased by a Unit located in IFSC subject to condition that the Unit has commenced operation on or before the March 31, 2024;

  b. Exemption of any income of a non-resident by way of royalty, on account of lease of a ship in a previous year, paid by a unit of an IFSC if the unit has commenced its operations on or before the March 31, 2024. The term ship has been defined to mean a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof. While ship leasing has not been notified as a financial product by the IFSCA currently, with the proposed change to the ITA, it is expected that ship leasing will also be included in the meaning of financial product. Entities envisaging to undertake ship leasing in IFSC are likely to obtain registration as a finance company or finance unit under the International Financial Services Centres Authority (Finance Company) Regulations, 2021.

The Government seems to be very keen to promote Gift City as a jurisdiction for foreign investors. However, whether these provisions would be able to able to attract new investors based on these announcements and incentives, remains to be seen.

The proposed amendments will be effective from FY 2022-23 onwards.

25. Amendment in section 35(1A) of the IT Act

Section 35(1A) inserted by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 had made it mandatory for the research association, university, college or other institution referred to in section 35(1)(ii)/(iii) or company referred to in clause (iia) to file the statement of donations received by these entities from the donors.

Presently, the section has an error and reads that no deduction shall be allowed to the research association, university etc., if such statement of donations is not filed. The legislative intent was to disallow the deduction claimed by donor in such cases, similar to amendment in section 80G of the IT Act.

The Finance Bill seeks to correct this error by amending the language in section 35(1A) of the IT Act to provide that the deduction claimed by donors for amount paid to such institutions shall be disallowed unless such institutions file the statement of donations.

The proposed amendments will be effective retrospectively from FY 2020-21 onwards.

V

Tightening The Screws on Undisclosed Income & Streamlining of Prosecution Provisions

26. Additional onus to explain source of "source of funds" in search and seizure cases

In order to curb the practice of conversion of unaccounted money by crediting it into the books of a person, section 68 of the IT Act has been widely applied in cases where unexplained credits are detected in the books of an assessee. In such cases, onus lies on the person in whose books the sum is credited to explain the source of such funds.

Vide Finance Act 2012, the scope of said provision was significantly expanded in those cases where receipts were in the form of share application money, share capital, share premium etc in case of closely held companies such that onus was placed on the shareholder to additionally explain the source of such sum. The purpose being to detect instances of tax evasion by companies in the name of non-exiting shareholders or third parties.

In a multitude of cases, it has been observed that in case of a credit in the form of a loan or a borrowing, the explanations provided by an assessee were deemed satisfactory by the IRA or the courts as long as the identity and creditworthiness of the creditor and genuineness of transaction was satisfactorily established. As per the prevailing jurisprudence in the matter, the onus of proof in such cases did not extend to explaining the source of the "source of funds" i.e. source of funds in the hands of the creditor or lender, opening various avenues for misuse.

The Finance Bill proposes to amend the provisions of section 68 of the IT Act in this regard such that where there is a transaction in the nature of a loan or a borrowing or a liability is recorded in the books of an assessee, an additional onus will also lie on the creditor or lender or entry provider to explain the source of such funds. The purpose is to establish the actual source of such funds to detect cases where such sum belongs to a third party instead and the assessee is merely used as a device to convert such unaccounted money.

The government has been keen to introduce further measures to curb any avenues for diversion of funds of third parties. Hereinafter after said amendment, an assessee will need to be cautious and improve its record keeping practices and methods and sources of availing credit(s) drastically to avoid an addition in its own books as unexplained cash credits.

It may be noted that an exception has been provided only where credit appears in the books from a well-regulated entity such as a Venture Capital Fund, Venture Capital Company etc registered with SEBI.

The proposed amendments will be effective from FY 2022-23 onwards.

27. Denial of set-off of any loss or unabsorbed depreciation against undisclosed income

The Bill proposes to introduce section 79A of the IT Act, wherein, set-off of losses brought forward or unabsorbed depreciation under section 32(2) of the IT Act allowed to an taxpayer, while computing his total income in any previous year, against undisclosed income detected during search, requisition or survey operations, is denied.

It was noticed that in several cases despite undisclosed income being detected the taxpayer were able to avoid the tax liability by setting-off of losses or unabsorbed depreciation, against undisclosed depreciation corresponding to difference in stock, undervaluation of stock, unaccounted cash payment etc. Currently, there is no such provision which prevent the taxpayer from setting of losses or unabsorbed depreciation against undisclosed income, detected owing to search, survey or requisition proceedings. However, such restriction of set-off of losses exists in case of income assessed as unexplained cash credit or undisclosed investment etc.

Therefore, to plug this loophole and to prevent taxpayers from misusing these existing provisions, the Bill proposes to introduced section 79A in the IT Act. Section 79A of the IT Act provides that a taxpayer would not be allowed to set-off of any loss or unabsorbed depreciation against undisclosed income detected during search, requisition or survey operations. The proposed provision also provides for a detailed definition of 'undisclosed income'.

Clearly, the government wants to tighten the noose around the notorious taxpayers by introducing such anti-voidance provisions, which will ensure that such taxpayer do not avoid payment of tax on undisclosed incomes, detected through search, survey or requisition.

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

28. Sunset clause provided in section 276AB of the IT Act to align with the prosecution provisions no longer relevant

Section 276AB of the IT Act lays down the terms of punishment in cases where there is a violation of section 269UC or 269UE or 269UL of the IT Act which cover certain instances where there is transfer of any immovable property. However, the provisions of sections 269UC or 269UE or 269UL of the IT Act were made inapplicable w.e.f. July 1, 2002 itself. In case of any violation under said provision(s), the provisions related to prosecution were contained in section 276AB in the IT Act which provide for a rigorous imprisonment for upto 2 years.

As per the Government, launching prosecution in case of an offence committed 20 years ago i.e. prior to 2002 would not be reasonable. Further, it was felt that prosecution cases launched 20 years ago might still be ongoing in certain cases which also deserved to reach a logical conclusion.

Therefore, in order to take these cases to a logical conclusion, Finance Bill proposes to insert a sunset clause in section 276AB of the IT Act such that no fresh prosecution shall be initiated under said provision after April 1, 2022.

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

29. Clarificatory amendment in section 276B of the IT Act with respect to reference to section 194B of the IT Act

Section 276B of the IT Act lays down the provisions for prosecution in cases where a person has failed to deduct TDS as per the provisions of Chapter XVII-B of the IT Act or failed to pay tax under certain provisions including under the second proviso to section 194B of the IT Act. It provides for prosecution for a term ranging from three months to seven years with fine for failure.

Section 194B of the IT Act pertains to deduction of tax at source where payment is made to any person on account of winnings from any lottery, crossword puzzle, card game etc. However, the second proviso to section 194B of the IT Act had already been omitted vide Finance Act, 1999 w.e.f. 01.04.2000. Therefore in order remove the ambiguity between the provisions of section 276B and section 194B of the IT Act, the Finance Bill proposes to remove the reference to second proviso to section 194B of the IT Act from section 276B of the IT Act and instead insert reference to the proviso to section 194B of the IT Act.

The Finance Bill also proposes a similar amendment in the provisions of section 271C of the IT Act such that the reference to the second proviso to section 194B of the IT Act would be omitted and instead reference shall be made to the proviso to section 194B of the IT Act.

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

30. TCS provisions also brought under the ambit of section 278A and 278AA of the IT Act

Sections 278A of the IT Act provides for punishment in case of second and subsequent offences where a person has already been convicted for failure to pay tax under Chapter XVIIB of the IT Act for tax deducted at source.

Further, section 278AA of the IT Act provides that in cases where an assessee is able to show that there was reasonable cause for failure to pay tax, he shall not be punishable under the provisions of section 276A, section 276AB or section 276B of the IT Act for such failure.

Similar provisions for any offence with respect to tax collected at source under Chapter XVII-BB of the IT Act, providing for punishment with prosecution against persons failing to pay tax collected at source are not there under sections 278A and section 278AA of the IT Act. In this regard, Finance Bill proposes to include reference to section 276BB of the IT Act under sections 278A and 278AA of the IT Act owing to the similar nature of offences that are punishable under section 276B (for tax deducted at source) and section 276BB (for tax collected at source) of the IT Act.

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

31. CIT(A) to levy penalties under section 271AAB, 271AAC and 271AAD of the IT Act

Presently, section 271AAB, section 271AAC and section 271AAD of the IT Act under Chapter XXI contain provisions which give powers to the AO to levy penalty in cases involving undisclosed income in cases where search has been initiated under section 132 or otherwise, or for false entry etc. in books of account.

However, certain other sections within the same Chapter also provide simultaneous powers to the AO as well as the CIT(A) to levy penalties.

The Finance Bill proposes to extend the power to levy penalties under the abovementioned sections to CIT(A) also, in addition to the AO. This has been done with a view to improve deterrence against non-compliance amongst the taxpayers.

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

32. Increase in amount of penalty under section 272A of the IT Act

Section 272A(2) of the IT Act provides for levy of penalty for specified failures listed therein like failure to comply with notice, failure to give notice of discontinuance of business, failure to furnish return within the prescribed time, failure to furnish withholding tax certificate, etc. The amount of penalty prescribed is INR 100 per day for which the failure continues.

It has been noted by the Comptroller and Auditor General of India in its report on entertainment sector that this penalty is very low. The penalty had been prescribed in the year 1999 and does not seem to be adequate now.

The Finance Bill now seeks to increase the amount of penalty for such listed failures to INR 500 per day for which the failure continues.

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

VI

Withholding Tax Compliance

33. Rationalising the TDS and TCS provisions relating to non-filer of returns

The Finance Act, 2021, had introduced section 206AB and section 206CCA in the IT Act, to ensure that the taxpayers timely file their income tax returns. These sections laid down special provisions for deduction and collection of tax at higher rates (specified therein), in case of payments to or from, as the case may be, a 'specified person'. A 'specified person' has been defined to mean a person who has not filed income tax returns for the last two years preceding the year in which tax is to be deducted, and the amount of tax collected and deducted at source is INR 50,000 or more in the relevant year.

In order to nudge taxpayers to furnish their return of income, where significant amount of tax has been deducted, the Bill, now proposes to amend the definition of 'specified person' under section 206AB and section 206CCA of the IT Act to reduce the two years requirement to one year. Accordingly, pursuant to the proposed amendment, a person who has not filed its return of income for the year immediately preceding the relevant year in which tax is to be deducted or collected, and the amount of tax collected and deducted at source is INR 50,000 or more in the said year, will be a 'specified person'.

Further, in order to reduce the burden on individuals and HUF (for whom simplified tax deduction system has been provided under the IT Act), the Bill proposes to amend section 206AB of the IT Act. As per the amendment, the section would not apply where TDS is required to be withheld under section 194-IA (i.e. pertaining to TDS on transfer of certain immovable property), section 194-IB (i.e. pertaining to TDS on payment of rent by certain individuals or HUFs) and section 194M (i.e. pertaining to TDS payment of certain sums by certain individuals or HUFs) of the IT Act.

Clearly, the Government wants taxpayers to be vigilant about tax compliances and ensure that the tax base is widened.

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

34. Rationalisation of TDS on sale of immovable property

Currently, section 194-IA of the IT Act provides for deduction of tax on any payment made or credited to resident taxpayers for transfer of any immovable property (other than agricultural land). Such tax is required to be deducted at the rate of 1% of the consideration. Further, it also provides that no tax is required to be deducted, where the consideration for transfer of an immovable property is less than INR 5 million.

Section 194-IA of the IT Act provides for deduction of tax on the consideration paid, and does not take into account the stamp duty value of the property. Concurrently, certain other provisions of the IT Act, such as section 50C and section 43CA, consider stamp duty value of the immovable property in addition to the sale consideration, to determine income derived out of alienation of property.

To address the aforesaid inconsistency, the Bill proposes to amend section 194-IA of the IT Act, to provide that tax should be deducted at the rate of 1% of consideration paid or credited to the resident or the stamp duty value of the property, whichever is higher.

Further, the Bill also clarifies that no tax is required to be deducted if the consideration and the stamp duty value, both are less than INR 5 million.

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

35. TDS on perquisites or benefits arising from business or profession

Currently, any benefit or perquisite arising from business or exercise of profession, whether convertible into money or not, is subject to tax as business income in the hands of the recipient of such benefit or perquisite. However, it was noted that in several cases such benefits were not being reported by the taxpayer in their returns of income. To ensure that such transactions are properly reported and taxpayers pay due tax with respect to such transaction, the Bill proposes to introduce a TDS provision in respect of such benefits of perquisites.

The Bill proposes to introduce section 194R in the IT Act, which provides that the person responsible for providing to a resident taxpayer, any benefit or perquisite, arising from carrying out of a business or exercising of a profession by such resident, shall, deduct tax at the rate of 10% of the aggregate value of such asset. However, no tax is required to be deducted if

(i) the aggregate value of the benefit or perquisite paid does not INR 20,000 during the relevant year; or

(ii) in case of an individual or HUF, the total sales, gross receipts or turnover, does not exceed INR 10 million in case of business, or INR 5 million in case of profession, in the preceding year.

The proposed provision also clarifies that where the cash component of the perquisite is not sufficient to meet the TDS liability, the person responsible for providing such benefit or perquisite should ensure that tax has been paid in respect of the benefit or perquisite, before releasing such benefit or perquisite. Thus, extra caution may have to be exercised in such scenarios.

Clearly, this provision has been introduced to prevent such perquisites from escaping the tax nets.

The proposed amendment will be effective from July 1, 2022 onwards.

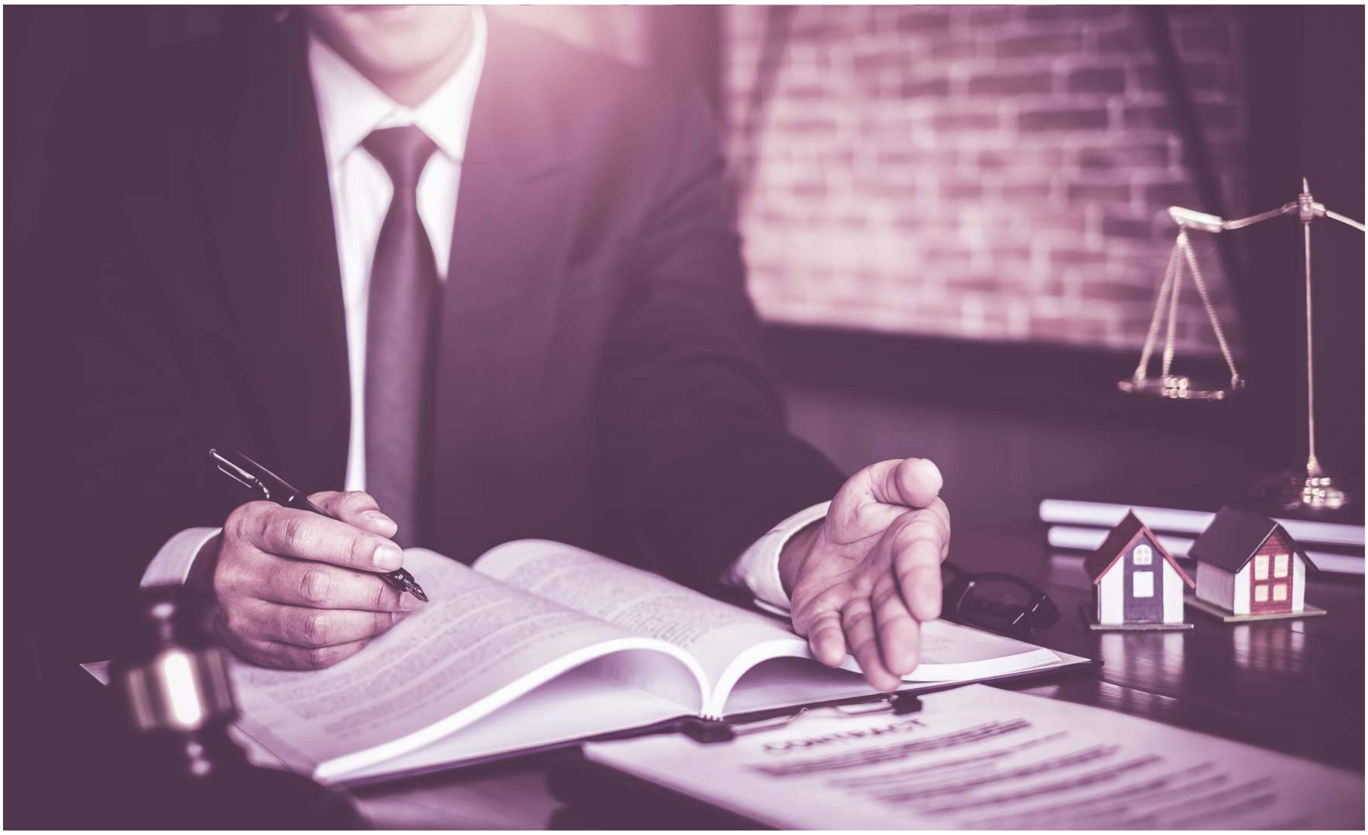
36. Demand payable on failure to deduct / collect or payment of tax

Section 201(1A) of the IT Act provides monetary consequences in case of failure to deduct or after deduction, failure to pay the taxes. Similarly, section 206C(7) of the IT Act provides for consequences on failure to collect the taxes to be deposited. The subject consequences are in the form of simple interest liability to be paid for the default.

The Finance Bill seeks to insert relevant proviso under the said sections to provide that the interest shall be paid in accordance with the order issued by the AO in this regard. This has been made to avoid any litigation or ambiguity on account of the manner of calculation of the interest liability.

However, it is interesting to note that litigation on the manner of calculation could be a subject of frequent debate, since there is no clear guideline on the amount and duration for which the interest liability has to be calculated. Further, whether such an amendment may have any valid impact would still have to be seen, since the order would still be rectifiable and/ or appealable in case there are discrepancies or mistakes in calculation of the amount of interest payable.

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



VII

Charitable Trusts

37. Rationalisation of the provisions for charitable trusts and institutions

The Finance Bill proposes to significantly overhaul the relevant provisions applicable to the charitable institutions. In addition, to avoid duplicity of tax exemptions in case of charitable institutions, it also proposes much more power with the tax authorities to be able to review and analyse the scope of operations and thus, question their ability to claim any tax benefit at any given point of time. While the provisions are well intentioned and the ability of the tax authorities to challenge the availability of tax benefits and whether they are following the purpose for which they were set up are all genuine, in practical terms, it will have to be ensured that such powers are used in a judicious manner so that unintentional harassment of genuine charitable institutions can be avoided. It would also have been appropriate if proper checks and balances along with requisite accountability had been fixed on the tax authorities so that they would be able to exercise such powers in the rarest of circumstances.

The Finance Bill proposes to rationalise and bring consistency in the provisions of the following two exemption regimes prevailing for a charitable trust or institution:

i) Exemption available for any trust or institution or any university or hospital etc as referred to in sub-clause (iv), (v), (vi) or (via) of section 10(23C) of the IT Act (**"first regime"**)

ii) Exemption available for trusts registered under section 12AA/12AB of the IT Act (**"second regime"**)

In this regard, the Finance Bill proposes to bring the following measures:

i) Maintenance of books:

The provisions of section 12A(1)(b) of IT Act and tenth proviso to section 10(23C) of the IT Act are proposed to be amended to provide that where the total income of a trust or institution is taxable without availing any exemption, it shall maintain books of accounts and other documents in the prescribed manner.

The proposed amendment will be effective from FY 2022-23 onwards.

ii) Penalty for unreasonable benefits to specified persons:

The Finance Bill proposes to insert a new provision i.e. section 271AAE in the IT Act for imposing a penalty on a trust or institution registered under either of the two regimes:

- equal to the amount applied for the benefit of a specified person in violation of provisions of 21st proviso to section 10(23C) or section 13(3) of the IT Act or

- twice the amount in case of violation in a subsequent year.

Such provision shall apply irrespective of any penalty leviable under any other provisions of this chapter.

The proposed amendment will be effective from FY 2022-23 onwards.

iii) Section 12AB(4) of the IT Act lays down the procedure for cancellation of registration of a trust or charitable institution by the Principal Commissioner or Commissioner where they are of the opinion that its activities are not genuine or not being carried out in accordance with the objects of such trust or institution.

The Finance Bill proposes to replace such provision and provide that in case of a trust or institution granted registration under clause (a) or (b) or (c) of section 12AB(1) or section 12AA(1)(b) of the IT Act, the Principal Commissioner or Commissioner may call for documents, make an enquiry and cancel the registration of such trust or institution after providing an opportunity of being heard to the assessee in the following cases:

1. Where they notice one or more of the following "specified violation" during the year:
    a) income applied other than for the objects of the trust or institution;
    b) has income profits and gains of business which is not incidental to the attainment of its objects;
    c) separate books not maintained for business which is incidental to the attainment of its objects;
    d) income from the property held under a trust applied for private religious purposes, not for the benefit of the public;
    e) income applied for the benefit of any particular religious community or caste
    f) any activity carried out by the trust or institution is not genuine or in accordance with any conditions subject to which it was registered; and
    g) the trust or institution has not complied with requirements of any other law and an order holding that such non-compliance has occurred has not been challenged or it has attained finality.
2. Reference received from AO under second proviso to section 143(3) of the IT Act.
3. Such case has been selected for scrutiny in accordance with the risk management strategy formulated by the CBDT

An order cancelling registration or refusing to cancel registration may be passed within six months from the end of quarter in which notice is issued by Principal Commissioner or Commissioner calling for an enquiry.

Identical provisions have been included in section 10(23C) of the IT Act with respect to any trust or institution as referred to in sub clause (iv), (v), (vi), (via) of section 10(23C) of IT Act.

Consequently provisions of section 143(3) of the IT Act have also been amended to provide that where an AO is satisfied that a trust or institution registered under the first or second regime has committed any specified violation, he shall send a reference to the Principal Commissioner or Commissioner for the withdrawal of registration and he shall not pass the assessment order in case of such trust or institution without giving effect to the order passed by the Principal Commissioner or Commissioner. Accordingly, necessary amendments have also been proposed in section 153 of the IT Act so that the period between the date of making such reference and the date on which an order cancelling or refusing to cancel the registration passed by the Principal Commissioner or Commissioner is received by the AO is excluded in computing the period of limitation.

The proposed amendment will be effective from FY 2022-23 onwards.

iv) Consistency in provisions for accumulation of income

Accumulation of income under section 11(2) of the IT Act under the second regime is allowed subject to fulfilment of certain conditions while there are no such conditions provided under section 10(23C) of the IT Act. Further section 11(3) of the IT Act provides that where income is not applied within 5 years, it shall be taxed in the 6th year whereas there are no such provisions in section 10(23C) of the IT Act and accumulated income not applied within 5 years is taxed in the 5th year itself.

Therefore, in order to bring consistency in the two regimes granting exemption to charitable trusts or institutions, the Finance Bill proposes the following:

1. Amend section 11(3) of the IT Act such that income accumulated but not applied within 5 years shall be taxed in the 5th year itself
2. Insert Explanation 3 to third proviso of section 10(23C) of the IT Act to lay down an additional condition for accumulation of income such that it provides that where 85% of the income is not applied but is accumulated in whole or in part, it shall not be included in the total income if the following conditions are satisfied:
   - A statement is furnished to the AO stating the purpose of accumulation and the period for which it is accumulated, not exceeding 5 years, before the due date of filing of ROI. In computing such period of 5 years, any period during which such income could not be applied due to any order or injunction of the court, may be excluded.
   - Such accumulated income is invested in any modes specified under section 11(5) of the IT Act.
3. Insert Explanation 4 to third proviso of section 10(23C) of the IT Act which provides that where any income accumulated:
   - is applied for purposes other than wholly and exclusively for the objects of the charitable trust or institution, or ceases to be accumulated;
   - ceases to remain invested in any modes specified under section 11(5) of the IT Act;

- is not applied for purpose for which it is accumulated or set apart; or
- is credited or paid to any trust or institution registered under the first or second regime;

it shall be deemed to be the income of such year in which it so applied or ceases to be accumulated or invested or not utilised for the stipulated purpose in the last year, or paid to any trust or institution as specified above.

4. Insert Explanation 5 to third proviso of section 10(23C) of the IT Act to provide that where due to circumstances beyond the control of assessee trust or institution, any income invested in any mode specified under section 11(5) of the IT Act cannot be applied for the purpose for which it was accumulated, the AO on an application being made may allow such person to apply such income for such other purpose as may be specified in the application and in conformity with the objects of the trust or institution. Consequently, the purpose for accumulated of income as stated above in Explanation 3 shall stand modified accordingly. The AO shall not allow application of such income by way of a payment or credit to any trust or institution registered under the first or second regime.

The proposed amendment will be effective from FY 2022-23 onwards.

v) Consistency in provisions governing payment to a specific person

Under section 13 of the IT Act, where a trust or institution registered under the second regime applies any income for the benefit of any specified person as referred to in section 13(3) of the IT Act such as author, trustee, manager of the trust or relative of such persons etc, such income shall be deemed to be the income of such trust or institution of the previous year in which it is so applied.

The Finance Bill proposes to insert 21st proviso in section 10 (23C) of the IT Act to incorporate similar provisions in case of a trust or institution registered under the first regime. Other provisions of section 13 of the IT Act in this regard have also been made applicable to such trust or institution registered under the first regime.

The proposed amendment will be effective from FY 2022-23 onwards.

vi) Provisions of section 115TD of the IT Act providing for imposition of taxes on exit or conversion of a charitable trust into a non-charitable organisation already applicable to trusts registered under second regime, extended to first regime

Section 115TD of the IT Act provides for taxation of accreted income in the books of a trust availing exemption under the second regime in case it decides to wind up or merge with another trust or institution or convert into a non-charitable organization. The term "accreted income" used herein implies an amount by which the aggregate fair market value of the total assets of the trust or institution exceeds the total liabilities of such trust or institution as on the specified date.

The Finance Bill proposes to incorporate the provisions of section 115TD of the IT Act in this regard applicable to a trust or institution registered under the second regime to a trust or institution registered under first regime as well.

The proposed amendment will be effective from FY 2022-23 onwards.

vii) As per the provisions of section 12A(1)(ba) of the IT Act, in order to avail exemption under the second regime, a trust or institution registered under the second regime needs to file its ROI within the due date as specified under section 139(4A) of the IT Act. The Finance Bill proposes to incorporate such provisions for a trust or institution registered under the second regime to those registered under the first regime. in to order to bring consistency in both these regimes, by inserting 20th proviso in section 10(23C) of the IT Act for the purpose of availing exemption under the said provision as well.

The proposed amendment will be effective from FY 2022-23 onwards.

viii) The Finance Bill also proposes several amendments to bring more clarity in the computation of income in case of a trust or institution registered under the first or second regime and availing exemption. The amendments proposed are as follows:

a. Insertion of a new section 13(10) to the IT Act to provide that where section 13(8) of the IT Act is applicable to any trust or institution registered under the second regime and it violates any condition provided under clause (b)/ (ba) of section 12A(1) of the IT Act , it can claim deduction for expenditure incurred towards its objects in India (other than capital expenditure) subject to the following conditions:

- such expenditure does not form part of its corpus
- such expenditure is not from any loan or borrowing
- depreciation cannot be claimed in respect of an asset whose acquisition cost has already been claimed as an application of income
- such expenditure does not constitute a donation

An explanation is also proposed to be inserted to make section 40a(ia) and section 40(3) and section 40A(3A) of the IT Act applicable in case of aforesaid expenditure.

b. The Finance Bill also proposes to insert a 22rd proviso in section 10(23C) of the IT Act to provide that where a trust or institution registered under the first regime violates the conditions under the 18th/ 10th/ 20th proviso of such provision, it can also claim deduction for expenditure subject to the aforementioned conditions.

An explanation is also proposed to be inserted to make section 40a(ia) and section 40(3) and section 40A(3A) applicable in case of aforesaid expenditure.

c. The Finance Bill also proposes that for the purpose of computing income as per section 13(10) above or under 22nd proviso to section 10(23C) above, no deduction for any expenditure, allowance or set-off of any loss shall be allowed under any other provision of the IT Act.

The proposed amendment will be effective from FY 2022-23 onwards.

ix) Taxation of specified income at special rate:

Where a portion of the income of a charitable trust or institution is applied in violation of certain provisions such as for the benefit of a specified person, it creates difficulty under both regimes as it restricts availment of exemption on the entire income. Therefore, Finance Bill proposes to introduce a special provision for taxation of such portion as specified income at a special rate without availing any deduction. In this regard, the Finance Bill proposes to amend the necessary provisions to provide that:

5. Insertion of section 115BBI in the IT Act for taxation of such specified income at a special rate of 30%
6. No deduction shall be allowed in respect of any expenditure or allowance or set off of any loss shall be allowed from such specified income

   In this regard the term “specified income has been defined to mean:

   (a) income accumulated or set apart in excess of 15% of the income unless allowed under another provision;

   (b) deemed income referred in Explanation 4 to the third proviso to section 10(23C) or sub-section (1B) or (3) of section 11 (already explained above) of the IT Act;

   (c) any income not exempt under section 10(23C) on account of violation of the provisions of clause (b) of the third proviso of Section 10(23C), or includible in income under Section 13(1)(d) of the IT Act;

   (d) any income which is deemed to be income under the 21st proviso to Section 10(23C) or which is not excluded from the total income under Section 13(1)(c) of the IT Act w.r.t. payment made to specified persons; and

   (e) any income not excluded from total income under Section 11(1)(c) of the IT Act .

The proposed amendment will be effective from FY 2022-23 onwards.

x) Treatment of voluntary contributions received for renovation and repair of temples, mosques etc

In order to bring clarity in the treatment of voluntary contributions received for specific purpose of renovation and repair of temples, etc. as to whether it can be treated as corpus or need to be applied and accumulated for 5 years, the Finance Bill proposes to insert Explanation 3A in section 11(1) of the IT Act and Explanation 1A in 3rd proviso to section 10(23C) of the IT Act to provide that where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under section 80G(2)(b) of the IT Act, voluntary contribution received for renovation or repair may be treated as forming part of corpus provided such corpus:

i. is applied only for the specific purpose for which the voluntary contribution was received;

ii. is not applied for making any donation;

iii. is separately identifiable; and

iv. is invested in the forms and modes as provided in section 11(5) of the IT Act.

If any of the said condition is violated subsequently, such sum shall be deemed to be the income of the trust or institution for the year in which the violation takes place.

The proposed amendment will be effective retrospectively from FY 2020-21 onwards.

xi) Clarificatory amendment in the provisions of both regimes to specify as to what constitutes application of income

A trust or institution registered under first regime or second regime is required to apply at least 85% of its income during the year. The Finance Bill proposes to insert Explanation 3 in section 10(23C) of the IT Act and Explanation in section 11 of the IT Act to provide that any amount shall constitute "application of income" for the purpose of the said provisions in the year in which sum is actually paid irrespective of the previous year in which the liability to pay such sum was incurred by such trust according to the method of accounting regularly employed by it.

The word "application" commonly implies that the sum has been actually paid and such position has also been clarified by various courts in a variety of judgements, A further clarification has also been included in the aforesaid provisions that any sum already claimed to have been applied by a trust or institution during a previous year, shall not be allowed as application in any subsequent year.

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

VIII

Personal Taxation

38. Tax exemption hike on employer's NPS contribution for State Government Employees

Section 80CCD of the IT Act prescribes any contribution by the Central Government or any other employer to the NPS account could act as a deduction to the assesses in the computation of his total income, if it does not exceed 14% of his salary in case the contribution is made by the Central Government. However, the limit is 10% in cases where contribution is made by any other employer.

The Finance Bill proposes to increase the limit of deduction under the section from 10% to 14% in respect of contribution made by the State Government to the account of its employees. This change would ensure that the State Government employees are on par with the Central Government employees and this will help State Government employees getting extended social security benefits in line with their counter parts in the Union Government.

The proposed amendments will be effective retrospectively from FY 2019-20 onwards.

39. Condition of releasing of annuity to a disabled person

The existing provision of section 80DD of the IT Act provides for a deduction in respect of (i) expenditure for medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or (ii) amount paid to Life Insurance Corporation of India ("**LIC**") or any other insurer in respect of a scheme for the maintenance of a disabled dependant. The existing provisions only allowed payment of annuity or lump sum amount is made to the benefit of the dependant, in the event of the death of the individual in whose name the subscription to the scheme lied.

The position of section 80DD of the IT Act had been discussed in the case of ***Ravi Agrawal v. Union of India***[12] and Another, wherein the SC observed that there could be harsh cases where handicapped dependants may need payment of annuity or lump sum basis even during the lifetime of their parents/guardians. The Court made recommendations to the Centre that it may take into consideration all the aspects, including those where a disabled dependant might need payment on annuity or lumpsum basis even during the lifetime of the parents or guardians.

Therefore, with the objective of removing some the genuine hardship, the Finance Bill proposes to allow the payment of annuity and a lumpsum amount to the differently-abled during the lifetime of their parents, once the parents attain the age of sixty years. This would mean that the amount received by way of annuity or lump sum will not be deemed to be that of the surviving taxpayer and will not be chargeable to tax.

The proposed amendments will be effective from FY 2022-23 onwards.

12 [2019] 101 taxmann.com 70 (SC)

40. Exemption of COVID - 19 related medical expenditure and ex-gratia

The Finance Ministry released a press statement dated June 25, 2021 wherein it was announced that income-tax would not be charged on the amount received by a taxpayer for medical treatment from employer or from any person for treatment of COVID-19 from FY 2019-20. Subsequently, the Finance Ministry announced income-tax exemption on ex-gratia payment received by family members of a person from the employer in case of death of the person due to COVID-19. The exemption did not prescribe any limit for the amount received from the employer however, it did prescribe a limit of INR 1 million for amount received from other persons.

The Finance Bill proposes exemptions for:

- Any sum received by an individual, from any person (including the employer) towards COVID-19 medical treatment for self and/or family subject to certain conditions as may be notified.
- Any sum of money received by a member of the family of the deceased employee from the employer (without any limit) on account of COVID-19 related illness within 12 months from the date of death, subject to certain conditions as may be notified.
- Any sum of money received by a member of the family of the deceased individual from other persons up to INR 1 million from the date of death, subject to certain conditions as may be notified.

The proposed changes cover financial support given by employers for COVID -19 treatment. Further the exemption covers any amount provided by persons other than the employer himself, though with a limit accorded. The Finance Bill did not offer much relief on the personal tax front. However, these proposed exemptions are giving a sigh of relief to those who lost their lives in the battle with COVID -19.

The proposed amendments will be effective retrospectively from FY 2019-20 onwards.

IX

Miscellaneous

41. Increased liability of directors

Section 179 of the IT Act enables IRA to hold each director of a private company jointly and severally liable for payment of tax due from such private company where such tax cannot be recovered from the company itself, unless the director proves that the non-recovery of tax is not due to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. While the language of the provision itself is quite broad, the title of the section is limited to "Liability of directors of private company in liquidation".

The Finance Bill proposes to align the title with the scope of the provision by amending the title of section 179 of the IT Act to "Liability of directors of private company", thereby ensuring that orders under section 179 of the IT Act can be issued even if the relevant company is not under liquidation.

This may increase the risk of directors having to prove that the non-recovery is not due to any gross neglect, misfeasance or breach of duty on their part, not just in case of liquidation but also in every other circumstances. The tests of gross neglect / misfeasance / breach of duty themselves are wide in nature, and directors may need to be wary of this heightened risk due to the proposed change.

Moreover, the explanation to section 179 of the IT Act defines the term "tax due" to include penalty, interest or any other sum payable under the Act. In order to avoid unnecessary litigation, the Finance Bill also proposes to clarify this definition by including the term "fee". It's not clear what kind of fee would be included under this head as the liability of the directors.

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

42. Tax Rates

There are no proposed changes in the rates of income tax, surcharge, as well as health education cess, except the few mentioned below.

(a) Co-operative societies

The Finance Bill proposes to reduce the rate of AMT under section 115JC of the IT Act applicable on cooperative societies, from 18.5% to 15%.

The rate of surcharge applicable on cooperative societies has also been reduced from 12% to 7% in case of total income exceeding INR 10 million and below INR 100 million.

(b) **Individuals, HUF, association of persons or body of individuals, etc.**

The Finance Act, 2020 had introduced a higher surcharge for individuals falling in the rich and super-rich category. The higher surcharge on income tax results in the highest effective tax rate of between 38-42%. However, the Finance Act, 2020 had provided that in case of transfer of listed shares of a company or a unit of an equity-oriented fund, the highest surcharge on income tax would not exceed 15%. While the benefit of the lower surcharge was provided to listed entities, the same was not extended to shares of private companies.

The Finance Bill proposes to provide a level playing field and proposes to cap the surcharge on tax on long term capital gains arising on transfer of any type of assets at 15%. In respect of shares of a private company, the maximum effective long-term capital gains tax rate on sale of shares for resident Indian will reduce from 28.496% to 23.92% and for non-residents from 14.248% to 11.96%.

This step will further incentivize investments in start-ups especially from non-resident investors who will now benefit from a reduced tax of almost 3% at the time of exit. For resident investors, this will mean a reduction in the tax rate by almost 5% which will also boost private investment. It is noteworthy to mention that the surcharge on long term gains tax rate has been capped for all types of capital assets including real estate and not limited to shares of Indian companies.

The proposed amendments will be effective from FY 2022-23 onwards.

SECTION B:

ANALYSIS OF THE PROPOSED CHANGES IN INDIRECT TAXES

X

Substantive Changes in GST

43. New condition for availment of ITC

Section 16(2) of the CGST Act provides for the conditions which are mandatorily required to be followed for availing of ITC in respect of any goods or services received by a recipient.

The Bill proposes to include an additional condition which provide that ITC pertaining to a supply can be availed only if such ITC has not been restricted in the details communicated to the recipient in an autogenerated statement containing the details of recipient's inward supplies.

The proposed amendment appears to be a stringent step taken by the Government to reduce availment of ITC where the supplier is non-compliant under GST.

44. Extending the time limit to avail ITC pertaining to invoice or debit note

Section 16(4) of the CGST Act disallowed availing of ITC in respect of any invoice or debit note after the due date of furnishing the annual return or return for the month of September following the end of the financial year to which such invoice or the debit note pertained. Therefore, the suppliers could not claim ITC on account of price adjustment or delayed payment post such dates, where the invoices pertained to the previous financial year.

The Bill proposes to increase the time limit to November 30 following the end of the financial year to which such invoice or the debit note pertained.

This provides for a fixed date to avail ITC as previously the date varied because of presence of supplier in different state, extension of due date, etc. It is also an extremely significant initiative for taxpayer as the time-limit has been extended by approximately 2 months and the taxpayer would be able to rectify the errors which may be observed during audit.

45. No provisional availment of ITC

Section 41 of the CGST Act is proposed to be substituted so as to do away with the concept of claim of ITC on a “provisional basis”. The substituted provision provides that where the supplier has not paid the tax, the recipient is required to reverse the ITC along with applicable interest. Thereafter, such credit may be re-availed when the supplier makes the payment of such tax.

The aforesaid proposal to levy interest on the recipient for the mistake/error of the supplier. It is expected that the provision would be read in conjunction with section 50(3) of CGST Act which provides that interest shall be payable only when ITC has been availed and utilized. Such amendment appears to be introduced to counter the decision such as *Commissioner of*

Trade and Taxes v. Arise India Limited[13] and ***D.Y. Beathel Enterprises v. State Tax Officer (Data Cell)***[14] wherein it was held that recovery of ITC from the recipient cannot be sought without first exhausting the remedy of recovery proceedings against the suppliers who collected GST from the recipient but failed to deposit the same with the Government.

46. Amendment of frequency of non-compliance leading to cancellation of GST registration

The Bill proposes to amend section 29 of the CGST Act dealing with cancellation of GST registration to modify the condition of non-compliance leading to cancellation in following circumstance:

a. a person paying GST under the composition levy scheme has not furnished the return for a financial year beyond 3 months from the due date of furnishing the said return. Earlier the scenario was non furnishing of returns for three consecutive tax periods

b. for any other GST registered person, has not furnished returns for prescribed continuous tax period. Earlier the scenario was non furnishing of returns for a continuous period of six months.

The Government has accordingly delegated the power to fix the frequency of non-compliance for cancelling the GST registration. It appears that the step has been taken as there are different type of registration and the requirement to file tax return varies among them. Thus, a common period was unsuitable for such situation.

47. Timeline to issue credit note

Section 34 of the CGST Act provided that a registered person cannot declare the details of credit note after the due date of furnishing the annual return or return for the month of September following the end of the financial year to which supply pertained.

The Bill proposes to increase the time limit to November 30 following the end of the financial year to which supply pertained.

This proposal provides for a fixed date to issue credit note as previously the date varied because of presence of supplier in different state, extension of due date, etc. The 2-month extension would also benefit the taxpayers to rectify the mistakes identified during the course of audit.

48. Amending the procedure for filing inward and outward details in return.

The Bill proposes to amend section 37 and section 38 of the CGST Act dealing with inward and outward details to provide for the following:

a. Delegating the power to provide for prescribing conditions and restrictions for furnishing the details of outward supply and for communication of the details of such outward supplies to concerned recipients;

13 2018-TIOL-11-SC-VAT
14 (2021) 127 Taxman.com 80 (Madras)

b. The requirement to accept or modify the details furnished by the supplier or input service distributor, i.e. the two-way communication process in return filing;

c. Extension of time limit for rectification of errors in respect of details of outward supplies upto November 30 of the following financial year;

d. Disallowing a registered person to furnish the details of outward supplies if the details of outward supplies for any of the previous tax periods was not furnished. However, the Government may notify a class of registered person which would not be required to comply with this condition.

e. Communication of outward details furnished by supplier electronically to the recipient in an auto-generated document. The auto-generated document would contain the details of inward supplies in respect of which ITC may be available to the recipient; and details of supplies in respect of which such ITC cannot be availed, whether wholly or partly. Such unavailable ITC would be for

   (i) Supplier for a prescribed duration of taking registration;

   (ii) Supplier who has defaulted in payment of tax and where such default has continued for prescribed period; or

   (iii) Supplier whose details for output tax as per the statement of outward supplies furnished by him exceeds the output tax paid by him during the said period by prescribed limit;

   (iv) Supplier availed ITC more than available as per the auto-generated document;

   (v) Supplier who has paid GST from the ITC beyond the prescribed limit to use ITC;

   (vi) by such other class of persons as may be prescribed.

Further, sections 42, 43 and 43A of the CGST Act are proposed to be omitted as they would not be relevant in light of various amendment.

The abovementioned proposal appears to omit the matching provision which did not get implemented as the Form GSTR 2 and 3 did not get implemented. The provision further delegates power to allow imposing requisite condition to prevent tax leakages and allow availment of ITC under very limited scenarios. It appears that the Government wants to ensure compliance which may create trouble for genuine recipient who would be deprived of right to avail ITC due to non-compliant suppliers.

49. Monthly Return

The Bill proposes to amend the section 39 of the CGST Act to provide for following:

a. The non-resident taxable person shall furnish the return for a month by 13th day of the following month;

b. For quarterly return filers, they may pay GST either based on the self-assessed tax or an amount that may be prescribed;

c. extend the last date for rectification of errors upto November 30 following the end of the FY or the date of furnishing of annual return, whichever is earlier. Similar change has also been announced in section 52 for person liable to collect tax at source and can rectify the mistake made in monthly statement by November 30 following the end of FY;

d. Restrict filing of GSTR-3B for a tax period if GSTR-3B for the previous tax period or GSTR-1 for the said tax period has not been filed. However, the Government may notify a class of registered person which would not be required to comply with this condition.

The changes suggested are in line with Government initiative to promote tax compliant environment.

50. Levy of Late Fee.

The Bill proposes to amend section 47(1) of the CGST Act to provide for late fee in case where there is delay in filing of return pertaining to tax collected at source. The Bill also proposes to eliminate late fee in case of delay in furnishing of inward supplies as the requirement to furnish such details has been removed consequent to amendment proposed in section 38 of CGST Act.

The changes suggested are in line with Government initiative to promote tax compliant environment.

51. Utilization of amount available in electronic cash and credit ledger

The Bill proposes to substitute subclause section 49(10) of the CGST Act so that unutilized balance of CGST and IGST in electronic cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states) without opting for refund procedure subject to prescribed conditions and restriction, apart from transfer between different tax registers. However, the transfer to distinct person would not be allowed if the transferor has any unpaid liability in his electronic liability register.

The Bill also proposes to incorporate a new subclause as section 49(12) of the CGST Act empowering the Government to prescribe the maximum portion of output tax liability which can be discharged through electronic credit ledger by such registered person or class of registered person as may be notified.

The amendment would potentially reduce the burden on working capital as now the balances of electronic cash ledger may be transferred between distinct persons as the taxpayer would not be required to follow cumbersome procedure of refund. However, mandating the payment of certain output liability by cash may become an additional burden for taxpayer.

52. Interest

The Bill proposes to retrospectively amend section 50(3) of the CGST Act, with effect from July 1, 2017, to provide levy of interest only on ITC i.e. wrongly availed and utilised.

Further, a notification has been passed with retrospective effect to cap the interest rate at 18% from earlier 24%, with effect from July 1, 2017.

It is a welcome step as the interest rate has been significantly reduced. This amendment would also bring end to ongoing dispute regarding the levy of interest where ITC has been availed but not utilized. It also in line with the judicial precedents in case of ***Maruti Udyog Ltd v. CCE***[15] and ***Bill Forge Private Limited v. CCE***[16] which held the requirement of wrongly availed and utilized mandatory for the erstwhile legislation.

53. Refund

The Bill proposes to amend section 54 of CGST Act dealing with refund to provide for following changes:

a. For claiming refund of balance in electronic cash ledger, it is proposed that an application needs to be filled in such form as may be prescribed. Currently, the process is linked with filing of monthly return.

b. The time limit for filling of refund of GST paid on inward supplies by a specialised agency or Consulate or Embassy of foreign countries or any other prescribed class of persons, is proposed to be increased to two years form six months from the last day of the quarter in which such supply was received.

c. The power of withholding of refund and deducting it towards unpaid tax has been widened from refund claim on account of zero- rated supplies and inverted duty structure to refund due for all types of refund claims.

d. The relevant date for filing refund claim of tax paid in respect of supplies made to SEZ developer/unit or inputs or input services used in such supplies is prescribed as the due date of furnishing the return.

The Bill proposes to expand the scope and power of the GST authorities to withhold all types of refund claim such as refund on excess payment of GST, excess balance, etc. where a person has failed to file return or pay the GST.

54. Retrospective changes

Owing to the confusion in the tax rate applicable on certain transaction, the Bill proposes the following amendments to the tax rates for a specified period, to provide relief:

a. GST would not be applicable on supply of unintended waste generated during production of fish meal (falling under Chapter heading 2301) except for fish oil from July 1, 2017 to September 30, 2019.

b. The activity of granting alcoholic liquor license against consideration in the form of license fee or application fee shall neither be treated as supply of goods nor supply of services.

15 2007 (214) ELT A50 (SC)
16 2012 (279) ELT 209 (Kar.)

XI

Substantive Changes in Customs Act

55. Widening the definition of proper officer to empower the officer of Director General of Revenue Intelligence ("DRI") to carry out the functions under the Customs Act

The Bill proposes to amend the definition of proper officer under section 2(34) of the Customs Act, classes of officer under section 3 and powers of officer under section 5 of the Customs Act to empower the officers of DRI, Audit and Preventive formation to carry out the operations under Customs Act. The new clause specifically state that assignment of functions to an officer would be done by the CBIC or the Principal Commissioner of Customs or the Commissioner of Customs as per the amended criteria which the Board may adopt while imposing limitations or conditions. The officer may be assigned basis either of the following:

a. territorial jurisdiction;

b. persons or class of persons;

c. goods or class of goods;

d. cases or class of cases;

e. computer assigned random assignment;

f. any other criterion prescribed by the CBIC.

The CBIC has also been empowered to allot same power to multiple officer at same time for the proper management of work to increase the efficiency and facilitation of trade.

The aforesaid amendments appears to counter the judgement in ***Canon India Private Limited v. Commissioner of Customs***[17] wherein the SC had held that the DRI officers were not empowered to issue SCN when a specific custom officer allows exemption from customs duties at the time of clearance. The aforesaid decision had wide repercussions to several matter where the DRI had issued SCN and the goods were cleared by other custom officer. The proposed amendment would now empower these officers to carry out functions under the Customs Act including issuance of SCN.

The amendment would also potentially remove the limitation on CBIC which allowed officers to operate within a specific territorial boundaries. The amended provision would empower the CBIC to appoint custom officers having expertise in specific industry or nature of business, etc. This would also support the Government's initiative of faceless assessments and other trade facilitation initiatives.

56. Power to make valuation rules for other criteria

The Bill proposes to amend section 14 of the Customs Act to provide CBIC with additional power to make rules for additional obligations of the importer in respect of any class of

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imported goods. This would put new checks and balances to be exercised in particular circumstances. The aforesaid power has to be exercised where CBIC has reason to believe that the value of imported goods may not be declared truthfully or accurately, in comparison to the trend of declared value of such goods or any other basis.

The aforesaid amendments appear to be an additional measure to deal with the issue of undervaluation in imports. The decision appears to have been introduced to allow the Government to prescribe rules to determine circumstances where valuation can be doubted on the basis of "reason to believe". Thus, providing a degree of objectivity and basis/foundation for the suspicion. The change has been proposed as in the case of ***Century Metal Recycling Pvt. Ltd. v. Union of India,***.[18] it was held that formation of opinion regarding reasonable doubt on correctness of value is mandatory before rejecting transaction value. The overall impact of this provision can be determined once the rules are published.

57. Changes pertaining to Advance Ruling

The Bill proposes to substitute the current INR 10,000 fees for making an advance ruling application with the fees as prescribed by the CBIC by amending the section 28H. The amendment also proposes to remove the restriction in withdrawal of application from 30 days the date of application. The applicant can now withdraw the application at any time before a ruling is pronounced.

The Bill also proposes to alter the time period for which an advance ruling would be binding. Earlier, the ruling was valid till there was a change in law or facts on the basis of which the advance ruling has been pronounced. However, now section 28J of the Customs Act is proposed to be amended to provide that the advance ruling shall remain valid for three years or till there was a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier. With respect to previous rulings, the timeline of three years would trigger from the date on which the Finance Bill receives the assent.

This amendment is more procedural in nature and ensures the applicant right to flexibly withdraw the application as per its convenience before the ruling is pronounced. The amendment also puts fixed timeline for applicability of advance ruling which appears contrary to Government position regarding the reduction in litigation and ease in compliance, as in absence of change in facts or law. The timeline of 3 years appears to be tactic to change the position, if revenue forsee loss of customs duty.

58. Transfer of documents pertaining to audit or inquiry, investigation, search and seizure to the concerned proper officer

A new provision is proposed to be inserted as section 110AA of the Customs Act deals with scenario where a customer officer other than the officer empowered by CBIC for specific class of person or goods or territorial jurisdiction undertakes inquiry, investigation, audit or search, etc. Such officer can undertake the same when he has reason to believe that there was short payment or non-payment of duty, or duty has been erroneously refunded or

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The Bill also proposes that refund for any of the abovementioned products will not be granted, if tax has already been discharged during such period. The proposed amendment puts taxpayers who have already paid taxes in view of the clarifications in a disadvantageous position.

The Bill proposes similar amendments under the IGST and UTGST legislations.

The aforesaid amendments in the GST legislations shall come into effect from the date when it is notified.

drawback is allowed and its corresponding interest. However, post undertaking such exercise, the said officer is required to transfer the relevant documents, along with a report in writing to the proper officer who passed the order of clearance of goods or refund or drawback or the proper officer appointed by CBIC for the same. Post the transfer, the concerned officer can take the relevant steps such as issuance of SCN, recovery of amount etc.

With the aforesaid proposal, the Government appears to play safe after the Supreme Court's decision in the case of ***Canon India Private Limited v. Commissioner of Customs***[19], wherein it held that the DRI officers were not empowered to issue SCN when a specific custom officer allows exemption from customs duties at the time of clearance.

Thus, it has mandatorily created a provision, to ensure that where any other custom officer conduct subsequent inquiry, investigation, audit etc., he must intimate the details to the officer who carried out the original function for further action like re-assessment, adjudications, etc.

59. Publishing of import or export data is now offense

A new provision is proposed to be inserted as section 135AA of the Customs Act to safeguard the import and export data such as value, classification, quantity of goods submitted to Customs by importers or exporters in their declarations. Publishing of such information in printed or electronic form, unless permitted shall be punishable with imprisonment for a term which may extend to six months, or with fine. A corresponding amendment has also been made in section 137 of the Customs Act, to prevent any other court to take cognizance of the aforesaid offence except with the previous sanction of the Principal Commissioner of Customs or Commissioner of Customs.

With proposals for making publishing of data as offense, the Government seems to be inclined in maintaining the business information confidential. It also appears to be step towards preventing taxpayers to rely on information available on public domain without carrying out their due diligence while clearance of goods.

60. Validation of actions

The Bill proposes to validate any action taken or functions performed before the date of commencement of the Finance Act, 2022, under various chapters of the Customs Act by any officer of Customs or where such action was in pursuance of their appointment and assigning of functions by the CBIC. The amendment in definition of proper officer and their roles would be applicable to such instances as if they were in force for all time.

The said provision also appears to be introduced to counter the SC decision in ***Canon India Private Limited v. Commissioner of Customs***[20] as discussed above. The validation clause would have significant impact on the outcome of the pending matters including petitions, appeals, wherein the jurisdiction of DRI officer to issue SCN has been challenged. The

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documents filed in these matters such as petitions, affidavit, appeals, counter submission, etc. would have to be supplemented or revised depending on the available grounds to maintain the challenge.

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

61. Amendment to Import of Goods at Concessional Rate of duty (IGCR)

The Customs (Import of goods at concessional rate of duty) Rules, 2017 are being amended to provide the following facilities:

a. The submission of all the necessary details electronically, through a common portal has been proposed.

b. The importer is required to furnish information on common portal as prescribed under Form IGCR-1 to obtain an IGCR Identification Number (IIN). However, the procedure qua submission of continuity bond remains unchanged.

c. At the time of fling of bill of entry, the importer intending to avail the concessional customs duty is required to mention INN along with continuity bond number in the Bill of Entry. Once the benefit is allowed by the jurisdictional customs officer, the respective amount will be debited automatically from the continuity bond. Previously, the importer was required to provide details of the estimated quantity and value of goods to be imported on an annual basis before undertaking imports.

d. An intimation in Form IGCR-2 is required to be filed immediately on common portal in cases where imported goods are not received or short received in the relevant premises. Thus, the amendment has discarded the cumbersome requirement of intimation of goods received at manufacturing premises after every import to the jurisdictional customs officer.

e. The requirement of filing quarterly return is proposed to be replaced with filing of monthly statement in Form IGCR-3 on common portal.

f. The precondition to intimate the jurisdictional customs officer at the time of sending goods for job work has been removed. Additionally, inter unit transfer of goods for further manufacturing is also permitted.

g. The importer can now suo moto decide to either re-export or clear the unutilized or defective imported goods within six months from the date of import without taking any prior permission from the jurisdictional customs officer. However, it is subject to furnishing of details of such clearances in monthly statement.

This proposed amendment will be effective from March 1, 2022.

The said amendment is expected to digitalize the processes for complying with procedure for concessional customs duty granted under the Customs Act that require complying with IGCR. This would promote the Government initiative of Digital India and ease in compliance of business.

XII

Changes in Rates of Customs Duty on Various Goods

62. Clarification pertaining to Social Welfare Surcharge

The taxpayer had been struggling with the issue of applicability of Social Welfare Surcharge in cases, where the aggregate of customs duties was Nil and the department had been trying compute the value for calculation of cess notionally. They were relying on the SC decision in ***Unicorn Industries v. UOI***[21], which held that unless expressly exempted through a notification piggy back cesses/ surcharges ought to be computed notionally and paid accordingly.

It has been clarified vide Circular 3/2022 dated February 01, 2022 that no Social Welfare Surcharge shall be payable, basis any notional computation, in such scenarios.

The clarification would put rest to the controversy enabling ease of doing of business in India.

63. Project Imports

Concessional BCD rate on project imports would continue to be levied at applicable rates for the projects registered until September 30, 2022 under project imports until 30 September 2023. From October 01, 2023, such projects would attract a BCD rate at 7.5 percent.

New projects registered after September 30, 2022 under project imports will attract a BCD rate of 7.5 percent.

64. Rescinding of concessional entries

The Budget has rescinded various entries in concessional notifications which are no longer relevant or have become redundant or for promoting Make in India initiative. After a comprehensive evaluation of customs duty exemptions on capital goods and project imports, more than 40 exemptions are proposed to be gradually phased out. However, certain exemptions on capital goods would continue. Similarly, around 350 exemptions are proposed to be withdrawn for normal inputs.

65. Rate changes

a) The First Schedule to the CT Act has been amended to revise the BCD rates on various goods. It has been proposed that tariff for multiples items as stated in rate notification would be shifted to the First Schedule of CT Act. The changes in the tariff schedule shall commence from May 01, 2022. Therefore, during the interim period the rate shall continue to operate through existing notifications.

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b) 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 Bill or the date of notifications i.e. February 01, 2010 or 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
	Gems and Jewellery			
1.	Imitation Jewelry	20%	20 or INR 400 Kg, whichever is higher.	↑
2.	Cut and Polished Diamonds	7.5%	5%	↓
3.	Cut and Polished Natural Gemstones (except few stones)	7.5%	5%	↓
4.	Simply sawn natural diamonds imported under Kimberley process certification scheme	10%	Nil	↓
	Chemicals			
5.	Sodium Cyanide	7.5%	10%	↑
6.	Methyl alcohol (w.e.f. May 01, 2022)	10%	2.5%	↓
7.	Acetic acid (w.e.f. May 01, 2022)	10%	5%	↓
	Medical			
8.	Artificial kidney	Nil	Applicable Rate	↑
9.	Raw materials, parts or accessories for manufacturing artificial kidney	Nil	Applicable Rate	↑
10.	Items used in manufacture of X-ray: a. X-ray grid b. Multi leaf collimator/iris c. Static user interface (w.e.f. April 01, 2022)	5%	10%	↑
11.	X- ray Machines (w.e.f. April 01, 2022)	7.5%	10%	↑

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
Electronic goods and parts thereof				
12.	Goods used in manufacturing static converters of automatic data processing machines: PCBA, transformer, battery, and copper enameled wires	Nil	Applicable Rate	↑
13.	Specified goods for public mobile radio trunked service and its parts	Nil	Applicable Rate	↑
14.	C block compressors and crankshafts used in manufacturing refrigerator compressors)	5%	7.5%	↑
15.	Over load protector and positive thermal coefficient used in manufacturing refrigerator compressors	5%	10%	↑
16.	Camera lens for use in manufacture of camera module for cellular mobile phone	10%	2.5%	↓
17.	Copper/ Aluminium based copper clad laminate for use in manufacture of PCB/ MCPCB	7.5%	Nil	↓
18.	Specified parts for use in manufacture of transformers of chargers/ adapters	10%	5%	↓
19.	Parts of electronic toys for manufacture of such toys	15%	25%	↑
Capital Goods				
20.	S.G. Ingot Castings used in manufacturing of Plastic Processing Machinery	10%	7.5%	↓

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
Capital Goods				
21.	Ball Screw and Linear Motion Guide used in manufacturing of Plastic Processing Machinery	7.5%	5%	↓
22.	Bushing made up of platinum and rhodium alloy, imported in exchange of worn-out bushing exported for refurbishment	10%	7.5%	↓
23.	Capital goods for synthetic fibre/yarn, such as spindles, yarn guides, ballon control rings and travellers. (w.e.f. April 01, 2022)	5%	Applicable rate	↑
24.	machinery for effluent treatment plant for handloom sector and leather industry	Nil	Applicable rate	↑
25.	Coffee roasting, brewing or vending machineries for use in manufacturing or processing of coffee	10%	5%	↓
26.	Transformers for use in manufacture of chargers/ adapters	10%	5%	↓
27.	Goods imported by a manufacturer supplier for manufacturing and supplying machinery and equipment to a power generation plant (other than a captive power generation plant) (w.e.f. April 01, 2022)	5%	Applicable rate	↑

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
Capital Goods				
28.	Specified goods for setting up crude petroleum refinery, such as utility systems, water treatment systems, air handling systems, and boilers. (w.e.f. April 01, 2022)	5%	Applicable rate	↑
29.	Kits and their parts required for the conversion of motor spirit or diesel driven vehicles into those driven on compressed natural gas or propane or liquefied petroleum gas (w.e.f. April 01, 2022)	5%	Applicable rate	↑
Solar				
30.	Photo voltaic cells, not assembled in modules or made up into panels other than those exclusively used with specific items (w.e.f. April 01, 2022)	20%	25%	↑
31.	Photo voltaic cells, assembled in modules or made up into panels other than those exclusively used with specific items (w.e.f. April 01, 2022)	20%	40%	↑
32.	Other photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED) other than those exclusively used with specific items	20%	40%	↑

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
Sport items				
33	a. Synthetic tracks and artificial surfaces and equipment required for their installation. b. Goods for laying synthetic tracks and artificial surfaces such as asphalt resurfacer, Acrylic resurfacer; Cushion coat, etc. c. Requisites for game d. snow-skis, water-skis, surf boards and equipment.	Nil	20%	↑
Paper				
34.	Recovered (waster and scrap) paper or paperboard for use in manufacturing of paper, paperboard or newsprint.	Nil	2.5%	↑
35.	Wood in chips or particles, used in manufacture of paper paperboard and newsprint	Nil	5%	↑
Metals				
36	Iron and Steel scrap including stainless steel scrap (exemption extended for 1 more year)	Nil	Nil till March 31, 2023 2.5% post that	↑
Miscellaneous				
37.	Silica Sand	2.5%	5%	↑
38.	Goods used in the manufacturing of refractory products	5%	Applicable rate w.e.f April 01, 2023	↑
39.	Mica glass tape for use in manufacture of insulated wires and cables	7.5%	10%	↑

Sr. No.	Commodity	From	2022-23	2023-24	2024-25	2025 onwards
	Smart Meters					
a.	Assembled/populated PCB for smart meters	7.5%	20%	20%	20%	20%
b.	Communication module	10%	Nil	Nil	5%	10%
c.	Relay	10%	5%	10%	10%	15%
d.	Antenna	Nil	Nil	Nil	5%	10%
e.	LCD and backlight for LCD	15%	Nil	5%	10%	10%
f.	Battery	10%	Nil	5%	10%	10%
g.	Parts, subparts, and raw materials used in manufacturing items mentioned above	Appli-cable rate	Nil	Nil	Nil	Nil
h.	Smart meters	15%	25%	25%	25%	25%

66. Clarification for import of Electric Vehicle (EV)

It has been clarified that the duty benefits available to a CKD form of an EV (including commercial, passenger, and two wheeled electric vehicles), would be available to EV Kit:

- when each individual component in the kit is not in a disassembled form; or
- if some components are missing in the EV kit provided that the kit as presented has the essential character of an EV.

67. Revocation of antidumping duty on import of specified steel products

- Straight length bars and rods of alloy steel originating in or exported from China
- High speed steel of non cobalt grade originating in, or exported from Brazil, China, and Germany.
- Flat rolled product of steel, plated or coated with alloy of aluminium or zinc originating in, or exported from China, Vietnam, and Korea.
- Hot rolled and cold rolled stainless steel flat products from China.

68. Revocation of customs duty concessions rate from March 31, 2023

a. Equipment, instruments, raw materials, components, pilot plants, and computer software used in R&D projects

b. Machinery/components for initial setting up of power generation project machinery, equipment, apparatus, components, and appliances for initial setting up of a fuel cell based system for power generation

c. Permanent magnets for manufacturing PM synchronous generators above 500kw for use in wind operated electricity generators

d. Parts of wind operated electricity generators that include special bearings, gear boxes, yaw components, and wind turbine controllers

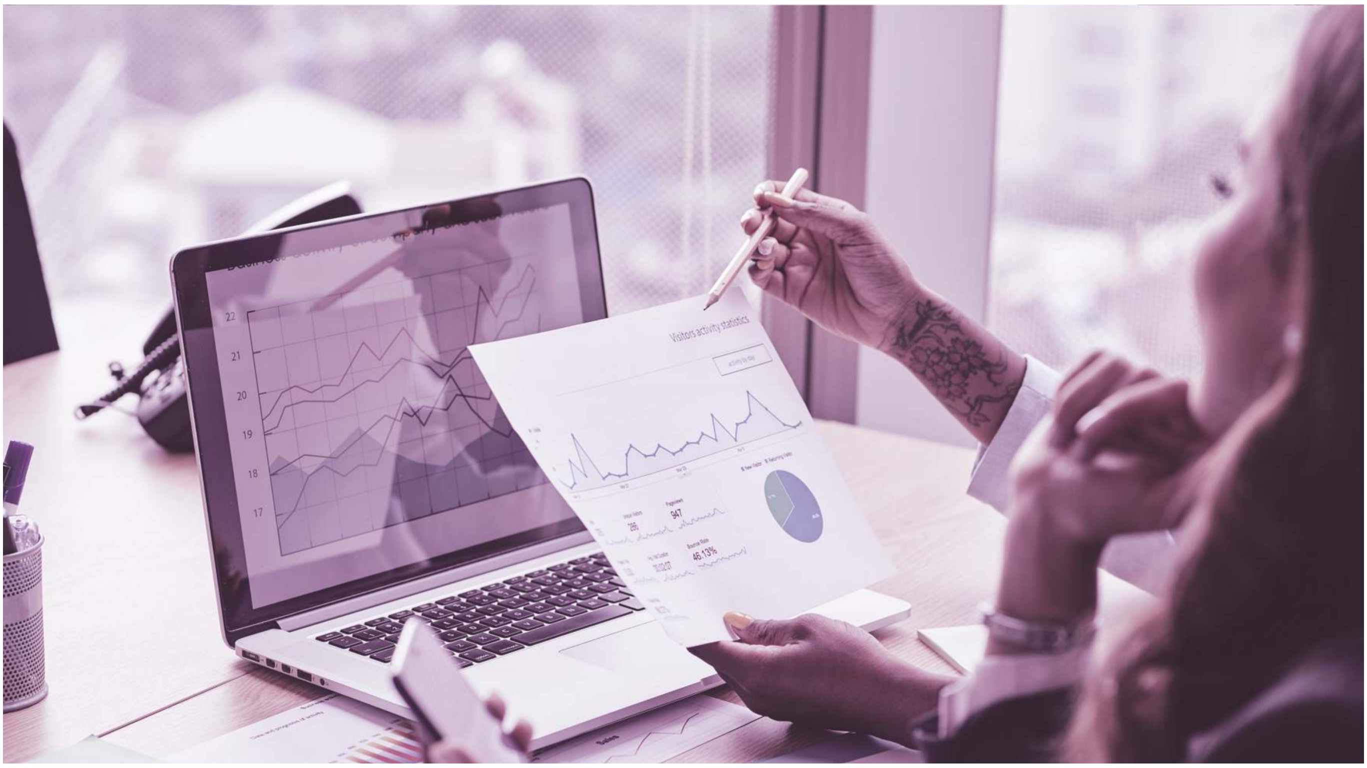
e. Specified drugs and medicines supplied free of cost to patients

f. Goods relating to defence and internal security forces

g. Machinery for the garment sector, technical textiles, woollen machinery items, non woven textiles, denim fabrics, shuttle less looms, etc.

h. Specified goods for setting up a crude petroleum refinery, including refinery process units, all types of hydrogen generation, recovery and purification plants, and effluent solids/liquids/gaseous processing

I. Specified goods, such as air blast dust removing and automatic drying machines, designed for use in the leather or footwear industry



Graded import duty rate structure has been notified for manufacturing plan of wearables, hearables and smart meter.

Sr. No.	Commodity	From	2022-23	2023-24	2024-25	2025 onwards
	Wrist Wearables Devices					
a.	CBA for wrist wearable device	Nil	Nil	10%	15%	15%
b.	Charging cable	10%	Nil	5%	10%	15%
c.	Specified parts of wearable devices	Appli-cable rate	Nil	5%	10%	15%
d.	Battery	15%	Nil	5%	10%	15%
e.	Display assembly	Nil	Nil	Nil	5%	10%
f.	Vibrator motor	10%	10%	10%	10%	10%
g.	Parts, sub-parts, and raw materials for use in manufacturing these no. 1 to 6 above	Appli cable Rate	Nil	Nil	Nil	Nil
h.	Wrist wearable devices	20%	20%	20%	20%	20%
	Hearable Devices					
i.	PCBA for hearable devices	10%	Nil	10%	15%	15%
j.	USB cable	10%	15%	15%	15%	15%
k.	Specified parts of hearable devices	Appli cable rate	Nil	5%	10%	15%
l.	Battery	15%	Nil	5%	10%	15%
m.	Speaker assembly (preassembled speaker driver with protective mesh, but not including PCBA or battery)	10%	Nil	Nil	5%	10%
n.	Parts, sub-parts, and raw materials used in manufacturing above items	Appli-cable rate	Nil	Nil	Nil	Nil
o.	Hearable devices	15%	20%	20%	20%	20%

XIII

Changes in Excise Duty

The Fourth Schedule has been amended and it provides the rate as follows:

Sr. No.	Classification	Description	Unit	Excise Duty
a.	2710 12 39	Solvent 145/205 Motor gasoline conforming to standard IS 2796,IS 17021z IS 17586, or IS 17076	kg.	
b.	2710 12 41	Motor gasoline conforming to standard IS 2796	kg.	14%+INR 15.00
c.	2710 12 42E 20	fuel conforming to standard IS 17021	kg.	14%+INR 15.00 per litre
d.	2710 12 43E 12	fuel conforming to standard IS 17586	kg.	14%+INR 15.00 per litre
e.	2710 12 44E 15	fuel conforming to standard IS 17586kg.	kg.	14%+INR 15.00 per litre
f.	2710 12 49M 15	fuel conforming to standard IS 17076	kg.	14%+INR 15.00 per litre

In order to promote blending of Motor Spirit (commonly known as Petrol) with ethanol/methanol and blending of High Speed Diesel with bio-diesel, an additional Basic Excise Duty of Rs. 2 per litre on Petrol and Diesel, intended to be sold to retail consumers without blending, as confirming to BIS classification, would be levied with effect from the October 01, 2022.

Sr. No.	Description	without a Brand name	With Brand name
a	Motor spirit commonly known as petrol which is intended for retail sale, not so blended with ethanol or methanol as conforming to BIS specifications from time to time for blended motor spirit.	INR. 3.40 per litre	INR. 4.60 per litre

Sr. No.	Description	without a Brand name	With Brand name
b	High speed diesel (HSD) intended for retail sale, not so blended with alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as bio-diesels as conforming to BIS specifications from time to time for blended diesel	INR. 3.80 per litre	INR. 6.20 per litre

Glossary

ABBREVIATION	MEANING
AAR	Hon'ble Authority for Advance Rulings
ACIT	Learned Assistant Commissioner of Income Tax
AIF	Alternate Investment Fund
AMT	Alternate Minimum Tax
AO	Learned Assessing Officer
AY	Assessment Year
BCD	Basic Customs Duty
BEPS	Base Erosion and Profit Shifting
Bill/ Finance Bill	Finance Bill, 2022
BIS	Bureau of Indian Standard
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
CGST Act	Central GST Act, 2017
CIT	Learned Commissioner of Income Tax
CIT(A)	Learned Commissioner of Income Tax (Appeal)
CT Act	Customs Tariff Act, 1975
Customs Act	The Customs Act, 1962
DCIT	Learned Deputy Commissioner of Income Tax

Glossary

ABBREVIATION	MEANING
DIT	Learned Director Income Tax
DTAA	Double Taxation Avoidance Agreement
FA	The Finance Act, 1994
FTDR Act	Foreign Trade (Development and Regulation) Act, 1992
FY	Financial Year
FM	Finance Minister
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 Centre
IFSCA	International Financial Service Centre Authority
IGST Act	Integrated GST Act, 2017
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

Glossary

ABBREVIATION	MEANING
MLI	Multilateral Instruments
MSME	Micro, Small & Medium Enterprises
NBFC	Non-Banking Financial Companies
NPS	National Pension Scheme
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

Offices of Cyril Amarchand Mangaldas

Mumbai

Peninsula Chambers,
Peninsula Corporate Park,
GK Marg, Lower Parel,
Mumbai – 400 013, India
T +91 22 2496 4455
F +91 22 2496 3666
E cam.mumbai@cyrilshroff.com

Bengaluru

3rd Floor, Prestige Falcon Tower,
19, Brunton Road, Of M G Road,
Bengaluru – 560 025, India
T +91 80 6792 2000
E cam.bengaluru@cyrilshroff.com

Delhi-NCR

Level 1 & 2, Max Towers, C-001/A,
Sector 16 B, Noida – 201 301,
Uttar Pradesh, India
T +91 120 669 9000
F +91 120 669 9009
E cam.delhi@cyrilshroff.com

Ahmedabad

Shapath - V 1304/1305,
Opposite Karnavati Club, S G Road
Ahmedabad – 380 051, India
T +91 79 4903 9900
F +91 79 4903 9999
E cam.ahmedabad@cyrilshroff.com

presence also in hyderabad, chennai, gift city and singapore

Key Contacts

Cyril Shroff
Managing Partner
cyril.shroff@cyrilshroff.com

S. R. Patnaik
Partner and Head-Taxation
sr.patnaik@cyrilshroff.com

Kunal Savani
Partner
kunal.savani@cyrilshroff.com

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