Provisions of Finance Bill 2021

M/s A C Bhuteria & Co
Chartered Accountants

Dear Readers,

India's Union Budget 2021, the first digital budget, touted as the most important budget in the decades, came at a time when India is reeling under the COVID-19 crisis. It reflects the government's commitment on digital economy, technology, innovation, and R&D alongside adoption of new-age technologies, such as AI and ML, in administration of companies, taxation, digital payments and focus on fin-tech.

The Union Budget clearly enumerates measures to kick-start economic recovery and growth by ushering reforms that boost private investment and enable job creation while prioritising expenditure in healthcare, infrastructure, and sustainability.

The Budget focuses on the development agenda, keeping diverse interests of the nation and its citizens. The six-part budget has stressed significantly on 'self-reliance' by boosting infrastructure and domestic trade. In addition to budgetary outlay for the MSMEs, revision in custom tariffs is also aimed at increasing economic activity. In line with recognising human capital as one of the main pillars of the economy, the government has reiterated universal social security coverage to all workers. The benefits would extend to gig workers, platform workers, inter-state migrant workers, building and construction workers, etc., who have now been covered under the Code on Social Security.

The Finance Bill 2021 which was tabled has proposed more than 80 amendments to the Income-tax Act and other related Acts. In a positive move, the Budget proposes to reduce the time limit for reopening past assessments to 3 years from existing 6 years (except in case of serious evasion). Furthering the commitment to move towards a more transparent tax system, which is also tech friendly, Union Budget now proposes a Faceless Income Tax Appellate Tribunal Centre, where all communication on tax cases shall be digital, including virtual hearings, if needed. A Dispute Resolution Committee is also proposed for small tax-payers with less than INR 50 Lakhs of annual income and disputes of upto INR 10 Lakhs.

Monetisation of assets, cleaning up of banks, setting up of an ARC for bad bank debts, privatisation of 2 PSU banks, IPO of LIC in current fiscal – all these are excellent moves in the right direction, hope these do get off from paper and get implemented. If all these proposed changes do get implemented, it would prove to be a truly generation shift – Budget of the decade.

Regards

Team A.C. Bhuteria & Co.

2, India Exchange Place,
Room No. 10, 2nd Floor,
Kol 700001
+91 33 22306990
mohit@acbhuteria.com

Contents

A. DIRECT TAX PROPOSALS

I. RATES OF INCOME TAX

1. Income Tax Rates – Option - I

(no change in existing tax structure)

The existing tax structure can be summarized as below:

1.1 Individuals (Resident Individuals), HUF, AOP, BOP and AJP-

- Other than Senior Citizen and Super Senior Citizen

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

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

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

- Super Senior Citizen (80 years and above)

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

- Surcharge: The amount of Income-Tax computed as above, shall be increased by:
  - Surcharge @ 10% of such Income-Tax if total income > Rs.50 Lacs < Rs.1 Crore.
  - Surcharge @ 15% of such Income-Tax if total income(excluding the income by way of dividend or income under section 111A or 112A) >Rs.1 Crore < Rs. 2 Crore.
  - Surcharge @ 25% of such Income-Tax if total income >Rs. 2 Crore < Rs. 5 Crore
  - Surcharge @ 37% of such Income-Tax if total income >Rs. 5 Crores
  - Surcharge @ 15% of such Income-Tax if total income(including the income by way of dividend or income under section 111A or 112A and not covered in the above two surcharge rates) > Rs.2 Crore

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

1.2 Co-operative Societies:

Taxable Income	Tax
Upto Rs. 10,000	10 per cent
Rs. 10,001 to Rs. 20,000	20 percent
Above Rs. 20,000	30 per cent

Surcharge : 12 per cent if the total income exceed Rs. 1 crore.

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

1.4 Local Authorities: Tax @ 30%, Cess @ 4%, Surcharge @ 12% if Taxable Income exceeds Rs. 1 Crore. .

1.5 Domestic Company:
(i) where its total turnover or the gross receipt in the previous year 2018-19 does not exceed four hundred crore rupees; Tax: 25 per cent
(ii) other than that referred to in item(i); Tax: 30 per cent

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

1.6 Foreign Company*:*

(i) Tax at the rate of 50 per cent on so much of the total income as consists of,-
(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or
(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976, and where such agreement has, in either case,been approved by the Central Government .

(ii) Tax at the rate of 40 per cent on the balance, if any, of the total income.

Taxable Income	Surcharge
Upto Rs. 1 crore	NIL

>Rs. 1 crore<Rs. 10 Crores	2 per cent
Rs. 10 Crores or above	5 per cent

- Marginal Relief on Surcharge*:*

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

  - Similarly, in the case of certain companies, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 1 Crore (or Rs. 10 Crore) shall not exceed the tax payable on Total Income of exceeding Rs. 1 Crore (or Rs. 10 Crore) by more than the amount of Income that exceeds Rs. 1 Crore (or Rs. 10 Crore).

2. Income Tax Rates – Option II

(no change in existing tax structure)

The existing tax structure can be summarized as below:

2.1. Individuals (Resident Individuals), HUF, AOP, BOP and AJP-

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

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

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

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

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

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

i. Leave travel concession as per clause (5) of section 10;
ii. House rent allowance as per clause (13A) of section 10;
iii. Some of the allowance as contained in clause (14) of section 10;
iv. Allowances to MPs/MLAs as per clause (17) of section 10;
v. Allowance for income of minor as per clause (32) of section 10;
vi. Exemption for SEZ unit as per section 10AA;
vii. Standard deduction, deduction for entertainment allowance and employment/professional tax as contained in section 16;
viii. Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23. (Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);
ix. Additional deprecation under clause (iia) of sub-section (1) of section 32;
x. Deductions under section 32AD, 33AB, 33ABA;
xi. Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;
xii. Deduction under section 35AD or section 35CCC;
xiii. Deduction from family pension under clause (iia) of section 57;
xiv. Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA,80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub-section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme) and section 80JJAA (for new employment) can be claimed.

Domestic Company:

2.7. Concessional Tax Rate – 22 per cent (Section 115BAA)

2.8. For New Manufacturing domestic companies – 15 per cent (Section 115BAB)

2.9. The tax rate prescribed U/s 115BAA is 22% which shall be further increased by a surcharge of 10% and health and education cess of 4%. Hence, the effective tax rate U/s 115BAA is 25.168%. However, such companies will not be required to pay minimum alternate tax (MAT) U/s 115JB of the Act.

2.10. Sections 115BAA and 115BAB were inserted via the Taxation Law (Amendment) Act, 2019. The scope of non-availment of deductions for the companies opting for the concessional rate has been widened to exclude all deduction under chapter VIA except deduction under section 80JJAA and Section 80M.

2.11. Companies opting for concessional tax rate will get the benefit of section 80M in respect of dividend income received by it during the previous year and distributed by it. MAT provisions are not applicable on such companies.

2.12. However, if the company continues to pay the tax under the regime, where provisions of Section 115JB are applicable, dividend income received by the company during the year will get added to the book profit for the calculation of MAT and reduction thereof would not available which would be detrimental to the Company.

Co-operative Society:

2.13. On satisfaction of certain conditions, a co-operative society resident in India shall have the option to pay tax at 22 per cent for assessment year 2021-22 onwards as per the provisions of section 115BAD. Surcharge would be at 10% on such tax.

3. Rates for deduction of income-tax at source during the financial year 2021-22

3.1. The rates for deduction of income-tax at source during the FY 2021-22 under the provisions of section 193, 194A, 194B, 194BB, 194D, 194LBA, 194LBB, 194LBC and 195 have been specified in Part II of the First Schedule to the Bill. The rates will remain the same as those specified in Part II of the First Schedule to the Finance Act, 2020, for the purposes of deduction of income-tax at source during the FY 2020-21. For sections specifying the rate of deduction of tax at source, the tax shall continue to be deducted as per the provisions of these sections.

3.2. The rates for deduction of income-tax at source from —Salaries or under section 194P of the Act during the FY 2021-22 and also for computation of —advance tax‖ payable during the said year in the case of all categories of assessee have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the FY 2021-22 on current incomes in cases where accelerated assessments have to be made, for instance, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc. There is no change in the tax rates from last year.

II. RATIONALISATION OF VARIOUS PROVISIONS

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

4.1. Clause (24) of section 2 of the Act provides an inclusive definition of the income. Sub-clause (x) to the said clause provide that income to include any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees.

4.2. Section 36(1)(va) provides for deduction of any sum received by the assessee from any of his employees u/s 2(24(x), if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. Explanation to the said clause provides that, for the purposes of this clause, "due date" to mean the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued there-under or under any standing order, award, contract of service or otherwise.

4.3. Section 43B specifies the list of deductions that are admissible under the Act only upon their actual payment. Employer's contribution is covered in clause (b) of section 43B.

4.4. Though section 43B of the Act covers only employer's contribution and does not cover employee contribution, some courts have applied the provision of section 43B on employee contribution as well.

4.5. Accordingly, in order to provide certainty, it is proposed to –

(i) amend clause (va) of sub-section (1) of section 36 of the Act by inserting another explanation to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the "due date" under this clause; and

(ii) amend section 43B of the Act by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies.

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

Comments:

- *The proposed amendment to Section 36(1) has retrospective impact as **it is clarified that provisions of Section 43B** never applied to sum received from employees and accordingly, delay in making payment of employees contribution is liable for disallowance under Section 36(1) of the Act.*
- *This proposed amendment may have an impact on the pending assessment proceedings and appeals filed by the assessee and can also cause reopening of assessments. As per the memorandum, the amendment proposed only seeks to clarify the position.*

- *It is also pertinent to note that the following judicial pronouncements, among various others, stand overruled:*
    - *CIT VS AIMIL LTD. ITA NO. 1063/2008 DATED 23-12-2009 [Delhi]*
    - *AKZO NOBEL INDIA LTD. VS CIT [ITA 110 of 2011](Cal)*
    - *CIT VS VIJAYSHREE LTD. [GA No. 2607 of 2011](Cal)*

5. Rationalisation of the provisions of Charitable Trust and Institutions

5.1. Section 12A of the Act, inter alia, provides for procedure to make application for the registration of the trust or institution to claim exemption under section 11 and 12. Section 12AB is the new section which comes into effect from the 1st April, 2021.

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

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

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

5.3. Such entities are not allowed to accumulate more than 15% of their income or accumulate for specific purpose upto 5 years, other than corpus donations referred above. There are instances where some entities claim corpus donations to be exempt and at the same time claim their application as part of the mandatory 85% application from income other than such corpus.

5.4. Instances have also come to the notice where such charitable organisations take loans/borrowings and make application for charitable or religious purposes out of the loans and borrowings. Such loans or borrowings when repaid, are again claimed as application. This results in unintended double deduction.

5.5. The aforesaid situations, also result in loss which is claimed by the assessee as carry forward resulting in unintended short application (less than 85%) in subsequent years.

5.6. To avoid aforesaid double counting while calculating application, it is proposed that-

(i) Voluntary contributions made with a specific direction that they shall form part of the corpus shall be invested or deposited in one or more of the forms or modes specified in Section 11(5) maintained specifically for such corpus.

(ii) Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11.

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

(iv) For purposes of computation of income, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed.

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

Comments:

- *There were various charitable institutions that were availing twin benefits arising out of ambiguity in provisions with respect to computation of income under Sections 11 and 12. On one hand, they were claiming corpus donations as exempt and on the other hand, expenditure incurred against corpus donation was claimed as application of income thereby leading to double deduction. Some trusts/institutions were also carrying forward excess application of income in a particular year for set off against income in subsequent years. Finance Bill, 2021 has introduced amendments as deterrents to the aforesaid practices.*

- *It was also noticed that some charitable institutions were incurring expenditure out of borrowings/loans. Such expenditure was claimed as application of income in one year and repayment of loans was also being treated as application, thereby resulting in reduction of the same amount from income twice. The proposed amendments intend to curb misuse of relevant provisions for claiming deduction twice.*

6. Taxation of proceeds of high premium ULIP

6.1. Under the existing provisions of the Act, there is no cap on the amount of annual premium being paid by any person during the term of the policy. Allowing such exemption in policy/policies with huge premium defeats the legislative intent of this clause. The intention was to provide benefit to small and genuine cases of life insurance. Hence, it is proposed to:

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

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

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

6.3. Consequential amendment has also been proposed in Finance (No 2) Act, 2004 to make security transaction tax applicable on maturity or partial withdrawal with respect to unit linked insurance policy issued by insurance company on or after the 1st February, 2021.

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

Comments:

- *The proposed amendment to Section 10(10D) has an effect on cases where premium paid by the assessee at any time during the term of the policy exceeds ₹2.50 lacs. Such cases would not be eligible for deduction under this Section. For Instance if the total premium paid by the assessee is say ₹1 Lac each for first 9 years and ₹3 Lacs for the 10th year, then exemption under this section would not be available, meaning thereby that average premium paid during the entire term is not relevant.*
- *However, this proposed amendment will not have an impact where aggregate premium exceeding ₹2.50 lacs is paid on two or more policies in any previous year.*
- *Exemption under this section would continue to apply where the sum is received on the death of the person.*
- *ULIPs on which exemptions under this Section is not available have now been proposed to be included in the definition of Equity Oriented Fund and accordingly provisions of Sections 111A and 112A would be applicable.*
- *Consequential amendment has been made under Section 45, wherein profits or gains arising out of sum received would be taxable under as capital gains in the year of receipt if exemption under this section is not available.*

7. Rationalisation of the provision of slump sale

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

7.2. A transaction of "sale" may be disguised as "exchange" by the parties to the transaction, but such transactions may already be covered under the definition of slump sale as it exists today on the basis that it is transfer by way of sale and not by way of exchange.

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

7.4. In order to make the intention clear, it is proposed to amend the scope of the definition of the term "slump sale" by amending the provision of clause (42C) of section 2 of the Act

so that all types of "transfer" as defined in clause (47) of section 2 of the Act are included within its scope.

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

Comments:

- *The above amendment has been brought in to nullify certain judgements by judicial authorities wherein it had been held that if there had been transfer otherwise than sale, then provisions of section 50B read with section 2(42C) of the Act were not applicable.*
- *The Hon'ble Supreme Court in CIT v R R Ramakrishnan Pillai 66 ITR 275 has held that exchange does not amount to a sale. In the following cases, courts/ tribunals have held that slump exchange does not amount to slump sale and thus not covered within Section 50B:*
    - *CIT v Bharat Bijlee Limited 365 ITR 258 Bom*
    - *Ballarpur Industries Limited v ACIT ITA no. 302/ Nagpur/ 2014*
    - *Avaya Global Connect Limited v ACIT ITAT Mum. dated 29 July 2008*
- *It is proposed to make amend Section 50B to bring into tax the schemes devised into garb of slump exchange. It is to be noted that while discussing transfer as a result of sale, it is the substance of transaction that is more important than the name given to it by the parties to the transaction.*
- *Thus, if a transfer of an asset is in lieu of another asset (non-monetary) it can be said to be monetized in a situation where the consideration for the asset transferred is ascertained first and is then discharged by way of non-monetary assets. In this situation it would be a case of transfer by way of sale and would thus be covered within existing provisions of section 50B of the Act.*
- *It has been bought in order to expand the scope of the definition of the term "slump sale" so as to mean the transfer of one or more undertakings, by any means, for lump sum consideration without value being assigned to individual assets and liabilities in such cases.*
- *The word "slump sale" shall also include all types of transfer as per clause 47 of section 2 by amending the provisions of clause (42C) of section 2 of the Act.*

8. Rationalisation of provision of transfer of capital asset to partner

8.1. Under the existing provisions of Section 45(4) of the Act, profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals or otherwise, is chargeable to tax as the income of such firm or other association of persons or body of individuals of the previous year in which the said transfer takes place.

8.2. There was ambiguity with respect to taxation in case of distribution on reconstitution of firm or in a scenario where assets were revalued or self-generated assets are recorded in the books of accounts and payment is made to partner or member which is in excess of his capital contribution.

8.3. Sections 45(4) is proposed to be substituted by insertion of new Sections 45(4) and 45(4A) to tax the aforesaid distribution.

8.4. New proposed sub-section (4) of section 45 of the Act applies in a case where a partner receives during the previous year any capital asset at the time of dissolution or reconstitution of the firm. In this situation, the profit and gains arising from the receipt of such capital asset by the partner shall be chargeable to income-tax as income of the firm under the head “capital gains” and shall be deemed to be the income of such firm of the previous year in which the capital asset was received by the partner. For the purposes of section 48 of the Act, the fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset and the cost of acquisition shall be determined in accordance with the provisions of Chapter on Capital Gains.

8.5. New proposed section sub-section (4A) of section 45 of the Act applies in a case where a partner receives during the previous year any money or other asset at the time of dissolution or reconstitution. The money or other asset is required to be in excess of the balance in the capital account of such partner in the books of accounts of the firm. In this situation, the profits or gains arising from the receipt of such money or other asset by the partner shall be chargeable to income-tax as income of the firm under the head "Capital gains" of the previous year in which the money or other asset was received.

8.6. For the purposes of section 48 of the Act,

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

(ii) the balance in the capital account of the partner in the books of accounts of the firm at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition.

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

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

8.9. The aforesaid provisions equally to AOP/ BOI/ LLP and members thereof.

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

Comments:

- *This amendment is retrospective and shall apply from the assessment year 2021-22.*
- *Section 45(4) seeks to tax capital gains on transfer of capital asset to the partner on reconstitution or dissolution. Section 45(4A) seeks to tax "deemed income" (in the books of the firm) arising on payment to partners in excess of the balances appearing in their capital accounts. As a result of these amendments, the settled position as held in CIT Vs Mohanbhai Pamabhai – 165 ITR 166 (SC) (1987), Tribhuvandas G. Patel Vs CIT – 236 ITR 515 (1996) (SC) and CIT v R Lingamallu Raghu Kumar 247 ITR 801 (SC) have been impliedly reversed.*
- *The proposed Section 45(4) provides that for the purpose of computation of capital gain, cost of acquisition of the relevant capital asset shall be determined in accordance with the provisions of the Chapter. The said Section, however, does not provide for allowability of cost of improvement on the capital asset. This appears to be an anomaly and should be clarified.*
- *It is not clear from the reading of the proposed Section 45(4A) whether the capital gains arising on receipt by the partner in excess of the balances in the capital account will be taxable (in the hands of the firm) as short-term capital gain or long-term capital gain. Whether the benefit of indexation shall be available?*
- *The proposed Section 45(4A) may also be triggered in a scenario where the firm does not have any capital asset and a sum of money is paid in excess of the balance in the capital account. In such a scenario, it may not be possible for the firm to claim benefit of proposed amendment in Section 48.*
- *An asset forming part of the block of assets is also a capital asset. However, the manner of computation of capital gains arising on the transfer of asset forming part of block of assets, is not clear from the reading of the proposed amendments.*

9. Depreciation on Goodwill

9.1. It is seen that Goodwill of a business or a profession has not been specifically provided as an asset either in the definition under clause (11) of section 2 of the Act or in section 32 of the Act. The question whether goodwill of a business is an asset within the meaning of section 32 of the Act and whether depreciation on goodwill is allowable under the said section, is an issue which came up before Hon'ble Supreme Court in the case of Smiff Securities Limited [(2012)348 ITR 302 (SC)]. Hon'ble Supreme Court answered the question in affirmative. Thus, as held by Hon'ble Supreme Court, Goodwill of a business or profession is a depreciable asset under section 32 of the Act.

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

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

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

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

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

(iv) amend section 55 of the Act by substituting clause (a) of subsection (2) to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,—

(a) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and
(b) in the case falling under sub-clause (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and
(c) in any other case, shall be taken to be nil

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

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

Comments:

- *The proposed amendment seeks to clarify that no depreciation would be allowed on goodwill whether the same arises as a result of a merger or is acquired. Up until now many*

companies would end up buying companies more than what the "book value" of the company is on its financial statements. This would mean that the remaining amount would be considered goodwill. Most companies would claim depreciation on the goodwill over the years, resulting in lower taxation.

- *The IT department is of the view that many corporate groups had orchestrated the restructuring exercise merely to escape taxes. Hundreds of companies that had undertaken restructuring or mergers within the group created goodwill merely to lower their tax outgo. It was the department's contention that "fictitious assets" were created by companies before restructuring and mergers merely to evade tax.*

- *Goodwill of a business or profession has thus been specifically excluded from the definition of the 'block of assets' eligible for claiming tax depreciation.*

- *As a corresponding amendment, in cases where depreciation has been claimed on the said goodwill, already forming part of the block of assets for the assessment year beginning on 1 April 2020, the Finance Bill has proposed alteration/adjustment of the written down value of the said block as per a prescribed mechanism, which may give rise to short term capital gain on transition.*

- *Purchase price paid by a taxpayer for acquiring goodwill will be considered as the cost of acquisition for the purpose of computation of capital gains except in case where the taxpayer has already claimed depreciation on such goodwill in the previous years, then the purchase price of the goodwill will be adjusted to the extent of the depreciation benefit already claimed by the taxpayer, while computing capital gains. Where no cost has been paid to acquire such goodwill, it has been expressly clarified that the purchase price shall be considered to be Nil.*

- *A contentious issue which now arises is that whether Brand will be included in the definition of goodwill and whether on acquisition of Business, Brand Value of the Product/Service acquired by the purchaser will be included in the definition of Goodwill not eligible for depreciation or will be treated as a separate asset eligible for depreciation under the Act.*

- *It is also pertinent to note that where financial statements are drawn up in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the accounting for Goodwill and other assets and its corresponding tax treatment may give rise to tax litigations unless clarity is brought in this respect through a notification or otherwise.*

10. Definition of the term "Liable to tax"

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

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

Comments:

- *The term 'liable to tax' was not defined anywhere in the Act and in the absence of any clarity one had to refer to the ITAT Mumbai Bench judgement in the case of BhagwanT. Shivlani v. Income-tax Officer (IT)-2(2), (Mumbai) It Appeal No. 1681 (Mum.) Of 2009 [Assessment Year 2003-04]. The judgement clarified that 'liable to tax' does not necessarily imply that person to be resident of contracting State should actually be liable to tax in that contracting State; it is enough if other contracting State has right to tax such person, whether or not such a right is exercised. The proposed amendment brought clarity to the definition in order to avoid further litigations in this regard.*
- *As a result it is important that for a person to be liable to tax, the foreign law imposes a tax liability. Absence of taxing statute in a foreign jurisdiction where an Indian citizen is residing may lead to a conclusion that the person is not liable to tax in the foreign jurisdiction. Accordingly, such person shall be deemed to be a resident of India by virtue of Section 6(1A) of the Act.*

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

11.1. It is proposed to provide for TDS by person responsible for paying any sum to any resident for purchase of goods. The rate of TDS is kept at 0.1%. It is proposed that the tax is only required to be deducted by those person (i.e —buyer) whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Central Government is proposed to be empowered by notification in the Official Gazette to exempt a person from obligation under this section on fulfilment of conditions as may be specified in that notification. Tax is required to be deducted by such person, if the purchase of goods by him from the seller is of the value or aggregate of such value exceeding fifty lakh rupees in the previous year. It is also proposed to provide that the provisions of this section shall not apply to,-

(i) a transaction on which tax is deductible under any provision of the Act; and

(ii) a transaction, on which tax is collectible under the provisions of section 206C other than transaction to which sub-section (1H) of section 206C applies.

11.2. This means, if on a transaction a TDS or tax collection at source (TCS) is required to be carried out under any other provision, then it would not be subjected to TDS under this section. There is one exception to this general rule. If on a transaction TCS is required under sub-section (1H) of section 206C as well as TDS under this section, then on that transaction only TDS under this section shall be carried out.

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

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

11.5. These amendments will take effect from 1st July, 2021.

Comments:

- *Contrary to Section 206C(1H), the aforesaid provisions are applicable to an assessee at the time of credit of such sum to the account of the seller or at the time of payment whichever is earlier (covers advance payment) shall deduct an amount equal to 0.1% of such sum exceeding Rs.50 lakhs by way of income-tax.*
- *It is pertinent to note that the word "goods" has nowhere been defined in the Act. As per the Sale of Goods Act, 1930, the word "goods" also includes "stock and shares". As such the said section includes unlisted and listed shares and securities.*
-
- *At the time of introduction of Section 206C(1H), FAQs and clarifications were introduced by the Board to avoid confusions and disputes. Similarly, FAQs and clarifications are much awaited before implementing the aforesaid provisions.*
- *The aforesaid amendments will take effect from 1st July, 2021. This indicates that transactions done after 01st April, 2021 but before 1st July, 2021 shall not be covered under the aforesaid provisions. However, the said transactions shall be considered for calculating the threshold limit of Rs. 50 lakhs. For example, if an assessee purchases goods of Rs. 30 Lakhs after 01st April, 2021 but before 1st July, 2021 and thereafter purchases goods of Rs. 25 Lakhs, then the aforesaid provisions shall be applicable on the differential value of Rs. 5 Lakhs only.*

12. TDS/TCS on non filer at higher rates

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

12.2. Proposed section 206AB of the Act would apply on any sum or income or amount paid, or payable or credited, by a person (herein referred to as deductee) to a specified person. This section shall not apply where the tax is required to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act. The proposed TDS rate in this section is higher of the following rates:-

(i) twice the rate specified in the relevant provision of the Act; or

(ii) twice the rates or rates in force; or

(iii) the rate of fiver per cent

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

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

(i) twice the rate specified in the relevant provision of the Act; or

(ii) the rate of five percent

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

12.6. The specified person is a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be. Further the time limit for filing tax return under sub-section (1) of section 139 of the Act has expired for both these assessment years. There is another condition that aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years. Specified person shall not include a non-resident who does not have a permanent establishment in India

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

12.8. This amendment will take effect from 1st July, 2021.

Comments:

- *In order to comply with the provisions of this Section, the tax deductor is required to obtain copies of return acknowledgements (ITR-V) for either of the two assessment years immediately prior to the previous year in which tax is required to be deducted to ascertain the applicable rate at which tax will be required to be deducted.*
- *In a scenario where the deductee has not filed returns for the 2 assessment years as above, the deductor will then be required to verify as to whether the TDS/ TCS for the said two years exceeds Rs. 50,000 to determine the applicable rates of deduction.*
- *This will substantially increase the procedural requirements including verifying the genuineness of the ITR-V. Non-compliance may lead to unintended consequences and hardship to the deductor. Beginning 1st April 2021, this Section will give nightmares to the deductors.*
- *There may also be apprehensions on sharing the income tax return acknowledgements with the deductor.*
- *It is suggested that the TRACES portal should include a facility to verify the applicability of the Section on input of the PAN of the payee.*

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

13.1. Clause (11) of section 10 of the Act provides for exemption with respect to any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies or from

any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette. Similarly, Clause (12) of this section provides for exemption with respect to the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule

13.2. Instances have come to the notice where some employees are contributing huge amounts to these funds and entire interest accrued/received on such contributions is exempt from tax under clause (11) and clause (12) of section 10 of the Act. Accordingly, it is proposed to insert proviso to clause(11) and clause (12) of section 10 of the Act, providing that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of contribution made by the person exceeding two lakh and fifty thousand rupees in a previous year in that fund, on or after 1st April, 2021, computed in such manner as may be prescribed.

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

Comments:

- *It means that if an employee contributes any amount in excess of ₹2.50 lacs to provident fund in a financial year, then the interest earned on such excess amount shall not be exempt under this section.*
- *Where an employer contributes 12% and similar contribution is made by the employee but if the said contribution exceeds ₹2.50 lacs this interest earned on the amount in excess of ₹2.50 would be taxable in the hands of the employee. It may be concluded that contribution of the employee within 12% is not what allows the employee to take benefit of Section 10.*

III. TAX INCENTIVES

14. Exemption for LTC Cash Scheme

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

14.2. Hence, it is proposed to insert second proviso in clause 5 of section 10, so as to provide that, for the assessment year beginning on the 1st day of April, 2021, the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of conditions to be prescribed.

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

Comments:

- *In view of the COVID-19 pandemic, this is a welcome amendment, wherein value received in lieu of LTC is also exempt if the prescribed conditions are satisfied.*

15. Incentive for affordable rent housing

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

15.2. To help migrant labourers, it is proposed to allow deduction under section 80-IBA also to such rental housing projects which is notified by the Central Government in the Official Gazette and fulfills such conditions as specified in the said notification.

15.3. Further, it is also proposed that the date for getting such project approved be extended from 31st March 2021 to 31st March 2022.

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

Comments:

- *One of the main objectives of the Central Government over the years has been providing houses to all families in the country. In view of the migrant crisis faced during the COVID-19 pandemic and to provide permanent homes to migrant labourers, it is proposed to include housing as notified in the official Gazette within the purview of Section 80-IBA. It will also provide a much needed fillip to the ailing realty sector.*

16. Tax incentives for units located in IFSC

16.1. Government has established a world class financial services centre. Units located in IFSC enjoy some concession. In order to make location in IFSC more attractive, it is proposed to provide additional incentives to IFSC. The amendments will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

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

17.1. The existing provision of the section 80EEA of the Act, inter alia, provides a deduction in respect of interest on loan taken for a residential house property from any financial institution up to one lakh fifty-thousand rupees subject to the condition that the loan has been sanctioned during the period beginning on 1st April, 2019 and ending on 31st March, 2021.

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

Comments:

- *This provision allows deduction to first time home buyers, in respect of interest on home loan. In order to help such first time home buyers further, it is proposed to amend the provisions of Section 80EEA of the Act to 31st March 2022.*

18. Extension of date of incorporation/ investment for eligible start up

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

18.2. In order to help the Start-ups and encourage investments in them, it is proposed to extend the date of incorporation of eligible start-up from 1st April, 2021 to 1st April,2022.

18.3. The date of transfer of residential property by the eligible assessee is also proposed to be extended from 31st March, 2021 to 31st March, 2020.

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

IV. REMOVING DIFFICULTIES FACED BY TAXPAYERS

19. Increase in safe harbour limit for real estate developers

19.1. In order to boost the demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a lower rate to home buyers, it is proposed to increase the safe harbour threshold from existing 10% to 20% under section 43CA of the Act, if the following conditions are satisfied:-

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

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

(iii) The consideration received or accruing as a result of such transfer does not exceed two crore rupee

19.2. Further it is proposed to provide the consequential relief to buyers of these residential units by way of amendment in clause (x) of sub-section (2) of section 56 of the Act by increasing the safe harbour from 10% to 20%. Accordingly, for these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

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

Comments:

- *In order to boost the demand for the real estate sector, a short-term relaxation has been provided to real estate developers to enable them at their option, liquidate their unsold inventory at rates less than 20% of the prevailing stamp duty valuation without any impact on taxable income of the transferor and transferee.*
- *As per the existing provisions a variation of 10% in the stamp duty valuations is acceptable. This proposed relaxation will certainly give an impetus to the otherwise stagnant real estate sector.*
- *It may be noted that this benefit is available in case of first time allotment of the residential unit to any person by the developer or the landowner.*
- *Relief has also been granted by way of proposed amendment under Section 56(2)(x) wherein the safe harbour has been proposed to be increased from 10% to 20%.*

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

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

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

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

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

Comments:

- *The new sectional clause means that those who are 75 and above can be free from income tax worries.*

- *The new provision also means that Very Senior Citizens aged 80 years or more filling return of income in Form SAHAJ (ITR-1) or SUGAM (ITR-4) and having total income of more than Rs, 5,00,000 or having a refund claim, who had option of filing paper returns are spared the ordeal, now.*
- *The pension income and interest must come from same bank.*
- *To claim section 80D, 80G, etc the return would still needed to be filed.*
- *If the senior citizen is earning income from capital gains or rents, then also he has to file return.*

21. Rationalisation of provisions of MAT

21.1. It is proposed to,-

(i) provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner. Further, the provision of section 154 of the Act shall apply so far as possible and the period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.

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

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

22. Rationalisation of provisions relating to tax audit in certain cases

22.1. In order to incentivise non-cash transactions to promote digital economy and to further reduce compliance burden of small and medium enterprises, it is proposed to increase the threshold U/s 44AB from five crore rupees to ten crore rupees.

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

Comments:

- *In order to promote digital payments and move towards cash less economy, the Finance Bill proposes to increase the threshold limit of tax audit from existing ₹5 crores to ₹10 crores in cases where total receipts in cash during the previous year is less than 5% of the total receipts and total payments made in cash during the previous year is less than 5% of such payments.*

- *It may be noted that loans taken and repaid shall also be included in determining the total receipts and payments.*

23. Advance tax instalment for dividend income

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

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

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

Comments:

- *The interest payment due to failure or non-payment of advance tax instalment shall not include dividend income for calculation of total income.*
- *The Finance Bill, 2021 proposes to include dividend income in the exclusion list for the purpose of determining interest Under Section 234C. The word 'dividend' does not include "deemed dividend"*

24. Raising of prescribed limit for exemption under Section 10(23C) of the Act

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

24.2. In order to provide benefit to small trust and institutions, the Finance Bill, 2021 proposes to raise the annual receipts threshold from ₹ 1 crores to ₹ 5 crores for claiming exemption u/s. 10(23C) w.e.f. April 1, 2022 by universities, educational institutions, hospitals or other institutions.

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

V. PROPOSALS RELATING TO RETURNS AND ASSESSMENTS

25. Extending due date for filing return of income in some cases

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

25.2. Sub-section (1) of the section provides for the filing of original return of income for an assessment year. Explanation 2 of the said section specifies the due-dates for filing of original return for different class of persons.

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

25.4. Sub-section (9) of section 139 of the Act lays down the procedure for curing a defective return. The Explanation to the subsection lists the conditions in which a certain return of income shall be considered to be defective.

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

Comments:

- *It is proposed that revised return and belated return may be filed within three months prior to the end of assessment year. Earlier, the same could have been filed till the end of assessment year. Thus, the time limit is further being pushed ahead for filing return of income.*

26. Income escaping assessment and search assessments

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

26.2. The department is now collecting all relevant information related to transactions of taxpayers from third parties U/s 285BA of the Act (statement of financial transaction or reportable account). This information is also shared with the taxpayer through Annual Information Statement under section 285BB of the Act.

26.3. In view of faceless assessment scheme also it can be seen that the assessment process has been completely reformed.

26.4. The Bill proposes a completely new procedure of assessment of such cases. The salient features of new procedure are as under:-

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

(ii) Assessments or reassessments where search is initiated u/s 132 or requisition made u/s 132A, after 31st March 2021, shall be under the new procedure.

(iii) Before such proceedings, a notice is required to be issued u/s 148 of the Act, which can be issued only when there is information with the Assessing officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year.

(iv) It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered for initiating reassessment proceedings.

(v) Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.

(vi) Further, in search, survey initiated or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated.

(vii) New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee.

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

a. No notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the said period can be taken only in a few specific cases.
b. in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three years but not beyond the period of ten years from the end of the relevant assessment year;
c. Such notice Us 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or after 1st day of April, 2021, if such notice could not have been issued at that time on account of being barred by limitation, as they stood immediately before the proposed amendment.

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

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

Comments:

- *A new limb has been added to 147 proceedings vide introduction of Section 148A wherein an assessee would be show caused and asked to produce requisite details before issuance of Notice U/s 148*
- *Earlier, the assessing officer needed to have reasons to believe based on tangible material, to issue Notice U/s 148 and initiate 147 proceedings. It is now proposed that the Assessing officer may initiate such proceedings based on information flagged by the system. Therefore, as argued in earlier cases, there is very little scope for the Assessing Officer to apply his mind as slight deviation from predetermined parameters might get certain transactions undertaken by the assessee flagged and lead to initiation of proceedings.*
- *The time limit for issuance of Notice U/s 148 is proposed to be changed w.e.f 01.04.21. Notice Us 148 would not be issued beyond a period of 3 years from the end of relevant assessment year except where the Assessing Officer has evidence that income of the assessee has escaped assessment which is represented in the form of an asset greater than Rs. 50 lakhs. Such notice can be issued for a period beyond the stipulated period of 3 years restricted to 10 years from the end of the relevant assessment year.*
- *However, another restriction with respect to such notice U/s 148 being issued after 01.04.21 for an assessment year is, it cannot be issued after enactment of proposed amendment if it was not issued earlier as a result of being barred by limitation.*
- *As per the proposed amendments, the Assessing Officer shall be deemed to be vested with the powers of making assessment/reassessment of other issues not related to the information pursuant to which 148 notice was issued. It also states that the procedure of issuing Notice U/s 148A need not necessarily be followed with respect to other areas of assessment. Quite clearly, the powers of the Assessing Officer have been increased manifold as earlier jurisdictional mandate was to restrict 147 proceedings to a particular issue/point(s).*

27. Allowing prescribed authority to issue notice under Section 142(1)(i)

27.1. Section Section 142 of the Act provides for conduct of inquiry before assessment. Clause (i) of sub section (1) of the said section empowers the Assessing Officer to issue notice to an assessee, who has not submitted a return of income, asking for submission of return. The power can be currently invoked only by the Assessing Officer.

27.2. The Central Government in the past year has shown its steadfast resolve to make all processes under the Act, fully faceless by eliminating human interaction. In line with this policy, and in order to enable centralized issuance of notices in an automated manner, it is proposed to amend the aforesaid provisions to empower the prescribed income-tax authority besides the Assessing Officer to issue notice under the said clause.

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

Comments:

- *Assessees are in receipt of notices from National e-Assessment Centre whereas the jurisdictional Assessing Officers (AO) reflected in the Income Tax portal is completely different. The process by which issue of such Notices from a person from a distinct designated authority other than the jurisdictional AO can be debated and hence necessary amendments should be made in the Act detailing the faceless assessment procedure.*

28. Faceless Proceedings before ITAT

28.1. In order to impart greater efficiency, transparency and accountability to the assessment process, appeal process and penalty process under the Act a new faceless mechanism has already been introduced. Further, vide Taxation and Other Laws Act, 2020 the Central Government has been empowered to notify similar schemes in respect of many other processes under the Act.

28.2. In line with the scheme of the Government, it is proposed that a faceless scheme be launched for ITAT proceedings on the same line as faceless appeal scheme.

28.3. Therefore, it is proposed to insert new sub-sections in the section 255 of the Act so as to provide that the Central Government may notify a scheme in this regard.

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

Comments:

- *Since the faceless appeal system has just recently been implemented, it is expected that the Income Tax department streamlines the assessment and appeal mechanisms and thereafter, launches faceless proceedings for ITAT.*

- *A robust system should also be designed to address technical issues while filing voluminous documents as appeals in most ITAT cases would involve submission of paperbooks.*

29. Discontinuance of Income-tax Settlement Commission

29.1. It is proposed to discontinue Income-tax Settlement Commission (ITSC) and to constitute Interim Board of settlement for pending cases. The various amendments proposed are as under:

(i) ITSC shall cease to operate on or after 1st February, 2021

(ii) No application under section 245C of the Act for settlement of cases shall be made on or after 1st February, 2021;

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

(iv) The Central Government shall constitute one or more Interim Board for Settlement, as may be necessary, for settlement of pending applications.

(v) On and from 1st February, 2021, the provisions related to exercise of powers or performance of functions by the ITSC shall apply mutatis mutandi to the Interim Board for the purposes of disposal of pending applications.

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

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

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

30. Reduction of time limit for completing assessment

30.1. Section 153 of the Act contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act. The time limit had earlier been reduced in order to improve the efficiency of the Department to give effect to computerization of processes under the Act. As a result, the time limit for completion of assessment proceedings Us 143/ 144 of the Act was reduced to 18 months for A.Y. 2018-19 and 12 months for A.Y. 2019-20 and subsequent assessment years vide the Finance Act, 2017.

30.2. The assessment procedure has also been completely overhauled by the introduction of the Faceless Assessment Scheme, 2019. The procedure is now conducted in a completely faceless manner where all communication is made electronically and different aspects like verification, scrutiny of books of accounts etc. are carried on by different units.

30.3. It is proposed that the time limit for completion of assessment proceedings may be reduced further by three months. Thus, the time for completion of assessment is proposed to be nine months from the end of the assessment year, for the assessment year 2021-22 and subsequent assessment years.

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

Comments:

The efficacy of the new faceless system can only be assessed after completion of assessments for AY 2018-19 currently in progress. However, the assessment procedure wherein return of income is filed by the month of September (in case of no extension) and thereafter, issue of Notice U/s 143(2) and initiation/conclusion of assessment proceedings within 3 months would be challenging both for the Department and the assessees.

31. Provisional attachment in Fake Invoice cases

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

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

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

Comments:

- *In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claims have been detected by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. The proposed amendment seems to penalise such fraudulent arrangements with harsher provisions under the Act.*

- *Section 281B of the Act bestows wide ranging powers on the Assessing Officer to provisionally attach any property of the assessee to protect the interest of revenue. Penalty payable U/s 271AAD shall be equal to the aggregate amount of false entries or omitted entries. Thus, provisional attachment during the pendency of proceedings for imposition of penalty appears to be quite stringent especially when redressal mechanism has not been specified.*

32. Provisions relating to processing of returned income and issuance of notice

32.1. It is proposed to amend the following provisions of sub-section (1) of section 143 of the Act,-

(i) Amend sub-clause (iv) of clause (a) of sub-section (1) of the section 143 of the Act, to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.

(ii) Amend sub-clause (v) of clause (a) of sub-section (1) of the section 143 of the Act so as to give consequential effect to amendment carried out in section 80 AC vide Finance Act, 2018.

(iii) Amend the provisions of section 143 to reduce the time limit for sending intimation under sub-section (1) of section 143 of the Act from one year to nine months from the end of the financial year in which the return was furnished.

32.2. Consequently, it is also proposed to reduce the time limit for issue of notice under sub-section (2) of section 143 of the Act from six months to three months from the end of the financial year in which the return is furnished.

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

VI. OTHER AMENDMENTS

33. Adjudicating Authority under Benami Law

33.1. It is now proposed to provide that the Competent Authority constituted under sub-section (1) of section 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) shall be the Adjudicating Authority under the PBPT Act which shall commence discharging the function from 1st July, 2021.

34. Rationalisation of the provisions of Equalisation Levy

- The Definition of 'online sale of goods' and 'online provision of services' is proposed to be extended to include acceptance of offer or purchase order.
- The Finance Bill, 2021 proposes that consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India under the Income-tax Act, and exemption under section 10(50) will also not apply in case of the said services.
- Consideration received or receivable from e-commerce supply or services shall include such consideration irrespective of whether the e-commerce operator owns the goods and whether service is provided or facilitated by the e-commerce operator. In other words, consideration received or receivable from e-commerce supply or services shall include entire consideration for sale of goods / services.
- These amendments will take effect retrospectively from 1st April, 2020

35. Rationalisation of provisions related to certain sovereign/ pension funds

35.1. Clause (23FE) of section 10 of the Act provides for the exemption to specified persons from the income in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India. Specified persons are Sovereign Wealth Fund (SWF) or PF which fulfils conditions prescribed therein and are specified for this purpose by the Central Government through notification in the Official Gazette. This provision was introduced through the Finance Act, 2020 to encourage investments of SWF and PF into infrastructure sector of India. In order to rationalise the provisions of this clause and to remove the difficulties in meeting some of the conditions, further amendments have been proposed in the Bill.

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

36. Rationalisation of the provision of presumptive taxation for professionals

36.1. Section 44ADA of the Act relates to special provision for computing profits and gains of profession on presumptive basis. It is proposed to amend sub-section (1) of section 44ADA of the Act to provide that the provision of this section shall apply to an assessee, being an individual, HUF or partnership firm, not being an LLP as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008. All other provisions like being a resident in India engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, shall remain same.

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

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

37.1. In order to address the mismatch in the year of taxability of withdrawal from retirement funds by residents who had opened such fund when they were non-resident in India and resident in foreign countries, the Finance Bill, 2021 proposes to insert new section 89A to provide manner of taxation of income of a specified person from specified account.

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

38. Rationalisation of the provision concerning WHT on payments to FIIs

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

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

39. Exemption of TDS on payment of Dividend to business trust

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

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

40. Constitution of Dispute Resolution Committee for small and medium taxpayers

40.1. It has been proposed to setup a Dispute Resolution Committee (DRC) to provide early tax certainty to small and medium taxpayers. The scheme shall cover cases where the returned income is upto fifty lakhs and aggregate variation proposed is upto ten lakhs.

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

41. Constitution of the Board for Advance Ruling

41.1. It is proposed to constitute a Board of Advance Ruling to provide an alternative method of providing advance ruling to taxpayers in timely manner. Amendments in the existing provisions of Authority for Advance Rulings (AAR) has been proposed in this regard.

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

42. Issuance of zero coupon bond by infrastructure debt fund

42.1. In order to enable infrastructure debt funds [which are notified by the Central Government in the Official Gazette under clause (47) of section 10 of the Act] to issue zero coupon bonds, necessary amendments are proposed in clause (48) of section 2 of the Act. Rules 2F and 8B of Income-tax Rules shall be amended subsequent to enactment of Finance Bill 2021.

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

42.3. Consequential amendment has also been proposed in clause (x) of sub-section (3) of section 194A of the Act which will take effect from 1st April, 2021

B. INDIRECT TAX PROPOSALS

Customs and Central Excise:

1. HSN 2022

1.1. HS 2022, which is the seventh edition of the Harmonized System (HS) nomenclature used for the uniform classification of goods traded internationally all over the world, has been accepted by all Contracting Parties to the Harmonized System Convention. It shall come into force on 1st January 2022.

1.2. Changes to the first schedule to the Customs Tariff Act are being proposed in accordance with HSN 2022, which proposes 351 amendments to the existing harmonized nomenclature, covering a wide range of goods moving across borders. The same shall be effective from 1st January 2022.

1.3. Consequentially, New tariff items have been inserted in Chapter 24 in the fourth Schedule of the Central Excise Act, 1944 in accordance with upcoming HSN 2022.

2. Customs duty rate changes

2.1. The changes in rates of duty, tariff rates and omission of certain outdated exemptions promises rationalization of customs duty. While customs duty on some items like solar investors are raised to promote domestic productions, anti-dumping duty on steel and steel products are scrapped.

2.2. A summary of certain items which are set to get cheaper and expensive are as follows:

Expensive	Cheaper
Electrical Items	Iron
Mobile Phones	Steel
Power Banks	Gold
Imported Raw Silk	Silver
Imported Solar Inverters	Nylon Clothes
Imported Gemstones	Copper Products
Tunnel Boring Machines	Shoes
Kabuli Chana, Pulses	Agricultural Equipment

Urea	Insurance Policy
Imported Auto Mobiles	
Imported Alcoholic Beverages	

3. Trade Remedial Measures (ADD/CVD and Safeguard Measures)

3.1. The Bill proposes to make the following amendments in the provision relating to ADD, CVD, Safeguard measures [sections 8B, 9 and 9A of the Customs Tariff Act and respective Rules] to provide for**:**

(i) Imposition of duty from the date of initiation of anti-circumvention investigation.

(ii) Anti-absorption provisions to counter situation where, by reduction of export prices or otherwise, the countervailing duty levied is sought to be absorbed, diluting the intended impact of such duty.

(iii) Imposition of countervailing duties on review for period upto 5 years at a time.

(iv) Whenever any countervailing duties are revoked temporarily, such temporary revocation shall not exceed one year at a time.

(v) Uniform provisions for imposition countervailing duty on account of inputs (attracting ADD or CVD) used by EoUs and SEZs for manufacture of goods that are cleared to Domestic Tariff Area.

(vi) Manner of application of safeguard measure, including tariff-rate quota in the Safeguard Duty (name changed to Safeguard Measures) Rules.

4. Changes in Central Excise Act and Duty Rates

4.1. The Fourth Schedule to the Central Excise Act, 1944 and Seventh Schedule of the Finance Act, 2001 is being amended with effect from 01.01.2022 to prescribe following tariff items:

4.2.

Tariff Item	Goods	Unit	Rate of Duty (Fourth Sch.)	Rate of Duty (Seventh Sch.)
2404 11 00	Products intended for inhalation without combustion, containing tobacco or reconstituted tobacco	Kg.	81%	25%

2404 19 00	Products intended for inhalation without combustion, Other	Kg.	81%	25%

4.3. **Exemptions**: Special Additional Excise Duty (SAED) and Road and Infrastructure Cess (RIC) is exempted on new category of blended fuels namely, 15% Methanol blended Petrol (M-15 fuel) and 20% ethanol blended Petrol (E-20 fuel), provided appropriate excise duty on Petrol and appropriate GST on ethanol/methanol and cosolvents are paid (Notification Nos. 04/2021-Central Excise, 05/2021-Central Excise and 06/2021-Central Excise, dated 1st February, 2021).

4.4. To align the First schedule of the Customs Tariff Act, 1975 to the Fourth Schedule to the Central Excise Act, 1944 in respect of Crude Petroleum Oil, it is proposed to amend entries in heading 2709 so as to replace the existing tariff items and entries thereof (2709 10 00, 2709 20 00 in the Fourth schedule of the Central Excise Act, 1944 and 2709 00 00 of the First schedule of the Customs Tariff Act, 1975) in both the First schedule of the Customs Tariff Act, 1975 and the Fourth schedule of the Central Excise Act, 1944, with the following two new tariff items (w.e.f 1.4.2021): 2709 00 10 - Petroleum Crude and 2709 00 20 – Other.

5. Retrospective Amendments effective from 1st January 2020

5.1. Amendment in Fourth Schedule is made retrospectively by Notification No. 08/2019-CE (T) dated 31st December 2019 (clause (98) of the Finance Bill, 2021).

5.2. It is proposed to respectively specify correct IS "17076" against the tariff item 27101249.

5.3. It is proposed that tariff rate of 14%+ Rs. 15.00 per litre against tariff item 2710 20 10 and 2710 20 20 may be prescribed and made effective (clauses [97 (ii) and 97 (iii)] of the Finance Bill, 2021).

6. Other Amendments

6.1. Exemption has been provided to blended fuels namely 5% ethanol blended petrol, 10% ethanol blended petrol, 20% bio-diesel blended High speed diesel, and new category of blended fuels namely, 15% Methanol blended Petrol (M-15 fuel) and 20% ethanol blended Petrol (E-20 fuel) (Refer notification Nos. 03/2021-Central Excise, dated 1st February, 2021).

Amendments in CGST, IGST and UTGST Acts, 2017:

Amendments carried out in the Finance Bill, 2021 will come into effect from the date when the same will be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States and Union territories with Legislature.

7. Reconciliation Statement - Obliterated

7.1. Sub-section (5) of section 35 of the CGST Act is proposed to be omitted to remove the mandatory requirement of getting annual accounts audited and reconciliation statements submitted by specified professionals in case of registered persons having specified aggregate turnovers.

7.2. Consequentially, section 44 of the CGST Act is proposed to be substituted to remove the mandatory requirement of furnishing a reconciliation statement duly audited by a specified professional. Instead, a new self-certified reconciliation statement may be submitted with the annual return along with the audited annual financial statement. The section further provides that the Commissioner may exempt a class of taxpayers from the requirement of filing the annual return.

8. Scope of Supply

8.1. Supply is a fundamental economic concept that describes the total amount of a specific good or service that is available to consumers. section 7 of the CGST Act provides the definition for Scope of Supply to include all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

8.2. The Bill proposes to expand the scope of supply with effect from 1st July 2017 by adding a new clause (aa) in sub-section (1) od section 7 to include activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment, or other valuable consideration. For the purpose of the amendment, it is clarified that, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

8.3. Consequent to the amendment in section 7 of the CGST Act paragraph 7 of Schedule II to the CGST Act is proposed to be omitted retrospectively, with effect from the 1st July, 2017 under clause 113 of the Finance Bill.

9. Zero Rate Supply

9.1. Clause (b) sub-section (1) section 16 of the IGST Act provides a supply to be zero rated if supply of goods or services or both is made to a Special Economic Zone developer or a Special Economic Zone unit, the bill proposes to amend the entry so as the transaction will be zero rated only when the said supply in the entry is for authorised operations.

9.2. A registered person making a zero rated supply earlier had an option to supply goods or services or both under bond/LUT or on payment of IGST. The bill proposes to restrict the zero rated supply on payment of IGST only to a notified class of taxpayers or notified supplies of goods or services.

9.3. Sub-section 3 of section 16 of the IGST Act further contains proposed amendments with the intent to link the foreign exchange remittance in case of export of goods with refund. The amendment provides that registered person making zero rated supply on basis of bond/LUT shall deposit the refund received along with the applicable interest within a period od 30 days in case the sale proceeds remain unrealised with the time limited prescribed under FEMA.

10. Eligibility and Conditions for Taking Input Tax Credit (ITC)

10.1. Proposal to include filing of return by the supplier of goods/services as provided for in section 37 (statement of outward supplies) of the CGST Act along with the condition of possession of invoice, for availment of credit. The said proposal seeks to include the provisions relating to ITC reconciliation provided in rule 36(4) of CGST Rules and in order to identify and eliminate tax evaders and fake billers.

11. Interest on Net Liability

11.1. CGST (Amendment) Act, 2018 (No. 31 of 2018) - Brought into force w.e.f. 01st February 2019 the proviso clause of section 50 which provided that interest shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger. However, subsequent developments by way of standing order, judgments, tweets, and interpretations created a big chaos and confusion in taxpayer's mind.

11.2. Bring the clarity, the bill proposes to amend section 50, retrospectively, to substitute the proviso to sub-section (1) so as to charge interest on net cash liability with effect from the 1st July, 2017.

12. Detention, seizure and release of goods and conveyances in transit

12.1. Earlier, seizure and confiscation of goods and conveyances in transit were included in Section 73 and 74 of the CGST Act (recovery of taxes). Section 74 of the CGST Act is proposed to be amended so as make seizure and confiscation a separate proceeding from recovery of tax.

12.2. Additionally, it is proposed to amend Section 129 and section 130 of the CGST Act to delink the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.

12.3. The bill proposes to insert a proviso to sub-section (6) of section 107 of the CGST Act to provide that no appeal shall be filed against an order made for seizure of goods and conveyances in transit under sub-section (3) of section 129 unless a sum equal to twenty-five per cent of penalty is paid by the appellant.

13. Other amendments in GST

13.1. An explanation to sub-section (12) of section 75 of the CGST Act is being inserted to clarify that "self-assessed tax" shall include the tax payable in respect of outward

supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.

13.2. Section 83 of the CGST Act is proposed to be amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.

13.3. The bill proposes to amend section 152 of the CGST Act - Bar on disclosure of information by concerned officers, to eliminate the words “of any individual or part thereof” to avoid any uncalled litigations. The bill further proposes to amend the section to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

14. Agriculture Infrastructure and Development Cess (AIDC)

14.1. Agriculture Infrastructure and Development Cess (AIDC), has been proposed in the bill as a duty of customs. Enabling provisions has been made for levy of this cess on all imported goods at the rate not exceeding the rate specified in the First Schedule to the Customs Tariff Act, 1975. However, it is to note that cess would be levied only on exhaustive list of goods (a few from the list are apples, crude palm oil, peas, kabuli chana, lentils, vermouth and other wines, urea, cotton, gold and silver). Necessarily, the BCD rates have been simultaneously lowered on items on which cess is being imposed. Social Welfare Surcharge (SWS) would be levied on AIDC. However, exemption from SWS on AIDC has been given to gold and silver. Further, goods imported under customs duty exemptions available under FTA and EOU as well as under advance authorization schemes are being exempted from AIDC.

14.2. For the purpose of calculating the AIDC, the import value of such goods shall be calculated in the same manner as the value of goods is calculated under the provisions of section 14 of the Customs Act, 1962.

14.3. AIDC of Rs 2.5 per litre has been imposed on petrol and Rs 4 per litre on diesel as an additional duty of excise. Accordingly, the government has calibrated Basic Excise Duty and the Special Additional Excise Duty so as to minimize the burden on the consumer.

14.4. These changes would become effective on 02.02.2021, owing to the declaration made under Provisional Collection of Taxes Act, 1931

C. SIGNIFICANT AMENDMENTS PROPOSED IN CORPORATE AND OTHER LAWS

This part of the publication outlines on sectors such as Banking, Bond Markets, Corporate Law and Securities Law :

1. The policy framework relating to deposit insurance cover to be structured properly. Earlier, the coverage was available only when the bank was liquidated, however, the revised mechanism will help the depositors even before liquidation.

2. The minimum loan size eligible for debt recovery under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 to be reduced from the existing level of Rs. 50 lakhs to Rs. 20 lakhs. This would strengthen the state-owned banks and expedite the process of clean-up of their balance sheet.

3. The creation of a permanent institutional framework to purchase investment grade debt securities both in stressed and normal times and help in the development of the Bond Market. Enabling pooled investment vehicle to raise debt, including by way of bonds with powers under SARFAESI Act.

4. Relaxation for one-person companies wherein it is proposed that no restriction on paid-up capital and turnover, conversion of one-person company to any other kind and reducing residency limit from 182 days to 120 days. It is also proposed to allow non-resident Indians to incorporate one-person companies in India.

5. The threshold under Companies Act, 2013 for Small Company is proposed to be increased. The ceiling with respect to paid-up capital is proposed to be increased from Rs. 50 lakhs to Rs. 2 crores and for Turnover from Rs. 2 crores to Rs. 20 crores. Consequently, various provisions under the Companies Act shall not be applicable. CARO 2020 also does not apply to small company.

6. Decriminalization of offences under the Limited Liability Partnership (LLP) Act, 2008.

7. The launch of MCA 3.0 to open avenues of e-scrutiny, e-Adjudication, e-Consultation and Compliance Management.

8. The Union Budget has proposed a consolidation initiative to consolidate provisions of SEBI Act, 1992, Depositories Act, 1996, Securities Contracts (Regulation) Act, 1956 and Government Securities Act, 2007 into a rationalised single “Securities Markets Code”

For Private Circulation only :

A C Bhuteria & Co

Chartered Accountants

Room 10, 2nd Floor, 2, India Exchange Place
Kolkata - 700 001
Phone : (+91-33) 4003-2841
E.mail Id : info@acbhuteria.com

Designed & Printed by : Dayfa. Ph. : 90515-33005