K C Mehta & Co.

Chartered Accountants

INDIA BUDGET 2022

FROM FREEDOM TO SELF RELIANCE

INDIA
BUDGET
2022

FROM FREEDOM TO
SELF RELIANCE

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The provisions contained in the Finance Bill, 2022 ("the Bill") are proposals and are likely to undergo amendments while passing through Houses of Parliament before being enacted.

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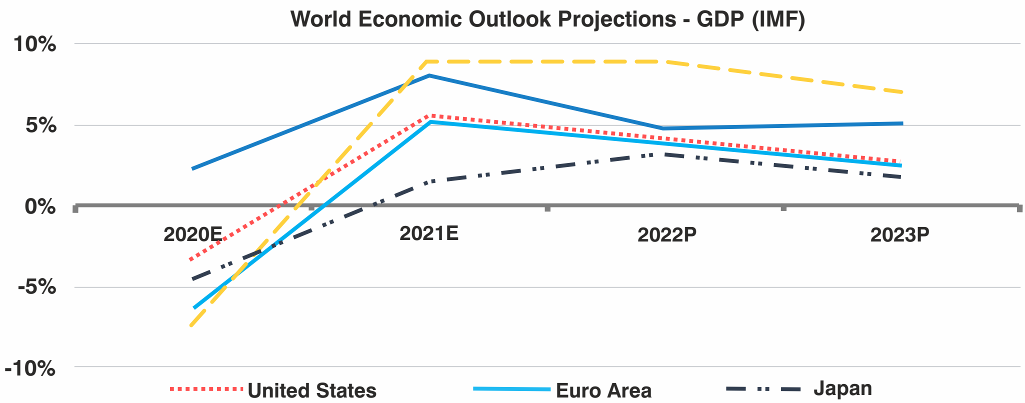
ECONOMIC SURVEY
2021-22

ECONOMIC SURVEY

Background

India has fared relatively better than most of its counterparts during the past two years. Indian economy has shown resilience through this COVID pandemic but the country is still not out of the woods as yet. There have been certain areas and sectors where India has been an outperformer but some concerns still remain. The robust growth story and the sustainability of Indian economy is evidenced by the data provided in the January 2022 Report - Global Economy Outlook Update, shown in form of chart below. Though global concerns on account of high energy prices, supply side disruptions and the hardening of rates by Central banks across the world can play spoilsport the Indian domestic demand is robust enough to handle the short and medium term turbulence in the global economic scenario.



Some of the notable highlights of the Indian Economy over the past year are:

- India experienced its first technical recession in a decade with the last two quarters of FY 2020-21 showing negative growth rate but rebounded with growth of 20.1 percent in Q1 of 2021-22 and 8.4 percent in the subsequent quarter.
- Net tax revenues as a percentage of Budget Estimates (BE) stood at 73.5 percent during April – November 2021, being the highest since 2014-15.
- Gross Goods and Services Tax (GST) receipts remained at more than INR 1 lac crore mark for the sixth consecutive month of December 2021.
- Forex reserves stood at USD 634.29 billion as on January 2022, showing the strong investor sentiment in the Indian growth story.

- India has administered more than 1.66 billion doses with over 90 percent of the population having received one dose and 66 percent of the eligible population.
- Merchandise Exports touched an all time high of USD 37.8 billion in December 2021 and the exports have remained above the USD 30 billion mark since March 2021.
- Labour Participation Rate (LPR) is about 40.9 percent which is one of the lowest in the world.
- Wholesale price index (WPI) and Consumer price index (CPI) showed an upward trend with the WPI of 14.23 percent in November 2021 being a 12 year high.

State of the Indian Economy

Economies across the world have been badly affected for the past two years on account of the COVID-19 pandemic. Wave after wave of COVID variants, supply-chain disruptions on account of lockdowns across the world, shipping rates shooting up sky high along with rising crude prices have created severe challenges. In India, the first response of the government was to provide immediate relief in form of a safety net to the most vulnerable sections of society and the business sector. The second response was to push for government initiative impetus in form of expenditure on infrastructure to generate medium-term demand. Along with demand push, the government introduced supply-side measures to set-up the economy for a durable and sustainable long-term expansion mode.

The effects of the multi-pronged efforts can be seen in the Advance estimates indicating a GDP growth of 9.2 percent in 2021-22 which are in line with the World Bank's and Asian Development Bank's real GDP growth projections of 8.7 percent and 7.5 percent respectively for 2022-23.

Sectoral Trends:

- Agriculture sector has been the least effected by the pandemic disruptions and has seen a growth from 3.6 percent in FY 2020-21 to 3.9 percent in FY 2021-22. The agriculture sector now accounts for ~19 percent of the Gross Value Added (GVA).
- Industrial sector especially the manufacturing and construction saw severe downturn in 2020-21 but an equally smart recovery in the current financial year.
- Services sector which now accounts for ~53 percent of the GVA was the most impacted by the COVID-19 related restrictions. Contact based services such as the travel and transport have been the worst affected with a fall of 18 percent in 2020-21.

Demand Trends:

- Total Consumption constituting Government and Private Consumption grew by 7 percent in 2021-22 against negative growth of 7 percent in previous year. Government consumption of 7.6 percent and Private consumption has also risen as evidenced by Index of Industrial Production – Consumer Durables and UPI based transactions.
- Investment measured by Gross Fixed Capital Formation (GFCF) is anticipated to grow by 15 percent in 2021-22 pushed by increased government spending in capex and infrastructure. The investment to GDP ratio of ~29.6 percent in 2021-22 is the highest in seven years.
- Exports, both of goods and services have been extremely robust in 2021-22 with merchandise exports exceeding USD 30 billion for eight consecutive months. Net services exports too rose sharply, driven by professional and management consulting services, audio visual and related services, freight transport services etc.
- Imports have seen a strong recovery too with revival in domestic demand along with sharp rise in price of crude and base metals.

Government Initiatives – Barbell Strategy, Safety Nets and AGILE Approach

- Barbell Strategy adopted by government is primarily an investment concept to tackle the COVID related economic aftermath. Barbell strategy is primarily to strike an equitable balance between two extreme options rather than a middle path approach. On one side a host of measures were taken to provide safety net to marginal sections and the business and while simultaneously following a liberal monetary policy to boost demand and provide supply impetus.
- Barbell Strategy was combined with AGILE approach, which is a feed-back loop based approach wherein the government used 80 High Frequency Indicators (HFI) including GST collections, power consumption, digital payments to evaluate the economic position and take course corrective action on a realtime basis.
- Some important Safety Net measures taken by the government to tackle distress in marginal sections of society and small businesses during 2020/2021 are:

- Cash transfers under Jan Dhan and under Pradhan Mantri Kisan Samman Yojna (PM-KISAN).
- One Nation One Ration Card enabled in 34 States / UTs.
- Cooking gas cylinders distribution under Ujjawala scheme.
- Pradhan Mantri Garib Kalyan Rojgar Abhiyaan (PM-GKRA) for immediate employment & livelihood opportunities to returnee migrant workers.
- Emergency Credit Line Guarantee Scheme and Credit Guarantee Scheme (CGS) for MSMEs

• Monetary Policy has been used judiciously to support growth and at the same time avoid medium term stress on account of excessive liquidity. Monetary Policy Committee (MPC) maintained policy repo rate of 4.0 percent since early 2020. Marginal Standing Facility (MSF) rate and the bank rate have also kept unchanged at 4.25 percent while the reverse repo rate has been kept at 3.35 percent.

• Vaccination drive which began in January 2021 provided a critical role in curtailing the human losses and gave confidence to resume economic activity. More than 88 crore people (93 percent of the adult population) has received at least one dose, of which ~ 66 crore people (70 percent of the adult population) are fully vaccinated.

Key Macroeconomic Stability Indicators

• India is better placed to handle financial shocks and stresses compared to recent past, as evidenced by macroeconomic stability indicators:

Key Macroeconomic Indicators	Global Financial Crisis (2008-09)	Taper Tantrum (2012-13)	Covid-19 Pandemic (2021-22)
CPI Inflation	9.10%	9.40%	5.20%
India's Gross Deficit as % of GDP	8.30%	6.90%	10.20%
Current Account Balance as % of GDP	-2.30%	-4.80%	-0.20%
External Debt as % of GDP	20.70%	22.40%	20.20%
Forex Reserves (USD billion)	252	292	634
Govt Bond Yields 10-year	7.30%	8.00%	6.40%
Total FDI inflows (USD billion)	8.3	34	48.4
SCBs Capital to Risk Weighted Assets Ratio (CRAR)	13.2	13.9	16.5

- India's balance of payments (BOP) remained in surplus throughout the last two years of the pandemic which led to the foreign exchange reserves of ~USD 634 billion on December 31, 2021 equivalent to ~13 months of imports.
- Fiscal Balance has improved considerably with revenue receipts of the central government during April- November 2021 period going up by 67.2 percent on a year on year basis. The tax collections have been robust with GST collections crossing 1 lac crore every month since July 2021.
- Financial sector has been an outperformer with Sensex and Nifty scaling all time highs of 61,766 and 18,477 respectively on October 18, 2021. Primary market boom led to INR 89,066 crore raised via 75 IPO issues in April-November 2021 period.
- Gross Non Performing Advances (GNPA) ratio of Scheduled Commercial Banks (SCBs) decreased from 7.5 percent at end-September 2020 to 6.9 percent at end-September 2021.

Supply Side Reforms

- Demand side impetus has been ably supported by supply side reforms including deregulation of numerous sectors, simplification of processes, removal of legacy issues like 'retrospective tax', privatisation, production-linked incentives etc.
- The sharp increase in capital spending by the government is both a demand and supply response to cushion the pandemic impact and the support growth as it creates infrastructure capacity for future growth.
- The government has gradually moved from the deregulation mode to the reforming of processes which involve simplification / smoothening of existing processes so as to ensure minimal role of government.
- Some Key Supply side reforms undertaken by the government are as follows:
  - Production Linked Incentive Scheme approved for 13 sectors, including Pharmaceuticals and Automobiles and Auto Ancillary.
  - Repealing of retrospective tax for promoting tax certainty and foreign investments.
  - Reforms in banking sector with increase in deposit insurance from INR 1 lac to INR 5 lac.
  - Revised definition of MSMEs with increased limits along with easing of registration process.

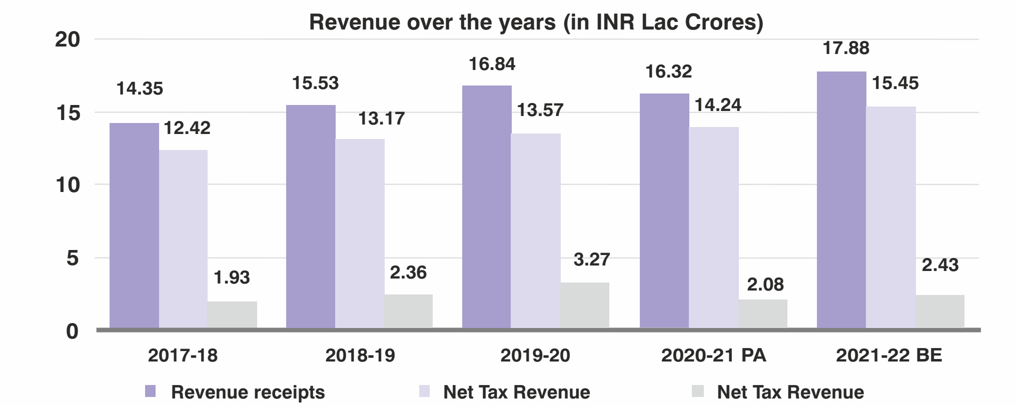
Indian Economy in 2021-22

Fiscal Developments

- The shortfall of revenue collection in 2020-21 was largely due to interruption in economic activity and additional expenditure burden in form of safety net measures to weaker sections, migrants and small businesses. The budgeted fiscal deficit for 2020-21 which was revised from 3.5 percent in Budget Estimates (BE) to 9.5 percent in Revised Estimate (RE) stands at 9.2 percent of GDP as per Provisional Actuals (PA).
- Fiscal Deficit of Central Government for April – November 2021 stood at 46.2 percent against the BE of 135.1 percent during same period in 2020-21 and 114.8 percent during 2019-20.

Revenue:

Budget 2021-22 estimated the Gross Tax Revenue (GTR) to be INR 22.17 lac crore (i.e. 9.9 percent of GDP), increase of 8.66 percent from 2020-21 PA. The revenue over the years is presented as below:



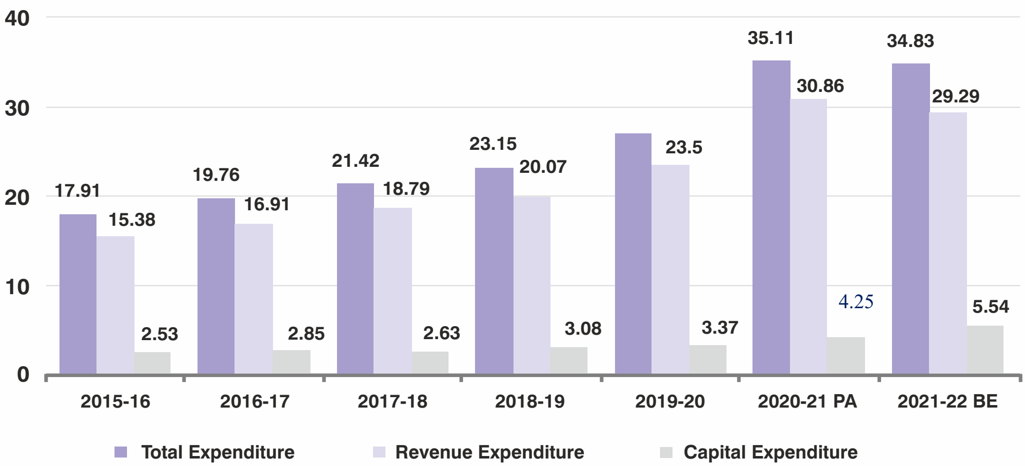
Source: Union Budget Documents & Controller General of Accounts (CGA)
BE: Budget Estimates, PA: Provisional Actuals

- Net Tax Revenue to the Centre, which was envisaged to grow at 8.5 percent in 2021-22 BE relative to 2020-21 PA, grew at 64.9 percent during April 2021 to November 2021 over April 2020 to November 2020 and at 51.2 percent over April 2019 to November 2019.
- Goods and Services Tax emerged as a buoyant source of revenue for both the Centre and the States. The average monthly gross GST collection for the third quarter of the current year was INR 1.30 lac crore, higher than the average monthly collection of INR 1.10 lac crore and INR 1.15 lac crore in the first and second quarters respectively.

Expenditure:

- The composition of government expenditure in the 2021-22 Budget Estimate (BE) reveals that expenditure on defence services, salaries, pensions, interest payments and major subsidies account for more than 61 percent of total expenditure against 65 percent in 2020-21 Provisional Actual (PA).

Central Government Expenditure (in INR Lac Crores)



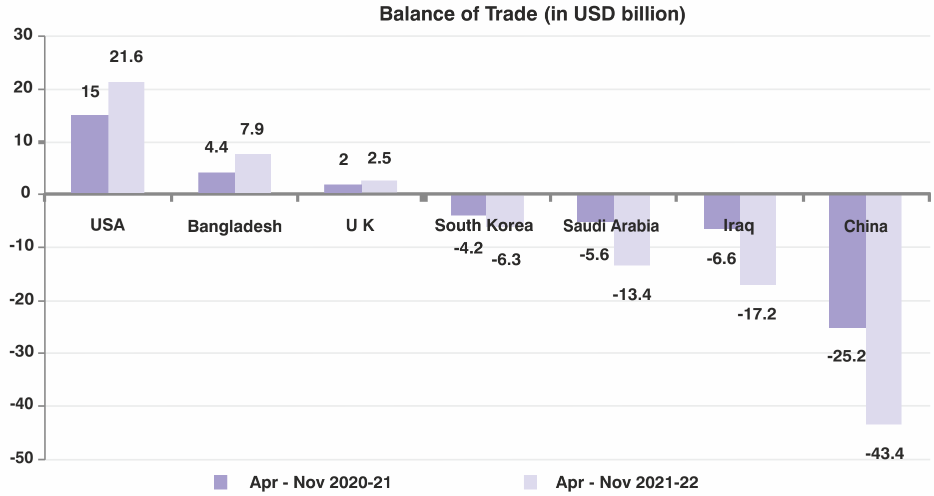
Source: Union Budget Documents & Controller General of Accounts (CGA):
BE: Budget Estimates, PA: Provisional Actuals

- The Revenue Deficit of the States increased from 0.1 percent of GDP in 2018-19 to 2 percent of GDP in 2020-21 (RE).

External Sector

- India's current account balance turned into deficit of 0.2 percent of GDP in the first half of 2021-22, largely led by deficit in trade account.
- The robust capital flows were sufficient to finance the modest current account deficit, resulting in an overall balance of payments (BoP) surplus of USD 63.1 billion in H1 2021-22, that augmented foreign exchange reserves to over USD 600 billion and touched USD 633.6 billion as of December 31, 2021. As of November 30, 2021, India was the fourth largest forex reserve holder in the world after China, Japan, and Switzerland.

• Following table depicts the balance of trade (Export less Import) of India with major countries:



Source: Department of Commerce (DoC)

• After a surplus in H1 2020-21, India's current account balance went into deficit of USD 3.1 billion (0.2 percent of GDP) in H1 2021-22, primarily due to merchandise trade deficit. Current account deficit remained lower than the deficit of USD 22.6 billion recorded in H1 2019-20.

• Computer software and hardware attracted the highest FDI equity inflows with USD 7.1 billion in April-September, 2021. Singapore has remained the top investing country in terms of FDI equity inflows followed by USA.

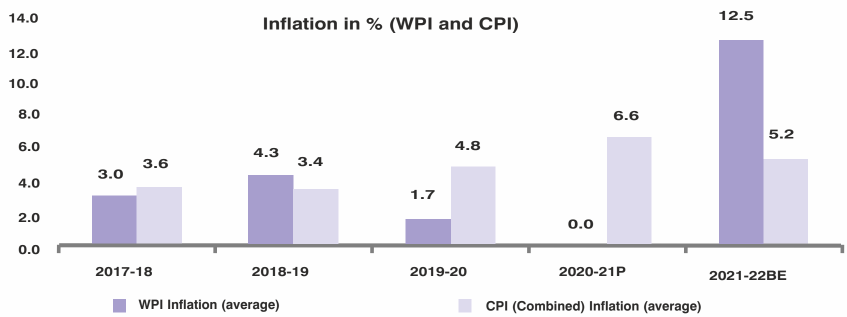
• India's external debt as at end-September 2021, estimated at USD 593.1 billion. External Commercial Borrowings (ECBs), the largest component of external debt stood at USD 218.8 billion at end- September 2021 and NRI deposits stood at USD 141.6 billion.

Monetary Management and Financial Intermediation

- Monetary Policy Committee (MPC) maintained status quo on the policy repo rate during April to December 2021 after a substantial cut of 115 basis points (bps) during February- May 2020. Repo rate which currently stands at 4 percent is lowest in the last decade.
- Credit growth which was 5.3 percent at beginning of April 2021, increased to 7.3 percent as on December 17, 2021 and picked momentum to reach 9.2 percent as on December 31, 2021.
- Gross Non-Performing advances (GNPA) ratio of Scheduled Commercial Banks (SCBs) decreased from 7.5 percent at end-September 2020 to 6.9 percent at end-September 2021 and Net Non-Preforming (NNPA) ratio of SCBs was 2.2 percent at end-September 2021.
- During April-November 2021, IPOs of 75 companies were listed garnering INR 89,066 crore indicating a rise of 504.5 percent over last year. Debt of INR 9,132 crore was raised through public issues during April-November 2021 against INR 3,871 of previous year.
- Sensex and Nifty 50, increased by 17.7 percent and 18.1 percent, respectively during April-December 2021and scaled highs of 61,766 and 18,477 respectively on October 18, 2021.

Price and Inflation

- Consumer Price Index (CPI) in India remained largely range bound until touching 4.9 percent in November 2021 and 5.6 percent in December 2021.
- The average retail inflation which was 4.8 percent in 2019-20, inched up to 6.2 percent in 2020-21. Average retail inflation in 2021-22 (April-December) has declined to 5.2 percent as against 6.6 percent during April-December 2020-21.
- Higher crude prices and an uptick in economic growth led to Whole Price Index (WPI) reaching a peak of 14.2 percent in November 2021 and 12.5 percent during April-December 2021 (as against 0.04 percent during April-December 2020-21).



Source: DPIIT, Ministry of Commerce and Industry

Sustainable Development and Climate Change

- Sustainable development requires balancing of rapid economic growth with conservation, ecological security and environmental sustainability that can be assessed by state of environment across land, water and air.
- Major steps have been taken to eliminate single-use plastic in the country. The manufacture, import, stocking, distribution, sale and use of identified single-use plastic is being prohibited from July 2022 onwards.
- The Namami Gange Mission aims to protect, conserve and rejuvenate the River Ganga. As of December 2021, a total of 363 projects worth INR 30,841.53 crores have been sanctioned under this mission.
- National Clean Air Programme (NCAP) in 2019 was launched in India to tackle the air pollution problem has been now implemented in 132 cities, of which 124 cities are non-conforming with the standards specified.
- Nation Solar Mission by NAPCC - Of the target set for 100 GW of solar power in seven years starting 2014-15, 49.35 GW has been installed as of December 31, 2021.

Agriculture & Food Management

- The agricultural sector, which is the largest employer of workforce, accounted for a sizeable 18.8 percent (2021-22) in Gross Value Added (GVA) of the country registering a growth of 3.6 percent in 2020-21 and 3.9 percent in 2021-22.
- As per the First Advance Estimates for 2021-22 (kharif only), total foodgrain production in the country is estimated at a record level of 150.50 million tonnes which is higher by 0.94 million tonnes than kharif foodgrain production of 2020-21.
- Government has taken various steps to utilize the surplus sugar production and enhance liquidity of mills by diverting excess production to manufacturing of ethanol.
- FDI flows in the Food Processing sector rose to USD 410.62 million during Apr-Sep 2021 as compared to USD 220.42 million for the previous year.

Industry and Infrastructure

- The Gross Value Addition at constant prices (GVA) in the industrial sector grew by compound annual growth rate (CAGR) of 4.53 percent between 2011-12 and 2019-20 with total GVA growing by a CAGR of 5.63 percent over the same period.
- In 2021-22, the manufacturing sector is expected to grow by 12.5 percent, mining and quarrying by 14.3 percent, construction by 10.7 percent and electricity, gas and water supply by 8.5 percent.
- Index of Eight Core Industries (ICI) (Coal, Crude Oil, Natural Gas, Refinery Products, Fertilizers, Steel, Cement and Electricity) comprise of 40.27 percent of the total weight in Index of Industrial Production (IIP) and recorded a growth rate of 13.7 percent during the period April-November 2021-22 as compared to (-)11 percent in the corresponding period last year.

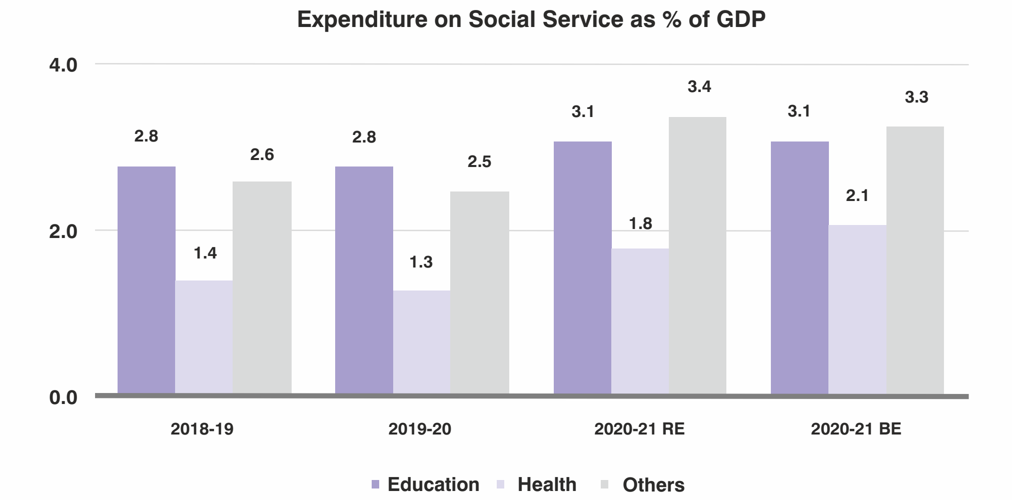
- In the year 2021-22, FDI inflow grew by 4 percent in the first six months to reach USD 42.86 billion as compared to USD 41.37 billion for the same period of last year.
- The share of MSME GVA in total GVA (current prices) for 2019-20 was 33.08 percent and the Government has revised the definition of MSMEs with effect from July 1, 2020 along with measures to boost the ease of doing business for MSMEs by reducing transaction time and costs.

Services Sector

- Services sector contributes over 50 percent to India's GDP and Covid pandemic has adversely impacted its share in India's GVA with a decline from 55 percent in 2019-20 to 53 percent in 2021-22.
- Overall, the Services sector grew by 10.8 percent YoY in first half (H1) 2021-22 and as per the first advance estimates, Gross Value Added (GVA) of services sector is estimated to grow by 8.2 percent in 2021-22.
- PMI Services recorded the strongest jump in over 10 years to 58.4 in October 2021 and moderated to 55.5 in December 2021.
- Service sector is the largest recipient of FDI inflows in India and during H1 2021-22, Services sector received USD 16.73 billion FDI equity inflows accounting for almost 54 percent of the total FDI inflows into India.
- During H1 2021-22, service exports increased by 21.6 percent against a fall of 7.8 percent during the same period a year ago and India's services imports exhibited growth of 20.7 percent during H1 2021-22 as against sharp decline of 8.4 percent in 2020-21.
- Start-ups in India have grown remarkably over the last six years, most of these belong to the services sector and more than 61,400 start-ups have been recognised in India as of January 10, 2022.Delhi has replaced Bangalore as the startup capital of India with over 5,000 registered startups against 4,514 registered in Bengaluru between April 2019 to December 2021.

Social Infrastructure and Employment

- Indian National COVID Vaccination Program, one of the world's largest vaccination programs, has not only supported production of COVID-vaccines domestically but ensured free vaccines to its population. Union Budget for 2021-22 allocated INR 35,000 crore for procurement of vaccines under COVID-19 Vaccination Program.
- In 2021-22 (BE), Centre and State governments earmarked an aggregate of INR 71.61 lac crore for spending on social service sector with increase of 9.8 percent over 2020-21, and funds to the sector increased to 8.6 percent of Gross Domestic Product (GDP) (8.3 percent in 2020-21).



Source: Reserve Bank of India, Budget Documents of Union and State Governments

- Gross enrolment ratio in higher education recorded at 27.1 percent in 2019-20, was slightly higher from 26.3 percent in 2018-19 and Government has undertaken multiple initiatives aimed at revolutionizing the higher education ecosystem.
- The payroll data of Employees Provident Fund Organisation (EPFO) has shown a net addition in EPF subscribers reached 13.95 lac in November 2021, depicting a growth of 109.21 percent from November 2020, and a growth of 25.65 percent from October 2021.
- India has made significant progress in improving its health outcomes over the last two decades by eliminating polio, guinea worm disease, yaws and maternal and neonatal tetanus. Total fertility rate (TFR) has come down from 2.2 in 2015-16 to 2 in 2019-21.

Tracking Development through Satellite Imagery & Cartography

- The use of information from satellites, drones, mobile phones and other sources has become a new source of data tools to understand geospatial data and use it accordingly.
- Night-time luminosity image between 2012 and 2021 has provided insight into the expansion of electric supply, the geographical distribution of population as growth around major cities and towns.

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BUDGET HIGHLIGHTS

Direct Tax

Tax rates

- No changes proposed in the income tax rates for corporate and non-corporates.
- In case of individuals, surcharge is now capped at 15% in case of long-term capital gains.
- In case of Association of Persons where all members are companies, rate of surcharge is kept at 15%.
- New manufacturing companies incorporated on or after 01 October 2019 continue to be eligible for concessional rate of tax at the rate of 15% with relaxed requirement of commencing manufacturing operations on or before 31 March 2024.
- Alternate minimum tax for co-operative societies proposed to be reduced from 18.5% to 15%.
- Lower rate of tax (15%) on dividends received from a specified foreign company not to apply from April 01, 2022.

Business deductions

- It is proposed that disallowance under section 14A can also be made even in case no exempt income is accrued, arisen, or received during a particular financial year.
- Expenditure incurred in connection with any offence which is prohibited under any law outside India shall now have to be disallowed. Similarly, expenditure on account of compounding of offence under any law in India or outside India shall be disallowed.
- Expenditure incurred to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, shall also not allowed as deduction.
- Section 40(a)(ii) is proposed to be amended to provide that no deduction in respect of any cess and surcharge shall be allowed while computing the business income.
- Section 43B of the Act is proposed to amend to provide that any conversion of interest liability into debenture or any other form of liability shall not be allowed as deduction at the time of such conversion.

Capital gains

- Bonus / Dividend stripping provisions are proposed to be applicable to securities and units of Infrastructure Investment Trust, Real Estate Investment Trust and Alternative Investment Funds.

Virtual Digital Assets

- Tax rate of 30% is proposed on income arising from transfer of virtual digital assets.
- No deduction shall be allowed in respect of any expenditure (except cost of acquisition) or allowance or set off of any loss.

- Receipt of virtual digital asset for nil / inadequate consideration shall be taxable in the hands of recipient.
- Withholding tax provisions are also proposed to be introduced on payment towards transfer of virtual digital assets if the said payment exceeds specified threshold.

Tax incentives to IFSC and start-ups

- It is proposed to amend to section 80-IAC of the Act by extending the end date of incorporation of eligible start up to March 31, 2023.
- Scope of tax incentives available to eligible unit in IFSC is expanded to cover certain types of income.

Mergers and acquisitions

- It is proposed to provide that any assessment or reassessment or any other proceedings made in the name of amalgamating / demerged entity during pendency of business re-organisation before the Court order is deemed to be made in the name of amalgamated / resulting company and accordingly, valid.
- It is also proposed to provide that pursuant to business reorganization, amalgamated / resulting company is required to file a modified return of income within prescribed time limit.
- Consequential amendments / clarifications are proposed in the definition of slump sale and to the provisions related to computation of short-term capital gains on account of adjustment of goodwill from the block of asset.

Covid-19 related measures

- Amount received by employee from his employer in connection to expenditure incurred for Covid-19 shall not be treated as perquisite subject to certain conditions.
- Exemption under section 56 is proposed to be provided in relation to amount received by any person from employer or any other person in connection with Covid-19 treatment, subject to certain conditions.

Updated Tax Return

- Section 139 of the Act is proposed to be amended to provide for filing of 'Updated Return' of income by any person within a period of 24 months from the end of the relevant assessment year. It is also proposed to provide that updated return cannot be filed in certain situations.
- Section 140B is proposed to insert in the Act to provide for payment of additional tax pursuant to filing of updated tax return. The meaning of additional tax is proposed to define in the section.

TDS provisions

- Section 194-IA of the Act is proposed to be amended to provide that tax is required to be deducted on the higher of actual consideration for transfer of immovable property or its stamp duty value.
- Section 194R is proposed to be inserted to provide for withholding of tax @ 10% in case of payment of any sum in the nature of benefit or perquisite taxable under section 28(iv), if value exceeds specified threshold.

- Section 206AB of the Act is proposed to amend by reducing the requirement of filing a return of income from two years to one year. Similar amendment is also made in case of TCS provisions.
- It is also proposed to provide that section 206AB shall not apply in case of payment referred in section 194-IA, section 194-IB and section 194M of the Act.

Trust Taxation

- In order to have more accountability on Trust and to disincentive misuse of provisions under the Act, it is proposed to incorporate changes including provisions related to cancellation of registration and with regards to taxation of Trust claiming exemption under section 11 and 12.
- 30% tax rate including heavy penalties are proposed to be introduced in certain cases of violation made by trusts or institutions.

Assessment, Reassessment and Litigation

- It is also proposed to modify the existing Faceless Assessment procedure for resolving the difficulties faced by the taxpayers and administration in its implementation so as to streamline the overall process.
- Scope of section 148 is expanded to cover the cases where information is available based on audit objection, information received under any tax treaty, information available with AO under faceless collection of information and information requires action in consequence of the order of any tribunal or court.
- Further, in addition to the above, it also proposed to expand scope of reassessment to include further information relating to any expenditure in respect of any transaction or event or any entry found in books of account which has escaped such assessment.

Other key amendments

- It is proposed to allow the carry forward and set off of losses to erstwhile public sector company even after change in the shareholding of more than fifty one percent if such change is on account of strategic disinvestment by the central or state government and the ultimate parent entity continues to hold more than fifty one percent.
- In order to reduce the practice of conversion of unaccounted money through loan or borrowing, in line with provision relating to share application money, it has been provided that the borrower is also required to prove the source of funds in the hands of lender in respect of money given by him
- It has been proposed to restrict the set off of any loss or unabsorbed depreciation against undisclosed income detected consequent to search & seizure or survey or requisition proceedings.
- Section 156A is proposed to insert to provide that assessing officer shall modify the demand payable in conformity with the order passed by the prescribed court or tribunal or authority and serve a revised notice of demand to the taxpayer.

Indirect Tax

Changes under GST law

- Provisions related to furnishing details of inward supplies for the purpose of claiming Input Tax Credit ("ITC") revamped
- Procedures prescribed under erstwhile sections 42, 43 and 43A relating to matching, reversal and reclaim of ITC removed
- 6 types of conditions prescribed under which auto-populated ITC would provide details in respect of which ITC cannot be availed by recipient
- Time limit to claim ITC proposed to be extended to 30 November of next financial year or filing of annual return whichever is earlier (presently it is due date of filing return for the month of September of next financial year or filing of annual return whichever is earlier)
- Section 41 amended to provide that reversal of ITC along with interest would apply if supplier has not paid tax. However, it would be allowed to be reclaimed once the supplier pays tax
- Provisions of Section 50 have been proposed to be amended retrospectively from 1 July 2017 to provide that interest @ 18% would apply only if ITC has been wrongly availed and utilized
- Transfer of balance in Electronic Cash Ledger would not be allowed for IGST and CGST to another location of the taxpayer (i.e, different GSTIN but under same PAN)
- Time limit to rectify error or omission in GSTR 1 and for issuance of Credit Note would now be till 30 November of next FY or filing of annual return, whichever is earlier
- Section 49(12) proposed to be introduced empowering Government, on recommendation of Council, to specify maximum proportion of output liability of CGST and IGST that can be discharged through electronic credit ledger by a registered person or class of registered person, as may be prescribed

Changes under Customs law

- About 350 exemptions have been withdrawn
- More than 40 exemptions relating to capital goods and project imports proposed to be phased out
- Graded import duty rate structure is being notified to operationalize Phased Manufacturing Plan for wearables, hearables and smart meters
- IGCR Rules is being revised to make entire process digital and transparent
- Procedures with regard to Advance Ruling are being rationalized
- Unauthorized publication of import or export data notified as an offence under Customs Act
- Definition of "Proper Officer" is being modified. Officers of DRI, Audit & Preventive formation are being specifically included in class of officers of Customs
- Clarification issued that SWS shall be Nil where aggregate duties of customs is zero

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2022

FROM FREEDOM TO
SELF RELIANCE

DIRECT TAXES

Tax Rates

Individuals

On the personal tax front, no change is proposed to the slab rates and the graded surcharge mechanism (ranging from 0 to 37%) continues. However, an amendment has been provided to surcharge rates which are now capped at 15% in case of long-term capital gains. This move is in line with the surcharge rates for listed securities and dividend income. This should effectively give a relief of more than 4% to certain class of individuals who were hitherto being taxed with a surcharge of 37%.

Association of Persons

To streamline taxability of Association of Persons in line with that of companies, the rate of surcharge has now been capped at 15% where all members of the AOP are companies. This would be relevant for consortiums being taxed as AOP and would be relevant for companies that bid for projects under a consortium model which may be taxed as an AOP.

Corporates

In order to attract new investments in India, the Government of India in 2019 introduced concessional corporate tax rate of 15% for new manufacturing companies subject to fulfilment of specified conditions and non-availability of few claims. One of the primary conditions of the provision is that the companies opting for this scheme has to commence manufacturing operations on or before 31 March 2023.

However, owing to Covid restrictions, not many companies are able to set up its business in India or able to commence its manufacturing operations by March 31, 2023. Therefore, for providing relief to such companies, the Bill proposes to extend the condition of commencement of manufacturing operation from March 31, 2023 to March 31, 2024.

Also, recently the Supreme Court in the case of CIT v. Sociedade De Fomento Industrial Pvt. Ltd. [SLP 6730/2021] in the context of section 10B has interpreted the term 'splitting up or reconstruction of a business already in existence' and listed down the test for identifying whether the entity has been formed by splitting or reconstruction of an existing business or not. Although the interpretation is for a separate section, however, such interpretation shall also be useful for evaluating the provisions of section 115BAB which also has a similar condition for availing concessional rate of corporate tax rate.

The Government has also introduced Profit Linked Incentive Schemes for promoting manufacturing and production activities in India. The proposed amendment and the incentive schemes implies the intention of the government to attract investments in India. These efforts are likely to provide a boost to the manufacturing sector of India.

Taxability of foreign dividends

Section 115BBD of the Act provides for lower tax rate of fifteen per cent on dividend income in the hands of the Indian Company provided the dividend is received from a foreign company wherein the Indian Company owns at least twenty-six per cent equity. The rationale behind introducing section 115BBD in 2011 was to promote the repatriation of foreign dividend in India as the funds remained invested abroad on account of taxation of foreign dividend at a full rate in the hands of residents in India.

However, with the abolition of Dividend Distribution Tax ('DDT') vide Finance Act 2021, the dividend income received from the domestic companies is no longer exempt in the hands of shareholders and is taxable at the applicable corporate tax rate in the hands of shareholders. In order to rationalise the taxability of dividend income received from domestic companies as well as from foreign companies, the Bill proposes to tax the foreign dividend income similar to dividend income received from the domestic companies i.e. at the corporate tax rate applicable to the companies.

This move of the Indian government shall impact the Indian companies currently receiving funds in India from its foreign subsidiaries. It is to be noted that India allows underlying tax credit for transactions with few countries only and does not allow underlying tax credit on the taxes paid on profits out of which dividend is to be paid by companies in other foreign countries. Accordingly, if the profits are already taxed in the foreign country and India again taxes dividend income out of such profits at the applicable corporate tax rate in India, this may lead to issues of double taxation.

It is to be noted that deduction of the foreign dividend income shall continue to be available under section 80M of the Act to the extent of such dividend is further distributed by the Indian company on or before the due date of filing income-tax return of that year.

The above provisions shall apply from April 01, 2022 and thus any dividends received by the Indian companies from its foreign subsidiaries shall continue to be taxed at lower rate of 15% up to March 31, 2022.

Co-operative societies

Surcharge rates have also been rationalized for co-operative societies and now a rate of 7% is proposed as surcharge for co-operative societies with income of less than INR 10 crore. Currently, co-operative societies are subject to AMT of 18.5% whereas companies are as subject to Minimum Alternative Tax of 15%. With the intention to give level playing field to co-operative societies, it has been proposed to reduce AMT applicable to co-operative societies to 15%.

These amendments will take effect from April 01, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years

Start-up

As per existing provisions, for claiming tax holiday u/s 80-IAC of the Act, an eligible start-up is to be incorporated on or after April 01, 2016, but before April 01, 2022.

The Finance Bill proposes to extend the abovementioned time-limit for incorporation of the new company up to March 31, 2023, considering difficulties faced in setting up of eligible start-up due to Covid-19 pandemic.

This amendment is proposed to take effect from April 01, 2022 and will accordingly, apply in relation to the AY 2022-23 and subsequent assessment years.

Business Deductions

Section 14A disallowance

Under section 14A of the Act, no deduction is allowed of expenditure incurred in relation to the exempt income that does not form part of the total income of the taxpayers. The issue related to allowability of expenses in case where no income has accrued or arisen or received during the year has been a subject matter of litigations.

The Bill proposes to insert an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in the Act, the provisions of section 14A shall apply and deemed to have always applied in a case where the exempt income has not accrued or arisen or has not been received during the previous year and the expenditure has been incurred during such previous year. Thus, deduction of expenses incurred for earning exempt income shall not be allowed even in case where there is no exempt income.

In past, there were several court rulings wherein it was ruled that expenses incurred in relation to earning any exempt income may be allowed if the taxpayer has not earned any exempt income during such year or the allowance of the expenses is to be restricted to the quantum of the exempt income accrued or arisen or received during the year. In fact, even the Supreme Court in the case of PCIT vs. Oil Industry Development Board [2019] 103 taxmann.com 326 (SC), has recently held that in absence of exempt income, disallowance u/s 14A of any amount is not permissible.

Contrary to the decision of the courts, the Bill proposes to clarify that it was not the intention of the legislature and no deduction of the expenses is to be allowed even if the taxpayers have not earned any exempt income during the year under consideration. The proposed amendment is introduced through an Explanation to the section, to be applicable from April 01, 2022, however, since the amendment is clarificatory in nature, the proposed amendment might be applied retrospectively and thus may have far-reaching implications on the pending litigations.

The Bill also proposes to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in the Act.

Certain Expenses relating to offence of law – not tax deductible

Section 37 of the Act restricts deduction of expenses not incurred wholly and exclusively for the purpose of business or profession. The section further states that expenses incurred for an offence prohibited under law shall not be considered to be incurred for the wholly and exclusively for the purpose of business or profession and hence shall be disallowed. There is lot of litigation as to whether only offence under the Indian Income-tax law gets covered under the above restriction and hence expenses incurred for offences related to other laws or laws of foreign country should be allowable as deduction u/s 37 of the Act.

The Bill proposes to clarify that expenses incurred for offence under any law in India or outside India shall not be allowed as deduction and the disallowance is not restricted only to the offences incurred in India with respect to the Act. Further, the Bill proposes that even any expenditure incurred for compounding such offenses shall not be allowed as deduction under section 37 of the Act i.e. expenditure such as government fees for compounding, professional fees for hiring lawyers/professionals for compounding may also be not allowed under section 37 of the Act.

Additionally, the Bill further proposes that any benefit or perquisites provided by any person shall also be not allowed as deduction if acceptance of such benefit or perquisites is in violation of any law or provisions. One of the intentions of the government is to curb the practice of providing various benefits by pharmaceutical companies to medical professionals in the form of travel facilities, gifts, hospitality etc. which otherwise is a violation under the medical regulations. There are several rulings on this issue and the courts have provided mix ruling till date. The Himachal Pradesh Court in the case of Confederation of Indian Pharmaceutical Industry Vs Central Board of Direct Taxes [(2013) 335 ITR 388 (HP)] held if any practice has been prohibited by the Medical Council, the taxpayers cannot claim deduction of such expenses. On the other hand, there are various other judgements as well wherein such expenses are allowable. In order to reduce the ambiguity, the Bill proposes to provide a clarification by way of Explanation that providing benefits or perquisites which are in violation with other laws cannot be considered as allowable deduction u/s 37 of the Act.

While the Bill proposes to introduce the above amendment from April 01, 2022, considering the amendment has been brought by way of Explanation, the tax authorities may take a position that amendment is retrospective in nature.

Cess and Surcharge is in nature of income-tax – Not a Tax-Deductible Expense

The existing provisions of the section 40 of the Act provides that the certain nature of expense prescribed therein are not tax deductible. The sub-clause (ii) of section 40(a) provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be entitled for deduction while computing income under the head 'Profits or gains of business or profession'. The term 'tax' has been defined in section 2(43) of the Act which means income-tax chargeable under the provisions of this Act. The terms 'Cess' and 'Surcharge' are not defined and under provisions of the Act and in absence its specific coverage in definition of section 2(43) of the Act as well as the section 40(a)(ii) discussed above, the taxpayers have managed to take position that such 'cess' or surcharge is deductible as expenditure under provisions of the Act. Said view was also supported by the Judgment of Bombay High Court in case of Sesa Goa Limited vs JCIT in ITA No 17 & 18 of 2013 and Judgement of Rajasthan High Court in case of Chambal Fertilizers & Chemicals Ltd vs JCIT in ITA No 52 of 2018 dated July 31, 2018.

In both the above decisions of the High Courts, it has held that Section 40(a)(ii) covers only rate or tax and does not cover 'cess' and therefore education cess paid on income-tax is not hit by provisions of Section 40(a)(ii) and accordingly deductible. Both the High Courts have placed reliance on legislative history wherein the term 'cess' was included in the Income Tax Bill, 1961 but was later excluded upon recommendation of the Selection Committee. It also relied upon a CBDT Circular F. No.91/58/66-ITJ(19), dated 18th May, 1967 wherein it also referred to the said legislative history for not disallowing cess. However, recently, ITAT Kolkata passed the judgement in case of M/s Kanoria Chemicals and Industries Ltd in ITA No. 2184 of 2018 and it has held that the 'Cess' is not allowable as deduction after dealing with above two judgements of High Courts. The ITAT observed in its order that certain decisions of apex court were not brought to the notice of aforesaid High Court in above cases and therefore considering the interpretation of apex court, the ITAT Kolkata denied the deduction of 'Cess' and 'Surcharge.

The Memorandum to Finance Bill 2022 considers the above judgement of Bombay High Court in case Sesa Goa Ltd and the judgement of the Rajasthan High Court in case of Chambal Fertilizers & Chemical Ltd (supra) to be per incuriam i.e. act of court in ignorance of previous decision of its own or superior court whose decision it must follow. i.e. ignorance of decision of apex court in case of K Srinivasan (supra). In fact, Memorandum to Finance Bill 2022 has gone in detail with respect to CBDT Circular dated May 18, 1967 and stated that the High Courts have not interpreted the said CBDT Circular in its true sense. The Memorandum to Finance Bill 2022 clarifies that the said circular was in reference to 'Cess' imposed State Government which is actually of the nature 'Cess' and not of the nature of 'Additional Surcharge' being terms as 'Cess' in relevant Finance Act.

Apart from the above, it would be important to note that the section 40 starts prohibition for deduction for expenses which are otherwise allowable u/s 30 to 38 of the Act. Thus, Cess must be first allowable under any of said sections where there is only section 37 which can allow such deduction when expenditure is incurred wholly and exclusively for the purpose of business or profession. Cess and surcharge are levy in nature of income-tax which cannot be considered as 'expenditure' and much less the 'expenditure incurred for the purpose of business'. Rather, it is actually an application of income once it is earned and therefore clearly not deductible u/s. 37 of the Act. 'Education cess' is actually an obligation on account of profits of the business and it is not an expenditure incurred wholly and exclusively to earn profits of the business. In view thereof, the said item is per se not tax deductible and therefore even the question of invoking provisions of Section 40(a)(ii) does not arise.

Considering the above interpretation, the Finance Bill 2022 accordingly proposes to insert Explanation 3 to section 40(a)(ii) of the Act with retrospective effect from AY 2005-06 so as to clarify that the term 'tax' shall include and shall be deemed to have always included any surcharge or cess by whatever name called on such tax. Therefore, such Cess and surcharge shall not be allowed as business deduction.

Deduction on payment basis

Section 43B of the Act allows deduction on actual payment of interest on loan and borrowings from specified financial institution or NBFCs or scheduled Banks or Co-operative banks and the section further clarifies that conversion of interest into a loan

or borrowing shall not be considered as actual payment for the purpose of claiming deduction u/s 43B of Act.

However, during the years it was noted that many taxpayers used to take the position that conversion of outstanding interest into debentures or other instruments is not covered by above explanation and thus such conversion leads to extinguishment of interest liability and hence to be treated as actual payment for the purpose of claiming deduction u/s 43B of the Act. The Delhi High Court in the case of ITO vs. M.M. Aqua Technologies Ltd. [2005] 143 Taxman 43 (Delhi) (Mag.), held that conversion of outstanding interest into debentures was a real, effective and actual payment as required under section 43B of the Act. However, later the Hon'ble Supreme Court in the same case has reversed the ruling of Delhi High Court and opined that such conversion does not satisfy the condition of 'actual payment' u/s 43B of the Act.

In order to remove the litigation, the Bill proposes to provide a clarification that even conversion of interest payable into debenture or any other instrument as a result of which there is a constructive discharge of interest liability shall not be considered as actual payment and no deduction shall be allowed u/s 43B of the Act. The amendment shall take effect from April 01, 2022.

Contribution to specified research association, university, etc.

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 introduced sub-section (1A) to section 35 with effect from April 01, 2021 mandating specified research association, university, college or other institution receiving donations from various companies to file the statement of donations basis which the donors shall be eligible to claim deductions u/s 35 of the Act. However, the language of the legislature was inadvertently drafted in a manner which resulted into the interpretation that donee being specified research association, university, college or other institutions shall not be eligible for deduction u/s 35 of the Act.

The Bill proposes to modify the language of the provision in a manner that donors shall not be eligible to claim deduction unless such specified research association, university, college or other institution files statement of donations. The amendment shall be applicable retrospectively from April 01, 2021.

Capital Gain

Bonus Stripping / Dividend Stripping provisions now applicable to shares and securities

The existing provisions of section 94(8) prevents claim of loss by the taxpayer arising from sale and purchase of units of mutual funds which have taken place during specified period of time during which such taxpayer has also received additional units of such mutual funds by way of bonus. Bonus units declared by Mutual Fund houses can be used for tax avoidance wherein a person acquires units of mutual funds just before three months when the bonus units are declared and after such bonus units are granted, the price of units ordinarily falls to adjust for increased units. In such case, if a person immediately sells some of those units and applying FIFO method, can claim loss on sale of those units. Under existing bonus stripping provisions contained in section 94(8) of the Act, the loss so generated is not allowed to be claimed in the computation of income if the units are sold within 9 months.

However, currently, such provision has not been extended to securities such as stocks and shares when taxpayer receives bonus shares during specified period of time. The Finance Bill 2022 propose to amend the provisions of section 94(8) of the Act so as to cover securities within ambit of provisions of section 94(8) of the Act to avoid claim of loss by the taxpayers in event of the bonus stripping of shares or securities.

Further, since the definition of unit provided in provisions of the Act has not been amended to include units of Infrastructure Investments Trust (InvIT), Real Estate Investment Trust (REIT) or Alternative Investment Funds (AIFs) post introduction of legislation in respect of such units, the definition of 'unit' as contained in section 94 of the Act has been proposed to be amended by Finance Bill 2022 to even include such units of InvIT, REIT and AIFs to avoid tax avoidance by dividend stripping and bonus stripping.

The aforesaid amendment is applicable with effect from AY 2023-24 onwards.

Virtual Digital Assets

Taxation of cryptocurrencies and other related virtual digital assets were in limelight since last many years owing to the extra-ordinary high margins at which such currencies are traded across the globe. Accordingly, as a measure to regulate cryptocurrencies and other virtual digital assets, the Finance Bill 2022 proposes to tax the income earned through transfer of such assets.

The Bill proposes to define Virtual digital assets to include any information or code or number or token generated through cryptographic means providing a digital representation of the value exchanged. It further includes non-fungible tokens such as digital artwork or real estates. However, currencies (either Indian or foreign) have been specifically excluded from the definition of virtual digital assets.

A new section 115BBH has been proposed to tax income arising from transfer of such digital assets at the highest rate of 30% wherein for the purpose of computing income from transfer of such assets, deduction shall be allowed only for the cost of acquisition of such assets and no other expenditure shall be allowed as deduction. Further, loss arising from transfer of virtual digital assets shall not be eligible for set off against any other income and shall also not be allowed to be carried forward to succeeding years. In addition to above, even gifting of virtual digital asset at a price less than its fair value has been brought to tax in the hands of the recipient under

section 56(2)(x) by expanding the meaning of the term 'property' to include virtual digital assets.

The above amendment shall take effect from April 01, 2022.

Further, in order to capture the transaction details, the Bill further proposes to introduce a new section 194S to withhold tax at the rate of one per cent on payment to resident as a consideration for transfer of virtual digital assets at the time of payment or credit, whichever is earlier. If the consideration is in kind or partly in cash or partly in kind, the buyer has to first ensure that tax has been paid in respect of such consideration. Further, the tax shall not be deductible if:

- Consideration is payable by specified person and the aggregate value of the consideration during the year does not exceed INR 50,000, or
- Consideration is payable by other than specified person and the aggregate value of the consideration during the year does not exceed INR 10,000

Specified Person has been defined to include individual or HUF not having any income from business or profession or Individual or HUF having sales, gross receipt or turnover not exceeding INR one crore in case of business and INR fifty lakhs in case of profession. No TAN is required to be taken by such payer for the purpose of deduction of tax under such section. Further the higher rates of TDS prescribed u/s 206AB shall not be applicable to such payer. The above TDS provision overrides all the other TDS provisions i.e. if TDS is deducted u/s 194S, no deduction shall be required under any other provisions of the Act. This TDS provision shall override the TDS provision relating to e-commerce operators in respect of payment of such income. The TDS provisions shall take effect from July 01, 2022.

It is to be noted that the Bill has not shed any light on which head of income would such income from Virtual digital assets be classified. Although, the taxability of such income has been proposed to be clubbed under income chargeable at special rate, clarification is awaited so as to understand under which head of income whether such income should be taxable.

International Financial Services Center (IFSC)

The Government, with the object of making IFSCs (currently GIFT City in Gandhinagar) a global hub of financial services, have provided several tax concessions in past to units located in IFSCs. In order to further incentivise operations from IFSC, it has been proposed to provide the following additional incentives:

Ship leasing in IFSC

Similar to exemption provided in respect of aircraft leasing vide Finance Act, 2021, the Finance Bill, 2022 proposes to exempt royalty or interest income from leasing of ship if such royalty or interest is paid by IFSC units which are eligible for deduction under section 80LA.

Further, deduction available to units of IFSC under Section 80LA in respect of gain on transfer of an aircraft is extended to a ship as well. Also, the term "ship" has been specifically defined.

This amendment will take effect from 1st April, 2023 and will, accordingly, apply in relation to the assessment year 2023-2024 and subsequent assessment years.

Extension of tax benefits for promotion of Offshore Banking Units (OBUs)

Vide Finance Act, 2021, income of a non-resident on transfer of non-deliverable forward contracts entered into with OBUs located in IFSC was exempted from tax. Similar exemption is now proposed for instruments in other form of derivative instruments viz offshore derivative instruments and over-the-counter derivatives.

Exemption of offshore income from portfolio managed by portfolio manager in an account maintained with OBUs in IFSC

Income of a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an OBU, in any IFSC as referred to in sub-section (1A) of section 80LA, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

This amendment will take effect from 1st April, 2023 and will, accordingly, apply in relation to the assessment year 2023-2024 and subsequent assessment years.

Exemption from angel tax

As per Section 56(2)(viib), share money received in excess of fair market value of shares is deemed as income in hands of a private limited company. Currently, the said deeming provisions are not applicable in case the shares are subscribed by SEBI regulated Category I and Category II AIFs. However, no similar benefit is available to AIFs regulated in IFSC. The said exemption is now proposed to be extended to IFSCAA regulated Category I and Category II AIFs as well.

Over the past few years, we have seen great impetus given by the Government to IFSC by opening up the same for variety of activities / sectors and providing tax incentives.

Mergers and Acquisitions

Compliances during business reorganization

Generally, business reorganization is a long-drawn process and is not time-bound. The reorganization often has an "Appointed Date" which has retrospective effect with a date prior to date of order of the designated authority (which includes High Court or Tribunal or National Company Law Tribunal) approving such reorganization.

While the application for such business reorganization is pending before the designated authority, the income tax proceedings and assessments are carried on and often completed on the predecessor entities. However, various courts have held such proceedings and consequent assessments illegal as the predecessor assessee ceases to exist in the midst of the said tax proceedings.

The Finance Act, 2022 has proposed that tax proceedings during pendency of business reorganization (i.e. from date of filing of application for business reorganization with the designated authority to date on which order of the authority is received by Commissioner of Income-tax) shall be deemed to have made on the successor entity.

The term "business reorganisation" is proposed to mean the reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons.

Further, by inserting Section 170A, the Finance Act, 2022 proposes to enable the successor entity to file modified return of income to give retrospective impact of business reconstruction. Such revised return would need to filed within 6 months from date of such order. Currently, from a practical standpoint, the successor entity generally intimates about pendency of application for reorganisation with the tax officer post filing return of income with request to consider impact of subsequent court order in the said return of income. With the said insertion of Section 170A, such revision/updation of Return of Income is codified in the Act in order to bring consistency.

The amendment will take effect from 1st April 2022.

“Slump sale” – consequential amendment

Slump sale is defined in section 2(42C) of the Act, as the transfer of one or more undertaking for a lump sum consideration without values being assigned to individual assets and liabilities. Vide the Finance Act, 2021, the definition of “slump sale” was amended to expand its scope to cover all forms of transfer under slump sale instead of only 'sale' transaction. However, the section still provided reference to the word “sales” instead of “transfer”. Therefore, the Bill proposes to carry out consequential amendment by amending the provision of section 2(42C) of the Act to replace the word “sales” with the word “transfer”.

Reduction of Goodwill from block of asset deemed to be transfer – consequential amendment

Finance Act 2021 amended the relevant provisions under the Act so as to specifically exclude Goodwill of a business or profession from the list of qualifying assets for allowing tax depreciation. Accordingly, no depreciation on Goodwill is allowable with effect from AY 2021-22 onwards.

Further, as per amendment to Section 43(6)(c)(ii) vide Finance Act, 2021, the written down value (WDV) of the block of asset was required to be reduced by the actual cost of goodwill (as adjusted by amount of depreciation claimed in past). The same provided clarity on computation of WDV where the block of assets includes goodwill.

Also, the Finance Act, 2021 amended section 50 of the Act (dealing with capital gain arising from depreciable assets) to provide that where goodwill forms part of block of assets for AY 2020-21 and depreciation has been claimed on such Goodwill, CBDT would specify the manner of computing the value of such block of assets and capital gain arising under section 50 of the Act.

As per Notification G.S.R. 472(E) [NO. 77/2021/F. NO. 370142/23/2021-TPL] dated July 07, 2021, where said the reduction of actual cost of goodwill as per Section 43(6)(c)(ii), for the previous year relevant to the assessment year commencing on the 1st day of April, 2021, exceeds the aggregate of the following amounts, namely:

- the written down value of the block of assets at the beginning of the previous year relevant to the assessment year commencing on the 1st day of April, 2021 without giving effect to reduction under sub-item (B) section 4343(6)(c)(ii); and
- the actual cost of any asset falling within the block of assets "intangible", other than goodwill, acquired during the previous year relevant to the assessment year commencing on the 1st day of April, 2021,

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

Finance Bill, 2022 proposes to clarify that for the purposes of section 50 of the Act, the said reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with sub item (B) of Section 43(6)(c)(ii), shall be deemed to be transfer. This amendment seems to have been brought in in order to avoid any litigation in future in absence of any specific reference to such reduction being considered as a transfer whereby taxpayers could have potentially argued that there could not be any capital gains on mere reduction of actual cost.

Covid-19 related measures

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

Vide press statement dated 25 June 2021, various exemption was announced for amount received for medical treatment or on account of death due to COVID 19. The said exemption is proposed to be enacted vide Finance Bill, 2022 by way of amendment in Section 17 and Section 56 of the Act. The summary of the said exemption is as under:

Payee	Payer	Quantum of Exemption
Taxpayer	Employer of the taxpayer	To the extent expenditure actually incurred by the taxpayer on his medical treatment or treatment of any family member for any illness relating to COVID-19 subject to such conditions as may be prescribed by the Central Government
	Any person	
Family members of a deceased person	Employer of the deceased person	Amount actually received
	Any person	INR 10 lacs received within 12 months from date of death of the deceased person

This amendment will take effect retrospectively from April 01, 2020 and shall accordingly, apply in relation to the assessment year 2020-2021 and subsequent assessment years.

Updated Tax Return

Under the existing provisions, a Taxpayer can file a revised or belated return till December 31 of the assessment year. Considering that the original return filing date is July 31 (for individuals), October 31 (for companies and tax audit filers) and November 30 (for Transfer pricing applicable entities). Thus, taxpayers currently only get 1 to 5 months (depending on the original due date) to revise or file a belated return.

The CBDT has acknowledged the fact that the additional time currently provided is less considering the extensive information sourced from third parties related to the income earned by a Taxpayer and hence vide this Finance Bill, it is proposed to introduce a section which would provide the Taxpayers additional time of 2 years to file an updated return or make correction in the original return. The Bill has laid down the conditions attached to the provisions, ineligible taxpayers tax computation mechanism. These provisions can be summarized as under:

Conditions attached

- Return of a loss, refund or increase in refund cannot be filed
- If an original return is filed, then the updated return should not result in decreasing the total tax liability
- Updated return can only be filed once i.e., it cannot be updated again

Computation mechanism & Additional Tax

- Regular Taxes, interest under section 234A, 234B & 234C and fees for late filing would be applicable. The new proposed provisions have laid down detailed computational mechanism for deriving the amount of tax & interest.
- Over and above the normal tax and interest liability, the Taxpayer shall have to pay additional tax of 25% of tax plus interest (if return filed within 1 year) & 50% of tax plus interest (if return filed after 1 year but before the end of second year). Proof of payment of taxes is also to be furnished in the absence of which, the updated return would be treated as Defective return.

Taxpayers not eligible to file updated return

- Taxpayers in whose case search has been initiated or books of account, other documents or any assets are requisitioned in the case of the taxpayer, or a survey has been conducted (excluding TDS survey cases) are not eligible to file an updated return. Additionally, where a notice has been issued to the Taxpayer to the effect that any money, bullion, jewellery or valuable article or thing, books of account or documents/ information seized or requisitioned in the case of any other person belongs to the taxpayer are also not eligible. It is proposed that such ineligible taxpayers will not be allowed to file updated return in the year of search/survey as well as 2 years prior to that.
- Taxpayers in whose case income tax proceedings viz. assessment or reassessment or recomputation or revision of income are pending or have been completed cannot file the updated return for that year.
- In cases where Assessing officer has received information related to the Taxpayer under certain specified Acts (such as Benami, Black Money, Anti-money laundering etc) or from other countries as per the Exchange of information agreement/Tax treaty and the same has been communicated to the Taxpayer, then post communication of such information, an updated return cannot be filed
- In case any prosecution proceedings are initiated under the provisions of the Act, then

after such initiation, updated return cannot be filed for that relevant year.

Lastly, regarding the time limit for assessment proceedings, proposed amendments to Section 153 provides that the assessment proceedings u/s 143 or 144 should be completed within 9 months from the end of the financial year in which the updated return is filed.

These amendments will take effect from April 1, 2022.

TDS Provisions

TDS on transfer of immoveable property

Presently section 194-IA provides that tax is required to be deducted at source @ 1% on the amount of consideration of payable on transfer of immovable property being land or building, when such consideration exceeds Rs. 50 lacs. However, in case where the value adopted by stamp duty authority for registration of such transfer exceeds the actual consideration value, as per section 43CA/50C such value adopted by stamp duty authority shall be deemed to be consideration received and accordingly taxable under the Act.

To align the TDS provision in accordance with the above, the Bill has proposed to amend section 194-IA to provide that TDS is required to be deducted by the payer at the rate of 1% on the amount of actual consideration or the value adopted by stamp duty authority for the purpose of payment of stamp duty whichever is higher where such amount exceeds by Rs. 50 lacs.

The above amendment will be effective from April 1, 2022.

TDS on perquisites in respect of business or profession

Section 28(iv) provides that the value of any benefit or perquisite arising from a business or profession shall be taxed under the head profit and gains of business and profession.

To track the proper motioning of receipt of such income and its taxation in the hands of resident recipient, the Bill proposed to insert new section 194R to provide that tax is required to be deducted by the payer of such income @ 10% if the aggregate of benefits or perquisites provided / likely to be provided during the year exceeds Rs.20,000. In case of non-resident recipient of such income, the existing provision of section 195 already covers provide the requirement to deduct tax at source in case such amount is taxable in the hands of non-resident Further the higher withholding tax rate as per section 206AA/206AB shall apply in situations provided therein.

It is to be noted that the language of provision of section 28(iv) is very wide and different courts have given contrary interpretation on its applicability in depending upon the nature of transactions. Hence, due care is required to be taken while making payment of such income as non-deduction of tax at source on such income will not entitle to claim full deduction of such expenditure in the hands of payer of such income.

Reducing the scope of provisions relating to higher TDS/TCS

Section 206AB and 206CCA were introduced in the Finance Act 2021 whereby higher rates of TDS /TCS is applicable if

- The deductee or collectee, has not filed tax return for two previous years immediately prior to the previous year in which tax is required to be deducted / collected, and
- Tax deducted or collected in case of such taxpayers is INR 50,000 or more in each of such two previous years.

The Finance Bill 2022 proposes to amend the said sections whereby the higher rates of TDS / TCS would now be attracted only if the deductee or a collectee, has not filed its tax return for the previous year immediately prior to the previous year in which tax is required to be deducted / collected and Tax deducted or collected in case of such taxpayers is INR 50,000 or more in the said preceding year. Further there was also ambiguity as to which previous year's returns are to considered. The amendment now is clear and as per the same, the latest previous year in respect of which due date of filing of tax return has expired is required to be considered.

Further, currently the above provisions are not applicable in respect of TDS u/s.192, 192A, 194B, 194LBC & 194N of the Act. The amendment now also provides that in addition

to these sections, the provision of section 206AB is not applicable in respect of TDS u/s.194-IA (relating to TD on immovable property), 194-IB (relating to TDS on rent payable to Individual) and 194M (relating to TDS on by individual on work contract, Fees for technical service etc. in non-business cases).

The above provisions will be applicable w.e.f. April 1, 2022.

Rationalization of refund of TDS borne by payer on payments to non-resident

Under the existing provisions of Section 248 of the Act, Taxpayer who has deducted tax on any income paid to a non-resident (other than interest) under section 195 of the Act may appeal to the Commissioner (Appeals) for refund of TDS, which is borne by the Taxpayer in case where, according to him no tax was deductible on such income. As per the existing mechanism, to obtain a refund of the tax deducted and paid in such cases a taxpayer had no resort to approach the Assessing Officer with such request and he is required to mandatorily file an appeal before the Commissioner (Appeals).

To rationalize this process, it is proposed to insert section 239A to enable such Taxpayers, who have deducted such taxes and borne the tax liability, when no tax deduction was required, may file an application for refund of such tax deducted before the Assessing Officer. The order passed under this section can is also appealable before the Commissioner (Appeals). An additional requirement provided now is that the arrangement between the payer and the payee regarding payer bearing the tax cost has to be in writing.

Consequently, the provisions of section 248 of the Act are proposed to not be applicable in cases where the date of tax payment, to the credit of Central Government is on or after April 1, 2022.

Currently, apart from Section 248, the CBDT had also issued Circular no. 7 of 2007 which also provides for the procedure to obtain refund of TDS paid under Section 195 in certain specified cases. There existed a view that based on this circular, a Taxpayer may approach the Assessing officer for refund of TDS even for cases covered under Section 248. However, the proposed insertion of Section 239A provides clarity that recourse to Circular 7 of 2007 is not available in all cases referred to in Section 248.

These amendments will take effect from April 1, 2022

Interest on TDS/TCS is payable as per order

Section 201(1A) and 206C(7) refers to the levy of interest on defaults in deduction / collection or payment of TDS and TCS. The manner of calculation of interest has been a subject matter of disputes before at various judiciary forum. The Bill has therefore proposed to incorporate a proviso in both the sections whereby it has been provided that the interest calculated by the AO in his order pursuant to the default in TDS or TCS shall be paid by the defaulter.

We believe that the above amendment will not resolve the present litigation. In fact, the above amendment mandates the taxpayer to pay interest as computed as per the order. We believe that such amendment is not in accordance with the fundamental right of the Assessee to compute interest in accordance with such provisions and therefore may be subject matter of litigation for its constitutional validity.

Assessment, Reassessment and Litigation

Faceless Assessment Scheme - certain changes

Indian Government has embarked on a journey of adoption of technology and digitization in governance processes and citizen services over the last few years. The Faceless administration lend transparency to the process of assessments and appeals under the income tax. The move sought to eliminate the physical interface between an Assessee and the tax officer to the extent technologically feasible. The faceless assessment scheme was launched in 2020 with the objective of promoting an efficient and effective tax administration, minimizing physical interface, increasing accountability and introduction of team-based assessments. The scheme was later modified in 2021. Vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, section 144B was inserted in the statute to provide the procedure for faceless assessment with effect from 01.04.2021 and therefore, the Faceless Assessment Scheme 2021 (2019) ceases to operate from the said date.

In recent past, it is however witnessed that both the Tax Department and the Taxpayer find certain challenges and difficulties in operating the scheme and especially the Tax administrator did not follow the mandate of the scheme laid down in 144B in true spirit. Therefore, the courts had to intervene in such matters to remand the matter back to the AO or in certain cases the order are quashed as invalid. Therefore, to overcome these difficulties and to streamline the whole process of faceless assessment, section 144B has suitably amended to incorporate the following key changes.

- The provision of section 144B shall also be applicable to the reassessment proceeding initiated u/s 147.
- As per existing scheme, taxpayer is required to respond to any notice within 15 days. In contrast, now the faceless scheme u/s 144B has been suitably modified to provide that the taxpayer is now required to respond to the notice within the stipulated time frame provided by the notice or within extended time.
- For ease of effective administration, the Regional Faceless Assessment Unit shall cease to exist. The NaFAC shall assign the case directly to Assessment Unit.

- Assessment Unit, Verification Unit, Technical Unit and Review Units needs to have communication between them only though NaFAC

- The Assessment Unit shall be required to prepare an “income or loss determination proposal” before passing the draft order as per the direction of NaFAC.

- Draft Assessment order can be prepared only after getting direction from NaFAC

- Transfer Pricing Assessment to be faceless - detailed guidelines can be issued on or before March 31, 2024. Technical Unit shall carry out determination of Arm's Length Price

- The designated Income Tax Authorities under respective units (AU/VU/TU/RU) have been assigned to function the role of an AO

- In case where the eligible Assessee objects to any variation proposed in the draft order u/s 144C, then he is required to file his objection to the DRP and that with NaFAC (Earlier he was required to file with concerned AU. It is practical impossible to identify which AU is assigned with the case and thus this amendment).

- The PCCIT/PDGIT in charge of NaFAC shall have jurisdiction/ power to make reference for Special Audit u/s 142(2A) of the Act in appropriate cases

- The Assessee can authenticate digital records by either affixing DSC or logging into his registered account or through electronic verification code.

- It is settled position of law that the Assessee has vested right of personal hearing in the faceless assessment and therefore, the provision of 144B has been suitably amended to clarify that where the request for personal hearing has been received from the Assessee, the concerned income-tax authority of the relevant unit shall be required to afford an opportunity of such hearing, through NaFAC.

- Currently Faceless assessment order as per section 144B of the Act shall not be non-est if the assessment is not made in accordance with the procedure laid down in this provision. The Bill proposed to remove such provision. It has been provided that there is unnecessary litigation on the validity of the assessment order in view of procedural lapse and hence such amendment. However, if there is a substantial lapse on the part of Revenue in faceless assessment, it is still possible to argue that such faceless assessment is not valid if due process of law is not followed.

Re-assessment Procedures – Widened scope

The Finance Act, 2021 w.e.f April 1, 2021 revamped the provisions for reopening the assessment so as to provide for more rational, objective and Taxpayer-friendly approach for conducting the reassessment proceedings. The new scheme required mandatory compliance of various procedures which included conducting of pre-inquiry and granting opportunity to the Assessee before passing the order concluding whether or not it is fit case for reopening the assessment.

The Act also requires prior approval of Pr. CIT or Pr. DIT or Pr. CCIT or Pr. DGIT or CCIT ("prescribed authority") before issuance of notice for reopening the assessment. Moreover, the case could be reopened by the AO only when the AO had any information which has been flagged in the case of the Taxpayer for such assessment year in accordance with the risk management strategy of CBDT or any information, being final objection raised by C&AG which indicates that assessment has not been made in accordance with the provisions of the Act. Apart from this, no other material can be considered as information to re-open the case.

The scheme provided for strict adherence to the procedures and restricts the power of the AO to reopen the assessment on the basis of specific information only. It also provided for reopening the case beyond period of three years only for the year where income represented in form of asset valuing Rs. 50 lakhs or more has escaped assessment.

The Bill now proposes to widen the scope of the reassessment proceedings by making following amendments in the new re-assessment scheme:

- Approval from prescribed authority before issuance of notice for reopening the assessment is not required in case prior approval is already obtained at the time of passing order u/s 148A for considering it to be the fit case for reopening the assessment.
- The AO can re-open the case for assessment if he has following information which suggest that income chargeable to tax has escaped assessment:
  - All the information in case of the Assessee for the relevant assessment year in accordance with risk management strategy formulated by Board
  - Audit objection to the effect that assessment has not been made in accordance with provisions of the Act
  - Information received under an agreement with foreign countries or specified territories or specified associations
  - Any information made available to AO under a scheme for faceless collection of information
  - Any information which requires action consequent to the order of a Tribunal or Court
- The Assessing Officer can now re-open the case beyond the period of 3 years but up to 10 years if he is in possession of information or documents or evidence which reveals that income represented in form of an asset or expenditure relating to any transaction, event or occasion or entry in the books of account aggregating to Rs.50 lakhs or more has escaped assessment. As against the current condition of income being represented in the form of asset, by including expenditure on any transaction and entry in the books, the Bill has significantly expanded the ambit of reopening the assessment beyond the period of 3 years. It would be interesting to see if this amendment would have an impact

on the cases where High Courts have struck down notices in view of non-compliance with requirement of issuance of notice under the new provisions of section 148/148A applicable with effect from April 1, 2021.

- It is also to be noted that currently the requirement for issuance of notice beyond period of 3 assessment years requires existing of escapement of income for a value of Rs.50 lacs or more for that year. However, the word "that year" has been removed and therefore it appears that the intention is to compute such value on aggregate basis of years for which notices is required to be issued. Accordingly, there will be a litigation on such basis and we need to again wait for the Court to get final conclusion on such aspect.

- Further as per the existing provisions, in certain cases such as search and survey, it shall be deemed that the Assessing Officer has information for 3 assessment years immediately preceding the assessment year relevant to the financial year in which search or survey has taken place. Hence, the Assessing Officer had all the right to reopen the assessment for such 3 assessment years, without bringing on record the information he has in his possession. The Bill now proposes to extend this deeming fiction to all the years relevant to the search or survey and therefore it is inferred that in case of search or survey, the Assessing Officer would have right to reopen matter pertaining to any assessment year (within the period allowed

u/s 149) without actually bringing on record the information in his possession. Further this deeming fiction is also extended to a survey conducted in pursuance to an event or function. However, the Bill also inserted clause(1A) in section 249 to provide that in case of issuance of notice u/s.148 in all cases (including search cases) there should be actual escapement of income as referred under section 149(1)(b) in such respective years for issuance of notice for that year.

- It is also clarified that the extended time limit of 10 years cannot be used for AY 2020-21 or earlier AYs if the time limit for reopening the assessment or assessment in case of search u/s 153A or 153C have already elapsed as per the old provisions of reassessment proceedings or assessment in case of search at the time of issuance of notice for reassessment under the new provisions. Such provision will enable the tax officer to issue notices u/s.148 in respect of search conducted on or after April 1, 2021 in respect of assessment year beyond period of 6 assessment years if the time limit for issuance of notice u/s.153A/153C has not expired as per such section.
- Exemption has been provided from the complying with section 148A in a case where the Assessing Officer has received information under a scheme for faceless collection of information.

All the above amendments are applicable with effect from AY 2022-23 onwards.

Bar on filing repetitive appeal before the ITAT / HC /SC by tax department

Over past few years, the Government has taken several initiatives such as introduction of DRS (Dispute Resolution Scheme) VSV (Vivaad Se Vishwas Scheme) and introduction of Faceless Assessment mechanism to achieve uniformity and transparency in assessment proceeding which is again aiming to reduce the amount of litigation.

Currently, the law provides that in case of any assessee, if an appeal is pending before the SC for any substantial question of law (SQL) then pending disposal such appeal, the PCIT/ CIT is empowered to issues direction to the jurisdictional AO to make an application to ITAT stating that an appeal for any other AY would be filed only after the finality of the decision in that matter. In order words, the relaxation is provided only if the appeal is pending in Assesee' s own case before the SC and the identical SQL is applicable to other AYs.

In order to reduce the magnitude of litigation going forward by bringing parity on decision making stand, the Bill has now proposed that if any question of law is pending before the jurisdictional HC or SC either in Assessee's own case or same is pending in case of any other Assessee then the Collegium (two or more of CCIT/PCIT) has been empowered to issue appropriate direction to the CIT/PCIT not to file an appeal before the ITAT or HC at this stage. In view of the proposed amendment, now the PCIT/CIT are debarred from filing reparative appeal before the ITAT and HC if the identical SQL is already pending before the HC or SC.

The proposed amendment further provides that if the order of the CIT(A) or the order of the ITAT eventually found not to be in the conformity with the final decision on the question of law, then PCIT/CIT will the issue direction to the AO to file an appeal to ITAT/HC. The Application shall be required to be made in the prescribed form within the prescribed time limit (60 days from the CIT(A) order and 120 days from ITAT order). Further the CIT/PCIT can issue direction only if the Assessee has accorded his consent that the question of law in the other case is identical in his case. However, if the AO has not received any acceptance from the Assessee, then the CIT/PCIT shall be required to file an appeal before the ITAT/HC in stipulated time frame.

Revision can be done for Order passed by TPO

Section 263 of the Act contains the provision for revision of an order passed by the AO which is erroneous and prejudicial to the interests of revenue.

Usually in all the cases selected for the scrutiny on TP parameters (CASS), the AO shall be required to refer the matter to TPO for determination of ALP. The TPO passes an order determining the ALP in an international transaction or specified domestic transaction under the provisions of section 92CA and send it to the AO for final income determination. The finding of the TPO is binding on the AO and therefore, strictly speaking, the AO is required to incorporate the adjustment proposed by the TPO while passing the final assessment order.

In view of the above, a question may arise as to whether the PCIT/CIT can really modify the order of TPO if they found that there is an error in TPO Order or not. The Mumbai ITAT in the case of Tata Communications Ltd. v DCIT (ITA No. 3122/3123/Mum/2013) has an occasion to decide whether the provision of section 263 empowers the PCIT to review an order passed u/s 92CA or not. The ITAT Mumbai has taken a position that an order passed by the TPO is outside the ambit of section 263 and therefore, the PCIT lacks inherent jurisdiction to review the order of TPO even if the same is patently erroneous.

In order to enlarge the scope of revisionary power of PCIT u/s 263, the Bill has proposed to amend section 263 of the Act to provide that PCIT/CIT is now empowered to review the order of TPO and can issue appropriate direction to the TPO.

In view of the above amendment, the TPO shall now be required to pass revisionary order as per the direction of the PCIT and the AO on receipt of the said order shall be required to pass an order incorporating the said effect within the period of 2 months.

The above amendment will be applicable with effect from 1st April 2022. Since, this is a procedural amendment, the PCIT have jurisdiction to review records of any order passed by the TPO with effect from 1st April 2022. Therefore, the PCIT can technically exercise the power u/s 263 to review records for TPO proceeding even for the AY prior to AY 22-23.

Income Tax Authority for carrying out Survey

Section 133A of the Act enables the prescribed Income-tax authority to enter any place of business or profession or charitable activity within his jurisdiction to verify the books of account or other documents etc. which they consider useful for any proceeding under this Act. Explanation to section 133A provides the definition of an income tax authority for the purposes of this section. Taxation and Other Laws (Amendment and Relaxation of Certain Provisions) Act, 2020 has then amended 133A to clarify that the income tax authority subordinate to the PDIT (Inv)/ DGIT(Inv)/ PCIT(TDS)/ CCIT (TDS) shall only be considered as Income-tax authorities for the purposes of section 133A.

In order to align the above amendment, section 133A has been suitably amended. In view of the above, now the Income tax authority who is sub-ordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner can alone exercise the power u/s 133A.

Exclusion of certain time for making search assessment

Section 153B deals with period of limitation for the completion of search assessment u/s 153A. The Bill proposes to further exclude the period commencing from the date of search u/s 132/ requisitioned u/s 132A till the books of accounts etc. seized or assets requisitioned u/s 132A handed over to the AO, maximum up to 180 days while determining the period of limitation. Such provision is however applicable to search conducted prior to 1st April 2021.

Time limit for revision assessment in Transfer Pricing cases

Under the current provisions, there is no specific timeline for completion for assessment proceedings pursuant to revision u/s 263, in cases where order is passed by Transfer Pricing Officer under section 92CA. The provision only refers to 'fresh assessment order'. In order to clarify this aspect, it is now proposed to amend the provision of Section 153 to provide that, similar to other cases, the time limit for such cases would be 12 months from the end of the financial year in which the revision order is passed.

It is also proposed to amend Section 153 to provide that in cases where order giving effect is to be passed by a Transfer Pricing officer pursuant to revision order u/s 263, such order should be passed within 3 months from the end of the month in which order u/s 263 is passed.

Lastly, sub-section (5A) is proposed to be inserted in Section 153 to provide that where the Transfer Pricing Officer gives effect to an order or direction under section 263 by means of an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall modify the order of assessment or reassessment or recomputation, within two months from the end of the month in which such order of the

Transfer Pricing Officer is received by him,

These amendments will take effect from April 1, 2022.

Faceless Assessment Scheme for determination of arm's length price and DRP proceedings

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 empowered the Central Government to notify faceless scheme for determination of the arm's length price and proceedings with Dispute Resolution Panel for achieving greater transparency and efficiency. Earlier, the time limit for issuance of directions for this scheme was restricted to March 31, 2022. However, considering the delay in the introduction of the scheme and consultation required from Ministry of Law & Justice, the time period of issuance of directions for faceless assessment scheme for Transfer Pricing matter has been extended till March 31, 2024.

These amendments will take effect from April 1, 2022.

Effect of order of Dispute Resolution Committee

The Finance Act 2021 had introduced Dispute Resolution Committee as an alternative dispute resolution body to ensure faster resolution of low quantum matters and thereby avoiding unnecessary litigation backlog. The Bill proposes to provide a mechanism and timeline to give effect of any order passed by the Dispute Resolution Committee. The Assessing Officer shall be liable to modify the draft assessment order or the assessment order in accordance with the directions of the Dispute Resolution Committee within 1 month from the end of the month in which order is received.

Extension of time limit for introducing various Faceless regimes

The Finance Act 2020 had introduced the concept of filing appeal to ITAT with dynamic jurisdiction. Further, the Finance Act, 2021 introduced the concept of Faceless ITAT with dynamic jurisdiction. The Act provides that the Government shall issue directions to implement the appeal filing process before ITAT with dynamic jurisdiction by 31st March 2022 and to implement Faceless ITAT by 31st March 2023. The Finance Bill proposes to extend these timelines to 31st March 2024.

Trust Taxation

Taxation of Charitable and Religious Trust, educational and medical institution, etc.

Currently, section 11 to section 13 provides the exemption to various Charitable and Religious Trust if the conditions provided in such sections are fulfilled. Similar section 10(23C) provides exemption to various entities viz. educational institution, medical institution and certain other universities. In order to have more monitoring and watch over the activities and utilisation of money received by such tax-exempt entities, the Bill proposes to make various changes in such sections. The important changes are discussed below:

Application of Income only on actual payment basis

The existing provisions of section 11 allows expenditure incurred to be treated as application of income if same is incurred during the year in accordance with mercantile system of accounting regularly employed. Thus, the expenditure which have been incurred during the year but not actually paid during the year are considered as application of income u/s 11 of the Act considering principle of accrual and mercantile system of accounting. Vide the Finance Act, 2021, it has been provided that the application from loan or borrowing shall be treated as application only in the year of repayment of such loan or borrowing.

The Bill further provides stringent condition to allow any expenditure incurred by the Trust as application only when the said amount has been actually paid i.e. on cash basis irrespective of method of accounting followed by such trust or institutions. Accordingly no expense would be permitted to claim as application of income if same is remained outstanding at the end of the relevant year. Further if the payment of such expenditure is made from loan or borrowing, as per existing provision of the Act the same is allowable as deduction at the time of payment of such loan or borrowing. It has also been clarified that no deduction would be permitted on actual payment basis if same has already been claimed as application of income in earlier year.

It is important to note that the above amendment is applicable from AY 2022-23 onwards.

Trust to maintain prescribed books of account

Under the existing provisions, such exempted entities are required to get their accounts audited if total income exceeds the maximum amount which is not chargeable to tax i.e. Rs. 2,50,000 without considering exemption. However, the existing provisions of the Act do not prescribe the form and manner in which books of accounts are required to maintained and the place at which same is required to be maintained.

The Finance Bill 2022 propose to amend relevant provisions so as to mandate every trust and institution registered therein to compulsorily maintain books of accounts at place & in manner as may be prescribed along with requirement of getting them audited if total income exceeds such exemption limit i.e. Rs. 2,50,000 as determined without claiming an such exemption.

This amendment would take effect from AY 2023-24 onwards.

Unutilised amount - Taxable in 5th year

In case of trust & institution registered u/s 12A are entitled to claim exemption u/s 11 to the extent income applied towards the object of the trust. However, when income of such trust or institution cannot be applied for charitable purpose in India during the year, the same is permitted for accumulation for subsequent five years and such accumulation is considered as deemed application for the purpose of exemption u/s 11 of the Act. The existing provisions of the Section 11(3) provides that if such amount accumulated is not spent for the purpose for which it was accumulated within 5 years, then such unspent amount out of such accumulation would subject to tax in 6th year if the same remain utilised.

The Bill proposes to amend section 11(3) of the Act to tax such unspent amount out of accumulation made u/s 11(2) in 5th year itself instead of in a 6th year.

This amendment would take effect from AY 2023-24 onwards.

Penalty for Application of Income for benefit of Trustees, their relatives and other specified persons.

The existing provisions of section 13(1)© of the Act provides that where any income is applied by the trusts and institutions for the benefits of trustees, their relatives or concerns in which such persons have substantial interest, the same shall not be eligible for exemption u/s 11 of the Act.

In order to discourage such misuse of funds of the trusts and institutions, the Bill proposes to introduce section 271AAE which provides for levy of penalty on such trusts or institutions being 100% of income applied for the benefit of such persons where such violation is for the first time and 200% of the amount of such income applied for the benefit of such persons where such violation is made by trust or institution once again in subsequent year(s).

The above penalty u/s 271AAE is over and above other penal provisions provided under the Act.

The above amendment is applicable with effect from AY 2023-24.

Additional Powers to Commissioner

The Finance Act 2021 had introduced the requirement for every existing trust & institution registered u/s 10(23C) or u/s 12A to apply a fresh for getting re-registration where such re-registrations are being granted in automated manner i.e. on submission of information in prescribed form along with certain prescribed documents. The government has observed that such automated approval on re-registration application has led to grant of approval in case of non-genuine trusts. Also, under existing provisions of the Act, in case of trusts which are registered u/s 12A, the Assessing officer carrying out assessment proceedings u/s 143(3) of such trusts do not have power to make reference to Commissioner for denial of exemption u/s 11 where such trusts have contravened such provisions.

Accordingly, the Bill has amended the relevant provisions in order to address above issues. The Bill provides that where the case of the trust is selected by the CBDT in accordance with risk management strategy formulated by it or where Principal Commissioner has noticed occurrence of 'Specified Violation' during any year or receives reference from the Assessing Officer who noticed 'Specified Violation' during the course of scrutiny assessment proceedings u/s 143(3) of the Act, such Principal Commissioner shall have power to examine the activities of the Trust and to cancel/to continue such registration after providing reasonable opportunity of being heard to such trust.

Following are cases of 'Specified Violation'

- Income is applied by the trusts for objects other than for which it is established
- Trust has earned income from profits and gains of business which is not incidental to attainment of its objectives
- No Separate books of accounts are maintained for business which is incidental to the attainment of objectives.
- Charitable Trusts has applied income for private religious purposes which is not for the benefit of public, or for benefit of any particular religious community or caste
- Trust activities are considered to be non-genuine or not in accordance with conditions subject to which approval was granted
- Trusts has not complied with requirements of any other law or order (which has an impact on attainment of objective of the Trust), and the order passed under such law or order for such non-compliance has either not been disputed or has attained finality

The Commissioner is required to pass necessary order cancelling registration or refusal for cancellation of registration before the expiry of six months from the end of the quarter in which first notice is issued by the Commissioner.

It has been also provided that the period from the date on which the reference is made by the Assessing Officer for withdrawal of registration to the Principal Commissioner or Commissioner and till the period of passing of order shall not be considered in computing period of limitation for completion of assessment proceedings as provided in section 153 of the Act.

The above amendment would take effect from AY 2022-23 onwards.

Taxation of income of trust on denial of exemption in certain circumstances

The existing provision of Act provides that the trust or institution registered u/s 12A shall not be entitled for exemption u/s 11 if

- Business receipts in excess of 20% of total annual receipts in respect of business which is incidental to attainment of the objects of the trust
- Failure to get books of account audited
- Failure to file return of income on or before the due date

In above circumstances, while the law provides that such trust or institutions shall not be entitled for the exemption u/s 11 of the Act, however, the existing law does not provide clarity as to how income is computed in case of such non-compliance. Accordingly, in order to bring clarity and to avoid litigation on possible disputes, the Bill provides that income of trust or institution shall be computed in such circumstance after allowing deduction of expenditure incurred in India towards the object of the trust (other than capital expenditure) and subject to following conditions;

- Such expenditure is not made out of corpus
- Such expenditure is not from proceeds of loan or borrowings
- No depreciation is claimed for asset, the acquisition cost of which has been claimed as application in any other year.
- Such expenditure is not in form of any donation to any other person.
- The trust has duly complied with provisions relating to deduction of tax at source, if applicable
- The trust has not incurred such expenditure in cash in violation of section 40A(3)

These amendments would take effect from AY 2023-24 onwards.

No complete denial of exemption on violation of section 13(1)(c) or section 13(1)(d)

The provisions of section 13 deals with situations where the exemption u/s 11 is denied to the trust of institution where trust fails to fulfil certain conditions laid down therein. Of the various conditions stated therein, in clause (c) and (d) of section 13(1) of the Act, it is provided that no exemption u/s 11 would be available if trust applies its income directly or indirectly for the benefit of trustees or their relatives or other specified persons or where funds of the trusts do not remain invested in mode or forms specified u/s 11(5) of the Act.

Thus, the interpretation of existing provisions leads to conclusion that the entire exemption u/s 11 shall be denied to the trust if any income or part thereof is applied for benefit of such specified persons or where any part of funds not remained invested in such specified modes. It is observed that it would be very unfair to deny entire exemption u/s 11 where violations stated above is merely for a small amount. It is observed that the legislation has no such intention and accordingly the Bill has proposed to make amendment so as to restrict exemption u/s 11 limited only to the extent of amount for which such violation has occurred.

The above amendment would take effect from AY 2023-24 onwards.

'Specified Income' on certain violation is taxable at flat rate

In order to discourage violation of various conditions given under section 11 as well as section 13 of the Act, the Bill proposed to taxed following specified income @ at 30% without giving deduction of any expenditure or set off of any loss against the same.

- Income accumulated in excess of 15% of income without claiming such accumulation under applicable provision
- Income applied directly or indirectly for any unreasonable benefit of persons specified u/s 13 i.e. Trustees, their relatives and other specified persons u/s 13(3) of the Act.
- Amount which has not remained invested in forms and modes specified u/s 11(2) of the Act.
- Amount accumulated u/s.11(1)/ 11(2) but not utilised in accordance with various condition specified therein

The above amendment would take effect from AY 2023-24.

Voluntary Donations

Currently the voluntary donation received by the trust for the purpose of renovation of temple, mosque, gurdwara, charge and other notified place is treated as normal donation and considered while computing application of income. In order to provide relief to trust to make expenses from such donation, the Bill proposed to provide an option to trust to treat such donation as Corpus of the Trust provided such amount is apply only for such purpose and does not apply for making donation to any person. Further the Trust is required to maintain separate identify of such corpus and the amount thereof remains to be invested in form specified u/s.11(5). If any of such conditions are violated, then amount of income in respect of which such violation is made shall be taxed in the year in which such violation takes place.

The above amendments would take retrospective effect from AY 2021-22 onwards.

Trust or institution registered 10(23C) of the Act

All the above amendments made in respect of section 11/13 are also proposed in respect of certain entities claiming exemption u/s.10(23C) so as to make the tax exemption regime of section 10(23C) at par with section 11. In addition to the same, the following important amendments have been proposed for entities claiming exemption u/s.10(23C)

- In order to claim exemption, such entity is now required to file their tax return before due date
- Where, such entity could not apply its accumulated fund the purpose for which it was accumulated due to circumstances beyond its control, the Assessing Officer,

based upon application made by such entity, allow him to apply such fund for other object and purpose which is within objects of the trust or institution for which it is established

- The existing provisions of Chapter XII-EB covering section 115TD, 115TE and 115TF governs the levy of exit tax at maximum marginal rate which trust or institutions registered u/s 12A are liable to pay on accreted income (i.e. fair value of assets less total liabilities) when such trust or institution is converted into non-charitable organization or when the same gets merged with (i) non-charitable organization or (ii) charitable organization with dissimilar objects or such trust or institution does not transfer all the assets to another charitable organization within period of twelve months upon dissolution. The Bill 2022 proposes to extend such exit tax regime to such entities claiming exemption u/s.10(23C) of the Act.

Unexplained Transactions

Unexplained cash credits u/s 68

The existing provisions of the section 68 of the Act provide that where any sum is found to be credited in the books of any person and such person does not offer any explanation about the nature and source of such credit or where such explanation is not found satisfactory in the opinion of Assessing Officer, the sum so credited in books shall be charged to income tax as income of such person in such relevant year.

Thus, the section 68 casts onus on the person in whose books such sum is credited. The Finance Act 2012 had earlier expanded the scope of section 68 requiring the closely held company to explain source of funds even in the hands of shareholders where such sum credit is in nature of share capital, share premium or any such amount by whatever name called.

However, in certain judicial pronouncements [such as PCIT vs Ami Industries (India) Pvt Ltd (2020) 271 Taxman 75 (Bombay HC)] it has been held that in case of transaction of loan or borrowings, the onus does not extend for explaining the source in the hands of creditor. In order to curb this situation and to unearth the black money which are routed in books through loan or borrowings, the Finance Bill 2022 proposes to amend provisions of section 68 of the Act to provide that any sum in form of loan or borrowings or any other liability credited in books of the person shall be considered as explained only when source of funds is also explained in the hands of such creditor or the person who has given such loan or borrowing. However, the same would not apply if the creditor is venture capital fund or venture capital company registered with SEBI.

This above amendment is effective with effect from the assessment year 2023-24 would serve as a positive step towards unearthing black money which may otherwise be infused into any business entity as loan or borrowings.

No set off of losses / unabsorbed depreciation from Undisclosed Income

As per existing provisions of section 115BBE, loss is not allowed to be set off against income in the nature of unexplained cash credits, unexplained investments, unexplained money or unexplained expenditure.

However, in certain cases, the Taxpayers were claiming set off of the loss against the income found during the course of search or survey on the ground that since source and nature of the income found was explained, the said income did not remain unexplained and therefore provision of section 115BBE is not applicable. Accordingly, the said income was taxed as business income and consequently business loss was claimed as set off against such income.

In order to ensure that income found during search and survey does not escape taxation and get benefit of set off of loss, the Finance Bill proposes to insert new section 79A to disallow set off of current year / brought forward loss or unabsorbed depreciation from undisclosed income being

- Income represented in form of money, bullion, jewellery or any other valuable article or any other document or transaction, etc. which is not recorded in the books of accounts maintained in regular course of business or

- not disclosed to the Income Tax Authorities before date of search or survey or

- represented by any entry of expense in the books of accounts which is found to be false during the course of search or survey proceedings.

Considering the above provision even if one argues that income found during the course of search may not be taxable u/s.115BBE in case conditions mentioned therein are not fulfilled, he will not be able to claim set of loss/depreciation including brought forward loss/depreciation against undisclosed income.

This amendment is applicable with effect from AY 2022-23 onwards.

Other Amendments

Allowance of carry forward and set off of losses to an erstwhile public sector company

Section 79 of the Act restricts the carry forward and set off of the losses in case of companies in which public are not substantially interested in the case of a change in its shareholding pattern. The brought forward losses can be set off or carried forward to the subsequent years by such companies only if shareholders holding 51% or more of the voting power shall continue to hold the same voting power even after the change in shareholding of the company.

The Finance Bill proposes to provide the benefit of allowance of carry forward and set off of losses to an erstwhile public sector company by amending provision of section 79 of the Act. It proposes that if the ultimate holding company would continue to hold at least 51% of the voting power of the erstwhile public sector company directly or through its subsidiary company even after strategic disinvestment, the erstwhile public sector company will be eligible to set off or carry forward the losses incurred prior to strategic disinvestment.

Further, the Bill proposes that if the said condition is not fulfilled in any year, the erstwhile company will not be eligible to claim benefit of carry forward and set off of the losses in such year or in any subsequent year.

The amendments are proposed to be effective from AY 2022-23 and subsequent assessment years.

Procedure to reduce the Demand in business reorganization pursuant to Court order

As a part of the restructuring process, there are instances where the Court or Tribunal or an Adjudicating Authority (referred to in Insolvency and Bankruptcy Code, 2016), recast the liabilities to ensure future viability of sick entities and in the process, Income tax demand created vide various proceedings in the past, are modified as well.

Under the current tax provisions, there is no mechanism provided to reduce such demands from the outstanding demand records of the Tax department. Hence, to remove this anomaly, a new section 156A is proposed to be inserted to give effect to the orders of such authority and to modify demands in accordance with such directions. It seems that such tax demands modified by the Court, tribunal or Adjudicating Authority cannot be challenged by the Tax department and will have to be accepted by the department without any modification.

These amendments will take effect from April 1, 2022

Removing inconsistency relating to a liability of Directors of Private companies

Section 179 imposes liability on every director of a private company for recovery of tax dues, in case where the same not be recoverable from the hands of the company. Such a provision was introduced for the first time in the Act, from April 1, 1962. When the section was first introduced, it was only made applicable to companies that were being wound up. With effect from October 1, 1975, applicability of the section was extended to all private companies in scenarios where recovery of tax demands against such companies did not yield results. However, the title of the section inadvertently refers to the liability of directors of private company in liquidation even though the Section does not contain reference to liquidation. Thus, to make the title of the section uniform with its provisions, it is proposed to amend the title of the section to “Liability of directors of private company”.

Further, the existing Explanation to the section clarifies that the expression “tax due” in the section includes penalty, interest of any other sum payable under the Act. There is no reference to ‘fees’. In order to remove this ambiguity, it is proposed to insert the word “fees” in the scope of the expression “tax due” under Explanation to the section.

Certain exemptions to foreign nationals removed

Currently, clauses (8), (8A), (8B) and (9) of Section 10 provide for exemptions in respect of rom the following incomes:

- Remuneration received by an individual who is assigned duties in India in connection with any co-operative technical assistance programmes and projects (in accordance with an agreement entered by the Central Government and the Government of a foreign state) and his any other income from sources outside India which are subject to income tax or social security tax in his home country

- Remuneration received by a consultant by out of funds made available to international organization under technical assistance grant agreement between such organization and foreign state and his or its any other income from sources outside India which are subject to income tax or social security tax in his/its home country.

- Remuneration received by an employee of the consultant referred above or his any other income from sources outside India which are subject to income tax or social security tax in his home country

- Income of family members of abovementioned individuals from sources outside India which are subject to income tax or social security tax in their home country

In order to be in line with the Stated Policy of phasing out of exemptions / tax incentives and to retain taxation rights available to India, the Finance Bill, 2022 proposes to remove the above exemption from AY 2023-24 onward.

This amendment will take effect from April 01, 2023 and will, accordingly, apply in relation to the assessment year 2023-2024 and subsequent assessment years.

Additional Deduction to the State Government Employees

Section 80CCD (2) of the Act provides for deduction to the employee from his gross total income on account of employers contribution to the specified pension scheme. As per existing provision, the Central Government employees are eligible to get deduction up to 14% of salary and other than Central Government employees are eligible to get deduction up to 10% of salary.

The Finance Bill proposes to bring in line the deduction on account of employer's contribution to specified pension scheme for the State Government and Central Government. As per the proposed amendment now the State Government employees would also be eligible to claim the deduction up to 14% of the salary.

This amendment is proposed to be effective retrospectively from April 01, 2020 and accordingly it will be effective from AY 2020-21 and subsequent assessment years.

Allowability of deduction to the subscriber of the annuity scheme

The existing provision of section 80DD of the Act allows deduction to an individual or HUF (being resident in India) in respect of subscription to a specified scheme for maintenance of a disabled dependant. The deduction is allowable only if the scheme provides for payment of annuity or lump sum amount in the event of death of such subscribers (the Individual or the member of HUF) only. This condition causes the genuine hardship to the disabled dependants who need fund during lifetime of parents/ guardians.

The Government, considering the genuine hardship and the request of Hon'ble Supreme Court of India while deciding the matter in the case of Ravi Agrawal vs Union of India (Write Petition No 1107 of 2017) proposes to allow the deduction to the subscriber even if annuity or lump sum amount to be received by the disabled dependant on attaining age of 60 years or more by the subscriber of the scheme.

Further, the Bill also proposes to allow income tax exemption to the subscriber of the scheme on receipt of such annuity or lump sum amount by the disabled dependant before his death.

The amendments are proposed to be effective with effect from April 01, 2023 and will accordingly apply to the AY 2023-24 and subsequent assessment years.

Widening the scope of reporting by producers of cinematograph films, etc.

Currently, producers of cinematographic films need to furnish a statement containing particulars of all payments over INR 50,000 in the aggregate made by him or due from him to each person engaged by him within the prescribed timelines.

The Finance Bill, 2022 has proposed to widen

the scope of section 285B to "Specified Activities" which includes event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Waiver of Fees by CBDT

Section 234F provides for fee payable by a taxpayer on account of failure to file the return of income within the prescribed time limits. With the view to provide relaxation from the levy of such fee in genuine cases, the Finance Act has amended section 119 to empower the CBDT to issue orders in relation to relaxation of provisions of section 234F.

Extending power of Commissioner (Appeals) for levy of Penalty

The existing penalty provisions empowers the Assessing Officer or the Commissioner (Appeals) to levy penalty in cases of concealment, under-reporting and misreporting of income, non-furnishing of statement/return/certificates/information etc.

The Finance Bill proposes to extend the power to levy penalty by the Commission (Appeals) in following case where there is -

- an undisclosed income in the cases where search has been initiated u/s 132 – Section 271AAB
- in cases where income includes any income mentioned u/s. 68 to 69D – Section 271AAC
- false entry or omission of any entry in the books of account – Section 271AAD

The amendments are proposed to be effective from April 01, 2022.

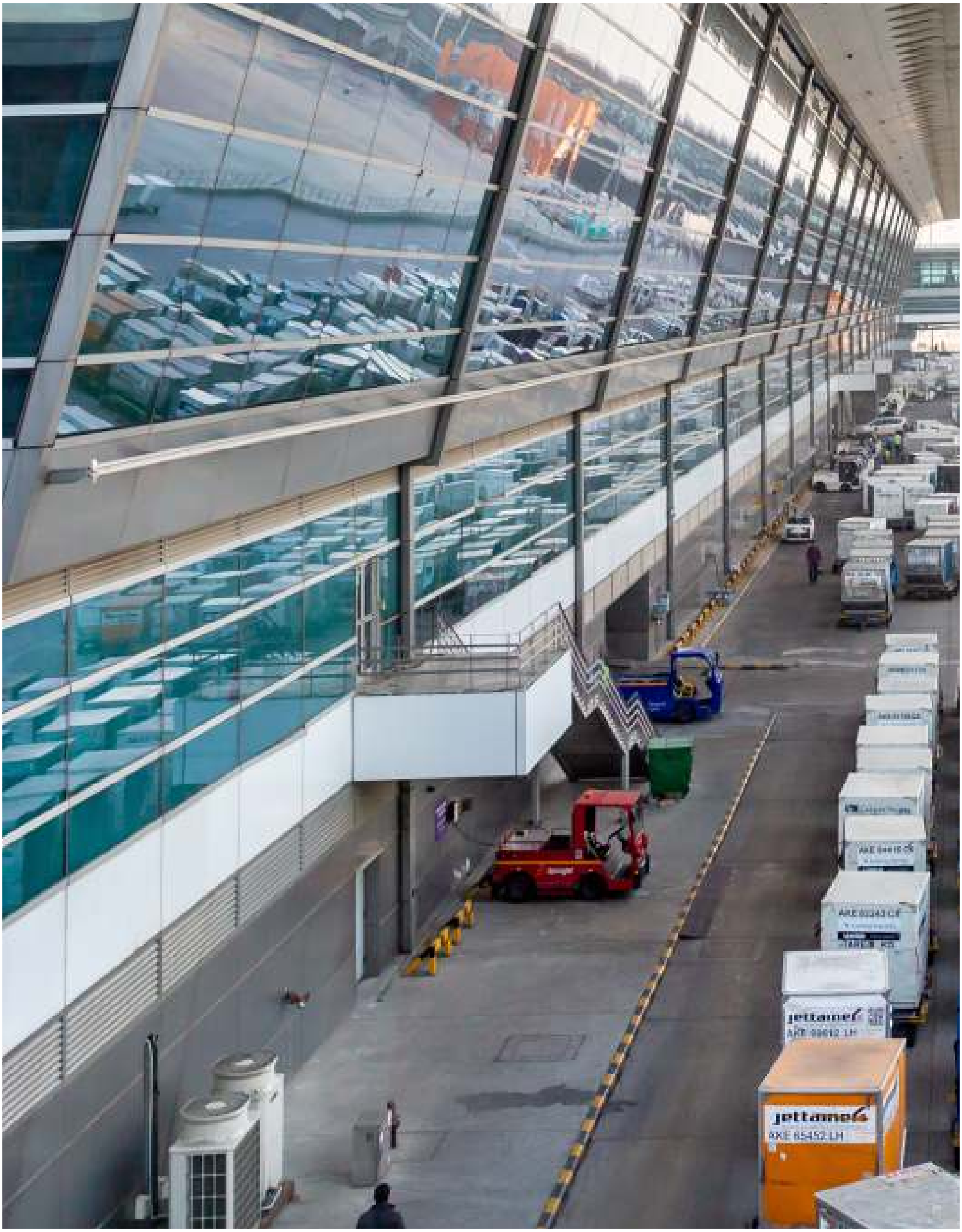
Penalty for failure to comply with statutory requirements

The Finance Bill proposes to increase sum of penalty amount from Rs 100 to Rs 500 for every day during which the failure in continues in certain cases such as compliance to notice of furnishing returns or statements of TDS /TCS , give notice for discontinuation of business, deduction of TDS from salary etc.

Section 271C deals with levy of penalty for non – deduction tax at source. Section 276B deals with prosecution where there is failure to pay tax to the credit of the Government. Section 194B dealt with deduction of tax at source from winnings from lottery, crossword puzzle etc. Section 194B was amended by the Finance Act, 1999 w.e.f. 1-4-2000 by which the first proviso to the section was omitted and the section since then had only one proviso. However, the provisions dealing with penalty for failure to deduct tax u/s. 271C and prosecution u/s. 276B contained the wording "the second proviso to section 194B".

Since the section 194B had only one proviso since 1-4-2000 consequential amendment is proposed in section 271C and section 276B to avoid any confusion.

DIRECT TAXES



Amendment with respect to offences and prosecutions

The existing provision of section 269UC, section 269UE and section 269UL dealing with restrictions on transfer or on registration etc of documents of immovable property and vesting of property in Central Government are inapplicable with effect from 01.07.2002. Section 269UP was introduced Finance Act 2002 which states that the provision in relation to transfer of any immovable property effected on or after 01.07.2002 shall not be applicable. Consequently, launching prosecution against offences committed in relation to transfer of immovable property prior to 2002 would be beyond reasonable time and therefore prosecution provisions u/s 276AB are not relevant. The Finance Bill proposes to amend section 276AB by providing a sunset clause in respect of inapplicable provisions. It is proposed that no fresh prosecution proceeding shall be initiated under this section on or after 1st April, 2022.

The Bill proposes that if the person furnishes the updated return for the previous year within 2 years from the end of the assessment year than it will not be considered as failure in furnishing of the return in due time and consequently prosecution proceedings will not be initiated on such person. This amendment is consequential amendment of section 139(8A) which would encourages the person to offer additional or undisclosed income by paying additional tax liability along with interest without inviting harsh provision of prosecution proceedings.

The Bill also proposes to provide for punishment in case where the person commits an offence in respect of non-deposit of tax collected at source (TCS) to the credit of the Central Government within prescribed time limit. It has proposed the punishment for the second and for every subsequent offence with rigorous imprisonment for a term which shall be from six months to seven years and with fine. However, in case there is reasonable cause for non-deposit of TCS, the person cannot be punishable with such stringent prosecution provisions.

These amendments are proposed to be effective from April 01, 2022.

INDIA
BUDGET
2022
FROM FREEDOM TO
SELF RELIANCE

GOODS & SERVICES TAX

GOODS & SERVICES TAX

The following amendments have been proposed in the Budget 2022 for the Central Goods and Services Tax (CGST) Act, 2017 and Integrated Goods and Services Tax (IGST) Act, 2017. These changes would come into effect from a date to be notified after the enactment of the Finance Bill, 2022 except wherever it is expressly specified.

Input Tax Credit (ITC)

It has been proposed to insert a new condition for availing ITC by way of sub-clause (ba) of Section 16(2). ITC would be available only when it has not been restricted in any of the proposed six circumstances as mentioned under Section 38.

It has been proposed to amend Section 38 (1) and ratify GSTR -2B. The new Section 38(2) has been inserted to constitute the principal of non-restrictive and restrictive ITC. ITC which is restricted will not be allowed to be availed. The six conditions for restrictive ITC are as given below:

- Supplies made by the registered person within such period of obtaining GST Registration as may be prescribed.
- Supplier who has defaulted in payment of tax and the default has been continued for such period as may be prescribed.
- Supplier who has paid the tax less than the limit as may be prescribed in comparison with tax disclosed in the statement of outward supplies during the period as may be prescribed.
- Supplier who has availed ITC more than the limit as may be prescribed in comparison with auto generated statement of inward supplies during the period as may be prescribed.
- Supplier who has contravened the provisions of the payment of such portion of outward liability through Cash mode as may be prescribed.
- Supplies received from certain class of the suppliers as may be prescribed.

This amendment would compel the customer to monitor the compliance accuracy of the supplier for availing ITC.

Judiciary have been observing earlier that in case of default in payment of tax by seller, recovery should be made from seller[1] and also that ITC cannot be denied only on the ground that a transaction is not reflected in GSTR 2A[2]. The proposed amendments would however transcend the rulings made in such judicial pronouncements.

An amendment in Section 16(4) has been proposed to extend the time limit for availing ITC from furnishing return of September to 30 November of the subsequent FY.

It has been proposed to substitute Section 41(1) for availing eligible ITC on the self-assessed basis from erstwhile on a provisional basis and shall be credited to the Electronic Credit Ledger (ECL).

Section 41(2) has been proposed to be inserted for reversal of ITC in case if the supplier has not filed the return or not paid correct tax liability. The recipient shall be required to reverse ITC with the applicable rate of interest. Post settlement of dues, the recipient shall re-claim ITC in the subsequent period. In such matter, the Government would recover interest from the supplier along with the recipient. However, this would lead to the case of double jeopardy. Further, at the time of reclaim of ITC, whether interest paid can be claimed as refund is the question which will be answered in time to come.

Section 42, 43, 43A of the CGST Act dealing with matching, reversal and reclaim of Input Tax credit & Output tax Liability have been proposed to be omitted considering that the said provisions were brought in to implement the new GST return structure which the Government has scrapped.

It has been Proposed to introduce Section 49 (12) to give power to prescribe the maximum ITC that can be utilized to discharge output liability for a registered person or class of registered persons as may be prescribed.

Registration

An amendment has been proposed under Section 29(2) for the cancellation of registration:

- For composite dealers, a new time limit for cancellation of registration has been proposed which empowers the officer to cancel registration after three months from the filing of the annual return. Earlier the proper office was empowered to cancel return in case of non-filing of return for three consecutive periods.
- For the non-composition taxpayer, power has been given to cancel the registration if return has not been furnished for such continuous period as may be prescribed. Prior to this amendment, the time limit for cancellation of registration was six consecutive months of default in furnishing the return.

Extension of Time limits

It has been proposed to allow rectification/ amendment of the documents /details in GSTR -1 & GSTR-3B under Section 37 & 39 of the CGST Act, respectively till 30 November of the subsequent FY. Earlier it was permissible to amend till filing of return for the month of September of the subsequent F.Y. or filing of annual return whichever is earlier. This is a very welcoming provision.

The books of accounts of the companies would generally be finalized on or before 30 September of the subsequent FY and hence any treatment in the context of availing ITC or discharging additional liability at the time of finalization of books of account could be recognized prior to 30 November and would also give appropriate treatment in GSTR 3B/GSTR-1. Simultaneously the taxpayer may have an option for furnishing the details of any adjustment in subsequent FY related to the previous FY in the annual return.

Sections 37(4) and 39 (10) have been amended to provide that non-furnishing of GSTR -1 for past periods shall restrict the filing of GSTR 1 and 3B for the subsequent periods. This means GSTR-1 would be considered fundamental pillar of the GST compliance and hence it is essential & imperative to comply within statutory time limit.

An amendment to Section 52 has been proposed to increase the time limit for amendment/rectification in GST return (GSTR 8) from the filing of return for the month September to 30 November of the subsequent Financial Year.

An amendment has been introduced in Section 39 (5) to revise the time limit for filing of return for a non-resident taxable person within thirteen days from the end of the month or seven days from the last date of registration, whichever is earlier. However, erstwhile the time limit was twenty days.

[1] Madurai Bench of Madras High Court in case of M/s. D. Y. Beathel Enterprises W.P. No. 2127 of 2021

[2] Kerala High Court in case of St. Joseph Tea Company Ltd W.P. (C) No. 17235 of 2020

Payment of Tax

An amendment is proposed under Section 49(10) to transfer the balance of tax, interest, penalty fees, or any other amount available in Electronic Cash ledger to their other GSTIN under the same PAN, subject to the conditions that the transferor units should not have any unpaid liability. Earlier provision was allowing transfer of available cash between tax heads but under the same GSTIN, now the said limitation has been done away with. The proposed amendment would substantially strengthen the cash flow of the organization.

Refund

A new clause 2(ba) to the explanation of Section 54 has been introduced to clarify the time limit for refund claim in case of zero-rated supply of goods or services to SEZ developer / SEZ unit. Now the refund application shall be filed within two years from the date of filing of the return (GSTR -3B). Prior to this amendment, the relevant date was considered as per clause (h) (the date of payment of tax) which could lead to a dispute to determine the time limit of two years.

Late Fees & Interest

It is proposed to levy late fee on late filing of return (GSTR 7) under Section 52.

It is also proposed to amend Section 50 to provide that interest at 18% p.a. shall be leviable if ITC is wrongly availed and utilized. In other words, no interest shall be payable if ITC was wrongly availed but not utilized. This amendment has been proposed retrospectively from 1 July 2017. However, there is an ambiguity in respect of the interest already paid in past but not payable because of this amendment. A clarification in this regard would be welcome.

(Similar amendment has been proposed under IGST Act & UTGST Act, also)

Exemptions

Supply of unintended waste generated during the production of the fish meal except for fish oil for the period from 01.07.2017 till 30.09.2019 shall be treated as an exempted supply (retrospective amendment w.e.f. 1 July 2021). However, tax already collected & paid cannot be claimed as a refund.

Supply of Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee for the period from 01.07.2017 till 30.09.2019 shall be considered as an exempted supply (retrospective amendment w.e.f. 1 July 2021). However, tax already collected & paid cannot be claimed as a refund.

(Similar amendments have been proposed under IGST Act & UTGST Act, also)

Excise

It has been proposed to hike excise duty from Rs. 1 to Rs. 2 on blending of fuel, unblended fuel w.e.f. 1 October 2020

Inserted new tariff under chapter 27 under Fourth schedule of Excise Act

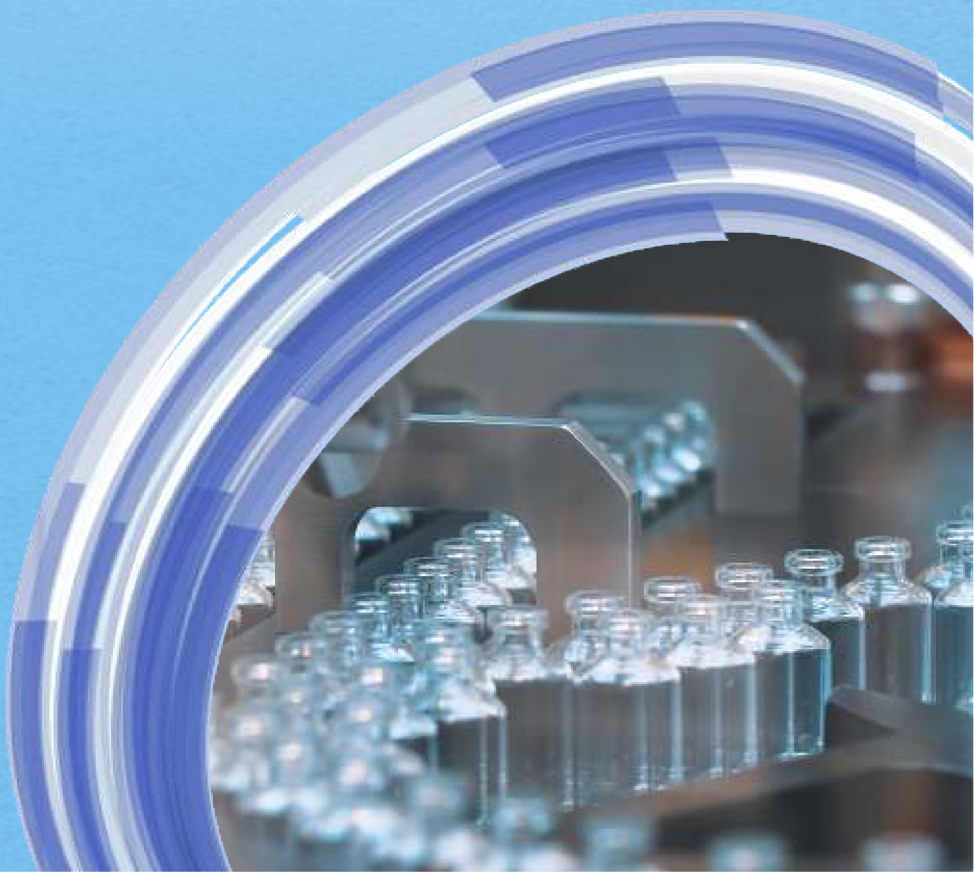
- 2710 12 43 - Ethanol Blended Petrol with percentage of ethanol up to twelve (E12)
- 2710 12 44 - Ethanol Blended Petrol with percentage of ethanol up to fifteen (E15)

This amendment will be effective from the date of receipt of the assent *from the honorable President.*

INDIA BUDGET 2₹22

FROM FREEDOM TO SELF RELIANCE

CUSTOMS ACT



CUSTOMS ACT

Proper officer of Customs to include DRI, Preventive and Audit officers

Section 3 of the Customs Act, (Classes of Customs officer), has been amended to include the officers of the Directorate of Revenue Intelligence ('DRI'), Officers of Customs (Preventive) and Customs audit officers to remove any ambiguity as regards the class of officers of Customs.

Amendments have also been made to Sections 2 (34) containing the definition of "proper officer" as well as Section 5 of the Customs Act dealing with the powers of the customs officer, to implement the following changes:

- Assignment of functions to an officer of Customs by the Board or the Principal Commissioner of Customs or the Commissioner of Customs shall be done under the newly inserted sub-sections (1A) and (1B) of Section 5 of the Customs Act, 1962 (52 of 1962)
- Power of assignment of function to officers of customs explicitly provided to the Board or as the case may be by the Principal Commissioner of Customs or Commissioner of Customs.

Further, it is to be noted that vide clause 96 of the Finance Bill, the above amendment is sought to be given with retrospective effect notwithstanding any judgment, decree or order. The said clause also seeks to validate the past actions of Customs officers under specified Chapters of the Customs Act, where such actions were in pursuance of their appointment or assigning of functions by the Central Government or by the CBIC, notwithstanding any judgment, decree or order.

The above amendment and its retrospective effect nullifying any judgement prior to the amendment is proposed to overcome the judgement of the Hon'ble Supreme Court case of M/s Canon India Pvt. Ltd. Vs Commissioner of Customs wherein the Hon'ble Apex court held that the DRI officer are not the proper officers to issue show cause notices. Due to the said judgement, Show Cause Notices issued by the DRI across India were being quashed by various High Courts / Tribunals etc. It is expected that the retrospective nature of the amendment would be challenged by the taxpayers where the present amendment directly impacts numerous petitions pending before various forums including High Courts and the Supreme Court.

In case of review of earlier assessment, the inquiring officer to transfer the documents to jurisdictional officer

A new Section 110AA is proposed to be inserted to the Customs Act to provide that in case the assessment has already been made by the Jurisdictional officer, and subsequently in pursuance of an inquiry, investigation or audit any officer of the Customs has reasons to believe that duty/interest is short-levied, not levied, short-paid or not paid or refund or duty drawback has been erroneously granted, such officer shall have to submit a report to the jurisdictional Customs officer. In case of multiple jurisdictions, the report shall have to be submitted to the officer to whom such matter is assigned by the CBIC. Thereafter the jurisdictional officer shall exercise the powers granted to him and proceed with the matter.

This amendment also seems to address the observation of Hon'ble Supreme Court in case of Canon India (Supra.) wherein the Supreme Court had held that once an assessment was done in respect of any goods, recovery of duty thereafter would tantamount to reviewing the earlier assessment which can only be done by the Jurisdictional Customs officer.

Valuation under Customs

An amendment to Section 14 of the Customs Act dealing with Valuation has been proposed to empower the CBIC to formulate Rules to specify additional obligations on importers in case of specific class of goods where CBIC has reasons to believe that the value of such goods may not be declared truthfully and accurately, having regard to the trend of declared value of such goods or any other relevant criteria.

[3]Civil Appeal no. 1827 of 2018

Advance Ruling under Customs

An advance ruling pronounced under the Customs Act shall be valid for a period of 3 years or till there is change in law or change in facts on the basis of which the advance ruling has been pronounced, whichever is earlier. In case of advance rulings which are already in force, the period of 3 years will be applicable from the day the Finance Bill, 2022 receives the assent of the President.

CUSTOMS ACT

An amendment is also proposed to allow an applicant to withdraw the application for advance ruling at any time before the advance ruling is pronounced.

It is to be noted that earlier the orders passed by the Special Valuation Branch ('SVB') of the Customs were valid for a period of 3 years requiring renewal every 3 years. This requirement was done away with in 2016 and now a renewal of SVB proceedings is not required if there is no change in the circumstances of products. Prescribing a validity of 3 years for an advance ruling would mean that the Applicant may have to go for another advance ruling after the expiry of 3 years which would discourage filing of Advance Ruling applications.

Penalty on leakage of Data

Section of 135AA has been proposed to make the publishing of sensitive information related to the import / export of goods, as well as the information related to the importer / exporter of the said goods punishable with imprisonment up to 6 months and fine up to INR 50,000, unless the same is required to be published under any law.

Further, the cognizance of offence under the above referred section can be taken with the prior approval of the Principal Commissioner of Customs or the Commissioner of Customs.

Amendment to Customs Import of Goods at Concessional Rate of duty (IGCR) Rules, 2017

The IGCR Rules, 2007 are applicable in cases where the benefit of concessional rate of Customs duty is availed in specified cases. Amendments have been proposed to the said rules to implement the record keeping and data submission with the authorities electronic. Various forms have also been notified in this regard which shall have to be filed / maintained by the importer in the electronic format on the Customs portal. An option for voluntary payment of the necessary duties and interest, through the Common Portal is being provided to the importer.

All importers importing goods under IGCR shall be required to register with the specified customs portal where each importer shall be provided with an Import of Goods at Concessional Rate Identification Number ('IIN'). Importers intending to import goods at a concessional rate of duties where IGCR is applicable shall be required to mention this IIN on the BOE at the time of import and the continuity bond shall get debited automatically.

In place of the current practice of intimating the jurisdictional officer regarding receipt of goods in the manufacturing premises within 2 days from such receipt, now reporting shall have to be done on the common portal on an exception basis only where imported goods are not received or short received in the premises.

The requirement of filing quarterly return is also to be replaced with filing of monthly statement in Form IGCR-3 on common portal. Intimation to the jurisdictional officer regarding sending the goods for job work has been removed and this information is to be submitted in the monthly statement to be submitted on the portal.

The proposed amendments to the IGCR rules requiring furnishing of all the information electronically would lead to a lot of ease of doing business for the taxpayers.

Clarification on applicability of SWS

The CBIC has issued a clarification stating that Social Welfare Surcharge ('SWS') will be 'NIL' in case where the basic custom duty is

exempted on import of goods. It is to be noted that the DRI officials had conducted inquiries across India contending that SWS would be applicable unless specifically exempted, even if aggregate customs duties is zero. This circular should help resolve this issue.

Exemption from AIDC and other cesses

Various notifications issued under Customs providing exemption from customs duty have been amended to extend the exemption to **Agriculture Infrastructure** Development Cess ('AIDC'). Similarly, where applicable, the exemption has been provided from payment of Road and Infrastructure Cess ('RIC') as well as Health Cess, wherever applicable.

Other Tariff Changes

Under the Phased Manufacturing Scheme an upfront Exemption from customs duties has been granted with a gradual increase in the duties applicable over a period of time has been introduced in respect of following electronic items and their parts

- Wrist wearable devices (Smart watches)
- Hearable devices
- Smart meters

Levy of Social Welfare Surcharge is being rationalized by way of withdrawing the exemptions currently granted on certain items and introducing exemptions on certain items. Exemption from SWS is withdrawn for certain textile products, in cases where the composite tariff is being replaced with ad-valorem tariff.

Concessional rates of BCD prescribed to Capital Goods and Project Imports vide notification No. 50/2017 – Customs is being phased out in gradual manner. Exemptions granted to various sectors through various notifications are being withdrawn with effect from the dates specified (1 April 2022 or 1 April 2023, as the case may be)

Sunset dates for various exemption notifications provided in line with the Government's target to phase out various exemptions under Customs.

CUSTOMS ACT

Tariff rate changes for Basic Customs Duty

These changes shall be effective from 02.02.2022, unless otherwise specified.

Particulars	Increase in Duty
Electrical and Electronics Sector	
Single or multiple loudspeakers, whether or not mounted in their enclosures Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers	From 15% to 20%
Printed Circuit Board Assembly of Smart Meters *(Effective BCD rate on these goods would continue to be '7.5%' till 31.03.2022)*	From 10% to 20%
Smart Meters *(Effective BCD rate on these goods would continue to be '15%' till 31.03.2022)*	From 15% to 25%
Solar Energy Sector	
Solar Cells (other than those exclusively used with ITA-1 items) *(Effective BCD rate on these goods would continue to be 'Nil' till 31.03.2022)*	From 20% to 25%
Solar Modules (other than those exclusively used with ITA-1 items) *(Effective BCD rate on these goods would continue to be 'Nil' till 31.03.2022)*	From 20% to 40%

Particulars	Decrease in Duty
Frozen Mussels and Squids	From 30% to 15%
Asafoetida (The current applicable Basic Customs Duty is 20% vide S. No. 51 of notification No. 50/2017- Customs)	From 30% to 5%
Cocoa Beans, whole or broken, raw or roasted	From 30% to 15%
Methyl alcohol (methanol) (The current applicable Basic Customs Duty is 5% vide S. No. 200 of notification No. 50/2017- Customs)	From 10 to 2.5%
Acetic acid (The current applicable Basic Customs Duty is 7.5% vide S. No. 185 of notification No. 50/2017- Customs)	From 10% to 5%
Textile Industries - Rates related to basic custom duty have been reduced for multiple HSNs related to woven fabrics	
Ferrous waste and scrap [It will attract "NIL" rate till 31.3.2023, vide S. No. 368 of notification No. 50/2017- Customs.]	From 15% to 2.5%
Project Imports [Effective BCD rate on these items would continue to be 'Nil / 2.5% / 5% (as applicable)' vide S. Nos. 597 to 606 of notification No. 50/2017- Customs, till 30.09.2023 for the project imports registered till 30.09.2022. For project imports registered on or after 01.10.2022, BCD will be levied at the rate of 7.5% All project imports will attract 7.5% BCD rate after 30.09.2023	From 10% to 7.5.%

INDIA
BUDGET
2022

FROM FREEDOM TO
SELF RELIANCE

REFERENCES

TAX RATES* FOR AY 2023-24

*[To be increased by applicable surcharge and health & education cess (see Notes)]

Individual, HUF, AOP & BOI

Taxable Income	All Individual, HUF, AOP & BOI	Resident Individual of 60 years or more age	Resident Individual of 80 years or more age
Up to Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	5%	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	5%	5%	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Rs. 10,00,001 and above	30%	30%	30%

Optional Tax regime for all Individual, HUF (Section 115BAC)

Taxable Income	All Individual, HUF
Up to Rs. 2,50,000	Nil
Rs. 2,50,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs. 7,50,000	10%
Rs. 7,50,001 to Rs. 10,00,000	15%
Rs. 10,00,001 to Rs. 12,50,000	20%
Rs. 12,50,001 to Rs. 15,00,000	25%
Rs. 15,00,001 and above	30%

This optional tax regime shall be exercised by Individual or HUF without claiming any exemption or deductions as prescribed u/s. 115BAC and under relevant rules.

Partnership Firm & Foreign Company

Particulars	General Tax Rate
Partnership Firm & LLP	30%
Foreign Company	40%

Domestic Company

Particulars	General Tax Rate
Domestic Company with Turnover / Gross Receipts up to Rs. 400 Crores in FY 2019-20	25%
Domestic Company opted for taxation under section 115BA	25%
Domestic Company opted for taxation under Section 115BAA	22%
Domestic Manufacturing Company incorporated on or after 1st October 2019 opted for taxation under Section 115BAB	
- Income derived from Manufacturing or Production	15%
- Other income for which no specific rate of tax is specified	22%
- Short-term capital gain of a non-depreciable capital asset	22%
Domestic Company not covered above	30%

Optional tax regime u/s. 115BAA or 115BAB shall be exercised by Company without claiming any exemption or deductions as provided in respective section and filing prescribed Form as per relevant rule.

Co-operative Society

Total Income	General Tax Rate
Upto Rs. 10,000	10%
Rs. 10,001 to 20,000	20%
Rs. 20,001 and above	30%

Resident Co-operative Society (Section 115BAD)

Particulars	General Tax Rate
Co-operative Society opted for taxation u/s 115BAD	22%

This optional u/s 115BAD tax regime shall be exercised by co-operative society without claiming any exemption or deductions as provided in the Act and filing prescribed Form as per relevant rule.

TAX RATES* FOR AY 2023-24

Special Rates of Tax

Nature of Income	Rate of Tax
Minimum Alternate Tax (Section 115JB) excluding company opted under section 115BAA and 115BAB.	15%
Alternate Minimum Tax (Section 115JC) excluding person opted for tax regime under section 115BAC and 115BAD	15%
(1) If Co-operative society (2) Other than Co-operative society	18.5%
STCG on listed securities (Section 111A)	15%
LTCG on listed equity share, units equity oriented mutual funds, business trust or unit linked insurance plan exceeding Rs. 1,00,000 (Section 112A)	10%
LTCG on unlisted securities or shares of a company in which the public are not substantially interested derived by **Non-Resident** (Section 112)	10%
LTCG on assets other than listed securities and zero-coupon bonds (Section 112)	20%
Royalty & Fees for Technical Services derived by **Non-Resident** (Section 115A)	10%
Dividend derived by non-resident subject to tax treaty benefit	20%
Tax payable by any Company (other than Foreign) on Buy-back of Shares (Section 115QA)	20%
Income by way of Royalty in respect of a patent developed and registered in India derived by Resident (Section 115BBF)	10%
Tax on Virtual Digital Assets (Section 115BBH- newly inserted by the Bill, 2022)	30%
Tax on Specified Income of Trusts and certain Institutions (Section 115BBI- newly inserted by the Bill, 2022)	30%

Note 1:
Rate of Surcharge on Income Tax

Total Income	Up to Rs. 50 Lacs	Rs.50 Lacs to Rs. 1 Cr.	Rs.1 Cr. to Rs. 2 Cr.	Rs.2 Cr. to Rs. 5 Cr.	Rs. 5 Cr. to Rs.10 Cr.	Above Rs. 10 Cr.
Individual / HUF/ AOP/ BOI (including tax regime u/s 115BAC)	Nil	10%	15%	25%**	37%**	37%**
Co-operative Society	Nil	Nil	7%	7%	7%	12%
Co-operative Society opted for tax regime u/s 115BAD	10%	10%	10%	10%	10%	10%
Partnership Firm / LLP	Nil	Nil	12%	12%	12%	12%
Foreign Company	Nil	Nil	2%	2%	2%	5%
Domestic Company						
Domestic Company (not opting for lower taxation u/s 115BAA & 115BAB)	Nil	Nil	7%	7%	7%	12%
Domestic Manufacturing Companies u/s 115BAA & 115BAB	10%	10%	10%	10%	10%	10%

***** In case of AOP, the applicable surcharge would be 15% in case all the members of AOP are companies.*** Further the above rate of surcharge shall not be applicable on tax payable on dividend and capital gains arising from transfer of certain securities u/s. 111A, 112, 112A for all classes of taxpayers .

Note 2: Health & Education Cess @ 4% will be charged to all assessee on the amount of Income Tax & Surcharge.

Note 3: In case where person is opting for taxation u. s. 115BAA/ 115BAB/ 115BAC & 115BAD, tax payable on capital gains arising will be at the rate specified in section 111A, 112 & 112A in respect of capital asset covered within the scope of these sections.

Note 4: A non-resident including foreign company can also avail lower rate of tax, if any, specified under applicable tax treaty subject to compliance with treaty access provision as provided under the Act.

TAX RATES* FOR FY 2022-23

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
192	Salary	As per Slab	As per Slab
192A	Provident Fund amount which is not exempt from tax	50,000	10%
193	Interest on Securities		
	(1) Interest on Debentures (Listed/Unlisted debentures issued by company in which public are substantially interested)	5,000**	10%
	(2) Interest on 7.75% Savings (Taxable) Bonds, 2018	10,000	10%
	(3) Any Other Interest on Securities (Unlisted)	0	10%
194	Dividend (including deemed dividend) to Resident	5,000*	10%
194A	(1) Interest paid by Banking Company, Co-operative Society/Banks engaged in banking business, Post Office under a deposit scheme framed by Central Government	40,000***	10%
	(2) Interest other than Interest on Securities (Other than above)	5,000	10%
194B	Winning from Lotteries	10,000	30%
194BB	Winnings from Horse Races	10,000	30%
194C	Payments to Contractors		
	(1) Payment to Transporter covered by Section 44AE [2]	NA	NIL
	(2) Payment to Individual / HUF (other than above)	30,000[3]	1%
	(3) Payment to Others (other than above)	30,000[3]	2%
194D	Insurance Commission	15,000	5%
194DA	Income component received from LIC (including ULIP) which are not covered u/s 10(10D)	1,00,000	5%
194E	Non-Resident Sportsman /Sports Association / Entertainer	0	20%[1]
194EE	Payment of deposits under NSS to Resident / Non-Resident	2,500	10% [1]
194F	Repurchase of units of Mutual Fund /UTI from Resident / Non-Resident	0	20%[1]
194G	Commission on Sale of lottery tickets to Resident / Non-Resident	15,000	5%[1]

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194H	Commission or Brokerage to Resident	15,000	5%
194I	Rent to Resident		
	(a) Rent for machinery / plant / equipment	2,40,000	2%
	(b) Rent for other than in (a)	2,40,000	10%
194-IA	Payment on transfer on certain immovable properties (Other than agricultural land)	50,00,000	1%
194-IB	Payment of Rent by certain Individuals or HUF (other than those who are covered u/s 194I) to a resident	50,000 p.m.	5%[4]
194-IC	Payment under speci?ed agreement (in case of joint development agreement excluding payment in kind)	0	10%
194J	Payment to resident taxpayer for professional services, royalty, sum referred u/s 28(va) excluding fees for technical services	30,000	10%
	Payment to resident assessee for fees for technical services or payment to assessee engaged in the business of call centre	30,000	2%
	Remuneration, fees, commission paid to Director (other than those on which tax is required to be deducted u/s 192) which is not in the nature of Salary	0	10%
194K	Income/ Dividend in respect of Units of Mutual Fund registered u/s 10(23D) payable to resident	5000	10%
194LA	Compensation to a resident on acquisition of immovable property (excluding compensation received under RFCTLAAR Act, 2013)	2,50,000	10%
194LB	Interest paid to a Non-Resident by the Noti?ed Infrastructure Debt Fund	0	5%[1]
194LBA	Payment to a resident Unit Holder speci?ed in Section 115UA (in respect of dividend if SPV opted for 115BAA)	0	10%
	Payment of Interest to a non- resident Unit Holder specified in Section 115UA	0	5%[1]
	Payment of Dividend to a non- resident Unit Holder speci?ed in Section 115UA if SPV opted for 115BAA	0	10%[1]

TAX RATES* FOR FY 2022-23

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194LBB	Income in respect of units of investment fund under Section 115UB		
	(1) In case of Payee being Resident	0	10%
	(2) In case of Payee being Non-Resident	0	Rate in Force [1]
194LBC	Income distribution to an investor by Securitisation Trust in respect of Section 115TCA		
	(1) In case of Payee being Resident Ind/HUF	NA	25%
	(2) In case of Payee being Resident any other person	NA	30%
	(3) In case of Payee being Non-Resident	NA	Rate in Force[1]
194LC	Interest paid by Specified Company to a Non-Resident on ECB	0	5%[1]
	Interest paid by Specified Company to a Non-Resident on Long term Bond or Rupee Denominated Bonds listed on recognized stock exchange in any IFSC	0	4%[1]
194LD	Interest payments to FII and QFI's on their Investment in Govt. Securities and RDB of an Indian Company, Municipal debt securities	0	5%[1]
194M	Payment by Individual/HUF for carrying out any work pursuant to contract, commission & fees for profession services (not covered by 194C, 194D & 194J)	Rs. 50 Lac	5%
194N	TDS on cash withdrawal		
	- Person who did not filed ITR for preceding three AYs & time limit to file original ITR is expired and said person withdrawing cash not exceeding Rs. 1 Crore	Rs. 20 lacs	2%
	- Person who did not filed ITR for preceding three AYs & time limit to file original ITR is expired and said person withdrawing cash exceeding Rs. 1 Crore	On amount exceeding Rs. 1 Crore	5%
	- Any other person	Rs. 1 Crore	2%
194O	Payment by e-commerce operator to e-commerce participant in respect of sale of goods or services	Rs. 5 lacs[5]	1%
194P	TDS in case of resident senior citizen having age of 75 year or more and receiving only pension in the bank and interest income from the same bank.	As per Slab[6]	As per Slab[6]
194Q	TDS on payment for purchase of goods by specified buyer	50,00,000	0.1%

Section	Nature of Payment	Threshold Limit	Rate
194R	TDS on benefits or perquisites in respect of business or profession to a resident assessee	20,000	10%
194S	TDS on payment for transfer of Virtual Digital Assets to a resident assessee (w.e.f. July 1,2022) (1) Specified person [8]	50,000	1%
	(2) Other than Specified person	10,000	1%
195	Payment of other sums to Non-Resident (Other than those specified in Section 194LB)	Rates specified under Part II of First Schedule of Bill, including applicable surcharge and health and education cess subject to rate specified under applicable DTAA	
196A	Income to non-residents in respect of units of MF as specified u/s 10(23D) or of specified company as specified u/s explanation of 10(35)[7]	0	20% [1]
196B	Income from units (including long term capital gain on transfer of such units) to an offshore fund	0	10% [1]
196C	Income from foreign currency bonds or GDR of Indian Company	0	10% [1]
196D	Income of FII from securities not being long term and short-term capital gain	0	20% [1]

(* in case of Resident Individual only)

(** in case of Resident Individual / HUF only)

(*** Rs. 50,000 in case of Resident Senior Citizen)

[1] All rates of TDS for Non-Resident Assessee shall be increased by applicable Surcharge, Health & Education Cess

[2] Transporter means persons engaged in plying, hiring and leasing of Goods Carriages having Income u/s. 44AE and not owning more than 10 goods carriage. Nil rates will be applicable if the transporter quotes his PAN and furnishes prescribed declaration.

[3] This limit is for individual transaction. However, if aggregate payment to contractors during the year exceeds Rs.1,00,000 then tax will have required to be deducted even where individual transaction is less than the threshold limit of Rs. 30,000

[4] In case TDS is to be made as per section 206AA, TDS amount shall not exceed rent payable for the last month of financial year or last month of tenancy.

[5] This limit is provided to only e-commerce participant being resident individual or HUF whose gross amount from sale of services and goods does not exceed Rs. 5 lacs and provided PAN or Aadhar card.

[6] Specified senior citizen need to submit declaration in the prescribed Form and manner to the Specified Bank. Accordingly, such specified senior citizen is not required to file ITR for the year in which TDS is deducted.

[7] No TDS will be withheld, in case where units have been acquired from UTI out of Non-Resident External account maintained in India or remittance of Funds in foreign currency as per FEMA regulations.

[8] Individuals or HUF whose Total Sales or Gross Receipts or Turnover does not exceed Rs. 1 Crore in case of Business or Rs. 50 lacs in case of Profession during the financial year immediately preceding the financial year in which such asset is transferred.

Note 1: A non-resident including foreign company is subject to lower withholding tax, if any, specified under applicable tax treaty subject to compliance with treaty access provision as provided under the Act.

Note 2: In order to strengthen the PAN /Aadhar Mechanism, as per section 206AA of the Act any person whose receipts are subject to TDS i.e. the deductee, shall furnish his PAN / Aadhar to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:

(i) prescribed in the Act;

(ii) at the rate in force i.e. the rate mentioned in the Finance Act; or

(iii) 20%

However, in the case TDS is required to be deducted u/s 194O and 194Q, the maximum TDS rate will be 5% instead of 20%. Further, in case of TDS deductible u/s. 192A where PAN in not furnished, TDS shall be deducted at Maximum Marginal Rate.

In addition to above, 206AB of the Act provides higher rate of TDS in case where deductee who is non-filer of income-tax return (in respect of latest assessment year for which time limit for filing of tax return is already expired) excluding a non-resident not having PE in India.

Accordingly, except in case of TDS falling under section 192, 192A, 194B,194BB, 194LBC, 194N, 194IA, 194IB and 194M and TDS by specified person u/s.194S; if deductee has not filed income tax return for immediately preceding AY for which time limit to file original return has expired and aggregate of TDS deducted and TCS collected in such AY is Rs. 50,000 or more, the deductor is required to deduct TDS at higher of the following rates;

(I) Twice of the rate prescribed in the Act;

(ii) at twice the rate in force i.e. the rate mentioned in the Finance Act; or

(iii) 5%

TCS Rates

Rates of Tax Collected at Source

Section	Nature of Payment	Threshold Limit	Rate
206C	Sale of alcoholic Liquor for human consumption & Indian made foreign Liquor	0	1%
206C	Sale of Timber obtained by any mode and any other forest produce	0	2.5%
206C	Sale of scrap	0	1%
206C	Parking Lot/ Toll plaza/Mining and Quarrying	0	2%
206C	Sale of tendu Leaves	0	5%
206C	Minerals, being coal or lignite or iron ore	0	1%
206C(1F)	Sale of Motor Car	10,00,000	1%
206C(1G)	Remittance out of India under the LRS of RBI**	7,00,000	5%
206C(1G)	Sale of overseas Tour Package*	0	5%
206C(1H)	Sale of goods (not covered under any of the above provision) excluding the case where the buyer of goods is liable to deduct tax at source on such goods under any other provision and has deducted such TDS)	50,00,000 [1]	0.1%

**TCS will not be applicable in cases where the buyer being deductor has already deducted TDS from the consideration as per the provision of Chapter XVII-B.

[1] The provisions of section 206C(1H) is applicable to seller whose turnover exceeded Rs. 10 crore during the immediately preceding financial year. Further, certain specified buyer such as central or state government, local authority or any other person as specified are excluded from the provision of the said section.

Note I: In order to strengthen the PAN/Aadhar Mechanism, as per section 206CC of the Act, any person who makes above nature of payment which is subject to TCS shall furnish his PAN/ Aadhar to the seller failing which the seller shall collect tax at source at higher of the following rates:

(I) at twice the rate specified in the section, or
(ii) at the rate of 5%

Further, in a case where TCS need to be collected u/s 206C(1H) and buyer has not provided PAN or Aadhar Card, TCS will be collected at the rate of 1%.

In addition to above, section 206CCA provides higher rate of TCS in case where buyer being non-filer of income-tax return excluding non-resident not having PE in India.

Accordingly, if buyer has not filed income tax return for immediately preceding AY for which time limit to file original return is expired and aggregate of TDS deducted and TCS collected in such AY is Rs. 50,000 or more, seller is required to collect TCS higher of the following rates:

(i) At twice of the rate prescribed in the Act;
(ii) 5%

OTHER RATES

Rates of Equalisation Levy – The Finance Act, 2016

Section	Nature of Transaction	Threshold Limit	Rate
165	Equalisation Levy in respect of Specified Services (e.g. online advertisement) provided by non-resident excluding case where services are not for business or profession.	1,00,000	6%
165A	Equalisation Levy in respect of e-commerce supply or services made by Non-Resident e-commerce operator	2 Crore	2%

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