DTPA
Direct Taxes Professionals' Association
ज्ञानं एक्यं च न्यायार्थम
Estd. 1982

eBulletin

January-February, 2021

Dear Friends,

With immense delight and happiness, we present you with this issue of DTPA E-Bulletin for the month of January & February 2021 containing informations which Members will find useful for them.

The Honourable Finance Minister has presented her First Digital Budget for the year 2021 for the first time in Indian History since Independence. Basically there are numerous changes in Direct and Indirect Taxes made in the Finance Bill 2021. The fine points are discussed in this edition of our this DTPA E-Bulletin. Omission of the GST Audit in this budget will certainly be a loss of existing professional opportunity for the practicing Chartered Accountants.

I would like to express my gratitude to all our Members for the honour bestowed upon me in granting me the opportunity to serve you as Chairman of the Journal Committee and for supporting me with your kind suggestions and valuable inputs.

With warm regards

CA MAHENDRA K AGARWAL
Chairman - DTPA Journal Committee
26th February, 2021

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Dear Members,

The new edition of our E-Bulletin, containing discussion and analysis on the Union Budget 2021 provisions is in your hands. All of us had a hectic schedule of work in auditing, submission of ITRs and GST Audit Reports and now there is a bit of time in hand to relax.

In spite of this tight work schedule also, the DTPA Journal Committee lead by CA Mahendra Kumar Agarwal had been on work and have completed the compilation of the monthly E-Bulletin for Jan-Feb 2021 with all his dedicated efforts, which I must appreciate and applaud. I am sure you will like this edition too for its useful contents.

This volume includes articles on Budget and others as well. In the Union Budget we saw sea changes in the provisions related to re-opening of assessments, assessment relating to Search cases. Many apex Court's decisions were made null by making corresponding changes in the related provisions. Some of these provisions like that of section 148A are useful. We have been representing for reduction in the number of years for which the assessment can be re-opened and we are glad that response to our voice has been positive.

GST Audit is now rendered 'useless' because the Reports submitted were found to be not generating enough Revenue. The message is loud and clear - the Government either feels the business entities need not be stressed by multiple audits or the CAs have lost their confidence in Nation Building at least in the field of GST Revenue collection. I would expect a strong representation on this issue from ICAI and all Associations, including ours.

As the COVID protocols are easing up, we have also responded positively to the same and are holding our sessions in 'hybrid' mode by allowing upto 40 participants in the DTPA Hall and rest over zoom, by connecting the Hall through a Video Conferencing system. I am sure Members will take fullest advantage of this and may attend the programmes physically also.

We are also organising our Third Residential Conclave at Amaya Resort on 20-21 March 2021 and I request Members to consider their participation in this Programme, which has been very successful on both the earlier occasions.

I would also request all the Members to contribute useful articles and compilations, which I assure, will find place in the next published bulletin, if found worthy of publication.

My best wishes to all the Members,

With warm regards

CA Narendra Kumar Goyal
President - DTPA
26th February, 2021

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ANALYSIS OF SOME DIRECT TAX PROPOSALS IN FINANCE BILL, 2021

Narayan Jain, LL.M., Advocate

The Hon'ble Finance Minister has introduced the Finance Bill, 2021 in the aftermath and amidst the panic caused by pandemic. There are as many as 79 amendments proposed the Income-tax Act, 1961. Some key amendments relating to Income Tax proposed in the Finance Bill, 2021 are discussed in this article.

TIME LIMITS FOR FILING RETURNS, REMOVAL OF DEFECTS IN RETURN

1. **Return of income [Section 139]**
   a) **Belated Return:** It has been proposed to prepone the due date of filing belated return of income under Section 139(4) to **31 December** from the earlier time of 31 March of the next year, effectively reducing the window for filing the belated return of income by 3 months.
   b) **Revised Return:** It has also been proposed to prepone the due date of filing revised return of income under Section 139(5) to **31 December** from the earlier time of 31 March of the next year, effectively reducing the window for filing the revised return of income by 3 months.
   c) **Defective Return:** It has been proposed to amend Section 139(9) which relates to cases where the Return of income would be considered as defective, so as to grant the Central Board of Direct Taxes (CBDT), the powers to declare such classes of assessees as excluded or excluded with modifications as the case may be, from the said conditions under which a return of income may be considered as a defective return. The amendment is proposed to be effective from 1 April 2021.
   d) **Filing of Return in cases where apportionment of income is to be made in cases in which The Portuguese Civil Code of 1860 and Sec 5A apply :** Section 139 of the Act deals with the provisions relating to the filing of return of income for various assessees. The Portuguese Civil Code of 1860 and Section 5A of the Act provides for the equal apportionment of income other than salaries between the husband and the wife governed by the said Code.It has been proposed to amend Section 139 so as to align the due dates of filing of return of income for the assessee with his / her spouse, in case the provisions of tax audit are applicable, and they are governed by the Portuguese Civil Code of 1860 and Section 5A is applicable.In the erstwhile provisions there was a mismatch whereby the spouse had to file his / her return earlier by 31 July and the assessee was required to do so by 31 October, if the provisions of Section 44AB were applicable.As a result, the **due date of 31 October** would now be applicable to both the said assessee as well as his / her spouse, if either one of them is required to get his / her books audited.
   e) **Filing of Return by partners in cases where sec.92E is applicable**: The earlier provisions for filing of return of income had a mismatch in case the provisions of Section 92E were applicable to the firm as the due date of filing return of income was 31 October for the partners but 30 November for the firm. It has been

proposed to align the due date of filing Return of income under Section 139 to **30 November**, for the **partners of the firm** to whom the provisions of Section 92E are applicable

The above reductions in the timelimits to file belated and revised returns seem to be a right step to expedite the whole assessment process.

TIME LIMITS FOR ISSUE OF INTIMATION, NOTICE & SCRUTINY ASSESSMENTS

2. Intimation and Assessment [Section 143(1), 143(2) and 143(3)]

a) Intimation under Section 143(1) :Section 143(1) provides for the processing of the return of income and issuing the Intimation under Section 143(1). It has been proposed to amend the time limit of processing of the said intimation under Section 143(1) and reduce the same to **nine months** (instead of the present one year time limit) from the end of assessment year.

b) It has also been proposed to amend the language of the provision so as to enable processing of intimation under Section 143(1) as regards the **mismatches with the audit report to the income side** as well and the adjustments just not be restricted to the expenditure side.

c) Further, it has also been proposed to insert **'Chapter VI-A'** instead of the Section numbers under Section 143(1)(a)(v) which provides the conditions for the processing of the return under Section 143(1). The said proposal is consequential to amendment in Section 80AC, which provides for non-allowance of deduction in case the return of income is not filed within the due date specified in Section 139(1).

d) Notice under Section 143(2): Section 143(2) provides time limit for the issue of notice for scrutiny assessment, as 6 months from the end of the assessment year, which has now been proposed to be reduced to **3 months from the end of the assessment year**.

e) Time limit for the completion of the scrutiny assessment : Amendment has also been proposed to reduce the time limit for the completion of the scrutiny assessment proceedings under Section 143(3) / 144 to 9 months from the end of the assessment year.

The above amendments are proposed to be effective from 1 April 2021. The reductions in the time- limits seem to be in right direction as it will help to expedite the assessment process.

INCOME ESCAPING ASSESSMENT AND ISSUE OF NOTICE UNDER SEC. 147/ 148/148A

3. Income escaping assessment and Notice under section 148 and 148A [Section 147]

a) It has been proposed that the scheme of reassessment as well as search assessment be substituted with a new procedure for the reassessment of income from 1 April 2021 onwards, which subsumes within its ambit both the assessment pursuant to search under Section 153A as well as under section 153C as well as reassessment under Section 147, under the erstwhile provisions.

b) It has been proposed to substitute the existing Section 147 and introduce a new Section 147, wherein the AO may assess or reassess such income and also any other income chargeable to tax which has escaped assessment, subject to the provisions of Section 148 to 153.

c) It has been proposed to substitute the erstwhile Section 148 of the Act and introduce a new Section 148, which stipulates that the assessee is to be served a notice under Section 148 along with the

order under Section 148A, asking him to furnish his return of income. It has been provided that the issue of the notice would not be made **unless there is information with the AO which suggests escapement of income,** as also the necessary approvals have been taken from the specified authority under Section 151. (also see subsequent paras)

d) It has been clarified that **information with the AO which suggests escapement of income to mean** :
   (i) Any information flagged in accordance with the risk management strategy formulated by the CBDT
   (ii) Any final objection raised by the Comptroller & Auditor General (C&AG) of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

e) It has also proposed to clarify by way of Explanation that any action under Section 132, 132A or 133A against the assessee or any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person belonging to the assessee after 01 April 2021 would be **deemed to be considered as information with the AO** which suggests income chargeable to tax has escaped assessment. Further, it has been clarified that the provisions of Section 148A would not be applicable to the assessee in these cases.

f) Insertion of new Section 148A : It has also been proposed to insert new Section 148A of the Act which requires that the AO can, if he requires, conduct any inquiry with respect to the information which suggests that the income chargeable to tax has escaped assessment before the issue of notice under Section 148 of the Act, after prior approval of the authority prescribed under Section 151 of the Act. Section 148A would require the AO to provide the assessee opportunity of being heard by serving upon him a show cause notice and asking him to reply within a specified time limit not exceeding 30 days from the date of the notice. The AO shall consider the reply of the assessee in response to the show cause notice under Section 148A of the Act as well as the material before him and then pass an order under Section 148A of the Act, whether or not it is a fit case to issue notice under Section 148. The said order should be passed within One month from the end of the month in which the reply is received, and in cases where no reply is received within 1 month from the end of the month in which the time limit allowed has expired.

g) It has also been proposed to be clarify by way of an Explanation that the AO has the power to assess or reassess any issue subsequently during the assessment proceedings irrespective of the fact that the provisions of Section 148A have not been complied with.

h) New Time frame for Issue of Notice under sec. 148 for Reopening of assessment: Section 149 of the Act has been substituted to provide that in normal cases the reassessment provisions would not be applicable if 3 years have elapsed from the end of the relevant assessment year. However, in case the AO has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to INR 50 lakh or more for that year, then the limitation period would get extended to 10 years from the end of the relevant assessment year. It is further provided that the limitation period would be extended by the time limit allowed to the assessee to comply with the show cause notice under Section 148A, or the period

during which the proceedings under Section 148A are stayed by an order or injunction of a Court. Corresponding amendments have also been made in Section 151 and Section 151A of the Act to reflect the said assessment procedure.

The proposed changes with regard to the manner in which income escaping assessment is to be assessed are much different from the erstwhile provisions, and are welcome. The opportunity to be allowed to the assessee under new section 148A is admirable. It had been judicially laid down that proceedings under Section 147 cannot be used to revising, rectifying or reconsidering the whole assessment, and merely on change of opinion to tax the transaction already assessed. However now the principle laid down regarding "reassessment on mere change of opinion" may not be a good ground for challenging re-assessment. As a result of amendment, now the whole reassessment proceedings are based only on '**information which suggests**' that income has escaped assessment, in contradistinction to the words '**reason to believe**' in the erstwhile Section 147.

TIME LIMIT U/S 153 FOR COMPLETION OF ASSESSMENTS

4. Time Limit for completion of assessments: It has also been proposed to amend Section 153(1) by way of a proviso whereby the time limit of completion of assessments under Section 143 and Section 144 for Asst Year 2021-22 onwards would be reduced to 9 months from the end of the assessment year in which the income is assessable. The above amendments are proposed to be effective from 1 April 2021. Consequential amendments have been also proposed in Section 153A and Section 153C, whereby the Sections would cease to apply to actions initiated after 1 April 2021.

Inquiry before assessment [Sections 133C, 142(1)(i)]

5. Inquiry before assessment [Sections 133C, 142(1)(i)]

a) Section 133C give powers to the prescribed income-tax authority to ask for information and documents which may be useful or relevant to any inquiry or proceeding under the Income Tax Act.However, the prescribed income-tax authority was not permitted to ask the assessee to file its return of income in case it had not been filed.

b) It has now been proposed to amend Section 142(1)(i) so as to include within the ambit of the assessing officer, the '**prescribed income-tax authority**'. Consequently, the prescribed income-tax authority can also mandate the assessee to file his return of income, in case the same is not filed.

c) This is in addition to the powers of inquiry under Section 133C wherein information and documents relevant to proceedings can be asked for.

This amendment has been proposed to be effective from 1 April 2021.It seems that the aim is to widen powers of National E Assessment Centre (NeAC) to promote the faceless assessment scheme.

6. PROFITS AND GAINS OF BUSINESS OR PROFESSION

Certain deductions to be only on actual payment [Section 36(1)(va) and Section 43B]

a) Section 36(1)(va) provides for deduction by way of expenditure to **any sum received by the assessee from any of his employees** to which the provisions of **Section 2(24)(x)** apply, if such sum is

credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.**Section 43B** allowed for the deduction of expenditure incurred by the employer on account of employers' contribution to the specified funds like provident fund etc. on actual payment basis.

b) As a result of the similar nature of payments, there was a controversy regarding the term 'due date' mentioned in the Section 36(1)(va) wherein, some High Courts had held that the due date mentioned, is the date of filing the return of income and not the mandatory date of payment under that specific Act.Hence, the contribution made even after the due date under the specified Act but before the due date of filing the return of income was allowed as expenditure. There were conflicting decisions on both sides.

c) In order to clarify the issue, an amendment has been proposed under Explanation 2 to Section 36(1)(va) to provide specifically that the provisions of Section 43B are not applicable and further are deemed to never have been applicable for the purpose of determining the 'due date' under the Section 36(1)(va).

d) Corresponding clarification has also been proposed to be inserted under Section 43B that the provision of the Section shall not apply to a sum received by the assessee from any of his employees to which the provisions of Section 2(24)(x) applies, as the same is covered in Section 36(1)(va) of the Act.

The above amendments are proposed to be effective from 1 April 2021. **The proposed amendment is to ensure payment of the employees contribution towards welfare funds such as ESI and PF within time prescribed under ESI and PF Act.**

7. Safe Harbour Rule by way of amendment in Special provision for full value of consideration for transfer of assets other than capital asset in certain cases (by the developers/ promoters) and Income from other sources [Section 43CA and Section 56(2)(x)]

a) To encourage the real estate developers, in case of residential units, the safe harbour limit is proposed to be increased from 10% to 20% subject to fulfilling the following conditions:

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

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

(iii) The consideration received or accruing as a result of such transfer does **not exceed INR 2 crore.**

b) An explanation has been inserted to define the term 'residential unit'.

c) Consequential amendment has also been proposed in Section 56(2)(x) to increase the **safe harbour limit from 10% to 20%** whereby, circle rate shall be deemed as sale/ purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

The above amendments are proposed to be effective from 1 April 2021.The proposed amendment is in line with the announcement made earlier by the FM. It will bring some relief to real estate industry.

8. Depreciation on Goodwill [Sections 2(11), 32, 50 and 55]

a) The term '**block of assets**' as referred to in **Section 2(11)** of the Act shall not include the term '**goodwill of a business or profession**'.Section 32(1)(ii) of the Act has been proposed to be amended to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said Section and therefore not eligible for depreciation.Also, Explanation 3 to Section 32(1) is proposed to be amended to provide that goodwill of a business or profession shall not be

considered as an asset for the said sub-Section.

b) A proviso has been proposed to be inserted in Section 50(2), which provides that in a case where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on 1 April 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.

c) **Substitution of Section 55(2)(a)**: Section 55(2)(a) has been proposed to be substituted to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours:

(i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and

(ii) in the case falling under Section 49(1) (i) to (iv) and where such asset was acquired by the previous owner by purchase, means the amount of the purchase price for such previous owner; and

(iii) in any other case, shall be taken to be **NIL**.

Further, the **cost of acquisition** will be the purchase price as reduced by the amount of depreciation so obtained by the assessee under Section 32 on or before 1 April 2020 in a case wherethe goodwill of a business or profession is acquired by the assessee by way of purchase from a previous owner, either directly or through the modes specified under Section 49 (1) (i) to (iv).

The above amendments are proposed to be effective from 1 April 2021.It may be noted that Hon'ble Supreme Court in the case of **Smifs Securities Limited [(2012) 348 ITR 302 (SC)**, had held that goodwill is an asset that arises on account of consideration paid being in excess of fair value of assets and liabilities being acquired, irrespective of the fact whether consideration is discharged in cash or shares.The Hon'ble Supreme Court held that in essence the business advantages, like the reputation enjoyed by the transferor company to retain its clientele etc., is attributable to goodwill. It is worth noting that the transferor company, prior to the amalgamation would have had assets, trained workforce, established business practices, all this enabling the company to have a regular stream of income. It is this complete intangible apparatus that has been acquired by the transferee company through amalgamation. It is this intangible apparatus which is termed as goodwill.The mode of acquisition of business may be via business purchase, amalgamation, mergers, demergers, etc.

The proposed amendment aims to nullify the decision of the Hon'ble Supreme Court in the case of **Smifs Securities Limited [(2012) 348 ITR 302**.

9. Audit of accounts of certain persons carrying on business or profession[Section 44AB]

a) Section 44AB provides for audit of accounts for every person carrying on business, if his total sales, turnover or gross receipts in business exceed or exceeds INR 1 crore in any previous year.

b) The threshold limit for a person carrying on business was increased from INR 1 crore to INR 5 crore, where:

- the aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt and
- the aggregate of all payments in cash during the previous year does not exceed

5% of such payment.

c) **The threshold limit of tax audit in specified cases is now proposed to be increased to INR 10 crore, however the conditions mentioned above would still be applicable.**

The above amendment is proposed to be effective from 1 April 2021. The amendment has been made to incentivize non-cash transactions to promote digital economy and toreduce compliance burden of small and medium enterprises.

10. Computing profits and gains of profession on presumptive basis [Section 44ADA]

a) Presently, a resident, being an assessee having professional income, he / she can opt for offering presumptive income, if the gross receipts from such profession is up to INR 50 lakhs.

b) The said benefit is now proposed to be restricted to resident individual, Hindu Undivided Family or a partnership firm **other than a Limited Liability Partnership (LLP)** as defined under Section 2(1)(n) of LLP Act, 2008.

The amendment is proposed to be effective from 1 April 2021.

11. Special provision for computing deduction in the case of business reorganization of co-operative banks [Section 44DB]

a) The Reserve Bank of India (RBI) has started an on-tap licensing policy for granting of the Small Finance Bank (SFB) License to applicants, based on various parameters. On-tap licensing policy means that RBI, unlike in the past, will accept applications and grant license for banks throughout the year. The Urban Cooperative Banks, which are encompassed within the general definition of primary cooperative banks, are also eligible to avail the SFB license.

b) RBI has encouraged UCBs to apply for the said license on account of the better regulatory framework and compliance in terms of capital adequacy norms, etc.

c) Section 44DB of the Act provides for the method of computing deductions in the case of **business reorganization of co-operative banks**, so as to enable seamless reorganization of the banks.

d) In the above backdrop and in order to provide a further impetus to these banks, an amendment to Section 44DB has been proposed to expand the scope of business reorganization by including within its ambit, the **conversion of a primary co-operative bank into a banking company**. This would allow the cooperative banks to avail the deduction even if the result of the reorganization is a banking company.

e) In line with the above, '**banking company**', '**converted banking company**', '**conversion**' and '**primary co-operative bank**' have been defined and consequential amendment to the term '**predecessor co-operative bank**' has been made.

f) Consequential amendments have also been made under Sections 47, 56(2)(x) as well as new sub-Section 10(23)(FF) has been inserted, so as to make the said reorganization tax neutral.

The above amendments are proposed to be effective from 1 April 2021. The amendments seek to encourage urban cooperative banks to get converted into banking companies and contribute to make the banking and financial services sector more vibrant.

CAPITAL GAINS

12. Taxation on distribution of asset/ money on dissolution or reconstitution of firm/AOP/BOI [Section 45 (4) and 45(4A) and Section 48]

a) **Erstwhile Section 45(4)** provides for tax on transfer of capital asset by way of distribution to partner/ member by a firm /

AOP / BOI (specified entity) on its dissolution or otherwise. For computation of such capital gains, fair market value of the capital asset is considered as full value of consideration.It has now been proposed to substitute Section 45(4) and insert new Sections 45(4) and 45(4A) to compute tax of the specified person on capital gains arising from dissolution or reconstitution.

b) **New Section 45(4)** will deal with Capital Asset and **Full Value of consideration received or accruing as a result of transfer of such capital asset for the purpose of Section 48 shall be deemed to be** Fair Market value of capital asset for the purpose of section 48. The Cost of acquisition of such capital asset shall be determined in accordance with the provisions of the Chapter IV-E of the Income tax Act; Balance in capital account of the specified person in the books of account of specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset, or due to self-generated goodwill or any other self-generated asset.The substituted section is proposed to be effective from 1 April 2021

c) **New Section 45(4A)** will deal with Money and Other Assets received by any specified person. **Full Value of consideration received or accruing for the purpose of Section 48 shall be Value of money and fair market value of other assets on the date of such receipt.** Balance in capital account of the specified person in the books of account of the specified entity at the time of dissolution or reconstitution shall be deemed to be cost of acquisition. It has been provided that the balance in the capital account of the specified person in the books of specified entity is to be calculated without taking into account increase in the capital account due to revaluation of any asset, or due to self-generated goodwill or any other self-generated asset.

The above amendments are proposed to be effective from 1 April 2021. It may be noted that the words '**dissolution or otherwise**' are now substituted for the words '**dissolution or reconstitution**' of the specified entity and the words '**distribution of assets'** are now substituted for the word '**receives**'. It seems that **Section 45(4)** has been substituted to circumvent the judicial decisions where it has been held that receipt of **monetary consideration by retiring partners would not be covered by the erstwhile Section 45(4)**.

13. Definition of the term 'Slump Sale' mentioned in section 50B [Section 2(42C)]

a) Section 50B provides for computation of capital gains in case of 'slump sale'. It may be noted that Section 2(42C) defines 'slump sale' to mean the transfer of one or more undertakings **as a result of the sale** for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

b) The erstwhile definition of 'slump sale' has been proposed to be amended to include all types of transfers within its scope to provide certainty. The definition of the term 'slump sale' under Section 2(42C) is expanded so as to mean the **transfer of one or more undertakings, by any means**, for lump sum consideration without value being assigned to individual assets and liabilities in such cases.

c) An Explanation has also been proposed to be added to Section 2(42C) which states that the meaning of the term 'transfer' shall have the same meaning as assigned under Section 2(47) and hence, all the types of transfer as defined in Section 2(47) are included within its scope.

It may be noted that the above amendment nullifies the decision of the Hon'ble

Bombay High Court in case of **Bharat Bijlee Limited (2014) 365 ITR 258(Bom)** and other decisions, wherein taxability of a transfer of an undertaking under Section 391 read with Section 394 of the Companies Act, 1956, in a Scheme of Arrangement was considered. The said Scheme was for a transfer of an undertaking in exchange of shares and bonds. The Hon'ble High Court held that the transfer of the undertaking was not a sale as envisaged under Section 2(42C) of the Act, in absence of monetary consideration and was in fact an exchange. Thus, the Court held that provisions of Section 50B were not applicable. It may be noted that the above amendment also proposes to tax 'slump exchange' of an undertaking as capital gains and as a result of amendment, all types of transfer of an undertaking are sought to be covered by the provisions of slump sale under Section 50B.

The above amendments are proposed to be effective from 1 April 2021.

14. Capital gain on transfer of residential property not to be charged in certain cases [Section 54GB]

a) **Section 54GB**, inter alia, provide for roll over benefit in respect of capital gains arising from the transfer of a long-term capital asset, being a residential property owned by the eligible assessee. For getting benefit of this provision, the assessee is required to utilise the net consideration for subscription in equity shares of an eligible company before the due date of filing return of income. The benefit is only available for investment in the equity shares of eligible start-ups up to 31 March 2021.

b) It has been proposed to amend the proviso to **Section 54GB(5)** so as to extend the outer date of investment by one year in case of an eligible start-up, the capital gains arising from transfer of residential property made up to **31 March 2022** shall be eligible for the benefit.

The above amendment is proposed to be effective from 1 April 2021.

15. Consequential amendments to Section 2(14), 45(1B), 112A

In case of a ULIP to which exemption under Section 10(10D) does not apply on account of the applicability of the fourth and fifth proviso to Section 10(10D), consequential amendments are proposed to be made to the below Sections:

a) Section 2(14)(c) isinserted to include such **ULIP as a capital asset** under Section 2(14)

b) Section 45(1B) is inserted to provide for the **deemed taxation of profit and gains from the redemption of such ULIP as income under the head 'capital gains.'**

The same shall be income of such person of the previous year in which such amount is received. The Rules may prescribe the manner of taxability of such income (Non-obstante clause).

Explanation to Section 112A is amended to include a fund set up under a scheme of an insurance company comprising of such ULIP in the **definition of equity oriented fund**, so as to provide them the same treatment as unit of equity oriented fund.

Thus, the provisions of Section 111A and 112A would apply on sale/ redemption of such ULIPs.

Amendments have also been proposed to the Finance (No.2) Act, 2004 to make Security Transaction Tax applicable on maturity or partial withdrawal with respect to unit linked insurance policy issued by insurance company on or after the 1 February, 2021 (to which exemption under Section 10(10D) of the Act does not apply on account of the applicability of the fourth and fifth proviso).

The above amendments are proposed to be effective from 1 April 2021

DEDUCTIONS

16. Special provision for Deduction in respect

of specified business. [Start-ups] [Section 80-IAC]

Section 80-IAC provides for a deduction of 100% of the profits and gains derived from an eligible business by an eligible start-up having turnover not exceeding INR 100 crores, for 3 consecutive assessment years out of 10 years, at the option of the assessee, subject to certain conditions, for an eligible start-up incorporated on or after the 1 April 2016 but before the 1 April 2021.It has now been proposed to extend the period of incorporation of such eligible start-ups till **1 April 2022.**

The above amendment is proposed to be effective from 1 April 2021.

17. Deduction in respect of profit and gains from housing project [Sec 80-IBA and Sec. 80EEA]

a) Section 80-IBA provides deduction of 100% of the profits in case they are earned from the business of developing and building Affordable Housing Projects, to provide impetus to the construction industry in respect of these affordable housing projects.Earlier, the time limit for the approval of the project by the competent authority was until 31 March 2021, which has now been proposed to be extended to **31 March 2022**.

b) Sub-Section 80-IBA(1A) is also proposed to be inserted, whereby 100 percent deduction of the profits can also be availed for the profits and gains derived from the business of developing and building an **Affordable Rental Housing Project**.

c) Consequential amendment is also proposed to be made in sub-Section 80-IBA(6), defining the expression '**Rental Housing Project**'.

d) A corresponding amendment has also been proposed to **Section 80EEA**, which provides for deduction in respect of interest on loan taken for acquisition of the Affordable Residential House Property mentioned above to the purchaser of the said residential property

The above amendments are proposed to be effective from 1 April 2022.The extension of the time limit will provide some relief to the construction industry as well as the buyers of affordable housing.The proposed amendment on Rental Housing Projects is welcome as it has been introduced with the intent to help migrant labour and promote affordable rental housing options.

BOARD FOR ADVANCE RULING, INTERIM BOARD OF SETTLEMENT AND ITAT

18. Board for Advance Rulings [Section 245-OB and from Sections 245N to Section 245W]

b) The erstwhile Authority for Advance Rulings (AAR) shall cease to exist on and from such date notified by the Central Government.

c) In order to ensure smooth functioning of the Authority for Advance Rulings (AAR), it is proposed to constitute a Board of Advance Ruling consisting of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board.And for this purpose a new Section 245-OB shall be inserted to provide for the constitution of the Board of Advance Rulings.

d) Unlike the AAR, the rulings of the Board shall not be binding on the Applicant or the Department.

e) Consequential amendments in various provisions of this Chapter are made as the work of AAR shall be carried out by the Board for Advance Rulings on and after the notified date.

The above amendments are proposed to be effective from 1 April 2021. It may be noted that Section 245N is amended to incorporate various definitions including the changes in the definition of Authority to now include Board of Advance Rulings. The following changes may also be noted:

i. **Section 245O is amended to provide that the Authority for Advance Rulings (AAR)will cease to operate on or after the Notified date**.

ii. Section 245Q is amended to provide that **all pending applications with the Authority for Advance Ruling before the notified date shall be transferred to the Board for Advance Rulings**.

iii. References to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant in Section 245N and in Section 245Q relating to application for advance ruling is to be omitted.

iv. Sections 245P, 245R, 245T and 245U are amended to provide that **the words 'Authority',shall be substituted by the words 'Board for Advance Rulings'** and the provisions of this shall mutatis mutandis apply to the Board for Advance Rulings as they apply to the **Authority for Advance Rulings (AAR)**.

v. Section 245S and 245V shall no longer be applicable.

vi. Appeal can be made to the High Court if applicant or the A.O. is aggrieved by the ruling or order passed by the Board: A **new Section 245W** is inserted which provides that **an appeal can be made to the High Court** in case of an applicant or the Assessing Officer is aggrieved by the ruling or order passed by the Board. The appeal is to be made within **sixty days** from the date of the communication of that ruling or order.

vii. The High Court may grant further period of thirty days for filing such appeal if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in sub-Section (1).

The above amendments are proposed to be effective from 1 April 2021.It seems that the advice given by the **Hon'ble Supreme Court** in the case of **National Co-operative Development Corporation v. CIT** [Civil Appeal Nos. 5105-5107 of 2009], for strengthening the AAR as an effective Dispute Resolution mechanism, so as to un-burden the Courts of litigation, has been ignored. Howeverthere is need to re-visit the issue in line with the advice of the Hon'ble Supreme Court.

19. Constitution of new Interim Board for Settlement replacing existing Income-tax Settlement commission [Section 245A to Section 245M]

a) Discontinuation of the Income-tax Settlement Commission (ITSC): It has been proposed to discontinue the Income-tax Settlement Commission (ITSC) with effect from 1 February 2021 and constitute one or more Interim Board(s) for Settlement of pending applications.

b) The applications which have not been declared as invalid under Section 245D(2C) and in respect of which no order has been issued under Section 254D(4) on or before 31 January 2021 are proposed to be treated as **pending cases for Interim Boards**.

c) An order which was required to be passed by the ITSC under Section 245(2C) on or before 31 January 2021 to declare an application invalid but such order has not been passed before the aforesaid date, such application shall be deemed to be valid and treated as pending application.

It may be noted that the following amendments are proposed on this matter:

i. For the words **'Settlement Commission'**, wherever they occur, the words **'Interim Board'** shall be substituted

ii. For the word 'Bench', the words **'Interim Board'** shall be substituted

iii. The date on which the application was

made before ITSC shall be deemed to be **date on which application received by the 'Interim Board for Settlement' (IBS).**

iv. **Powers and functions** of the ITSC shall be exercised by the IBS and the provisions of ITSC shall mutatis mutandis apply to the IBS as they apply to the Settlement Commission

v. The assessee who had filed such application before ITSC may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer (AO), in the prescribed manner, about such withdrawal

vi. **Where the assessee withdraws the application** before ITSC, the proceedings with respect to the application shall abate on the date on which such application is withdrawn.

vii. **The AO, or, any other income-tax authority** before whom the proceeding at the time of making the application was pending, **shall dispose of the case in accordance with the provisions of this Act as if no application before ITSC had been made**

viii. **All the records, documents or evidences,** with the ITSC shall be transferred to such Interim Board for Settlement and shall be deemed to be the records before it for all purposes.

ix. The Central Government may by notification in the Official Gazette, make a scheme, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by :
- eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible
- optimising utilisation of the resources through economies of scale and functional specialisation
- Introducing a mechanism with dynamic jurisdiction

x. Central Government by notification in the Official Gazette, direct that any of the provisions of ITSC shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification and the said notification will be placed before House of Parliament.

The above amendments are proposed to be effective from 1 February 2021.The said proposed amendment states that the **Interim Board is proposed to be constituted to conclude pending cases and no fresh applications may be made.** Hence, the applicants have an option to withdraw their pending application within 3 months from the commencement of the Finance Act, 2021.

20. Procedure of Income-tax Appellate Tribunal (ITAT) [Section 255]

a) In order to further strengthen the Faceless Appeals Scheme, a Faceless Scheme for ITAT proceedings is proposed to be launched. Therefore, in order to reduce human interface between the ITAT and the assessee, Section 255 of the Act is proposed to be amended, to provide that the Central Government may notify a scheme for disposal of appeal by ITAT and to impart greater efficiency, transparency and accountability by:

– eliminating the interface between the ITAT and parties to the appeal in the

course of proceedings to the extent technologically feasible,

– optimising utilisation of the resources through economies of scale and functional specialization,

– introducing an appellate system with dynamic jurisdiction.

b) The Central Government is empowered to give such directions that certain provisions of the Income Tax Act shall not apply to this scheme or shall apply with such modifications, exceptions and adaptations on or before 31 March 2023.

c) The Explanatory Memorandum has provided the reason for the introduction of the Scheme: 'This will not only reduce cost of compliance for taxpayers, increase transparency in disposal of appeals but will also help in achieving even work distribution in different benches resulting in best utilisation of resources',

[We respectfully submit that these reasons are in fact not relevant and germane to the role of the ITAT and the carriage of justice, which is essential in the implementation of the Act. Considering the importance of face to face hearing on complicated tax matters and the jurisprudence on the same of many decades, these proposed amendments should be dropped.]

The above amendments are proposed to be effective from 1 April 2021.The ITAT is the highest fact finding body under the Income Tax Act. The essence of having the ITAT is to see that justice is meted out. **Personal hearing and debating the issues and giving an opportunity to be heard are the corner-stone of justice, embedding the principles of natural justice.**It will be relevant to refer the decision in has been held in **B Gautam v. UOI [(1993) 199 ITR 530 (SC)]**, wherein it was held that Violation of the principle of natural justice may lead to violation of Fundamental rights of equality guaranteed by Article 14 or 21 of the Constitution of India.

In view of the said decision of Apex Court, introduction of faceless hearings before the ITAT would be against the basic principles of natural justice. These principles have been upheld by the Hon'ble Supreme Court in many cases.

SPECIAL RATES OF TAX

21. SPECIAL RATES OF TAX: Special provision for payment of tax by certain companies [Section 115JB] (Part I)

a) The Finance Act, 2020, had scrapped the erstwhile **dividend distribution tax** and as a result **the burden of taxation of dividends has shifted from the issuer company to the shareholders receiving the dividends.**

b) The dividend income was under a dual computation mechanism, whereby the MAT provisions were applicable in case the tax payable as per the normal rates of tax was lower than the tax payable on the book profits. It has now been proposed that the dividend income earned by the foreign company, like the income from royalty and fees for technical services, would now be excluded from the computation of the book profits under Section 115JB.In other words, **MAT provisions would not apply to foreign companies having only specified incomes like dividend income, royalty income and income from fees for technical services**.

These amendments are proposed to be effective from 1 April 2021. This is a welcome step as it will provide tax certainty and facilitate easier tax compliance by the foreign companies and will help them in doing business in India.

22. **Special provision for payment of tax by certain companies [Section 115JB] (Part II)**

a) **Section 115JB**provides that **15% of the book profits of the company are payable as income-tax, in case the amount arrived at, is higher than the income-tax computed as per the normal provisions** of the Income Tax Act.

b) Sections 92CC and 92CE of the Act, deal with the provisions of Advance Pricing Agreements and Secondary Adjustments respectively. These Sections result in changes to income which gets reflected in the current year book profits of the company, even though the additions to the income as per the Income Tax Act is of that particular year in which the adjustment is made.This used to result in inflation of the book profits of the current year, as the adjustments to the books of accounts are made in the current year, even though the additions are pertaining to the income of the earlier years.

c) It has now been proposed that the **AO, on the receipt of an application from the assessee, may re-compute the book profits for all the past years and then determine the tax liability for the previous year** under consideration.

d) It is also proposed to provide that the said **process would be considered as a proceeding akin to proceedings under the ambit of Section 154, as also the time limit of 4 years from the end of the financial year in which the application was received from the assessee similar to Section 154(7) of the Act, would be applicable**.

e) **Since the income additions under Sections 92CC and Section 92CE are considered as part of past year book profits, the tax computation of the current year remains insulated from these additions and results in the correct computation of income under Section 115JB**t.

The proposed provisions will be beneficial to the assessee, as it helps to avoid the concentration of book profits pertaining to earlier years during the current year, thereby resulting in the correct computation of book profits under Section 115JB of the Act for the current year. It is suggested that similar relief should also be made available to assessees covered by Section 115JC.

TAX DEDUCTION AT SOURCE

23. **TAX DEDUCTED AT SOURCE**

a) **Withholding of tax on payment of dividends [Section 194]**: Section 194 provides for deduction of tax at source (TDS) on payment of dividend to a resident.Section 194 is proposed to be **amended to provide for exemption with respect to withholding tax on dividend paid by a SPV** [as referred to in Explanation to Section 10(23FC) of the Act] to a business trust [as defined under Section 2(13A) of the Act] or any other person as may be notified by the Central Government in Official Gazette.The amendments are proposed to be effective retrospectively from 1 April 2020.

b) **Withholding of tax on payment of interest [Section 194A]**: At present the provisions of **Section 194A are not applicable on interest paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond issued by them.** It has now been proposed **to widen the scope of the above exemption to include interest paid or payable by an infrastructure debt fund in relation to a zero coupon bond issued by such fund**. The amendments are proposed to be

effective from 1 April 2021.

The said amendment in Section 194A, will help the government to raise funds by way of zero coupon bonds and hence, the said amendment is rightly aligned to the amendments made in Section 2(48), to also notify infrastructure debt funds to issue zero coupon bonds.

c) **TDS on payment of rent by certain individuals or Hindu undivided family (HUF) [Section 194-IB]:** As per Section 194-IB, it is mandatory for any person, i.e. individuals / HUF,who is not liable to audit under Section 44AB, to deduct taxes for rent paid to a resident, exceeding INR 50,000 per month.Section 206AA of the Act provides that if Permanent Account Number (PAN) is not furnished by the payee, the withholding tax rate would be **20 per cent or the rate in force**, whichever is higher.**It is now proposed to amend Section 194IB to include the newly inserted Section 206AB, providing for higher rate for TDS for the Non-filers of income-tax return.**The amendment is proposed to be effective from **1 July 2021**.

d) **Deduction of tax in case of specified senior citizen and Relaxation from furnishing / filing of return of income to a senior citizen of age of 75 years[Section 194P]:** Section 194P is proposed to be inserted which provides for relaxation from furnishing / filing of return of income to a senior citizen of age of 75 years in the year in which tax has been deducted by the specified bank after giving effect to the deduction allowable under Chapter VI-A of the Act and rebate under Section 87A. It may be noted that such Senior citizens need to satisfy the below requirements for applicability of the said Section:

i. Resident in India

ii. Aged 75 years or more during anytime during the previous year

iii. He has **No income other than pension and interest income from the same specified bank in which he is receiving his pension income**

iv. Furnishes a declaration to the specified bank containing particulars, in such form and verified in such manner, as may be prescribed

The above amendment is proposed to be effective from 1 April 2021.This new Section applies only to senior citizens who are having income in the nature of pension, and has no other income except the income of the nature of interest, received or receivable from any account maintained by such individual in the same specified bank, in which he is receiving his pension income. **That means**, **if the senior citizen earns interest income from any other bank / banks, this Section shall not apply**. Further, if the senior citizen has refund due, he / she will have to file a return of income.**The object of the government to reduce compliance burden on the specified senior citizens seems laudable, the requirements that they should be earning only interest income apart from pension income from only one bank seems unpractical and unrealistic and hardly some people will be able to take benefit.**

e) **TDS on payment of certain sum for purchase of goods exceeding INR 50 lakh in a previous year [Section 194Q]: New** Section 194Q has been proposed to be inserted to provide for withholding tax at the rate of 0.1 per cent on payment made by a buyer to a person resident in India for purchase of goods exceeding INR 50 lakh in a previous year.The buyer is required to withhold tax at the rate of 0.1 per cent on the sum exceeding INR 50 lakh. According to the Explanation to the proposed Section

194Q(1) the term **'buyer'will mean a person whose total sales, gross receipts or turnover from the business carried on by him exceeds INR 10 crore, during the financial year immediately preceding the financial year in which the purchase of goods is carried out.**The provisions of this Section shall not apply to a transaction on which:

i. tax is deductible under any of the provisions of the Act; and

ii. tax is collectible under the provisions of Section 206C [other than a transaction covered under Section 206C(1H) of the Act]

It has also been proposed to consequentially amend Section 206AA(1) and insert second proviso to provide that where the tax is required to be deducted under Section 194Q and Permanent Account Number (PAN) is not provided, the TDS shall be at the rate of five per cent.The above amendments are proposed to be effective from 1 July 2021. As a result of insertion of the new section, the compliance burden is going to increase, as an entity is alreadycast with the burden of collecting tax at source under Section 206C(1H) on sale of goods, and now this extra burden has been imposed when an entity purchases goods. **The Memorandum clarifies that if on a transaction TCS under Section 206C(1H) is applicable, as well as TDS under this section is applicable, then only TDS under this section shall be carried out.**

f) **TDS on payment made to Foreign Institutional Investors (FIIs) [Section 196D]:** Section 196D prescribes withholding of tax at the rate of **20 per cent on dividend paid to FIIs from securities under Section 115AD(1)(a)**.A new proviso is proposed to be inserted to Section 196D which provides that **in case of a payee to whom an agreement under Section 90(1) or Section 90A(1) applies and such payee has furnished the tax residency certificate (TRC) referred to in Section 90(4) or Section 90A(4), then the tax shall be deducted at the rate of twenty per cent or the rate or rates of income-tax provided in such agreement for such income, whichever is lower**.The amendment is proposed to be effective from 1 April 2021. It is a welcome step as **it will enable the FIIs to avail the benefits of the lower rate of the DTAA as applicable at the time of deduction of tax at source itself and also now resolves the ambiguity of applicability of the beneficial rate of tax for dividend income of FIIs.**

g) **TDS /TCS for non-filers of income-tax return [Section 206AB / 206CCA]:** Section 206AB and Section 206CCA are proposed to be inserted to provide for a **higher rate of withholding tax / collection of tax for taxpayers not furnishing / filing return of income.**Section 206AB is proposed to apply on any sum paid or payable or credited by a deductee to a specified person (other than any sum where tax is required to be withheld under Section 192, Section 192A, Section 194B, Section 194BB, Section 194LBC or Section 194N of the Act).The proposed withholding tax rate shall be higher of the following:

- at **twice the rate specified in the relevant provision of the Act**; or
- at **twice the rate or rates in force**; or
- at **the rate of per cent**

Section 206CCA is proposed to apply on any sum or amount received by a collectee from a specified person. The proposed tax collection rate in the said Section shall be higher of the following:

- twice the rate specified in the relevant provision of the Act or
- the rate of five per cent

Further, if the provisions of **Section 206AA**

[requirement to furnish Permanent Account Number (PAN] or **Section 206CC** (requirement to furnish PAN by collectee) are applicable to a 'specified person' in addition to the proposed Sections, that is, Section 206AB and Section 206CCA, the tax shall be deducted / collected at higher of the two rates provided in the proposed Sections and in Section 206AA or Section 206CC of the Act.

The term **'specified person'** means a person:

- who has not filed the returns of income for preceding two assessment years immediately prior to the previous year in which tax is required to be deducted and **for which the time limit of filing return of income under Section 139(1) has expired**; and

- the aggregate of tax deducted at source and tax collected at source is INR 50,000 or more in each of these two previous years.

However, the term '**specified person**' shall not include a non-resident who does not have a permanent establishment in India

The above amendment is proposed to be effective from 1 July 2021.

EXEMPT INCOME

24. Incomes not included in total Income [Section 10(5)]

a) In view of the outbreak of COVID-19 pandemic, a second proviso to Section 10(5) is proposed to be inserted to provide that the **cash allowance in lieu of any travel concession or assistance** received by, or due to, an individual shall also be exempt subject to fulfilment of specified conditions.

b) It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption under the second proviso in connection with prescribed expenditure, no exemption shall be allowed under this clause in respect of same prescribed expenditure to any other individual.

c) The amount of exemption shall not exceed INR 36,000 per person or 1/3rd of specified expenditure, whichever is less.

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

The above amendment is proposed to be effective from 1 April 2021.

25. Taxation of proceeds of high premium Unit Linked Insurance Policy (ULIP) [Section 10(10D)]

a) Section 10 (10D) provides for the exemption for the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy in respect **of which the premium payable for any of the years during the terms of the policy does not exceed ten percent of the actual capital sum assured.**

b) New Fourth, fifth, sixth and seventh proviso are proposed to be inserted to Section 10(10D).

c) The proposed **exemption shall not apply with respect to any unit linked insurance policy (ULIP) issued on or after 1 February 2021, if the amount of premium payable for any of the previous years during the term of the policy exceeds INR 2,50,000**. (fourth proviso.)

d) If premium is payable by a person for more than one ULIPs, issued on or after 1 February 2021, exemption shall be available only to those insurance policies

where the **aggregate amount of premium does not exceed INR 2,50,000**, in any of the previous years during the term of any of the policies. (fifth proviso.)

e) The provisions of fourth and fifth proviso shall not apply to any sum received on the death of a person. (sixth proviso.)

f) Seventh proviso provides that in case any difficulty arises in giving effect to the provisions of Section 10(10D) :
- the Central Board of Direct Taxes (CBDT) may with the approval of the Central Government issue guidelines for the purpose of removing the difficulty and
- every guideline shall be laid before each House of Parliament and
- the same shall be binding on the income-tax authorities and the assessee

g) Explanation 3 to Section 10(10D) is proposed to be inserted to define unit linked insurance policy (ULIP) as a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation (3) of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 dated 8 July 2019. (also see next para)

26. Incomes not included in total Income[Income Exempt under Section 10(11) and 10(12)]

a) Section 10(11) and 10(12) provide for **exemption in respect of any payment from the provident fund**, whether set up by the Central Government or whether it is a recognised provident fund respectively.

b) With respect to Section 10(11) and 10(12), a proviso is proposed to be inserted to provide that the **exemption would not be applicable to income by way of interest accrued during the previous year where the aggregate amount of contribution made by that person exceeds INR 2.5 lakhs** and will be taxable and computed in the manner as prescribed.

The above amendment is proposed to be effective from 1 April 2022.The provision aims to restrict the exemption of interest accrued, where the employee's contribution to the provident fund amounts up to INR 2.5 lakhs during the year.

27. Rationalization of the provisions of charitable trust and Institutions[Section 11 and Section 10(23C)]

a) Section 11(1)(d) has been proposed to be amended so as to provide that voluntary contributions should be invested or deposited in one or more of the forms or mode specified in Section 11(5) maintained specifically for such corpus.

b) Explanation 4 to Section 11(1) is proposed to be inserted so as to provide that:

i. Application out of the corpus shall not be considered as application for charitable or religious purposes for the purposes of clause (a) and (b) of sub-Section (1). However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-Section (5), from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus and to the extent it is deposited back.

ii. Application from loans and borrowings shall not be considered as application for charitable or religious, provided when such loan or borrowing is repaid from the income of that previous year, such repayment shall be allowed as application in the previous year in which it is repaid and to the extent it is repaid.

c) For the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of that year preceding the previous year shall be allowed.

d) A reference to Section 12AB shall be made

in sub-Section (3) which provides for the procedure of registration.

e) **For claiming exemption by universities, educational institutions and hospitals or other institutions under Section 10(23C) (iiiad) and (iiiae) respectively, the annual receipt threshold has been increased from INR 1 crore to INR 5 crore.**
The above amendments are proposed to be effective from 1 April 2022.

OTHER AMENDMENTS

28. Definition of 'Demerger' [Section 2(19AA)] and Carry forward and set off of accumulated loss and unabsorbed depreciation of public sector companies in case of amalgamation, etc.[Section 72A]

a) Section 72A of the Act states the provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. However, some restrictions were placed regarding which public sector enterprises were allowed the said losses etc., on amalgamation / demerger.In order to ease the **amalgamation / demerger of public sector enterprises**, some amendments have been introduced.

b) Explanation 6 is proposed to be inserted to Section 2(19AA) clarifying that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and
- the resultant company is a public sector company on the appointed date indicated in the scheme approved by the government or any other body authorised under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and
- fulfils such other conditions as may be notified by the Central government in the Official Gazette.

c) Section 72A(1) is also proposed to be amended to the extent:
- The provisions of Section 72A(1)(c) have been substituted and shall now apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.
- Section 72A(1)(d) has been inserted and provides that in case of amalgamation of an erstwhile public sector company with one or more company or companies, if
- the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and
- the amalgamation is carried out within five years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

d) A **proviso has been inserted to Section 72A(1)** to provide that in case of an amalgamation under Section 72A(1)(d), the accumulated loss and unabsorbed depreciation of amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company, as on the date on which the public sector company ceases to be one as a result of strategic divestment.

e) An **Explanation is inserted to Section 72A(1)(d)** to define the expressions '**control**', '**erstwhile public sector company**' and '**strategic disinvestment**'.
The above amendments are proposed to be effective from 1 April 2021.The amendment to allow carry forward and set-off of losses of public sector companies upon their amalgamation is proposed in order **to facilitate strategic disinvestment of public sector companies** (PSUs).

29. Provisional attachment to protect revenue in certain cases [Section 281B]

a) In line with Section 271AAD as inserted by the Finance Act, 2020, the provisions of Section 281B are proposed to be amended to provide that an Assessing Officer (AO) may **exercise power under this Section which pertains to provisional attachment of property during pendency of proceedings**.

b) The words '**or for imposition of penalty under Section 271AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said Section exceeds Rs. 2crore**' are inserted.

c) This provision is amended **to safeguard the department in case a taxpayer evades penalty under Section 271AAD**.

The above amendment is proposed to be effective from 1 April 2021.

30. Advance Tax Instalment for dividend income [Section 234C]

a) Section 234C of the Act provides for payment of interest by an assessee who does not pay or fails to pay on time, the advance tax instalments as per Section 208 of the Act.

b) The said Section further covers certain exceptional cases wherein no interest is levied if shortfall or failure to pay advance tax instalment on time is on account of specified incomes.

c) The above relaxation is to insulate the taxpayers from payment of interest under Section 234C of the Act in specified cases where accurate determination of advance tax liability is not possible due to the intrinsic nature of such specified income.

d) It has been proposed to extend the above relaxation even in case of dividend income (other than deemed dividend as per Section 2(22)(e) of the Act) earned during the fiscal year.

The said amendment is proposed to be effective from 1 April 2021.

INTERNATIONAL FINANCIAL SERVICES CENTRE

31. Certain activities not to constitute business connection in India [Sections 9A, 10(4D), 10(4E) and 10(4F)]

a) A new **sub-Section (8A) has been inserted under Section 9A** to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in Section 9A(3) (a) to (m) or Section 9A(4) (a) to (d) shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an IFSC and has commenced operations on or before 31 March 2024.

b) Section 10(4D) has been amended so as to provide that **the exemption to specified funds shall also be available in a case of any income accrued or arisen to, or received to the investment division of an offshore banking unit to the extent attributable to it and computed in the prescribed manner**.

c) Section 10(4E) has been inserted **to exempt in the hands of non-resident, any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of an IFSC which commences operations on or before the 31 March 2024** and fulfills prescribed conditions.

d) Section 10(4F) has also been inserted **to exempt any income of a non-resident by way of royalty, on account of lease of an aircraft in a previous year, paid by a unit of an IFSC referred to under Section 80LA(1A), if the unit is eligible for deduction under Section 80LA for that**

previous year and has commenced its operations on or before 31 March 2024.

The above amendments are proposed to be effective from 1 April 2022.

32. Exemption from capital gain tax on account of transfer of shares of an India Company on account of relocation [Section 10(23FF), Section 47]

a) Section 10(23FF) is proposed to be newly inserted to provide for **exemption any income of the nature of capital gains, arising or received by a non-resident, which is on account of relocation from the original fund to the resultant fund**.

b) Section 47 is also amended to insert new clauses in the said provision so as **to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gains tax purpose**.

c) Any transfer by a shareholder or unit holder or interest holder, in relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains.

d) Explanation to Sections 47(viiac) and 47 (viiad) provide the definition of the terms '**Original Fund**', '**Relocation**' and '**Resultant Fund**'.

The above amendments are proposed to be effective from 1 April 2022.

33. Income based deductions for units located in IFSC from payment of income-tax [Section 80LA]

a) The deduction will now be available to a unit of an IFSC, if it is registered under the IFSC Authority Act, 2019 and thereby removes the earlier requirement of obtaining permission under any other relevant law.

b) The income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit under Section 80LA(2)(c) to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100 per cent deduction, subject to condition that the unit has commenced operations on or before 31 March 2024.

c) Further, in case the unit is registered under the IFSC Authority Act, 2019, then the copy of permission shall mean a copy of the registration obtained under the IFSC Authority Act, 2019.

The above amendments are proposed to be effective from 1 April 2022.

34. Carry forward and set off of losses in case of relocation between Original Fund and Resultant Fund [Section 79(2)]

a) Section 79(2)(e) is proposed to be inserted, to specify the restriction pertaining to carry forward and set off of losses in case of change in shareholding pattern of company will not apply to a company wherein the change in shareholding pattern has taken place on account of relocation between original fund and resultant fund, as proposed to be defined vide amendments in Section 47.

The above amendment is proposed to be effective from 1 April 2022.

35. Tax on income of Specified Fund or Foreign Institutional Investors from securities or capital gains arising from their transfer [Section 115AD]

a) Section 115AD is proposed to be amended to make **the provision of this Section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund**.

b) The provisions of **this Section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III**

portfolio investor under the SEBI (FPI) Regulations, 2019 calculated in the prescribed manner.

The above amendment is proposed to be effective from 1 April 2022. It may be noted that the Government has established a world class Financial Services Centre and the units located in IFSC enjoy some concession / benefits.

EQUALISATION LEVY (EQL)

36. Provisions relating to Equalization Levy – Amendment to Section 163, 164 and 165A of the Finance Act, 2016

a) The Finance Act, 2016 had introduced the **Equalisation Levy (EQL) of 6% which was to be levied on a 'Specified service'** which means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement would include any other service as may be notified by the Central Government

b) The **Finance Act, 2020 widened the ambit of the EQL**, to not just cover payments made for online advertising, but also to any online sale of goods or online provision of services or facilitation of the any of them by an E-Commerce operator.

c) The **Finance Act, 2021, has proposed that certain clarifications be inserted so as to provide certainty regarding the ambit of the EQL provisions**.

d) Section 163 provides the scope of the EQL. The said section is proposed to be amended by way of inserting a proviso **to provide that the EQL would not cover within its ambit, any consideration which is otherwise taxable as royalty or fees for technical services under the provisions of the Income-tax Act, 1961 read with the applicable tax treaty**.

Consequential amendment has also been introduced under **section 10(50)** of the Act, to clarify regarding the said exclusion under the Act.

e) It is further proposed to amend section 10(50) so as **to provide that the said section would be applicable from 1 April 2020 and not 1 April 2021 as stated earlier**, so as to align the exemption with the date of introduction of the expanded EQL provisions

f) It is further proposed to **clarify regarding the applicability** of the EQL provisions to the "**online sale of goods**" and "**online provision of services**", by defining the said terms to include one or more of the following online activities:

- acceptance of offer for sale
- placing of purchase order
- acceptance of the purchase order
- payment of consideration
- supply of goods or provision of services, partly or wholly.

g) Further, under **section 165A(3)**, the meaning of the word "**specified circumstances**" has been clarified **to include consideration received for the sale of goods or provision of services, irrespective of the fact whether the goods are owned or not and whether the service is provided or only facilitated by the Ecommerce operator respectively**.

The amendment in respect of the **exclusion of royalty and fees for technical services income is welcome** as it provides clarity regarding the taxation on these issues. The amendment regarding the definition of the online sale of goods and provision of services, provides clarity stating that the **income earned by the intermediaries**, which are only in facilitation and not engaged in actual online supply of goods and services, would also be covered in the EQL provisions, provided they get covered

in the stated category.The clarification in section 165A, also dispels prevailing doubts, regarding the liability of the intermediaries under the EQL provisions.

INCOME DECLARATION SCHEME, 2016

37. Provisions relating to Income Declaration Scheme, 2016 – Amendment to Section 191 of the Finance Act, 2016

a) Income Declaration Scheme, 2016 was introduced to provide an opportunity to persons who have not paid taxes in the past, to make a voluntary disclosure of their undisclosed income and pay taxes accordingly.

b) Section 191 of the Finance Act, 2016 provides that any excess amount of tax and surcharge paid on the voluntary disclosure of income made under the scheme would not be refundable, except where specifically provided by the Central Government by a notification, specifying the class of persons, to whom the refund may be allowed.It has now been proposed **to insert the words "without interest" in the proviso to Section 191, so as to state that even in cases where the Central Government notifies a class of persons to whom the excess amount is refunded, the same would not include interest on the said amount of refund.**

AMENDMENT TO THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020

38. Clarification regarding the scope of Vivad se Vishwas Act, 2020 [Section 2]

With a view to remove any ambiguity, it is proposed to amend the provisions of VsV Act, 2020, to clarify that **the proceedings before the Income-tax Settlement Commission (ITSC) would not be covered under the VsV Act, 2020.**The said amendment is proposed to take effect retrospectively from 17 March 2020.It may be noted that Hon'ble Delhi High Courtin the case of **Abhishek Manu Singhvi v. CBDT &Anr**, is seized of this matter but yet the Parliament has thought it fit to introduce this proposed amendment.

NON-RESIDENTS

39. Meaning of the term 'liable to tax' [Section 2(29A)]

The term '**liable to tax**' has been defined by inserting a new clause 29A to Section 2. The term '**liable to tax**' in relation to a person means that there is a liability of tax on such person under the law for the time being in force of any country and shall include a case where subsequent to imposition of such tax liability, an exemption has been provided. The amendment is proposed to be effective from 1 April 2021.

It may be noted that the Income Tax Act presently does not define the term 'liable to tax' although the same is widely used in various provisions like determination of residential status under Double Tax Avoidance Agreements (DTAAs/ Tax Treaties). Various tax treaties provide that in case a term is undefined in a tax treaty, then reference should be made under the domestic law. Hence, this amendment would impact the interpretation of various DTAAs.

40. Relief from taxation in income from retirement benefit account maintained in a notified country [Section 89A]

Section 89A is applicable in case of a resident who was earlier a non-resident and had maintained an account in a notified country in respect of his retirement benefits. There was a mismatch with respect to taxability on withdrawal from the retirement fund i.e., in some cases, the income was charged on

accrual basis in India, whereas the same was charged on receipt basis in the foreign country.**The insertion of the Section 89A is now proposed to alleviate the genuine hardship to these residents and accordingly provides that the income of a specified person from specified account shall be taxed in such manner and for such year as provided by the Rules**.The amendment is proposed to be effective from 1 April 2022.The amendment will remove the hardship faced by Indians returning from abroad.

41. Incomes not included in total Income [Section 10(23FE)]

a) Section 10(23FE) of the Act was introduced vide the **Finance Act, 2020** and provides exemption in respect of any income in the nature of dividend, interest or long-term capital gains earned by a wholly owned subsidiary of the Abu Dhabi Investment Authority (ADIA) or sovereign wealth funds (SWFs) or pension funds (PFs) in respect of their investment made in India in infrastructure, subject to fulfilling certain conditions.

b) In order **to further encourage more investments from SWFs and PFs, amendments relaxing some of the earlier conditions of exemption of income have been proposed**.

c) The erstwhile Section required the **Category-I or Category-II Alternative Investment Fund to invest 100% of its investments in one or more entities covered under Section 80-IA(4) of the Act** which provides 100% deduction to an enterprise engaged in an infrastructure facility. The said requirement has now been relaxed to 'not less than 50 per cent' of the investments.

d) Further, the investment may also be made in an Infrastructure Investment Trust defined in Section 2(13A)(i) and is not just limited to one or more entities covered under Section 80-IA(4). It has also been proposed to allow investment into a newly incorporated domestic company, which then invests a minimum of 75% in one or more entities covered under Section 80-IA(4).

e) It is also proposed to allow investment into a Non-Banking Finance Company (NBFC) registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund (IDF) as referred in the Master Circular issued by the Reserve Bank of India (RBI) in this regard, provided that the NBFC / IDF have minimum 90% lending to one or more entities covered under Section 80-IA(4).

f) It is further proposed that in case **the revised minimum investment limits are satisfied but the investments are not 100% in the specified business, the exemption in income would be calculated in proportion to the investments in the infrastructure facility and the balance income attributable to non-infrastructure investments would be taxable as applicable**.

g) It is also proposed that **in case a SWF or a PF has a loan or borrowing, directly or indirectly, which has been utilised for the purpose of making investment in India, then exemption would not be allowed**. A corresponding amendment has also been made which states that the conditions regarding the devolvement of the earnings and assets in India would not apply if funds or loans are availed for some other purpose and for investment in India.

h) It is further proposed to insert a condition

that the SWF or PF would not participate in the day-to-day operations of the assessee. However, the SWF or PF would be allowed to appoint directors or executive directors and the same would not be considered as participation in day-to-day operations.

i) It is also proposed to add a **clarificatory amendment whereby the PF even if it is liable to tax in the foreign country, exemption from taxation for the said income is provided in the foreign country.**

j) The term '**liable to tax**' has been proposed to be defined under Section 2(29A) and means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided.

k) The government may prescribe the method of calculation of the said investment limits as applicable.

The above amendments are proposed to be effective from 1 April 2021.The relaxations and clarifications, especially in relation to the investment limits, demonstrate the resolve of the Government to garner funds from foreign funds and utilise the same to improve the infrastructure in India and put India on the map of high economic growth.

Special Bench : In event of a doubt about correctness of earlier decisions of Tribunal, a reference can be made for constituting a larger Bench for considering same .

DTPA deeply mourns the sad demise of our beloved members

CA Rabindra Nath Bhaduri
Membership No. L/1984/014

CA Rajesh Kumar Duggar
Membership No. L/1995/368

We pray to the almighty that their soul rest in peace.

ज्ञानं एक्यं च न्यायार्थम
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DIRECT TAX PROPOSALS IN FINANCE BILL, 2021
– AN ANALYTIC VIEW

Paras Kochar, Advocate

The Hon'ble Finance Minister presented the Finance bill in parliament on 1st February 2021in which various amendments in Income Tax Act have been proposed by her. Despite this being a COVID19 hit year, the Hon'ble Finance Minister has not increased tax rates on any, class of assessee. Although no rate of tax has been increased, no changehave been proposed in various deductions and exemption available to the assessee in this Finance Bill. It appears from the proposals that this Government is focusing on compliances andstrengthening Tax Evasion provisions, reduction in human interface and lowering litigation.

SPEEDY COMPLIANCE:

From last several years the Government is focusing onspeedy and better compliance in income tax proceedings. Due dates of furnishing returns have been brought from December to October and time barring period of scrutiny assessment/s 143(2) of Income Tax Act, has been brought forward from two years to one year. In this Finance Bill, the Government has taken more stepsfor faster compliances and hence have proposed to further reduce the time for filing revised return of income u/s 139(5) and time for filing belated return u/s 139(4) within nine months from the end of the financial yeari.e. within 31st December.Further, the time limit for issue of notice u/s 143(2), has been reduced from six months from the end of financial year in which the return is furnished to three months from the end of the financial year in which return is furnished. It means that *now notice of scrutiny selection will be issued in the month of June only in place of September.*

The time limit for completing scrutinyassessment is proposed to be nine months from the end of the assessment year in which income was first assessable, from Assessment Year 2021-22 and subsequent assessment years. Previously, it was 12 months till assessment year 2020-21.Therefore, the assessment will be time barred in December only.Furthermore, it has also reduced the time limit for reopening of cases u/s 148 from 6 years to 3 years. Post search assessment proceeding u/s 153A and 153C for 6 years prior to the year of search has been withdrawn. Such assessment will now be made u/s 147 for three years prior to the year of search only.

All such provisions have been proposed with an intent to make compliance faster and also to minimize burden of compliance by reducing number of years for reopening of assessment in certain cases. The Finance Minister has taken very good steps for timely and speedy compliance. Shehas not only brought steps for speedy compliance for assessee only but also for Assessing Officers.

I doubt that assesses will be able to make compliance so fast. It will be very difficult for small and medium assesses as they have lack of efficient manpower and latest technological developments.Cost factor is an important aspect for such assesses. Apart from this, attitude and mind set of the assessee also make them non-compliant. FacelessAssessment and Faceless Appeal also requires prompt compliance. It is expected that the Government may also reduce the

due dates of returns further in near future. It is time that every tax consultant should also make his infrastructure stronger to face this challenge.

TAX EVASION:

The Government is also focusing heavily on Tax Evaders. In this Finance Bill several steps have been taken to put some more nails in coffin of the Tax Evaders. Settlement Commission has been abolished w.e.f. 1st February, 2021. The biggest advantage of approaching Settlement Commission was relief from penalty and prosecution. But now the assessee will have to face penalty proceedings and there are likely chances that in every search case prosecution proceeding shall be initiated.

One of the reasons of discontinuing functioning of settlement commission may be political reason, this year maximum searches were made related to political persons. In order to prosecute such persons and also imposing heavy penalty, this step might have been taken. Few years ago, powers of settlement commission was curtailed so thatLate J. Jayalalithaa former Chief Minister of Tamilnadu could not furnish her application.

Post search assessment u/s 153A/153C have also been abolished for those assesses where search action is made after 1st April 2021. Due to abolition of Section 153A and 153C, addition can also be made on the basis of entries in regular books of accounts. U/s 153A/153C, the assessee used to get relief for addition if any made by A.O. in respect of transactions related to regular books of accounts as various courts have held that in proceeding u/s 153A addition in regard to entries made in regular books of accounts cannot be made if incriminating documents were not found during search action, now the assesses will lose this benefit.

Last year section 271AAD was inserted by Finance Bill 2020 to impose penalty on a person who makes false entry or omit an entry from his books of accounts. In this Finance Bill, it has been proposed that during course of hearing of penalty proceeding u/s 271AAD, the A.O. can also exercise the power of provisional attachment u/s 281B, if penalty imposed is going to be Rs.2 Crore or above. It is one of the most dangerous provision for tax evaders and it has been further strengthened by this new proposed amendment.

The abolition of settlement commission and removal of section 153A/153C clearly indicates that the Government has harsh approach for tax evasion. Other amendments proposed in this Finance Bill will also put tax evaders in a fix. No assessee should now think for tax evasion since now as the provisions in Income Tax and also GST have become very tough if such evasion is found.A time will come when scrutiny assessment, survey and search and seizure will be very minimal as due to harshness of tax provisions , the assessee will hardly think for tax evasion. The government should also reduce the rate of non-corporateassesses like corporate assesses for blocking scope for tax evasion.

SETTLEMENT OF DISPUTES:

The Government has brought Vivad se Vishwas Scheme for settling disputes and it has been quite successful. For further reducing litigation and dispute of small and medium tax payers, it has been proposed in the Finance Bill to constitute a Dispute Resolution Committee.The new scheme is proposed to be incorporated in a new section 245MA. This committee shall resolve disputes of such persons or class of persons which shall be specified by the board. The assessee will have option for opting or not to opt for dispute resolution through DRC. Those assesses whose return income is Rs.50 Lakh or less and addition is Rs.10 lakh or less shall be eligible to be considered by Board. DRC can also waive penalty and provide immunity from prosecution. The proceeding will be online. The intent of the Government is clear that it also wants to decrease litigation.

REDUCTION IN HUMAN INTERFACE:

The Government has already brought Faceless Assessment, Faceless Appeal and Faceless Penalty schemes this year. Now in order to reduce further human interaction, the Income Tax Appellate Tribunal faceless scheme for ITAT proceedings will be launched on or before 31/03/2023.

AMENDMENTS IN SECTION 147 AND 148:

Presently, the assessment is reopened where the assessing officer has reason to believe that the income of the assesse chargeable to tax has escaped assessment, but from this Finance Bill A.O. is not required to record reason to believe for re-opening of the assessment. The assessment will be reopened on the basis of information which is flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the board.Further reopening can also be made on the basis of objection raised by the Comptrollerand Auditor General of India.

A new section 148A is going to be inserted where before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee.

In case of search and survey or in requisition cases initiated on or after 1st April 2021, it shall be deemed that the Assessing Officer has information and reopening will be for three years immediately preceding the assessment year in which search or survey took place.This provision in case of search and survey will not apply to searches and survey conducted during current financial year. Section 153A/153C are withdrawn w.e.f. 1st April 2021. In case of survey reopening will be for three years.Alsowhere the A.O. has in possession evidence which reveal that the income escaping assessment represented in form of assets amounts to or is likely to amount to Rs.50 Lakh or morereopening will be up to 10 years.

In regular cases re-opening will be up to three years and in specific cases reopening will be up to 10 years.Specific cases mean where the A.O. has in possession evidence which reveal that the income escaping assessment represented in form of assets amounts to or is likely to amount to Rs.50 Lakh or more.

The prescribed authority for granting approval in case of reopening for three years will be Pr,Commissioner of Income Tax and for more than three years will be Pr. Chief Commissioner or Chief Commissioner of Income Tax.

A sea of changes in section 147 and 148 will give relief to normal assesses but increase tension ofspecific assesses. Government has lost various cases in appeals because of improper recording of reasons by the Assessing Officer.Such litigations will end. However, new litigation may increase. It appears that the scope of 26AS will be further enlarged and in case of mismatch of transaction shown in 26AS with books of accounts,the chances of reopening u/s 147 will immensely increase.

The tax evaders should be now ready for heavy penalty u/s 270A and also should be ready to face prosecution proceedings. It appears that assessment u/s 147 for post-search cases may also be made faceless.

SETTELMENT COMMISSION:

From 1st February onwards no application u/s 245C can be made for settlement of cases before Settlement Commission. For pending applications , the Government shall constitute an Interim Board. However, the applicant can withdraw his

application within three months from the date of commencement of the Finance Act and shall intimate the Assessing Officer in prescribed manner about such withdrawal. If the assessee does not exercise the option of withdrawal of the application, the case would be deemed to have been received by the Interim Board. This Board will not function after 31st March 2023. It means all pending settlement commission cases will be disposed before 31st March 2023.

In case of withdrawal, the A.O. will commence proceeding upon receipt of withdrawal application and shall proceed to dispose of the case. It will create hardshi for the assessee. The returns u/s 153A have already been filed by the assessee considering only its disclosed income and concealed income is disclosed in petition before the Settlement Commission.So, the A.O. will have to make addition of such income during assessment. It will lead to penalty being imposed u/s 271AAB of Income Tax Act @ 60%. This is unfair and needs reconsideration. The assessee should be allowed to furnish revised return u/s 153A.

I fail to understand why Interim Board is being constituted. The Government could continue with the same Settlement Commission for pending cases by invoking same proposed amendments.

OTHER PROPOSALS:

- ✓ The time limit for claiming tax exemption on constructing affordable housing u/s 80-IBA has been further extended to 31.03.3022. The approval is required to be obtained before the said date.

- ✓ The date for obtaining sanction for claiming deduction u/s 80 EEA for interest on affordable housing loan has been extended to 31.03.2022.

- ✓ For claiming deduction u/s 80-IAC, eligible start-up needed to be incorporated before 31.03.2021, this has been further extended to 31.03.2022 and corresponding amendment has been made in section 54GB for claiming exemption on gain on sale of shares of eligible start-up.

- ✓ Interest on contribution in excess of Rs.2.50 Lac to EPF and GPF shall not be exempt w.e.f. 01.04.2021.

- ✓ Senior Citizens who are of the age of 75 years and above and having income from pension and interest from bank in which he receives his pension income, he shall not be required to file his return. The bank shall deduct the applicable tax on his income and deposit the same. If assessee has account in two banks, which bank will calculate and deduct tax is not clear and moreover, how much cooperation will be extended by banks? We all know the working of banks and how much cooperation will they extend to senior citizens in calculating and pay tax on there behalf. It is not a good provision for the senior citizens.

- ✓ In case of Dividend Income, Advance Tax shall be calculated on the same from the date of declaration of dividend by the company.It will be a relief to the tax payers.

- ✓ Exemption u/s 10(10D) shall not apply with respect to any ULIP issued on or after the 1st February, 2021, if the amount of premium payable for any of the previous year during the term of the policy exceeds two lakh and fifty thousand rupees.

- ✓ The limit for tax audit in case of assessee having more than 95% digital transactions (both receipt and Payment side) has been increased from existing 5 Cr to 10 Cr. In future

years, excepting certain businesses like retail and works contract etc., in most of the businesses, receipt and payment will be less than 5% due to rapid increase in digital transactions and cases below 10 Crores will be out of the ambit of Tax Audit.

- ✓ The prescribed limit of annual receipts for claiming exemption u/s 10(23C) available to Hospitals, Schools, Universities etc., has been raised from Rs.1 Cr to Rs.5 Cr.

- ✓ Trusts claiming the corpus donations to be exempt used to claim application out of the said funds as part of the mandatory 85% application. W.e.f. 01.04.2021, they shall now be required to maintain separate bank account for the same.

- ✓ Also trusts used to take loans to make application for charitable or religious purposes and claimed the expenses made as deduction and subsequent repayment of the said loans were are again claimed as application. This results in double deduction. W.e.f. 01.04.2021 the trusts shall not be allowed to claim deductions for expenses made from borrowed funds. However, repayment of the loan shall be allowed as deductions.

- ✓ Delay in deposit of PF/ESI/Superannuation etc. deducted from the salary of the employee shall be considered as income of the employer. The said delay will be from the due date of the relevant Act.

- ✓ New Section 45(4) and 45(4A) has been proposed to be inserted where in case of LLP and Partnership Firm any amount or Asset received by the partner on dissolution or reconstitution of the Firm/LLP, in excess of his capital balance in the Firm/LLP shall be chargeable to capital gains tax.

- ✓ It has been decided to propose that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation.

- ✓ Similar to 206C(1H) related to collection of TCS on Sale of Goods above 50 Lakhs, section 194Q has been proposed to be introduced for deduction of TDS on purchase of goods above 50 Lakhs. The rate of deduction shall be 0.1%. It has been proposed to be made this applicable from 01.07.2021. The purpose of TDS on purchase in light of section 206C in case of Tax collection at source is to catch bogus purchases. Because due to TDS, the name of buyer will reflect in 26AS and it will be easy for the income tax department to locate bogus purchase. However, if TDS and TCS are applicable for same transaction , TDS would prevail over TCS.

- ✓ W.e.f. 01.04.2021 TDS/TCS is required to be deducted at a higher rate (i.e. higher of twice the rate provided in the relevant section or five percent) in case of non-filers of Income Tax Return also. Earlier this was applicable for assessee not having PAN. However, it has not been clarified as to how the deductor would know if the PAN holder is filing.

CONCLUSION:

In my view, the tax consultants and the assessee should change its mind set and should heavily focus on compliance and also should avoid tax evasion. The assessees and the tax consultants should work systematically and should make their infrastructure for accounts and income tax proceedingsvery sound.

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ANALYSIS OF DIRECT TAX PROVISIONS OF FINANCE BILL 2021

CA K. K. Chhaparia

I. INCOME TAX RETURNS, ASSESSMENTS AND APPEALS

1. Extending due date for filing return of income in some cases, reducing time to file belated return and to revise original return and also to remove difficulty in cases of defective returns

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

1.2. Extending due date for filing of return by certain category of partners: In the case of a firm which is required to furnish report from an accountant for entering into international transaction or specified domestic transaction, as per section 92E of the Act, the due date for filing of original return of income is the 30th November of the assessment year. Since the total income of such partner can be determined after the books of accounts of such firm have been finalized, itis proposed that the due date of such partner be extended to 30th November of the assessment year

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

1.4. Defective Return: Sub-section (9) of section 139 of the Act lays down the procedure for curing a defective return. It provides that in case a return of income is found to be defective, the Assessing Officer will intimate the defect to the assessee and give him a period of 15 days or more to rectify the said defect and if the defect is not rectified within the said period, the return shall be treated as an invalid return and the assessee will be considered to have never filed a return of income. The Explanation to the sub- section lists the conditions in which a certain return of income shall be considered to be defective. Representations have been received that the aforesaid conditions create difficulties for both the taxpayer and the Department, as a large number of returns become defective by application of the said conditions. This has resulted in a number of grievances. It has been represented that the conditions given in the said Explanation may be relaxed in genuine cases. The amendment has been proposed to insert proviso before the Explanation to sub-section (9) of the section 139 of the Act so as to provide that the Board may specify, by notification, that any of the conditions specified in clauses (a) to (f) of the said Explanation shall not apply to such class of assessees or shall apply with such modifications, as may be specified in such notification.

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

Comments:

- *It is worth mentioning here that the due date of furnishing return by a Company or tax audit cases is 31st October after the end of relevant previous year. Now, such assessees has only two months' time to furnish revised return.*
- *The proposed amendment regarding defective returns is a welcome move, and it is reasonably*

expected that the proposed notification will suitably deal with this issue.

2. Reduction of time limit for completing assessment

2.1. Section 153 of the Act contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act. The sub-section (1) of the said section provides that the time-limit for passing an assessment order under section 143 or 144 of the Act.

2.2. It has been proposed that the time limit for completion of assessment proceedings be reduced by three months. Thus the time for completing of assessment is proposed to be nine months from the end of the assessment yearin which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.

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

Comments:

- *The time limit for passing various assessment orders giving effect to Taxation Ordinance dated 31.03.2020, Atmanirbhar Package dated 13.05.2020, CBDT Notification dated 24.06.2020 and the proposals in the present Finance Bill 2021 can be tabulated as follows :*

Nature of Assessment	Earlier due dates	Revised due dates
Assessment u/s 143(3) for AY 2018-19	30.09.20	31.03.21
Assessment u/s 143(3) for AY 2019-20	31.03.21	30.09.21
Assessment u/s 143(3) for AY 2020-21	31.03.22	31.03.22
Assessment u/s 143(3) for AY 2021-22	31.03.23	31.12.22
Assessment u/s 147 notice served upto 31.03.20	31.03.21	30.09.21
Assessment u/s 153A where search took place in FY 18-19	30.09.20	31.03.21
Assessment u/s 153A where search took place in FY 19-20	31.03.21	30.09.21
Assessment u/s 153A where search took place in FY 20-21	31.03.22	31.03.22

- *It may be noted that vide Atmanirbhar Package-1 dated 13.05.2020, it was announced that the date of assessments getting barred on 30.09.2020 extended to 31.03.2021 and those getting barred on 31.03.21 will be extended to 30.09.21.*
- *Though subsequent to this Package, there is no formal statutory amendment with regards to extension of time to 30.09.21, however, the same has been given effect in the above table.*

3. Income escaping assessment and search assessments

3.1. Existing provisions

3.1..1. Income Escaping assessments

Presently, under the Act, the provisions related to income escaping assessment provide that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or re-compute the total income for such year under section 147 of the Act by issuing a notice under section 148 of the Act. However, such reopening is subject to the time limits prescribed in section 149 of the Act.

3.1..2. Search assessments

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

3.2. The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued.

3.3. New Provisions are being discussed below.

3.4. Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).

3.5. Before such assessment or reassessment or re-computation, a notice is required to be issued under section 148 of the Act, which can be issued only when there is information with the Assessing officer which suggests that the income chargeable to tax has escaped assessment in the case of the

assessee for the relevant assessment year. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.

3.6. Following shall be considered as 'information' which suggest that the income has escaped assessment

3.6..1. Any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board. The flagging would largely be done by the computer based system.

3.6..2. A final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act.

3.6..3. In search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

3.7. New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

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

3.8..1. in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year.

3.8..2. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;

3.9. Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.

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

3.11. Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

3.12. The assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153Cand 153D of the Act, the aforesaid time limitation shall not apply to such cases.

3.13. It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.

3.14. The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be —

(a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year

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

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

Comments:

- *Search assessments*

The existing provisions of section 153A and section 153C, of the Act are proposed to inapplicable where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021. Thus, for search initiated after 01.04.2021, assessments shall be made under section 148 instead of section 153A/153C. Further, notice u/s 148 shall compulsorily be issued for three assessment years preceding the year of search, as against present norms under section 153A/153C for issue of notice for six assessment years. However, for those years where there is escapement of income exceeding Rs. 50 Lacs, the existing norms giving power to issue notice up to ten years preceding the year of search, will continue, though in a different section.

- It seems that the proposed amendment is intended to reduce litigation in the context of Section 153A/153C, wherein the judiciary is generally of the view that in case of completed proceedings, additions can only be made on the basis of some incriminating material unearthed during the course of search, if any for the relevant year. With the merging of search provisions with section 148,and insertion of deeming provision in section 148 that in case of search cases, the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

- On the face of the proposed amendment, it seems that number of assessment years generally involved in search cases has decreased from seven years to four years. However in our view, the proposed section gives more power of issuing notice beyond three years, since the earlier criteria of 'undisclosed income' has now been replaced by 'information which suggests that the income chargeable to tax has escaped assessment'. The term 'undisclosed income' has been judicially held in a number of cases that it should have nexus with incriminating materials found during search, while the proposed section uses the word 'suggests' or 'information' etc,, which can again be subject matter of new arena of litigations.

- Proposed amendment in section 148 (other than search cases)

- The budget proposal will amend section 148 of the Income Tax where the time limit for reassessment has been reduced to 3 years from 6 years. The proposal addresses serious tax evasion, where evasion evidence is Rs.50 lakhs or more can be re-opened within 10 years.

- The present section 148 empowers AO to issue notice only when he has 'reasons to believe'. The proposed section has empowered the AO to issue notice even when he has 'information which suggest that income has escaped assessment'. Thus, the time tested interpretation of 'reasons to believe' may not continue to apply.

- A new section 148A has been inserted which provides that before issuing notice under section 148, the AO shall conduct necessary enquiry, provide opportunity to assessee as to why notice under section 148 should not be issued on the basis of information which suggests that income has escaped assessment. However, the provision of this section is not applicable, where 148 proceedings are initiated pursuant to search.

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

- Certain scenario are being discussed below :

Sl. No.	*Date of Issue of Notice*	*Assessment Year for which notice has been issued*	*Amount escaping assessment, represented in the form of asset*	*Whether 148 notice is legally valid*	*Remarks*
1	*After 01st April 2021*	*2015-16*	*40,00,000*	*No*	*Since after 01.04.2021, notice under section 148 can be issued only income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year*
2	*Before 01st April 2021*	*2015-16*	*40,00,000*	*Yes*	*Yes, notice under section 148 can be issued since income chargeable to tax, which has escaped assessment exceeds Rs. 1,00,000/- or more for that year*
3	*After 01st April 2021*	*2014-15*	*75,00,000*	*No*	*Another restriction has been provided that the notice under section 148 of the Act cannotbe issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.*

4. Issue of notice u/s 142(1) of the Act

4.1. Section 142 of the Act provides for conduct of inquiry before assessment. Clause (i) of sub section (1) of the said section gives the Assessing Officer the authority to issue notice to an assessee, who has not submitted a return of income, asking for submission of return. This is necessary to bring into the fold of taxation non-filers or stop filers who have transactions resulting in income. However, this power can be currently invoked only by the AssessingOfficer.

4.2. The Central Government is following a conscious policy of making all the processes under the Act, where physical interface with the assessee is required, fully faceless by eliminating person to person interface between the taxpayer and the Department. In line with this policy, and in order to enable centralized issuance of notices etc. in an automated manner, it is proposed to amend the provisions of clause (i) of the sub-section (1) of the section 142 to empower the prescribed income-tax authority besides the Assessing Officer to issue notice under the saidclause.

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

Comments:

- *Now it is expected that NeAC shall issue such notice. The database available with them shall easily give list of all such assessees who have not filed their return, and by a single click, notices to all such assessees can be generated.*

5. Rationalisation of the provision relating to processing of returned income and issuance of notice under sub-section (2) of section 143 of the Act

5.1. Prima-facie adjustments u/s 143(1)(a):

The existing provisions of section 143(1)(a) empowers CPC to make prima-facie adjustments specified in clauses (i) to (vi) therein. It is proposed to make some amendments in sub-clause (iv) and (v).

It is proposed to amend sub-clause (iv) to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.

It is further proposed to amend sub-clause (v) so as to give consequential effect to amendment carried out in section 80 AC vide Finance Act,2018.

5.2. Time limit for sending intimation u/s 143(1)(a) reduced:

It is proposed to amend the provisions of section 143(1) to reduce the time limit for sending intimation from one year to nine months from the end of the financial year in which the return was furnished.

5.3. Time limit for issuing notice u/s 143(2) reduced:

It is proposed to reduce the time limit for issue of notice under section 143(2) from six months to three months from the end of the financial year in which the return is furnished.

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

Comments:

- *The existing sub-clause (iv) of section 143(1)(a) provides for adjustment on account of disallowance of expenditure indicated in the audit report but not taken into account in calculating the total income of the assessee. There has been a debate whether adjustment could be made for income not included in the return of income, but which is evident from the audit report. The amendment has been proposed to amend the said sub-clause so as to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.*
- *According to the existing provisions of Sub-clause (v) of section 143(1)(a), any deduction admissible under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, shall be allowed if the return of income is furnished on or before the due date specified under sub-section (1) of section 139 of the Act. The amendment has been proposed to amend the said sub-clause so as to provide that any deduction admissible under section 10 AA or under any of the provisions of Chapter VIA under the heading "C.—Deductions in respect of certain incomes" shall be allowed, if the return of income is furnished on or before the due date specified under the sub-section (1) of section 139 of the said Act.*
- *The proposed amendment in reducing time limit for issue of scrutiny notice u/s 143(2) is in line with the amendments reducing time limit for passing assessments.*

6. Discontinuance of Income-tax Settlement Commission

6.1. Section 245B of the Act provides for constitution of the Income Tax Settlement Commission which was established to provide the necessary mechanism for the settlement of tax liability of a taxpayer and to give such person an opportunity make an application in the prescribed form containing a 'full' and 'true' disclosure of his income at any stage of the proceedings which has not been disclosed before the Assessing Officer.

6.2. It is proposed that the Income-Tax Settlement Commission ("ITSC") shall cease to operate on or after 1st February, 2021. This means that no application under section 245C of the Income Tax Act 1961 for settlement of cases shall be made on or after 1st February, 2021.

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

6.4. Where in respect of an application, an order, which was required to be passed by the ITSC under section 245(2C) of the Act on or before the 31st day of January, 2021 to declare an application invalid but such order has not been passed on or before 31st January, 2021, such application shall be deemed to be valid and treated as pending application.

6.5. It has been stated that in respect of pending application, the Central Government shall constitute one or more Interim Board for Settlement ("Interim Board"), as may be necessary, for settlement of pending applications which shall consist of three members, each being an officer of the rank of Chief Commissioner, as may be nominated by the Board. If the Members of the Interim Board differ in opinion on any point, the point shall be decided according to the opinion of majority.

6.6. From 1st February, 2021, the provisions related to exercise of powers or performance of functions by the ITSC viz. provisional attachment, exclusive jurisdiction over the case, inspection of reports and power to grant immunity shall apply mutatis mutandis to the Interim Board for the purposes of disposal of pending applications and in respect of functions like rectification of orders for all orders passed under section 245D(4) of the Act.

6.7. With respect to a pending application, the assessee who had filed such application may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer, in the prescribed manner, about such withdrawal. This means that the assessee can go before the Assessing Officer and get his assessment done in view of this latest amendment for the very same assessment period for which he has filed the settlement application.

6.8. However, where the option for withdrawal of application is not exercised by the assessee within the time allowed, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board. This means that application shall be decided by the Interim Board which was to be earlier decided by the ITSC.

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

6.10. It is important to state that during the course of such assessment, the income-tax authority shall not be entitled to use the material and other information produced by the assessee before the ITSC or the results of the inquiry held or evidence recorded by the ITSC in the course of proceeding before it. By inserting these conditions, the interest of the assessee is hedged.

6.11. The caveat and a very wide one is that the above restriction shall not apply in relation to the material and other information collected, or results of the inquiry held or evidence recorded by the Assessing Officer, or, as the case may be, other income-tax authority during the course of any other proceeding under this Act irrespective of whether such material or other information or results of the inquiry or evidence was also produced by the assessee or the Assessing officer before the ITSC.

6.12. The Central Government may, for the purposes of giving effect to the said scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st March, 2023.

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

Comments:

- *The purpose of discontinuation of Income Tax Settlement Commission and constitution of Interim Board for Settlement is evident from the Memorandum Explaining Finance Bill which provide for eliminating interface between the Interim Board and the assessee and introducing a mechanism of dynamic jurisdiction. Thus, it is intended that Interim Board will function in a similar manner like Faceless Assessments or Appeals. Interestingly, this discontinuation and constitution is effective from 1st February 2021 implying that there is status- quo on all pending cases and no fresh cases can be filed in ITSC for time being.*
- *It is known fact that majority of applications filed in ITSC are relating to search and survey cases. Interestingly, assessments of such search and survey cases are still under physical regime with Central Circles. Even appeal against such assessments with CIT(A) are also under physical regime. This is quite logical as such assessments and appeals require reference to various seized records etc and it may not be practical to do such assessments or appeals in a faceless manner.*
- *The assessee may put to a prejudice, if it is exposed to the newly constituted 'Interim Board' the working regulation of which is yet to be notified/finalised. It is not known as to which conditions shall be inserted by the legislature, unlike the previous conditions which existed for the functioning of the ITSC. It is like keeping the cart before the horse.*
- *In the alternative given to the assessee i.e. to file the application for withdrawal and go before the Assessing Officer for assessment, also prejudices the interest of the assessee. The amendment gives a right to the Assessing Officer to use the material and other information collected irrespective of whether such information was produced before the ITSC by the assessee of by the AO.*
- *No clear definition of the word 'inquiry' has been given. This provides a free hand to the AO, which was otherwise functus officio till now.*
- *The amendment which is clearly stated to be effective from 1st February, 2021 that is prospective is in fact impliedly made retrospective as it says that a stage of settlement shall be completed in a hybrid manner i.e. some part as per the old regime (which now remains discarded) and some part as per the new regime which is yet to be notified. This creates huge inconsistencies in the process and may lead to litigation/ deliberation/ discussions/confusion.*
- *In view of the above,whether to continue with the ITSC or not is wholly up to the Legislature. However, the person who has already ventured into the same as per the existing provisions, the application of such person should be decided as per the old regime only. This is also in accordance with the principles of natural justice and requires to be implemented as per the 'fitness of things' principle.*

7. Dispute Resolution Mechanism for Small Taxpayers

7.1. In order to prevent new ITR disputes and settling issues at initial stage, it is proposed to introduce a new scheme by inserting a new section 245MA in the Act so as to constitute one or more Dispute Resolution Committees (DRC) with the following key points:

- Disputes where aggregate amount of variation proposed in specified order is **ten lakh rupees or less** shall be eligible to be considered by DRC. Provided that the returned income shall not be more than **fifty lakh rupees**.
- The assesse shall have the option to opt or not to opt for the dispute resolution through the DRC.
- The specified order shall not be eligible for being considered by the DRC if it is based on a search initiated under section 132 or requisition made under section 132A or a survey initiated under section 133A or information received under an agreement referred to in section 90 or section 90A of the Income tax Act, 1961.
- Assessee would not be eligible for benefit of this provision if there is detention, prosecution or conviction under various laws as specified in the proposed section.
- The DRC shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence under

this Act in case of a person whose dispute is resolved under this provision.

7.2. The Central Government may, for the purpose of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However no such direction shall be issued after the 31st day of March, 2023.

7.3. Every such notification shall, as soon as may be after the notification is issued, be laid before each house of parliament.

7.4. The proposal will take effect from 1st April, 2021.

Comments:

- *Though the Scheme is yet to be notified, however on going through the fine prints, it seems that this Scheme can be availed by certain category of assessee when Draft Assessment Order is given to him. However, the clarity on the issue will come, when the Scheme is notified.*
- *The proposed DRC is akin to ITSC (now replaced by Interim Board), but expected to have much faster disposal and less reports/enquiry.*

8. Provision for Faceless Proceedings before the Income-tax Appellate Tribunal (ITAT) in a jurisdiction less manner

8.1. In order to impart greater efficiency, transparency and accountability to the assessment process, appeal process and penalty process under the Act a new faceless assessment scheme, faceless appeal scheme and faceless penalty scheme have already been introduced.

8.2. Further, vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 the Central Government has been empowered to notify similar schemes in respect of many other processes under the Act that require a physical interface with the taxpayers.

8.3. In order to ensure that the reforms initiated by the Department to reduce human interface from the system reaches the next level, faceless scheme be launched for ITAT proceedings on the same line as faceless appeal scheme.

8.4. To give effect of the new faceless scheme for ITAT proceedings, a new sub-section is proposed to be inserted in the section 255 of the Act. It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions soon as may be after the notification is issued, be laid before each House of Parliament. such direction shall be issued on or before 31st day of March, 2023

8.5. This proposal will take effect from 1st April, 2021.

Comments:

- *On 13.8.2020, Hon'ble PM Sh. NarendraModi has launched a new platform for transparent taxation- 'honouring the honest' and the major thrust of this platform was on two pathbreaking and bold reforms- faceless assessments and faceless appeals. The faceless appeal scheme was launched only for cases pending with CIT(A).*
- *These two bold and path breaking reforms were a game changer for overhauling the entire tax administration system. Though for the taxpayers and tax practitioners, these reforms will result in missing out on that odd cup of Tea with the AO/CIT(Appeals), but as long as that odd cup of Tea is being substituted by a far more rewarding and satisfying TEA i.e. Transparency, Efficiency & Accountability, no one is complaining.*
- *To the best of my knowledge, at this stage, there is hardly any disposals in the faceless appeal scheme with CIT(A). Now, the proposal is to cover ITAT cases in Faceless Regime.*
- *It may be noted that a writ petition was filed in Delhi High Court on the issue of the violation of the Principle of Natural Justice & Article 14 of the Constitution of India, wherein it was inter-alia argued that right of personal hearing in appeal proceedings cannot be taken away. Time will tell whether such faceless mechanism satisfies the test of Principal of Natural Justice and Article 14 referred above.*

9. Provisional attachment in Fake Invoice cases

9.1. Section 281B of the Act contains provisions which

provide that in cases of assessment or reassessment the Assessing Officer may provisionally attach any property of the assessee, if necessary, in order to protect the interest of revenue. This can be done only with prior approval of Pr. Chief Commissioner or Pr Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director, of Income-tax. Such provisional attachment is valid for a period of 6 months. Further, the said section allows the assessee to furnish a bank guarantee of the value of the property so attached for revocation of the provisional attachment. The above bank guarantee shall be invoked if the assessee fails to pay his tax demand on time. The powers under this section can only be exercised by the AssessingOfficer.

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

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

Comments:

- *Clause 98 of the Finance Bill 2020 introduced section 271AAD of the Income Tax Act for penalty on false entry or entry omitted by intention by a person to evade tax. The penalty levied under this section is a sum equal to the aggregate amount of such false entry or omitted entry.*
- *False entry includes*
- *false invoices,*
- *invoice issued for goods/service without actual supply of goods/service and*
- *invoices to/from a person who doesn't exist.*
- *In the recent times after the implementation of GST, several cases of fraudulent input tax credit claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce the GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid.*
- *It is highly anticipated that the person on whom penalty has been imposed for false entry or omitted entry with an intention to evade tax might also try to evade the payment of such penalty. Hence, in such circumstances where the penalty amount under section 271AAD exceeds two crore rupees, the Assessing Officer may attach any property of such person to safe guard the interest of the revenue to recover the penalty amount. Such provisional attachment shall be valid for a period of 6 months or until the assessee furnishes a bank guarantee of equivalent value against such attached property.*

10. Clarification regarding non applicability under Vivad se Vishwas Act, 2020 for assessee who have approached ITSC

10.1. In order to provide clarification of whether an assessee who opted for an alternative mechanism and approached the Income Tax Settlement Commission (ITSC) for settlement of his case under Chapter XIX-A of the Income Tax Act, 1961 can go for Vivad se Vishwas scheme, the Central Government has proposed to amend some provisions of the Vivad se Vishwas Act, 1961 with the following key points:

- Vivad se Vishwas scheme was enacted for the resolution of the disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case under Chapter XIX-A of the Income Tax Act, 1961 (whether they have attained finality or not).
- The definition of "Appellant" under the Vivad se Vishwas Act, 2020 is proposed to be amended to clarify that the expression "appellant" shall not include and shall be deemed never to have been included a person in whose case a writ petition or special leave petition or any other proceeding has

been filed either by him or by the income-tax authority or both, before an appellate forum arising out of an order of Income-tax Settlement Commission under Chapter XIX-A of the Income-tax Act, and such petition or appeal is either pending or is disposed of;

- The definition of "Disputed Tax" under the Vivad se Vishwas Act, 2020 is proposed to be amendedto clarify that the expression "disputed tax", in relation to an assessment year or financial year, as the case may be, shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Income-tax Settlement Commission under Chapter XIX-A of the Income-tax Act
- The definition of "Tax Arrear" under the Vivad se Vishwas Act, 2020 is proposed to be amendeddoubts to clarify that the expression "tax arrear" shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Settlement Commission under Chapter XIX-A of the Income-tax Act.

10.2. These amendments are proposed to take effect retrospectively from 17th March, 2020.

Comments:

- *Some of the appellant had filed writ petition or special leave petition before an appellate forum arising out of an order of Income-tax Settlement Commission in order to save interest on Income Tax (since settlement commission do not have power to give immunity from interest while applicants under VSVS get immunity from interest).*
- *Since these amendments are proposed to take effect retrospectively from 17th March, 2020, such appellant shall not be eligible to go for Vivad se Vishwas Scheme.*

11. Amendment in provision relating to tax audit under section 44AB

11.1. Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed or exceeds one crore rupees in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, fifty lakh rupees in any previous year.In order to reduce compliance burden on small and medium enterprises, through Finance Act 2020, the threshold limit for a person carrying on business was increased from one crore rupees to five crore rupees in cases where-

(i) Aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and

(ii) Aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

11.2. In order to incentivise non-cash transactions to promote digital economy and to further reduce compliance burden of small and medium enterprises, it is proposed to increase the threshold from five crore rupees to ten crore rupees in cases listed above.

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

Comments:

- *This is also a very welcome amendment as it proposes to filter the small taxpayers out of the tax audit bracket and reduce the compliance burden for them. However, shopkeepers and retailers which mainly have their sales over the counter in cash will not be benefitted. It seems that the aggregate of all amounts received will include receipts of both revenue and capital account and similarly aggregate of all amounts paid would include all payment of revenue and capital nature.*
- *In substance, it seems that aggregate of the receipts and payments of whatever nature received by the assessee will be considered for calculation the threshold limit of five percent. No change has been contemplated in case of limit for tax audit in case of persons carrying on business/ profession and covered under section 44AE, 44BB, 44BBB, 44ADA or 44AD.*
- *Further, this amendment would be step forward the flagship programme of the Government, i.e, "Digital India".*

12. Rationalisation of the provision of presumptive taxation for professionals under section 44ADA

12.1. Section 44ADA of the Act relates to special provision for computing profits and gains of profession on presumptive basis.

12.2. Sub-section (1) of the said section provides that notwithstanding anything contained in sections 28 to 43C, in case of an assessee, being a resident in India engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent of the total gross receipts of the assessee in the previous year on account of such profession, or as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax.

12.3. The provisions of section 44ADA of the Act were made applicable to individual, Hindu undivided family (HUF) and partnership firm but not a Limited Liability Partnership (LLP) as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008. This is for the reason that LLP are required to maintain books of accounts in any case under LLP Act.

12.4. It is proposed to make this position clear in the law. Hence it is proposed to amend sub-section (1) of section 44ADA of the Act to provide that the provision of this section shall apply to an assessee, being an individual, HUF or partnership firm, not being an LLP as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008. All other provision like being a resident in India engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts does not exceed fifty lakh rupees in a previous year , shall remain same.

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

Comments:

- *Earlier it was applicable on all assessee but as per recent amendment in budget it is applicable to an assessee, being an individual, Hindu undivided family or a partnership firm other than a limited liability partnership as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, who is a resident in India. The proposed amendment would bring hardship to other assessee who are not exempted under this section and they have to compulsory maintain the books of accounts*

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

13.1. Section 139 of the Act provides for filing of return of income. Sub-section (1) of the section provides that every person being an individual, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of hisincome.

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

(i) The senior citizen is resident in India and of the age of 75 or more during the previousyear;

(ii) He has pension income and no other income. However, in addition to such pension income he may have also have interest income from the same bank in which he is receiving his pensionincome;

(iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank;and

(iv) He shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may beprescribed.

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

return of income by such senior citizen for this assessment year.

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

Comments:

- *Any senior citizen aged 75 years or more during the financial year 2020-21, is not required to file Income Tax Return if such individual is only having pension income from Government specified Banks. In addition to pension income, such individual may also have interest income but such interest income should be earned from the same bank from where pension income is earned.*
- *The individual is required to furnish declaration to the specified bank, which shall compute the income tax liability of such individual and deduct tax after giving effect of deductions available under the Act.*
- *It is worth noting that pension income is the prime criteria for the senior citizen to avail the benefit of not filing the return. A senior citizen aged 75 years or more having interest income but not having pension income will continue to be liable to furnish Income Tax return if his/her income exceeds the basic exemption limit.*

II. TDS / TCS PROVISIONS

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

14.1. Chapter XVIIB of the Act relates to deduction of tax at source. The provisions of this chapter provide for TDS on various payments at rates contained therein. It is proposed to provide for TDS by person responsible for paying any sum to any resident for purchase of goods. The rate of TDS is kept very low at 0.1%.

14.2. To ensure that compliance burden is only on those who can comply with it, it is proposed that the tax is only required to be deducted by those person (i.e"buyer") whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

14.3. Central Government is proposed to be empowered by notification in the Official Gazette to exempt a person from obligation under this section on fulfilment of conditions as may be specified in that notification.

14.4. Tax is required to be deducted by such person, if the purchase of goods by him from the seller is of the value or aggregate of such value exceeding fifty lakh rupees in the previous year.

14.5. It is also proposed to provide that the provisions of this section shall not apply to

Ø a transaction on which tax is deductible under any provision of the Act; and

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

14.6. This means, if on a transaction a TDS or tax collection at source (TCS) is required to be carried out under any other provision, then it would not be subjected to TDS under this section. There is one exception to this general rule.

14.7. If on a transaction TCS is required under sub-section (1H) of section 206C as well as TDS under this section, then on that transaction only TDS under this section shall be carried out.

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

14.9. Every guideline issued by the Board is required to be laid before each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax

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

Comments:

- *The Government has realised the difficulty that has arisen on implementation of 206C(1H) with regard to TCS on sale of goods. The existing difficulty in timing and manner of collection of tax at source has*

been partly dispensed with by introducing a fresh TDS section in relation to purchase of goods.

- *Now on such transactions, TDS shall be deducted at the time of payment or credit, whichever is earlier. This seems to be much easier to implement and monitor.*
- *However, 206C(1H) survives for cases where turnover of buyer is less than Rs. 10 crores whereas turnover of seller is greater than Rs. 10 crores in the immediately preceding financial year. In such case, the seller shall continue to collect tax at source at applicable amount under section 206C(1H) since 194Q shall not be applicable in such cases.*
- *This partial disabling of the existing TCS provision is a measure to save the face of the Government in completely accepting the flaw in the said TCS provisions.*
- *Further apprehensions in the mind of the Government with regard to this new TDS provision are also clear from the fact that the Government has empowered to Board to modify the provisions of this section by way of issuance of guidelines approved by the Parliament.*
- *This amendment will take effect from 1st July, 2021.*

15. TDS/TCS on non-filer at higher rates

15.1. Section 206AA of the Act provides for higher rate of TDS for non-furnishing of PAN. Similarly section 206CC of the Act provides for higher rate of TCS for non-furnishing of PAN. It is seen that while these provisions have served their purpose in ensuring obtaining and furnishing of PAN by various person, there is need to have similar provisions to ensure filing of return of income by those person who have suffered a reasonable amount of TDS/TCS.

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

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

- twice the rate specified in the relevant provision of the Act; or
- twice the rate or rates in force; or
- the rate of five per cent

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

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

- twice the rate specified in the relevant provision of the Act; or
- the rate of five percent

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

15.7. The specified person is a person who:

- has not filed the returns of income for both of the two assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be, and
- The time limit for filing tax return under sub-section (1) of section 139 of the Act has expired for both these assessment years.
- The aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years.

15.8. Specified person shall not include a non-resident who does not have a permanent establishment in India

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

Comments:

- *In effect TDS/TCS at higher rates shall be deducted or collected for persons*
- *Who have not filed return for last two immediately preceding previous years*
- *Whose last date of filing returns have expired as on the date of such tax deduction or collection*
- *From whom tax has been deducted or collected exceeding 50,000 in the last two immediately preceding previous years*
- *Effectively this section shall become applicable only after the expiry of the due date of furnishing return of income of the previous year.*
- *The threshold limit of 50,000/- is for the two immediately preceding previous years and not for the previous year in which tax is to be deducted or collected at the higher rate.*
- *These amendments will take effect from 1st July, 2021.*

16. Exemption of deduction of tax at source on payment of Dividend to business trust in whose hand dividend is exempt

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

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

III. RATIONALISATION PROVISIONS

17. End of Prevailing Litigations of 'Depreciation on Goodwill'

17.1. Clause (11) of the section 2 of the Income Tax Act defines, 'block of assets' to mean a group of assets falling within a class of assets comprising, tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed.

17.2. Sub-section (1) of the section 32 of the Income Tax Act provides for deduction on account of depreciation on tangible assets (Building, machinery, plant and furniture) and intangible assets (know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature) acquired on or after the 1st day of April, 1998 which are owned, wholly or partly by the assessee which are used wholly and exclusively for the purpose of business and profession while computing the income under the head – 'Profits and gains of business or profession'.

17.3. Further, Explanation 3 to sub-section (1) of the section 32 provides that for the purposes of this sub-section, the expression "assets" shall mean to be tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

17.4. It is seen that Goodwill of a business or a profession has not been specifically provided as an asset either in the definition under clause (11) of section 2 of the Act or in section 32 of the Act.

17.5. The question whether goodwill of a business is an asset within the meaning of section 32 of the Act and whether depreciation on goodwill is allowable under the said section, is an issue which came up before Hon'ble Supreme Court in the case Smiff Securities Limited [(2012)348 ITR 302 (SC)]. Hon'ble Supreme Court answered the question in affirmative. Thus, as held by Hon'ble Supreme Court, Goodwill of a business or profession is a depreciable asset under section 32 of the Act.

17.6. However, there are other sections of the Act which are relevant for calculation of depreciation under section 32 of Act. These are as under:

17.6. 1. Sixth proviso the section 32 of the Act mandates that in a case of succession/ amalgamation/ demerger during the previous year, depreciation is to be calculated as if the succession or amalgamation or demerger has not taken place

during the previous year and apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

17.6..2. Explanation 2 of sub-section (1) of section 32 of the Act provides that the term ¯written down value of the block of assets shall have the same meaning as in clause (c) of sub-section (6) of section 43 of the Act.

17.6..3. Clause (c) of sub-section (6) of section 43 of the Act, with respect to block of assets, inter-alia, provides that the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year is to be increased by the actual cost of any asset falling within that block, acquired during the previous year.

17.6..4. Sub-section (1) of section 43 of the Act which defines ¯Actual cost as actual cost of the assets to the assessee. Explanation 7 to this section covers a situation where in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It clarifies that in this situation, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.

17.6..5. Explanation 2 of clause (c) of sub-section (6) of section 43 of the Act also covers a situation where in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It also clarifies that in this situation, the actual cost of the block of asset in the hand of the amalgamated company would be written down value of that block in the immediate preceding previous year in the case of amalgamating company as reduced by depreciation actually allowed in that preceding previous year.

17.7. Thus, while Hon‘ble Supreme Court has held that the Goodwill of a business or profession is a depreciable asset, the actual calculation of depreciation on goodwill is required to be carried out in accordance with various other provisions of the Act, including the ones listed above. Once we apply these provisions, in some situations (like that of business reorganization) there could be no depreciation on account of actual cost being zero and the written down value of that assets in the hand of predecessor/amalgamating company being zero.

17.8. However, in some other cases (like that of acquisition of goodwill by purchase) there could be valid claim of depreciation on goodwill in accordance with the decision of Hon‘ble Supreme Court holding goodwill of a business or profession as a depreciable asset.

17.9. It is seen that Goodwill, in general, is not a depreciable asset and in fact depending upon how the business runs; goodwill may see appreciation or in the alternative no depreciation to its value. Therefore, there may not be a justification of depreciation on goodwill in the manner there is a need to provide for depreciation in case of other intangible assets or plant & machinery. Hence there appears to be little justification for depreciation on goodwill even in the category of cases referred to in the immediately preceding paragraph.

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

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

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

17.11. 2. amend clause (ii) of sub-section (1) of section 32 of the Act to provide that goodwill of a business

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

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

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

17.13..1. in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and

17.13..2. in the case falling under sub-clause (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and

17.13..3. in any other case, shall be taken to be nil

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

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

Comments

- *The Union Budget 2021 has clarified that no depreciation on Goodwill shall be allowed by amending the definition of 'block of assets' and expressly excluding goodwill from intangible assets.*
- *Earlier, although the word goodwill was not specifically included within the definition of intangible assets, depreciation on purchased goodwill was allowed as an expenditure u/s 32 on the basis of Supreme Court ruling.*
- *By amending the definition and clarifying that depreciation of goodwill shall not be allowed, the government has resolved the debate of whether Section 32 of the IT Act provides for such depreciation. Consequentially, the Government has also put to rest any litigations in relation to previous claims of depreciation by accepting the fact the same was an allowable expenditure u/s 32 and by reducing the cost of purchase of goodwill, the capital asset, by the amount claimed as depreciation in past*
- *Interestingly, the financial bill also states that the deduction for the amount paid for acquiring Goodwill shall be allowed on sale of Goodwill, a transaction which is difficult to actually materialize in practical world. In a way, amount paid for goodwill shall hardly ever be deductible as tax expenditure. This should adversely affect the pricing of future M&A transactions by bringing time value of money into play for amount paid as goodwill by the purchasing entity.*

18. Rationalization of the provision of slump sale

18.1. Section 50B of the Act contains special provision for computation of capital gains in case of slump sale. Sub-section (42C) of section 2 of the Act defines "slump sale" to mean the transfer of one or more undertakings as a result of sale for lump sum consideration without value being assigned to individual assets and liabilities in such cases. This has been interpreted by some courts that other

means of transfer listed in sub-section (47) of section 2 of the Act, in relation to definition of the word "transfer" in relation to capital asset like exchange, relinquishment etc, are excluded.

18.2. While discussing transfer as a result of sale it needs to be kept in mind that it is the substance of transaction that is more important than the name given to it by the parties to the transaction. For example, a transaction of "sale" may be disguised as "exchange" by the parties to the transaction, but such transactions may already be covered under the definition of slump sale as it exists today on the basis that it is transfer by way of sale and not by way of exchange.

18.3. This principle was enunciated by Hon'ble Supreme Court in CIT vs. R.R. Ramakrishna Pillai [(1967) 66 ITR 725 SC]. Thus, if a transfer of an asset is in lieu of another asset (non-monetary) it can be said to be monetized in a situation where the consideration for the asset transferred is ascertained first and is then discharged by way of non-monetary assets. In this situation it would be a case of transfer by way of sale and would thus be covered within existing provisions of section 50C of the Act.

18.4. Based on this principle, Hon'ble SC in the case of Artex Manufacturing Company [(1997), 227 ITR 260] held that the sale of business on a going concern for a lump-sum non-monetary consideration was transfer by way of sale on the ground that the slump price was determined by the value on the basis of itemized assets, though this price was not mentioned in the agreement.

18.5. Similarly, Ho'ble SC in the case of Dhampur Sugar Mills [(2006) 147 STC 57] considered the case of a dealer who took a sugar mill on long term lease for an agreed amount of license fee and in satisfaction therefore, thedealer was required to give the entire quantity of molasses to the owner of the sugar mill. It was held that the said transaction "in effect and substance" involved passing of monetary consideration and was accordingly liable to sales tax.

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

18.7. In order to make the intention clear, it is proposed to amend the scope of the definition of the term "slump sale" by amending the provision of clause (42C) of section 2 of the Act so that all types of "transfer" as defined in clause (47) of section 2 of the Act are included within its scope.

Comments:

- *The proposed amendment ensures that even if a transaction is designed so as to not fall within the definition of sale, such as an exchange of assets or rights, the same can now be construed as a slump sale and accordingly taxed under the provisions of section 50B.*
- *Earlier only "sale" of an undertaking was subjected to capital gains under Section 50B of the act. By this amendment, any form of transfer of undertaking, which will now include transactions such as exchange of assets, and giving up or extinguishing rights on assets, would be deemed to be a slump sale and would be subjected to capital gains.*
- *This amendment will take effect from the 1st April, 2021 and shall accordingly apply to the assessment year 2021-22 and subsequent assessment years.*

19. Rationalization of provision of transfer of capital asset to partner on dissolution or reconstitution

19.1. The existing provisions of section 45 of the Act inter alia, provides that any profits or gains arising from the transfer of a capital asset shall be chargeable to income-tax under the head Capital gains and shall be deemed to be the income of the previous year in which such transfer takes place.

19.2. Further sub-section (4) of the said section, provides that the profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of such firm or other association of persons or body of individuals of the previous year in which the said transfer takes place.

19.3. Further, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration for the purposes of section 48.

19.4. In this regard, it has been noticed that there is uncertainty regarding applicability of provisions of aforesaid sub-section to a situation where assets are revalued or self- generated assets are recorded in the books of accounts and payment is made to partner or member which is in excess of his capital contribution.

19.5. Hence, it is proposed to substitute the existing sub-section (4) of section 45 of the Act with a new sub-section (4) and also insert a new sub-section (4A) to this section.

19.6. New proposed sub-section (4) of section 45 of the Act applies in a case where a specified person who receives during the previous year any capital asset at the time of dissolution or reconstitution of the specified entity.

Ø The capital asset represents the balance in the capital account of such specified person in the books of the specified entity at the time of its dissolution or reconstitution.

Ø In this situation, the profit and gains arising from the receipt of such capital asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "capital gains" and shall be deemed to be the income of such specified entity of the previous year in which the capital asset was received by the specified person.

Ø For the purposes of section 48 of the Act, the fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

Ø The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

19.7. New proposed section sub-section (4A) of section 45 of the Act applies in a case where a specified person receives during the previous year any money or other asset at the time of dissolution or reconstitution of the specified entity.

➢ The money or other asset is required to be in excess of the balance in the capital account of such specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution.

➢ In this situation, the profits or gains arising from the receipt of such money or other asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in whichthe money or other asset was received by the specified person.

➢ For the purposes of section 48 of the Act:

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

19.7. .2. the balance in the capital account of the specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition.

➢ The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self- generated goodwill or any other self-generated asset.

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

revalued and for which income under the proposed sub-section (4A) of section 45 of the Act was brought to tax is transferred subsequently by the specified entity.

Comments:

- *The proposed amendment is aimed at taxing transactions involving revaluation of assets of a firm and crediting the partners' capital account and subsequent transfer of same or other assets from the firm to the partners' against their capital account balances.*
- *Judicial pronouncements have held that such receipt of assets or sum of money is capital receipt in hands of partners and hence not chargeable to tax. However, the amendment proposes to tax the same in the hands of the partnership firm itself. Hence, the issue of taxability in the hands of the partner seems to have been put to rest by the proposed amendment.*
- *Also in case where the revalued asset is not transferred, the cost of the revalued asset shall be substituted by the amount on which tax has been paid under the new section for the purpose of computing capital gains on transfer of such revalued asset in future by the partnership firm.*
- *This amendment will take effect from the 1st April, 2021 and shall accordingly apply to the assessment year 2021-22 and subsequent assessment years.*

20. Rationalization of provisions of Minimum Alternate Tax (MAT)

20.1. Section 115JB of the Act provides for MAT at the rate of fifteen per cent of its book profit, in case tax on the total income of a company computed under the provisions of the Act is less than the fifteen per cent of book profit. Book profit for this purpose is computed by making certain adjustments to the profit disclosed in the profit and loss account prepared by the company in accordance with the provisions of the Companies Act, 2013.

20.2. Representations were received that the computation of book profit under section 115JB does not provide for any adjustment on account of additional income of past year(s) included in books of account of current year on account of secondary adjustment under section 92CE or on account of an Advance Pricing Agreement (APA) entered with the taxpayer under section 92CC.

20.3. Representation has also been received that since dividend income is now taxable in the hand of shareholders, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the Double Taxation Avoidance Agreement (DTAA).

20.4. Hence it is proposed to

- Provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recomputethe book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner.

  Further, the provision of section 154 of the Act shall apply so far as possible and the period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.

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

Comments:

- *This amendment has been proposed primarily to ensure MAT is not paid on income of a foreign company on which taxes are payable at rates lower than applicable MAT rate and income which are not related to the current previous year.*
- *This clause shall be applicable for AY 2021-22 and subsequent assessment years*

21. Rationalization of the provision concerning withholding on payment made to Foreign

Institutional Investors (FIIs)

21.1. Section 196D of the Act provides for deduction of tax on income of FII from securities as referred to in clause (a) of sub-section (1) of section 115AD of the Act (other than interest referred in section 194LD of the Act) at the rate of 20 per cent.

21.2. Since the said section provides for TDS at a specific rate indicated therein, the deduction is to be made at that rate and the benefit of agreement under section 90 or section 90A of the Act cannot be given at the time of tax deduction. The situation is different in cases where the provision mandates TDS at rate in force.

21.3. This is for the reason that the definition of the expression ¯rate in force , in clause (37A) of section2 of the Act, allows benefit of agreement under section 90 or section 90A in determining the rate of tax at which the tax is to be deducted at source. This principle of tax deduction has also been upheld by Hon'ble Supreme Court in the case of PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 2012).

21.4. Representations have been received requesting that the benefit of agreements under section 90 or section 90A of the Act may be considered at the time of tax deduction on payments to FIIs.

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

Comments:

- *This clause shall be applicable from 1st April, 2021.*

22. Amendment to provision of Charitable Trust to check double deduction on income application /accumulation

22.1. Exemption to funds, institutions, trusts etc. carrying out religious or charitable activities is provided under clause (23C) of section 10 of the Act and sections 11 and 12 of the Act. Section 12A of the Act, inter alia, provides for procedure to make application for the registration of the trust or institution to claim exemption under section 11 and 12.

22.2. Section 12AB is the new section which comes into effect from the 1st April, 2021.

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

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

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

22.4. These entities are not allowed to accumulate more than 15% of their income or accumulate for specific purpose up to 5 years, other than corpus donations referred above.

22.5. Instances have come to the notice where some of these entities claim the corpus donations to be exempt and at the same time claim the application of such Corpus as part of the mandatory 85% application from income other than such corpus. This results in a situation where the corpus income has been exempted and its application has been claimed as application against the mandatory 85% application of non-corpus income.

22.6. Instances have also come to the notice where these entities take loans or borrowings and make application for charitable or religious purposes out of the proceeds of loans and borrowings. Such loans or borrowings when repaid are again claimed as application. This results in unintended double deduction.

22.7. Both these situations, at times, also result in paper loss which is claimed by the assessee as carry forward resulting in unintended short application (less than 85%) in following years.

22.8. To ensure that there is no double counting while calculating application or accumulation, it has been proposed that-

22.8..1. Voluntary contributions made with a specific direction that it shall form part of the corpus shall be invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus.

22.8..2. Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.

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

22.8..4. Clarify in both clause (23C) of section 10 and section 11 that for the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed

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

Comments

- *Charitable trusts shall not be permitted to claim carry forward of loss.*
- *It is made clear that the calculation of income required to be applied or accumulated during the previous year shall be made without any set off or deduction or allowance of any excess application of any of the year preceding to the previous year.*
- *Also suitable adjustment for change in loan and change in corpus shall have to be made every year to arrive at the amount of application of income for that previous year.*

23. Rationalization of the provisions of Equalization Levy

23.1. Under section 165A of Finance Act, 2016, as inserted by section 153 of the Finance Act, 2020, Equalisation Levy is to be levied at the rate of two percent of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated, by it-

(i) to a person resident in India; or

(ii) to a non-resident in the specified circumstances as referred to in sub-section (3); or

(iii) to a person who buys such goods or services or both, using internet protocol address located in India.

23.2. For this purpose, E-commerce supply or service is defined as to mean:-

(i) online sale of goods owned by the e-commerce operator;

(ii) online provision of services provided by the e-commerce operator;

(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or

(iv) any combination of activities listed in clause (i), (ii) or clause (iii);

23.3. Clause (50) of section 10 of the Act provides for the exemption for the income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force or arising from any e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2021 and chargeable to equalisation levy under that Chapter.

23.4. It is seen that there is need for some clarification to correctly reflect the intention of various provisions concerning this levy. Hence, it is proposed to carry out the following amendments in the Finance Act, 2016:-

· Insert an Explanation to section 163 of the Finance Act, 2016, clarifying that consideration received or

receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India under the Income-tax Act read with the agreement notified by the Central Government under section 90 or section 90A of the Income-tax Act.

- Insert an Explanation to clause (cb) of section 164 of the Finance Act, 2016, providing that for the purposes of defining e-commerce supply or service,online sale of goods and online provision of services shall include one or more of the following activities taking place online:
  a) Acceptance of offer for sale;
  b) Placing the purchase order;
  c) Acceptance of the Purchase order;
  d) Payment of consideration; or
  e) Supply of goods or provision of services, partly or wholly
- Amend section 165A of the Finance Act, 2016, to provide that consideration received or receivable from e-commerce supply or services shall include:

(i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and

(ii) Consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

These amendments will take effect retrospectively from 1st April, 2020.

It is also proposed to amend section 10(50) of the Act to-

(i) Provide that section 10(50) will apply for the e-commerce supply or services made or provided or facilitated on or after 1st April, 2020.

(ii) clarify that exemption under section 10(50) will not apply for royalty or fees for technical services which is taxable under the Act read with the agreement notified by the Central Government under section 90 or section 90A of the Act.

(iii) Define e-commerce supply or services under section 10(50) as the meaning assigned to it in clause (cb) of section 164 of Chapter VIII of the Finance Act, 2016.

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

Comments:

- *E-commerce marketplaces facilitate the sale of goods belonging to other vendors through their platform. The revenue earned by such e-commerce operator is only a certain percentage of commission on the total sales price. EL should be required to be paid on the consideration received and retained by the e-commerce operator i.e. on the commission amount. However, the provisions are ambiguous in this respect.*

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

24.1. Section 36(1)(va) of the Act provides for deduction of any sum received by the assessee from any of his employees to which the provisions of Section2(24)(x) apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.

24.2. Section 43B provides for deduction if any sum towards employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the assessee on or before the due date for furnishing the return of the income under Section 139(1) of the Act.

24.3. Section 43B of the Act covers only employer's contribution and does not cover employee contribution. However, some courts have applied the provision of section 43B on employee contribution as well and allowed the deduction under section 43B even though employee contribution were paid after the due date prescribed by relevant statutes but before the due date of filing the return.

24.4. In order to distinguish Employer's contribution towards welfare funds such as ESI and PF from the employee's contribution, and in order to provide certainty, it is proposed to amend Section 36(1)(va) and Section 43B.

24.5. It is proposed to make amendment in section 36(1)(va) of the Act by inserting another explanation in order to clarify that the provision of section 43B does not apply and deemed to never

have been applied for the purposes of determining the due date under this clause.

24.6. It is further proposed to make amendment in section 43B of the Act by inserting explanation to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of section 2(24)(x) applies.

24.7. The proposed amendments will take effect from Assessment year 2021-22 and subsequent assessment years.

Comments:

- *As per the Employee Provident Fund Act 1952 and Employees' State Insurance Act 1948, due date for depositing of the amount deducted by the employer is within 20th& 26th of the following month respectively including grace period of 5 days.*
- *Subsequently, the Employees' State Insurance Corporation (ESIC) had changed the payment due date from "Within 21 days " To "Within 15 Days" with effect from the contribution for the month of June 2017.However, if such contributions are paid after the due date prescribed by relevant statutes but before the due date of filing the return, the same is allowable as held by ma*
- *Section 2(24)(x) of the Act, inter alia defines "Income"to include any sum received by the employer from itsemployees' as contribution towards certain specifiedfunds. Because of this definition of income, the employees' contribution to specified funds, which has been deducted by employer is treated as income, but on payment within the due date, such income becomes allowable expenditure. As held by majority of High Courts, if such contributions are paid after the due date prescribed by relevant statutes but before the due date of filing the return, the same is allowable.*
- *The use of words like 'deemed to never have been applied' in the proposed amendment indicate that this proposal is clarificatory in nature, though the Finance Bill has clearly stated this proposal is effective from AY 2021-22. Perhaps, CBDT has to come up with a suitable clarification regarding past disputes on this matter.*
- *With the present proposals, employers need to be very vigilant in depositing the employees' contribution within the due date as per relevant statutes.*

IV. TAX INCENTIVES

25. Incentives for affordable rental housing

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

25.2. To help migrant labours and to promote affordable rental, it is proposed to allow deduction under section 80-IBA of the Act also to such rental housing project which is notified by the Central Government in the Official Gazette and fulfils such conditions as specified in the said notification.

25.3. Further, it is also proposed that the outer time limit for 31st March 2021 in this section for getting the affordable housing project approved be extended to 31st March 2022 and same outer time limit be also provided for the proposed affordable rental housing project.

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

Comments:

- *The above amendment has provided opportunities to the migrant labours who travels different cities for employment. The migrant labours will easily get shelter at affordable rents, as the amendment promotes for building affordable rental housing projects.*
- *The above amendment has also increased the time limit to take approval from the competent authority for affordable housing projects and affordable rental housing projects from 31st March, 2021 to 31st March, 2022.*

- *This will also boost the initiative of Pradhan MantriAwasYojna which focused on housing for all by March, 2022.*

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

26.1. The existing provision of the section 80EEA of the Act, inter alia, provides a deduction in respect of interest on loan taken for a residential house property from any financial institution up to one lakh fifty-thousand rupees subject to the condition that the loan has been sanctioned during the period beginning on 1st April, 2019 and ending on 31st March, 2021. There are further conditions that the stamp duty value of residential house property does not exceed forty-five lakh rupees and the assessee does not own any residential house property on the date of sanction of loan. This provision allows deduction to the first time home buyers, in respect of interest on home loan. In order to help such first time home buyers further, it is proposed to amend the provision of section 80EEA of the Act to extend the outer date for sanction of loan from 31st March 2021 to 31st March 2022.

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

27. Increase in safe harbour limit of 10% u/s 43CA and 56 of the Income Tax Act to 20%

27.1. Section 43CA of the Act, provides that where the consideration received or accruing as a result of the transfer by an assessee (other than capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration.

27.2. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

27.3. Clause (x) of sub-section (2) of section 56 of the Act, *inter alia*, provides that where any person receives, in any previous year, from any person or persons on or after 1st April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "income from other sources".

27.4. It also provides that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds ten per cent of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "Income from other sources".

27.5. Thus, the present provisions of section 43CA and 56 of the Act provide for safe harbour of 10 per cent.

27.6. It is proposed to increase the differential from 10% to 20% (under section 43CA) for the period from 12th November, 2020 to 30th June 2021 for only primary sale of residential units of value up to Rs 2 Crores. Consequential Relief up to 20% was also allowed to buyers of the these units under section 56(2)(x) of the Income Tax Act for the said period

27.7. In view of the above, it is proposed to amend section 43CA and Clause (x) of sub-section (2) of section 56 of the Income Tax Act.

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

Comments

- *The amendment is proposed to give effect to the package announced in Atmanirbhar Package 3.0 on 12th November, 2020 by the Ministry of Finance.*
- *The increased safe harbor is applicable only on the transfer of residential units which takes place during the period from 12th November, 2020 to 30th June, 2021*
- *The buyer should not have owned any residential*

house prior to such purchase. It is to be seen how the developers will confirm and document the fact that the buyer does not or did not any residential house prior to the proposed sale. Also, in a case the buyer did own a residential property in past but had sold the same before purchase of this new unit, whether the benefit is available is debatable.

- *The aforesaid increase in differential limit to 20% will not apply if the consideration of transfer of such residential house property is more than Rs. 2 Crores.*
- *It should also be kept in mind that the safe harbor is transaction price plus 20% versus stamp duty value and not stamp duty value minus 20% versus transaction price.*
- *Also, in case difference is more than 20%, the entire amount of difference is taxable and not the difference exceeding 20%.*
- *"residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.'*
- *It means that more than joint buyers of a single residential unit cannot take the benefit of this amendment by apportioning the cost on one single residential unit between each of them.*

28. Extension of date of incorporation for eligible start up for exemption and for investment in eligible start-up

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

28.2. The existing provisions of the section 54GB of the Act, inter alia, provide for exemption of capital gain which arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee. The assessee is required to utilise the net consideration for subscription in the equity shares of an eligible start-up, before the due date of furnishing of return of income under sub-section (1) of section 139 of the Act. The eligible start-up is required to utilise this amount for purchase of new asset within one year from the date of subscription in equity shares by the assessee. Further, it has been provided that benefit is available only when the residential property is transferred on or before 31st March, 2021.

28.3. In order to help such eligible start-up and help investment in them,-

(i) it is proposed to amend the provisions of section 80-IAC of the Act to extend the outer date of incorporation to before 1st April, 2022; and

(ii) it is proposed to amend the provisions of section 54GB of the Act to extend the outer date of transfer of residential property from 31st March 2021 to 31st March 2022.

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

Comments:

- *This is also a welcome amendment and it would further promote investment in start-ups in India thereby enhancing the economic growth of the country.*
- *Startups create more jobs which means more employment and an improved economy. In addition, these start-ups also contribute to economic dynamism by spurring innovation and injecting competition.*

29. Raising of prescribed limit for exemption under sub-clause (iiiad) and (iiiae) of clause (23C) of section 10 of the Act

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

29.2. Sub-clauses (iiiad) of clause (23C) of the section 10 provides for the exemption for the income received by any person on behalf of university or

educational institution as referred to in that sub-clause. The exemptions under the said sub-clause are available subject to the condition that the annual receipts of such university or educational institution do not exceed the annual receipts as may be prescribed. Similarly, sub-clauses (iiiae) of clause (23C) of the section provides for the exemption for the income received by any person on behalf of hospital or institution as referred to in that sub-clause. The exemptions under the said sub-clause are available subject to the condition that the annual receipts of such hospital or institution do not exceed the annual receipts as may be prescribed. The presently prescribed limit for these two sub-clauses is Rs 1 crore as per Rule 2BC of the Income-tax Rule.

29.3. Representations have been received to increase this limit of Rs 1 crore, as provided under Rule 2BC. In order to provide benefit to small trust and institutions, it has been proposed that the exemption under sub-clause (iiiad) and (iiiae) shall be increased to Rs 5 crore and such limit shall be applicable for an assessee with respect to the aggregate receipts from university or universities or educational institution or institutions as referred to in sub-clause (iiiad) as well as from hospital or hospitals or institution or institutions as referred to in sub-clause (iiiae).

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

Comments:

- *The aforesaid amendments would provide benefits to small trusts and institutions as more institutions would be covered under the limits thereby promoting the growth of educational and health institutions at primary levels.*
- *The benefits of the above amendments cannot be availed in the Assessment Year 2021-2022.*
- *These amendments would further support the government's wider prospective of developing infrastructure in the fields of Health and Education as efforts of such institutions play a significant role in promoting economic development and social welfare objectives of the Government. Their outreach and more localised approach helps to identify the needy and lend a supporting hand.*

30. Exemption for LTC Cash Scheme

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

30.2. It is proposed to insert second proviso in clause 5 of section 10, so as to provide that, for the assessment year beginning on the 1st day of April, 2021, the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of conditions to be prescribed. It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption under the second proviso in connection with prescribed expenditure, no exemption shall be allowed under this clause in respect of same prescribed expenditure to any other individual.

30.3. The conditions for this purpose shall be prescribed in the Income-tax Rules in due course and shall, inter alia, be as under:

(i) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21;

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

(iii) "specified period" means the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021;

(iv) the amount of exemption shall not exceed thirty-six thousand rupees per person or one-third of specified expenditure, whichever is less;

(v) the payment to GST registered vendor/service provider is made by an account payee cheque

drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider;

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

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

Comments:

- *Cash Allowance received by an Employee from his employer in lieu to LTC will be allowed as exemption subject to fulfilment of certain additional conditions as prescribed above.*
- *This will help in economical flow of the Country and also the people will be helping in generating more cash in the economy.*
- *This Scheme was restricted to Central Government Employees, which has been widen to cover all Private & Government Employees.*

V. RATES OF INCOME TAX

31. Income Tax Rates (For Assessment Year 2022-23)

31.1. From the assessment year 2021-22 (F.Y. 2020-21), individual and HUF tax payers have an option to opt for taxation under section 115BAC of the Act and the resident co-operative society has an option to opt for taxation under the newly inserted section 115BAD of the Act.

31.2. On satisfaction of certain conditions as per the provisions of section 115BAC, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

31.3. New Tax Rates - Individuals (Resident Individuals), HUF

Upto Rs. 2,50,000	NIL
Rs. 2,50,001 to 5,00,000	5 percent
Rs. 5,00,001 to 7,50,000	10 percent
Rs. 7,50,001 to 10,00,000	15 percent
Rs.10,00,001 to 12,50,000	20 percent
Rs. 12,50,001 to 15,00,000	25 percent
Above Rs. 15,00,000	30 percent

- This option may be exercised for every previous year by an Individual and HUF having no business income, however, for other cases i.e. for person exercising this option and having business income, the option once exercised for a previous year shall be valid for that previous year and all subsequent years.
- The option can be withdrawn only once and thereafter, the individual of HUF will not be eligible to exercise the option of the concessional rate again, except in case where such individual of HUF ceases to have business income.
- The person availing concessional rate will not be allowed to claim any exemption or deduction for allowance or perquisites, by whatever name called, provided under any other law for the time being in force.
- The option is to be exercised along with the Return of Income to be furnished u/s 139(1) of the Act.
- It is proposed provisions of section 115JC- AMT will not apply to such Individuals and HUF having business income.
- It is proposed provisions of section 115JD- carry forward and set off of AMT credit will not apply to such Individuals and HUF having business income.
- The individual or HUF opting for taxation under the newly inserted section 115BAC of the Act shall not be entitled to the following exemptions/ deductions:

• Leave travel concession as per clause (5) of section 10;

• House rent allowance as per clause (13A) of section 10;

• Some of the allowance as contained in clause (14) of section 10;

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

Comments:

- *Provisions of Section 115BAC is riddled with endless conditions, including surprisingly that, in order to be eligible, neither standard deduction nor house rent allowance (both relevant to a salaried employee) can be claimed, nor U/s 80 C (which is the largest and most relevant deduction overall for individuals). Additionally, it is an irreversible option and not a year on year operation. In our opinion if the said option were to be exercised, it would lead to trivial benefits, if at all. Meaningful reduction in rates would have been beneficial in a slowing economy where public sentiment is quite poor and it would helped people with more disposable income.*

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

➢ Other than Senior Citizen and Super Senior Citizen

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

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

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

➢ Super Senior Citizen (80 years and above)

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

31.5. Similarly, a co-operative society resident in India shall have the option to pay tax at 22% for assessment year 2021-22 onwards as per the provisions of section 115BAD, subject to fulfilment of certain conditions.

31.6. Surcharge: The amount of Income-Tax computed as above, shall be increased by:

➢ Surcharge@10% of such Income-Tax if total income>Rs.50Lacs < Rs.1 Crore.

➢ Surcharge @ 15% of such Income-Tax if total income >Rs.1 Crore < Rs. 2 Crore.

➢ Surcharge @ 25% of such Income-Tax if total income >Rs. 2 Crore < Rs. 5 Crore

➢ Surcharge @ 37% of such Income-Tax if total income >Rs. 5 Crores

➢ Note: having a total income (including the income

by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees, surcharge will be applicable at the rate of 15% of such income tax.

31.7. Marginal Relief on Surcharge:

- In case of Individuals/HUF/ AOP/ BOI/ AJP, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore as the case may be shall not exceed the tax payable on Total Income of Rs. 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore by more than the amount of Income that exceeds Rs. 50 Lacs/ Rs. 1 Crore/ Rs. 2 Crore/ Rs. 5 Crore.
- Similarly, in the case of certain companies, the amount payable as Income Tax and Surcharge on Total Income exceeding Rs 1 Crore (or Rs. 10 Crore) shall not exceed the tax payable on Total Income of exceeding Rs. 1 Crore (or Rs. 10 Crore) by more than the amount of Income that exceeds Rs. 1 Crore (or Rs. 10 Crore).

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

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

31.10. Domestic Company: Tax rate 25% + Cess @ 4%, if the total turnover turnover or gross receipts of the previous year 2018-19 does not exceed 400 crore rupees and in all other cases the rate of Income-tax shall be 30% of the total income + Cess @ 4%.

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

31.11. Domestic Company (Concessional Tax Rate option):

- Concessional Tax Rate – 22 per cent (Section 115BAA)
- For New Manufacturing domestic companies – 15 per cent (Section 115BAB)
- The tax rate prescribed U/s 115BAA is 22% which shall be further increased by a surcharge of 10% and health and education cess of 4%. Hence, the effective tax rate U/s 115BAA is 25.168%. However, such companies will not be required to pay minimum alternate tax (MAT) U/s 115JB of the Act.
- Sections 115BAA and 115BAB were inserted via the Taxation Law (Amendment) Act, 2019. The scope of non-availment of deductions for the companies opting for the concessional rate has been widened to exclude all deduction under chapter VIA except deduction under section 80JJAA and Section 80M.
- The restriction to claim the deduction to avail the concessional tax rate under section 115BAA was earlier limited to deductions under Chapter VIA under the heading "C"- Deductions in respect of certain income. However, with the proposed Finance Bill, 2020 companies are now restricted to avail any deduction under whole of chapter VIA except Section 80 JJAA and Section 80M.
- Companies opting for concessional tax rate will get the benefit of section 80M in respect of dividend income received by it during the previous year and distributed by it. MAT provisions are not applicable on such companies.
- However, if the company continues to pay the tax under old regime, where provisions of Section 115JB are applicable, dividend income received by the company during the year will get added to the book profit for the calculation of MAT and reduction thereof would not available which would be detrimental to the Company.

31.12. Foreign Company: Tax rate 40%. Cess @ 4% on tax

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

31.13. Local Authorities: Tax rate 30%. Cess @ 4% on tax

31.14. Cooperative Societies:

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

31.15. In line with section 115BAA and section 115BAB introduced via the Taxation Law (Amendment) Act, 2019, the new section 115BAD for cooperative societies provides an option to pay concessional tax with the following conditions:

- This option so exercised cannot be withdrawn
- The option is to be exercised in the prescribed manner on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the returns of income and such option once exercised shall apply to subsequent assessment years;
- Provision of section 115JC- AMT will not apply to such co-operative society.
- The co-operative society opting for concessional tax rate under the newly inserted section 115BAD of the Act shall not be entitled to the following exemptions/ deductions:

- Exemption for SEZ unit as per section 10AA;
- Additional deprecation under clause (iia) of sub-section (1) of section 32;
- Deductions under section 32AD, 33AB, 33ABA;
- Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;
- Deduction under section 35AD or section 35CCC;
- Any deduction under chapter VIA

VI. OTHERS

32. Advance Tax installment for dividend income

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

32.2. The first proviso of the sub section (1) provides for the relaxation that if the shortfall in the advance tax instalment or the failure to pay the same on time is on account of the income listed therein, no interest under section 234C shall be charged provided the assessee has paid full tax in subsequent advance tax instalments. These exclusions are: -

(i) the amount of capital gains; or

(ii) income of the nature referred to in sub-clause (ix) of clause (24) of section 2; or

(iii) income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time; or

(iv) income of the nature referred to in sub-section (1) of section 115BBDA.

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

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

Comments:

- *This proposed amendment would bring a relaxation in paying the interest on dividend income incurred by the assessee*

33. Issuance of zero-coupon bond by infrastructure debt fund

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

33.2. In order to enable infrastructure debt fund [which are notified by the Central Government in the Official Gazette under clause (47) of section 10 of the Act] to issue zero coupon bond necessary amendments are proposed in clause (48) of section 2 of the Act. Rules 2F and 8B of Income-tax Rules shall be amendment subsequently after the Finance Bill 2021 is enacted.

Comments:

- *In order to enable Infrastructure Debt Fund to issue zero-coupon bonds the proposed amendment has been done in the definition of zero-coupon bonds under section 2(48) of the Income Tax Act, 1961.*
- *This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.*

34. Facilitating strategic disinvestment of public sector company

34.1. Section 2 of the Act provides the definitions for the purposes of the Act. Clause (19AA) of the said section defines that "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, by a demerged company of its one or more undertakings to any resulting company on satisfaction of conditions prescribed in the said clause.

34.2. Section 72A of the Act provides provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. Sub-section (1) of section 72A of the Act provides that the accumulated loss and unabsorbed depreciation of the amalgamating company or companies shall be deemed to be the accumulated losses and unabsorbeddepreciation of the amalgamated company or companies in specified cases and subject to the conditions specified in the said section.

34.3. It is proposed to relax the provisions of these two sections for public sector companies in order to facilitate strategic disinvestment by the Government. Accordingly, it is proposed to carry out the following amendments.

34.4. It is proposed to amend clause (19AA) of section 2 of the Act to insert Explanation 6 to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if

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

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

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

34.5. It is proposed to amend sub-section (1) of section 72A of the Act,

(i) to substitute clause (c) to provide that the provision of sub- section (1) of section 72A shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.

(ii) to substitute clause (c) to provide that the provision of sub- section (1) of section 72A shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies, if:

(a) the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and

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

(iii) to insert a proviso to sub-section (1) to provide that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public

sector company as a result of strategic disinvestment;

(iv) to insert an Explanation to sub-section (1) to define the followings:-

(a) "Control" shall have the same meaning as assigned to in clause(27) of Section 2 of the Companies Act, 2013;

(b) "Erstwhile" public sector company means a company which was a publicsector company in earlier previous years and ceases to be a public sectorcompany by way of strategic disinvestment by the Government.

(c) Strategic disinvestment" shall mean sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below 51%, along with transfer of control to the buyer.

Comments:

- *The proposed amendment has been made keeping in mind the Government's disinvestment plans announced by the Finance Minister in her Budget Speech including the proposed IPO of Life Insurance Corporation of India (LIC in FY 22).*
- *These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.*

35. Tax neutral conversion of Urban Cooperative Bank into Banking Company

35.1. Section 44DB of Act provides for computing deductions in the case of business re-organization of cooperative banks. Further, the said section, inter alia, provides that where such business reorganization of co-operative banks takes place, the deductions under sections 32, 35D, 35DD and section 35DDA will be apportioned between the predecessor co-operative bank and the successor co- operative bank in the proportion of the number of days before and after the date of business reorganization. Further transfer of a capital asset by the predecessor co- operative bank to the successor co-operative bank, as well as transfer of shares by the shareholders in the predecessor co-operative bank, in a case of business reorganization under section 47 of the Act, is also not regarded as transfer.

35.2. It is proposed to expand the scope of business reorganization to include conversion of a primary co-operative bank to a banking company and the deductions available under section 44DB of the Act shall also be made applicable in relation to such conversion of primary co-operative bank to the banking company. Further it is also proposed that transfer of a capital asset by the primary co-operative bank to the banking company as a result of conversion shall not be treated as transfer under section 47 of the Act. Consequently, the allotment of shares of the converted banking company to the shareholders of the predecessor primary co-operative bank shall not be treated as transfer under the said section of the Act.

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

Comments:

- *The Reserve Bank of India has granted permission for voluntary transition of primary co-operative Bank into a banking company by way of transfer of Assets & Liability vide Circular reference no. DCBR.CO.LS.PCB. Cir.No.5/07.01.000/2018-19 dated September 27, 2018.*
- *Pursuant to the above circular the scope of Section 44DB of the Act has been expanded to include conversion of primary co-operative Bank into a banking company.*

36. Investments Relaxations to Sovereign Wealth Fund (SWF) and Pension Fund (PF)

36.1. Allowing Alternate Investment Fund (AIF) to invest up to 50% in non-eligible investments

36.2. Allowing the investment by Category-I or Category-II AIF in an Infrastructure Investment Trust(InvIT).

36.3. Exemption under this clause shall be calculated proportionately, in case if aggregate investment of AIF in infrastructure company or companies or in InvIT is less than100%.

36.4. SWF/PFs are now allowed to invest through holding company. It is proposed to allow the same subject to the following conditions:

➢ Holding company should be a domestic company.

- It should be set up and registered on or after 1st April, 2021.
- It should have minimum 75% investments in one or more infrastructure companies.
- Exemption under this clause shall be calculated proportionately, in case if aggregate investment of holding company in infrastructure company or companies is less than 100%

36.5. SWF/PFs are now allowed to invest in NBFC-IFC/IDF. It is proposed to allow the same subject to the following conditions:

- NBFC-IDF/IFC should have minimum 90% lending to one or more infrastructure entities.
- Exemption under this clause shall be calculated proportionately, in case if aggregate lending of NBFC-IDF or NBFC-IFC in infrastructure Company or Companies is less than 100%.
- It is proposed to provide that there should not be any loan or borrowing for the purpose of making investment in India. It is also proposed to provide that the condition regarding no benefit to private person and assets going to government on dissolution would not apply to any payment made to creditor or depositor for loan taken or borrowing other than for the purpose of making investment in India

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

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

37.1. Representations have been received that there is mismatch in the year of taxability of withdrawal from retirement funds by residents who had opened such fund when they were non-resident in India and resident in foreign countries. At present the withdrawal from such funds may be taxed on receipt basis in such foreign countries, while on accrual basis in India. In order to address this mismatch and remove this genuine hardship, it is proposed to insert a new section 89A to the Act to provide that the income of a specified person from specified account shall be taxed in the manner and in the year as prescribed by the Central Government. It is also proposed to define the expression "specified person", as a person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country. "Specified account" is proposed to be defined as an account maintained in a notified country which is maintained for retirement benefits and the income from such account is not taxable on accrual basis and is taxed by such country at the time of withdrawal or redemption. "Notified country" is proposed to be defined to mean a country notified by the Central Government for the purposes of this section in the Official Gazette.

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

Comments:

- *The above amendments would provide further clarity on the taxability of income from overseas retirement fund.*

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

38.1. Clause (11) of section 10 of the Act provides for exemption with respect to any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette. Similarly, Clause (12) of this section provides for exemption with respect to the accumulated balance due and becoming payable to an employee participating in a recognized provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule.

38.2. Instances have come to the notice where some employees are contributing huge amounts to these funds and entire interest accrued/received on such contributions is exempt from tax under clause (11) and clause (12) of section 10 of the Act. This exemption without any threshold benefits only those who can contribute a large amount to these funds as their share. Accordingly, it is proposed to insert proviso to clause(11) and clause (12) of section 10 of the Act, providing that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the

amount or the aggregate of amounts of contribution made by the person exceeding two lakh and fifty thousand rupees in a previous year in that fund, on or after 1st April, 2021, computed in such manner as may be prescribed.

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

Comments:

- *The proposed amendment has restricted the tax exemption on the interest income on the aggregate of amounts of contribution made by the person above two lakh and fifty thousand rupees in the previous year in a recognized provident fund.*
- *The benefits of the old provisions can be availed in the Assessment Year 2021-2022.*

39. Definition of the term "Liable to tax"

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

Comments:

- *Some Litigations would be scrapped after the insertion of this definition providing further clarity.*
- *This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.*

40. Adjudicating authority under the PBPT Act

40.1. Section of the 71 of the PBPT Act, inter alia, provides that the Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under the PBPT Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the PMLA) and the Appellate Tribunal established under section 25 of the PMLA may discharge the functions of the Adjudicating Authority and the Appellate Tribunal, respectively, under the PBPT Act for such period and in respect of such cases or class of cases as may be specified in the said notification.

40.2. Since there is no appointment of the Adjudicating Authority under the PBPT Act, the Adjudicating Authority under the PMLA is discharging the functions of the Adjudicating Authority under the PBPT Act. It is now proposed to provide that the Competent Authority constituted under sub-section (1) of section 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) shall be the Adjudicating Authority under the PBPT Act which shall commence discharging the function from 1st July, 2021. As the said Adjudicating Authority under PBPT Act is proposed to commence the discharging the functions from 1st July, 2021, it is proposed to extend the period of limitation under sub-section (7) of section 26 of the PBPT Act to provide that where the time limit for passing order under sub- section (7) of section 26 of the PBPT Act expires during the period beginning from 1st July, 2021 and ending on 29th September, 2021, the time limit for passing such order shall stand extended to 30th September, 2021.

Comments:

- *The authority constituted under SAFEMA shall act as the Adjudicating Authority under the PBPT Act commencing its functions from 1st July 2021.*
- *This amendment will take effect from 1st July, 2021.*

41. Taxation of proceeds of high premium unit linked insurance policy (ULIP)

41.1. Clause (10D) of section 10 of the Act provides for the exemption for the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy in respect of which the premium payable for any of the years during the terms of the policy does not exceed ten percent of the actual capital sum assured.

41.2. Under the existing provisions of the Act, there is

no cap on the amount of annual premium being paid by any person during the term of the policy. Instances have come to the notice where high net worth individuals are claiming exemption under this clause by investing in ULIP with huge premium. Allowing such exemption in policy/policies with huge premium defeats the legislative intent of this clause. The intention was to provide benefit to small and genuine cases of life insurance. Hence, it is proposed to provide for the followings:

(i) Insert Explanation 3 to the clause (10D) of section 10 of the Act to define ULIP as a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation (3) of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 dated the 8th day of July, 2019.

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

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

(iv) insert sixth proviso to this clause providing that the provisions of fourth and fifth provisos shall not apply to any sum received on the death of a person.

(v) insert seventh proviso to this clause to enable CBDT to issue guidelines with the approval of Central Government for the purpose of removing the difficulty and to lay every guideline issued by the Board before each House of Parliament and to make it binding on the income-tax authorities and the assessee.

(vi) provide that a ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] is a capital asset under clause (14) of section 2 of the Act.

(vii) provide for the deemed taxation of profit and gains from the redemption of ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] as capital gains by inserting new sub-section (1B) in section 45 and to take power to prescribe rules for calculation of such capital gains.

(viii) Include such ULIPs [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] in the definition of equity oriented fund in section 112A so as to provide them same treatment as unit of equity oriented fund. Thus provisions of section 111A and 112A would apply on sale/redemption of such ULIPs.

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

41.3. Consequential amendment has also been proposed in Finance (No 2) Act, 2004 to make security transaction tax applicable on maturity or partial withdrawal with respect to unit linked insurance policy issued by insurance company on or after the 1st February, 2021 [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso]

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

Comments:

- *ULIPs will be taxed at 10%, just as equity mutual funds, as Budget closes exemption enjoyed by wealthy individuals. There is no tax exemption for maturity proceeds of unit-linked insurance policies with an annual premium above ₹ 2.5 lakh.*
- *Securities Transactions Tax (STT) may also be applicable on the redemption of ULIPs.*

42. Tax incentives for units located in International Financial Services Centre (IFSC)

42.1. Government has establishment a world class financial services centre. Units located in

IFSC enjoy some concession. In order to make location in IFSC more attractive, it is proposed to provide the following additional incentives:

(i) It is proposed to amend section 9A of the Act to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in clauses(a) to (m) of sub-section(3) or clauses (a) to (d) of sub-section (4) of section 9A of the Act shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an International Financial Services Centre and has commenced operations on or before the 31st day of March, 2024.

(ii) It is also proposed to amend clause (4D) of section 10 of the Act so as to provide that the exemption under this clause shall also be available in case of any income accrued or arisen to, or received to the investment division of offshore banking unit to the extent attributable to it and computed in the prescribed manner.

(iii) It is also proposed to amend the expression "specified fund" to include under the purview the investment division of offshore banking unit which has been granted a category III AIF registration and fulfils other conditions to be prescribed including the condition of maintaining separate books for its investment division. The investment division of offshore banking unit is proposed to be defined as an investment division of a banking unit of a non-resident located in an International Financial Services Centre and which has commenced operation on or before the 31st day of March, 2024.

(iv) It is also proposed to insert new clause (4E) in of section 10 of the Act so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of International Financial Services Centre which commenced operations on or before the 31st day of Mach, 2024 and fulfils prescribed conditions.

(v) It is also proposed to insert new clause (4F) in of section 10 of the Act so as to exempt any income of a non-resident by way of royalty on account of lease of an aircraft in a previous year paid by a unit of an International Financial Services Centre, if the unit is eligible for deduction under section 80LA for that previous year and has commenced operation on or before the 31st day of the March, 2024.

(vi) It is also proposed to insert new clause (23FF) in of section 10 of the Act so as to exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place.

(vii) It is also proposed to amend section 47 of the Act to insert new clauses in the said section so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose. It is also proposed to provide another clause to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains.

(viii) It is also proposed to amend the section 80LA of the Act to:

a. provide that deduction under said section is also available to a unit of International Financial Services Centre if it is registered under the International Financial Services Centre Authority Act, 2019 and thereby removing the earlier requirement of obtaining permission under any other relevant law.

b. provide that the income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit referred to in clause (c) of sub-section (2) of said section to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before the 31st March 2024.

c. to provide that in case the unit is registered under the International Financial Services Centre

Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the International Financial Services Centre Authority Act, 2019.

(ix) It is proposed to amend section 115AD to make the provision of this section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. However, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the Securities and exchange Board of India (Foreign Portfolio investors) Regulations, 2019 made under the Securities And Exchange Board of India Act, 1992 (15 of 1992), calculated in the prescribed manner.

Comments:

- *This amendment has been made in to make location in IFSC more attractive. Different entities will be attracted to setup their units in IFSC.*
- *These amendments will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.*

43. Constitution of the Board for Advance Ruling

43.1. With a view to avoiding dispute in respect of assessment of tax liability and to provide tax certainty, a scheme of Advance Rulings was incorporated in the Act vide the Finance Act, 1993 by inserting a new Chapter XIX-B.

43.2. Under these provisions the Authority for Advance Rulings (AAR) pronounces rulings on the applications of the non-resident/residents and such rulings are binding both on the applicants and the Tax department. AAR consists of a Chairman and various Vice-Chairman, revenue members and law members.

43.3. There are three benches of the Authority. The principal bench consists of Chairman, one revenue member and one law member. The other benches consist of one Vice-Chairman, one revenue member and one law member,each. A bench cannot function if the post of Chairman or Vice-Chairman is vacant. As per section 245-O of the Act, persons eligible for appointment as Chairman of AAR are retired judges of the Supreme Court, retired Chief Justice of a High Court or retired Judge of a High Court who has served in that capacity for at least seven years. Similarly, the persons eligible for appointment as Vice-Chairman are retired judges of a High Court. As per past experience, the posts of Chairman and Vice- Chairman have remained vacant for a long time due to non-availability of eligible persons.

43.4. This has seriously hampered the working of AAR and a large number of applications are pending since last many years. There is, therefore, a need to look for an alternative method of providing advance ruling which can give rulings to taxpayers in timely manner. Hence, it is proposed to constitute a Board of Advance Ruling and to make the following amendments in the existing provisions of AAR:-

- The Authority for Advance Rulings shall cease to operate with effect from such date, as may be notified by the Central Government in the Official Gazette (hereinafter referred to as the notified date).
- It is proposed that the Central Government shall constitute one or more Board for Advance Rulings for giving advance rulings under the said Chapter on and after the notified date. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner. Advance rulings of such Board shall not be binding on the applicant or the Department and if aggrieved, the applicant or the Department may appeal against the ruling or order passed by the Board before the High Court.
- Since the work of Authority shall be carried out by the Board for Advance Rulings on and after the notified date, amendments are proposed to be made to the various provisions of the Chapter to this effect.

Comments:

- *This clause shall be applicable from 1st April, 2021.*

44. Income Declaration Scheme (IDS) amendment

44.1. The Income Declaration Scheme, 2016 (the Scheme) contained in Chapter-IX of the Finance Act, 2016 provided an opportunity to the persons who had not disclosed any income in the past to come clean and make payment of tax, surcharge

and penalty as per the provisions of the Scheme. The Scheme commenced on 01.06.2016.

44.2. Section 187 of the Finance Act, 2016 inter alia, provides that the tax, surcharge and penalty payable under the Scheme shall be paid on or before the specified date and if the declarant failed to pay such amount, the declaration filed by the declarant shall be deemed invalid. Further, section 191 of the Finance Act, 2016, inter alia, provides that any amount of tax, surcharge and penalty paid in pursuance of a declaration made under the Scheme shall not be refundable.

44.3. A proviso was inserted in section 191 of the Finance Act, 2016 vide Finance (No. 2) Act, 2019 empowering the Board to specify a class of persons to whom such tax paid in excess shall be refundable.

44.4. It is now proposed to amend the proviso of section 191 of the Finance Act, 2016, so as to provide that the excess amount of tax, surcharge or penalty paid in pursuance of adeclaration made under the Scheme shall be refundable to the specified class of persons without payment of any interest.

Comments:

- *Thus it is being clarified that the Government shall not pay any interest on amount refundable to any person on account of any excess payment under the Income Declaration Scheme, 2016*

- *This amendment will take effect retrospectively from 1st June, 2016.*

LATEST INCOME TAX JUDGEMENTS

CA Manju Lata Shukla

TDS

ZEPHYR BIOMEDICALS VS JOINT COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0016 MumHC

In clear cases where separate bills have been raised by the C & F agents towards the reimbursement of freight charges, they are not liable to deduct tax at source upon payment towards such reimbursement components.

HEALTHCARE TPA PRIVATE LIMITED VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0033 KarHC

Payments are made to the hospitals and not personally Dy the payer to the individual doctors or professionals so, the nature of payment in the hands of the recipient, is determinative of deductibility of tax at source.

COMMISSIONER OF INCOME TAX VS SYNDICATE BANK : (2020) 109 CCH 0032 KarHC

If the refund does not include interest due payable on the amount refunded, the revenue would be liable to pay interest on the short fall.

DEDUCTIONS

KODUR SERVICE CO-OPERATIVE BANK LIMITED VS INCOME TAX OFFICER : (2020) 60 CCH 0108

Assessing Officer has to conduct an inquiry into the factual situation as to the activities of the assessee society to determine the eligibility of deduction u/s 80P.

BUSINESS EXPENDITURE

HARSHA ENGINEERS LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0107 AhdTrib

If any amount is being incurred towards R&D for the purpose of business for manufacturing customized products, then that can be considered under R&D which can be allowed under section 35(1)(iv) r.w.s. 35(2)(ia).

DRS DILIP ROADLINES PVT. LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0009 HydTrib

Interest free advances given to the group concerns only out of own funds of the assessee and not out of borrowed funds cannot be disallowed.

Adadyn Technologies (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle 1(1), Bengaluru - [2020] 120 taxmann.com 217 (Bangalore - Trib.)

Abandoned project : Where assessee was developing a new software platform but such new platform was abandoned during subsequent financial year due to rapid change in technology, expenditure incurred by assessee could not be treated as capital expenditure incurred for development of a new product giving enduring benefit to assesse.

Adadyn Technologies (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle 1(1), Bengaluru - [2020] 120 taxmann.com 217 (Bangalore - Trib.)

Marketing expenses : Where assessee incurred marketing expenditure towards overall promotion of business of company and there was no direct

nexus between marketing expenses and new software platform being developed by assessee, expenditure incurred on same would be revenue expenditure.

ACE Designers Ltd. v. Additional Commissioner of Income-tax - [2020] 120 taxmann.com 321 (Karnataka)

Investment in subsidiary : Where assessee-company made investment in its wholly owned subsidiary outside India for business purpose i.e for enhancement of its business activity in global market, however, said subsidiary could not perform upto company's expectations and same was wound up, loss arising from investment made in subsidiary was to be allowed as business loss of assessee .

M/S PRAGNYA CREST PROPERTIES PVT. LTD. (EARLIER KNOWN AS HABITAT PRAGNYA PROPERTY PVT. LTD.) VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 58 CCH 0453 BangTrib

Expenses incurred in the normal course of business is required to be allowed, after setting up of business irrespective of the fact whether the revenue is not yet earned.

REVISION

COMMISSIONER OF INCOME TAX VS LATE SHRI VIJAY KUMAR KOGANTI : (2020) 109 CCH 0015

Order passed by AO cannot be said to be erroneous and prejudicial to interest of revenue where the issues, which were the basis for exercise of the powers under Section 263 were, in fact, the issues, which were considered by the AO in the limited scrutiny culminating in the order of assessment under Section 143(3).

COMMISSIONER OF INCOME TAX VS PADMAVATHI : (2020) 109 CCH 0031 ChenHC

Merely because the guideline was higher than the sale consideration shown in the deed of conveyance cannot be the sole reason for holding that the assessments erroneous and prejudicial to the interest of revenue.

NXP INDIA PRIVATE LIMITED VS PRINCIPAL COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0118 BangTrib

Order passed by AO is erroneous and prejudicial to interest of revenue where the order is passed without making inquiries or verification which should have been made.

SECTION 2(24) OF THE INCOME-TAX ACT, 1961 - INCOME - DEFINITION OF

Income Tax Officer (Exemption), Guntur v. Hosanna Ministries - [2020] 119 taxmann.com 379 (Visakhapatnam - Trib.)

Sub-clause (iia) : Voluntary contributions received by assessee-society for a specific purpose cannot be regarded as income under section 2(24)(iia).

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME - DEEMED TO ACCRUE OR ARISE IN INDIA

Turner Broadcasting System Asia Pacific Inc. v. Deputy Director of Income Tax, International taxation - [2020] 120 taxmann.com 155 (Delhi - Trib.)

Royalties and fee for technical services : Advertisement and distribution revenue received by assessee a US based broadcasting company for granting distribution rights of products (Channels, interactive entertainment services and entertainment mobile telecommunications)to an Indian Company, whereby copyright in content always remained with assessee and at no point of time; same was transferred either to Indian

company or the sub-distributor and Indian company acted as an exclusive distributor of such rights to cable operators and other permitted systems on principal-to-principal basis and broadcasting was sole responsibility of assessee and even content on TV Channel could not be changed by any party except for assessee, would not be taxable as 'royalty', albeit it was a business income of assessee .

Mantri Technology Constellations (P.) Ltd. v. Deputy Commissioner of Income-tax (IT), Circle-1(2),Bangalore - [2020] 120 taxmann.com 124 (Bangalore - Trib.)

Design, drawing documentation/technical collaboration/technical services : Matter remanded as issue required further examination of facts in respect of services rendered by Singapore based entity to assessee since Assessing Officer was of opinion that services were in nature of FTS but did not give any specific findings.

Director of Income Tax (International Taxation) v. Autodesk Asia (P.) Ltd. - [2020] 120 taxmann.com 324 (Karnataka)

Computer software : Payment received by assessee, a Singapore based company, for sale of software license to customers in India would be taxable as royalty in hands of assessee at rate of 10 per cent as per substituted clause 2 of article 12 of India-Singapore DTAA.

Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd. - [2020] 120 taxmann.com 315 (Gujarat)

Where non-resident agents had rendered their services outside India and all agents had overseas offices and they were not having any permanent establishment in India, commission paid to them was not liable to tax in India .

Amadeus IT Group SA v. Assistant Director of Income Tax, Circle-1(1), International Taxation, New Delhi - [2020] 120 taxmann.com 450 (Delhi - Trib.)

Where payments were received by appellant from British Airways in relation to alleged use of Altea Reservation System (ARS), keeping in view fact that computer terminals are at Airport terminals and since amounts had been received for utilization of ARS which was predominantly a reservation system, same may be treated as income from royalty. However, in the absence of corresponding change in the DTAA with regard to interpretation of royalty in the domestic law, the provisions of DTAA would have primacy over the domestic provisions and thus, royalty wouldn't be taxable in India .

SECTION 260A OF THE INCOME-TAX ACT, 1961 - HIGH COURT - APPEALS TO

Mani Mandir Sewa Nyas Samiti Ramghat Ayodhya v. Commissioner of Income-tax - [2020] 119 taxmann.com 383 (SC)

Condonation of delay : Where assessee sought for condonation of delay of four and half years in filing appeal against order of Tribunal on ground of ailment of manager but High Court declined to condone delay on ground that there was nothing on record to show that manager was suffering from ailments which did not permit him to take initiative for filing of appeal, SLP against said decision was to be dismissed .

INCOME FROM OTHER SOURCES

RAVI SHANKAR SHETTY VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0112

The money received the assessee for procurement of land on behalf of the parties is not hit by the provisions of section 56(2)(ix) where the assessee

has not forfeited the amount received by him and it has been shown as outstanding in the respective name of the parties in the Balance Sheet of the assesse.

PRIAPUS DEVELOPERS PVT. LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0011 DelTrib

As assessee has utilised interest-bearing funds for the purpose of making investment/giving advances to the sister concern on interest, which is charged to tax under the head income from other sources, assessee is entitled to deduction u/s 57 (iii).

CHARITABLE TRUST

KAI SHRI MAHADEVRAO NAYKUDE VS COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0111

Merely non-filing of return under section 139(4A) cannot be the ground to deny registration u/s 12AA to the assessee when the genuineness of the activities is not disputed.

JOINT COMMISSIONER OF INCOME TAX (OSD) VS PATIALA IMPROVEMENT TRUST & ANR. : (2020) 60 CCH 0116 ChdTrib

Omission of Section 10(20A) does not affect the rights of the parties claiming the benefit of Sections 2(15), 11, 12, 12A and 12AA.

NON-RESIDENT

GOLDMAN SACHS INVESTMENTS (MAURITIUS) LIMITED VS DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) : (2020) 60 CCH 0110 MumTrib

As the short term and long term capital gains earned by the assessee from transfer of securities during the year in question are admittedly exempt from tax under Article 13 of the India-Mauritius tax treaty, therefore, the brought forward STCL of the previous years was rightly carried forward by the assessee to the subsequent years.

CAPITAL GAINS

ASSISTANT COMMISSIONER OF INCOME TAX VS SAFARI MARCANTILE PVT. LTD. : (2020) 60 CCH 0109

Where there was no transfer of shares but only a pledge of shares for purposes of obtaining a loan and revenue has not disputed the fact of return of loan and also receipt of pledged shares creditor, no capital gain could be charged.

SECTION 50C OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS - SPECIAL PROVISION FOR COMPUTATION OF FULL VALUE CONSIDERATION

Commissioner of Income Tax, Chennai v. Vummudi Amarendran - [2020] 120 taxmann.com 171 (Madras)

Amendment by insertion of proviso to section 50C(1) introduced with effect from 1-4-2017 which provides that where date of agreement, fixing amount of consideration and date of registration for transfer of capital assets are not same, value adopted or assesssed or assessable by stamp valuation authority on date of agreement may be taken for purpose of computing full value of consideration for such transfer seeks to relieve assessee from undue hardship and, thus, should be taken to be retrospectively effective .

SECTION 54F OF THE INCOME-TAX ACT, 1961 - CAPITAL GAIN - EXEMPTION OF, IN CASE OF INVESTMENT IN RESIDENTIAL HOUSE

Hemant Shah v. Assistant Commissioner of Income Tax, 20(1), Mumbai - [2020] 119 taxmann.com 381 (Mumbai - Trib.)

Computation of exemption : Where assessee-individual, earned long term capital gain along with his minor children on sale of equity shares of a private limited company and assessee explained that said sum was invested in capital gain account scheme for availing exemption under section 54F, exemption of capital gain could not be denied to minors, which was invested in Capital Gain Accounts Scheme (CGAS) .

Hemant Shah v. Assistant Commissioner of Income Tax, 20(1), Mumbai - [2020] 119 taxmann.com 381 (Mumbai - Trib.)

Conditions precedent : Where Assessing Officer denied exemption under section 54F to assessee by taking view that assessee was owner of more than one residential house on date of transfer of shares from which assessee earned LTCG, but there was no clarity about facts whether assessee owned any other residential house or not in order of Assessing Officer, it would be appropriate to restore this issue to file of Assessing Officer to decide issue afresh .

SECTION 119 OF THE INCOME-TAX ACT, 1961 - CENTRAL BOARD OF DIRECT TAXES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES

Nitin Sharma v. Principal Commissioner of Income Tax-2, Jabalpur - [2020] 120 taxmann.com 169 (Jabalpur - Trib.)

An order not made in accordance with an order, direction or instruction issued under section 119, is deemed to be erroneous and prejudicial to interests of revenue and not only is said Instruction binding, not observing its mandate makes an assessment made in disregard thereof as infirm and, accordingly, liable for revision under section 263 .

SECTION 12AA OF THE INCOME-TAX ACT, 1961 - CHARITABLE OR RELIGIOUS TRUST - REGISTRATION PROCEDURE

Yash Shikshan Sansthan Evam Gramin Vikas Samiti v. Commissioner of Income Tax (Exemption), Bhopal - [2020] 120 taxmann.com 90 (Indore - Trib.)

Denial of registration : Where CIT(E) had rejected application purely on ground that certain payments on account of salary, vehicle rent and house rent were made by assessee-society to specified persons in violation of section 13, since there was no material on record to suggest that CIT(E) made inquiry regarding said payments, matter be restored to file of CIT(E) .

SECTION 92C OF THE INCOME TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE

Danisco India (P.) Ltd. v. Deputy Commissioner of Income-tax - [2020] 120 taxmann.com 224 (Delhi - Trib.)

Where assessee was availing specialized services which were provided by AEs from common pool and evidences in this regard had been filed by assessee, there was no merit in order of Assessing Officer in questioning availment of services and benefit derived by assesse.

Commissioner of Income-tax, Corporate Circle-3, Chennai v. Visual Graphics Computing Services India (P.) Ltd. - [2020] 120 taxmann.com 123 (Madras)

Comparability factors - Current year v. Multiple year data : If from available data of comparable company, results for financial year can reasonably be extrapolated then said company cannot be

excluded from comparable list on ground of having different accounting year .

Commissioner of Income-tax, Corporate Circle-3, Chennai v. Visual Graphics Computing Services India (P.) Ltd. - [2020] 120 taxmann.com 123 (Madras)

Adjustments - Risk adjustment : Risk adjustment could be given only on company-to-company basis, considering level of risk involved between assessee and comparable companies.

Principal Commissioner of Income-tax v. Gulbrandsen Chemicals (P.) Ltd. - [2020] 119 taxmann.com 52 (Gujarat)

Methods for determination of - TNM Method : Where assessee, engaged in manufacturing of chemicals, had sold said products to AE and non-AE and applied TNMM to benchmark said transaction but TPO relying upon internal CUP made addition to assessee's ALP in respect of various products sold to AE, since intra AE transactions were fundamentally different character in economic circumstances and contractual terms and these cannot be compared with the independant transactions entered into by assessee, TNMM applied by assessee was correct method and application of CUP method was not justified .

Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) - [2020] 120 taxmann.com 283 (Delhi - Trib.)

Comparables, functional similarity - Manufacturer : A company being an aggregator, providing a platform for sale of electronic products of multiple brands and thus having a different business model vis-à-vis assessee having routine buy-sell model would not be comparable .

Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) - [2020] 120 taxmann.com 283 (Delhi - Trib.)

Comparables, functional similarity - Manufacturer : A company engaged in sale of surgical and medical equipment would not be comparable to assessee engaged in business of manufacturing and trading of consumer electronics, home appliances, mobile phones and IT products .

Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) - [2020] 120 taxmann.com 283 (Delhi - Trib.)

Comparability factors - Financial year : A comparable cannot be rejected merely on ground that its financial year is different particularly when result can be extrapolated using quarterly result .

SECTION 92B OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - INTERNATIONAL TRANSACTION, MEANING OF

Samsung India Electronics (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle 2(2) - [2020] 120 taxmann.com 283 (Delhi - Trib.)

AMP expenses : Where there was a Marketing Fund Agreement (MDF) between assessee and AE regarding AMP and shop display activities, scope and value of International Transaction could not have been expanded beyond reimbursement received under MDF agreement to cover entire gamut of AMP expenditure incurred by assessee during year .

Bacardi India (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle-4(1), New Delhi - [2020] 120 taxmann.com 451 (Delhi - Trib.)

Basic purpose of introducing various provisions of chapter X, was to prevent tax evasion in transactions undertaken between an Indian entity and its overseas AE a perceived/notional indirect benefit to AE due to incurring of certain expenditure by an assessee in India, is not covered by TP provisions .

SECTION 244A OF THE INCOM TAX ACT, 1961 - REFUNDS - INTEREST ON

Commissioner of Income Tax v. Syndicate Bank - [2020] 120 taxmann.com 227 (Karnataka

By Direct Tax Laws (Amendment) Act, 1987, section 244A was inserted with effect from 1-4-1989 and was made applicable for assessment year 1989-90 onwards - Hence, if interest on any excess advance tax paid in a financial year has to be computed after 1-4-1989, same has to be computed in accordance with section 244A only and assessee would be entitled to interest in terms of section 244A only .)

DEPRECIATION

IFCI LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0115 DelTrib

ASSISTANT COMMISSIONER OF INCOME TAX VS M/S. CAREER POINT INFRA LTD. : (2020) 60 CCH 0114 JaipurTrib

Assessee was the owner of the plant for the purpose of Section 32 and by leasing it out to the other party the assessee has used the plant only for the purposes of its business of leasing and as such the rental income earned thereon was a business income entitling assessee to depreciation u/s 32.

PADMINI PRODUCTS (P) LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 109 CCH 0022 KarHC

The 5th proviso will apply only in the year of succession and not in subsequent years and also in respect of overall quantum of depreciation in the year of succession.

SECTION 35E OF THE INCOME TAX ACT, 1961 - MINERALS, EXPENDITURE ON PROSPECTING FOR ETC.

Commissioner of Income Tax v. Mukhtar Minerals (P.) Ltd. - [2020] 120 taxmann.com 186 (Bombay)

Where both Commissioner (Appeals) as well as Tribunal, concurrently held that material on record indicated that amount paid by assessee to mining lessees was not towards acquisition of right in mine, but was basically towards expenditure undertaken by said lessees for purpose of developments like roads and trenches, temporary huts, drilling, etc. and, thus, held that provisions of section 35E was applicable to case of assessee, since there was no perversity found in impugned order of lower authorities, same was to be upheld .

SECTION 56 OF THE INCOME-TAX ACT, 1961 - INCOME FROM OTHER SOURCES – CHARGEABLE AS

Commissioner of Income Tax, Ward-3, Terunelveli v. Padmavathi - [2020] 120 taxmann.com 187 (Madras)

Where in limited scrutiny with regard to purchase of property by assessee, Assessing Officer after hearing assessee and verifying source of funds made addition but Commissioner revised said order on the ground that guideline value of said property at relevant time was higher than sale consideration reflected in registered document, since guideline value is only an indicator and same is fixed by State Government for purposes of calculating stamp duty on a deal of conveyance, invoking of section 263 not sustainable.

SECTION 251 OF THE INCOME-TAX ACT, 1961 - COMMISSIONER (APPEALS) - POWERS OF

Assistant Commissioner of Income Tax, Circle 2(2), Cuttack v. Kandoi Transport Ltd. - [2020] 120 taxmann.com 92 (Cuttack - Trib.)

Power to admit additional evidence : Where Commissioner (Appeals) admitted additional evidences/enclosures submitted by assessee without confronting same to Assessing Officer and without obtaining comments/remand from Assessing Officer on said additional evidence and deleted an addition under section 68 made to assessee's income on basis of such evidences, impugned order of deleting addition on basis of such additional evidenced was unjustified .

INCOME

GUJARAT MINERAL DEVELOPMENT CORPORATION LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 59 CCH 0254 AhdTrib

Only those investments are to be considered for computing average value of investment which yielded exempt income during the year.

CAPITAL INFRA PROJECTS PVT. LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0008 DelTrib

Addition u/s 68 is not sustainable where the assessee has successfully discharged the onus cast upon it u/s 68.

KUNAL STRUCTURE (INDIA) PRIVATE LIMITED VS DEPUTY COMMISSIONER OF INCOME TAX : (2019) 103 CCH 0425 GujHC

Mere reference to the expression "corrected income" in the notice under sub-section (9) of section 139 does not mean that a fresh return of income has been filed under that sub-section.

MEENU KAPOOR VS ASSISTANT COMMISSIONER OF INCOME TAX : (2020) 58 CCH 0444 DelTrib

Where the assessee produced sufficient documentary evidences on record to prove identity of the creditors, their creditworthiness and genuineness of the transaction and no further investigation was carried out by the A.O. on the documentary evidences filed by assessee, A.O. cannot fasten the assessee with such liability under section 68.

SECTION 80P OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS

Pattambi Service Co-operative Bank Ltd. v. Income Tax Officer, Ward 3, Palakkad - [2020] 118 taxmann.com 523 (Cochin - Trib.)

Income of co-operative societies : Where Assessing Officer denied assessee's claim of deduction under section 80P for reason that assessee was essentially doing business of banking and disbursement of agricultural loans by it was only minuscule as per narration in loan extracts in audit reports, since narration in loan extracts in audit reports by itself may not be conclusive to prove whether loan was agricultural or non-agricultural, Assessing Officer was to be directed to examine afresh nature of each loan disbursement.

SECTION 271(1)(C) OF THE INCOME-TAX ACT, 1961 - PENALTY

Omprakash T. Mehta v. Income Tax Officer - [2020] 118 taxmann.com 551 (Bombay)

For concealment of income : Where assessee sold a plot of land and received sale consideration in three instalments and during relevant assessment year, assessee offered to tax only amount of consideration which was received during previous year, since assessee had declared full facts and sale agreement at first instance and assessee had never suppressed any material fact from revenue, no penalty under section 271(1)(c) could be levied upon assessee for not furnishing entire sale consideration received by it on sale of plot of land during relevant assessment year . **PENALTY**

JITENDRA SHARMA & ANR. VS JOINT

COMMISSIONER OF INCOME TAX & ANR. (INTERNATIONAL TAXATION) : (2020) 60 CCH 0131 IndoreTrib

No penalty shall be imposable on the persons for any violation referred to in the said provisions (which in this case is Section 271(C) if he proves that there was a reasonable cause for the said failure.

Principal Commissioner of Income Tax v. Ashok Kumar Maneklal Parikh - [2020] 120 taxmann.com 269 (SC)

Disallowance of Claim, effect of : Where during assessment proceedings assessee had made full representation why according to his belief, receipt on sale of leasehold right was not chargeable to tax and High Court upheld order of Tribunal setting aside penalty order, SLP filed was to be dismissed .

SECTION 2(15) OF THE INCOME-TAX ACT, 1961 - CHARITABLE PURPOSE PROFIT MOTIVE

Creative Museum Designers v. Income tax Officer (Exemption), Ward-1(1) - [2020] 118 taxmann.com 464 (Kolkata - Trib.)

Where assessee, a non-profit entity, was awarded a contract of construction of a museum by RBI, since assessee was to execute work as directed by RBI as a contractor in lieu of money, actual work not being charitable in nature, asessee was not eligible for section 11 benefit .

SECTION 237 OF THE INCOME TAX ACT, 1961 - REFUND - GENERAL

Clean Wind Power Kurnool (P.) Ltd. v. Deputy Commissioner of Income Tax, TDS Circle 731 - [2020] 119 taxmann.com 64 (Delhi)

Where assessee filed instant writ petition seeking a direction to revenue to remove technical glitches and enable TRACES portal so that assessee could file its refund application for excess tax deduction at source (TDS) deposited by it, since in impugned case scrutiny and verification of TDS amount paid had to be manually done according to established procedure, assessee was to be directed to follow said procedure forthwith and once assesee follow aforesaid procedure, revenue was to be directed to decide assessee's request within thereafter .

TRANSFER PRICING

INTERCONTINENTAL HOTELS GRUOP (INDIA) PVT. LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0130 DelTrib

Company being a government enterprises is not comparable with a private business service provider because in case of government enterprises profit motive is not irrelevant consideration, and government companies work for other public sector undertakings and in that sense the related party transactions are much more than the filter of 25%.

REASSESSMENT

GANGESHWARI METALS PVT. LTD. VS INCOME TAX OFFICER : (2020) 60 CCH 0154 DelTrib

"Reasons to believe" recorded by the AO, which is replica of information received from the Investigation Wing, cannot be

DWARKADHISH SAKHAR KARKHANA LTD. VS DEPUTY COMMISSIONER OF INCOME TAX : (2020) 60 CCH 0064 PuneTrib

Once assessment proceedings had already commenced after allowing a reasonable time from date of supply of reasons, there could have been no cause with AO to put assessment proceedings in abeyance and first deal with objections of assessee.

SECTION 80-IB OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKING

OTHER THAN INFRASTRUCTURE DEVELOPMENT UNDERTAKINGS

Commissioner of Income Tax, Chennai v. Doshi Estates - [2020] 120 taxmann.com 261 (Madras)

Housing projects : Where there was no material to support finding of Commissioner that assessee-firm was used as a device to divert excess profit to sons of partners of assessee, Commissioner erred in revising assessment order on issue of deduction under section 80-IB.

Commissioner of Income Tax, Bangalore v. Brigade Enterprises Ltd. - [2020] 120 taxmann.com 346 (Karnataka)

Housing Projects : Where housing project of assessee was approved in respect of an area of 48,939 square feet which satisfied condition of minimum area of one acre, it would be entitled to claim deduction under section 80-IB(10) .

Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd. - [2020] 120 taxmann.com 315 (Gujarat)

Power, meaning of : Where assessee-company was engaged in operation of captive power plant, 'steam' produced by assessee could be termed as 'Power' and would qualify for benefit available under section 80-IA(4) .

SETTLEMENT OF CASES

COMMISSIONER OF INCOME TAX & ANR. VS INCOME TAX SETTLEMENT COMMISSION (IT&WT) & ANR. : (2020) 109 CCH 0030 PatHC

If revenue had duly made its representation, and the Settlement Commission had thereinafter accepted the settlement, it cannot be reopened.

SECTION 10(17A) OF THE INCOME-TAX ACT, 1961 - AWARDS

K. Vijaya Kumar v. Principal Commissioner of Income Tax, Chennai - [2020] 120 taxmann.com 257 (Madras)

Approval of Central Government : Reference to 'approval' in section 10(17A) does not only connote a paper conveying approval and bearing stamp and seal of Central Government but any material available in public domain indicating recognition for such services, rendered in public interest.

SECTION 253 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - APPEALS TO

Perfect Circle India Ltd. v. Assistant Commissioner of Income Tax - [2020] 120 taxmann.com 262 (Bombay)

Condonation of delay : Delay of 3389 days in filing appeal before Tribunal could not condoned when no sufficient cause was shown by assessee .

SECTION 254 OF THE INCOME-TAX ACT, 1961 - APPELLATE TRIBUNAL - POWERS OF

Rathna Stores (P.) Ltd. v. Commissioner of Income-tax-III, Chennai - [2020] 120 taxmann.com 260 (Madras)

Power to condone : Where assessee waited for passing of penalty order for which direction was given by Commissioner under section 263 and when such penalty order was passed assessee filed an appeal before Tribunal and in that process, delay occurred, Tribunal could have condoned delay if reason for delay supported by an affidavit was made out by assessee before it; thus, matter was to be remanded back to Tribunal .

SECTION 153A OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - ASSESSMENT IN CASE OF

Navneet Jhamb v. Assistant Commissioner of Income Tax, Central Circle Faridabad - [2020] 120 taxmann.com 314 (Punjab & Haryana)

Conditions precedent : Where no unaccounted cash was found to be paid by buyer to seller in respect of sale-purchase of land and addition made on account of on-money transaction in hands of buyer and seller was also deleted, addition made in hands

of assessee-broker was to be deleted.

SECTION 10B OF THE INCOME-TAX ACT, 1961 - EXPORT ORIENTED UNDERTAKING

Karle International (P.) Ltd. v. Assistant Commissioner of Income Tax, Circle-6(1), Bangalore - [2020] 120 taxmann.com 264 (Karnataka)

Computation of deduction : Loss sustained by assessee-company from its hundred per cent export oriented unit (EOU) which was entitled to exemption under section 10B could be set-off against profit of its other units under same head of income.

SECTION 133A OF THE INCOME-TAX ACT, 1961 - SURVEY

Commissioner of Income-tax v. Pawan Kumar Goel - [2020] 120 taxmann.com 319 (SC)

Conversion of survey into search & seizure : SLP dismissed against High Court ruling that survey at residential premises of assessee could not have been converted into search and seizure without tax authorities recording that assessee had failed to co-operate or there was a suspicion that income was concealed by assessee warranting resort to process of search and seizure .

SECTION 139 OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME

Avadhut Ban (HUF) v. Principal Commissioner of Income Tax - [2020] 120 taxmann.com 347 (Pune - Trib.)

Revised return : Substitution of sub-section (5) of section 139 vide Finance Act, 2016 which came into force from 1-4-2017 is prospective in nature .

ACCOUNTS

INCOME TAX OFFICER VS RAJKALP MUDRAALAYA PVT. LTD. : (2020) 60 CCH 0187 AhdTrib

AO cannot reject the books of accounts for the reasons as discussed above in a situation where the assessee does not maintain the stock register.

INTEREST PAYABLE AND RECEIVABLE

GAZEBO INDUSTRIES LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX (TDS) : (2020) 60 CCH 0185 MumTrib

Prior to 1.06.2015 late fee u/s 234E cannot be charged while processing quarterly return u/s 200A.

SECTION 10AA OF THE INCOME-TAX ACT, 1961 - SPECIAL ECONOMIC ZONES

Principal Commissioner of Income Tax-I v. Jewels Magnum - [2020] 120 taxmann.com 316 (Madras)

Approval : A medallion is also classifiable as a pendant; therefore, assessee could not be denied exemption under section 10AA on ground that it had violated approval granted by Development Commissioner, Special Economic Zone for manufacturing gold pendants by saying that product manufactured by assessee was described as medallion

SECTION 10B OF THE INCOME-TAX ACT, 1961 - EXPORT ORIENTED UNDERTAKING

California Software Co. Ltd. v. Commissioner of Income Tax-1, Chennai - [2020] 120 taxmann.com 322 (Madras)

Computation of exemption : Income brought to tax under section 41(1) by reversal of entry with regard to stock option scheme given to employees was also in nature of 'export income' for purpose of exemption/deduction under section 10A/10B .

SECTION 14A OF THE INCOME-TAX ACT, 1961 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME

Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd. - [2020] 120 taxmann.com 315 (Gujarat)

Conditions precedent : No disallowance under section 14A can be made if no exemption from income has been claimed .

SECTION 36(1)(III) OF THE INCOME-TAX ACT, 1961 - INTEREST ON BORROWED CAPITAL

Principal Commissioner of Income Tax v. Jay Chemical Industries Ltd. - [2020] 120 taxmann.com 315 (Gujarat)

Capital work-in-progress : Where presumption of Assessing Officer that total term loan received was applied towards capital work in progress was not based on relevant supportive evidence, disallowance of interest expenses was not sustainable .

SECTION 40(A)(IA) OF THE INCOME-TAX ACT, 1961 - BUSINESS DISALLOWANCE

Thomas Muthoot v. Commissioner of Income-tax - [2020] 120 taxmann.com 317 (SC)

Interest, etc., paid to resident without deduction of tax at source : SLP granted against High Court ruling that section 40(a)(ia) is automatically attracted on failure of an assessee to deduct tax on interest paid by him and fact that recipient has subsequently paid tax, will not absolve assessee from consequence of disallowance .

SECTION 194A OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - INTEREST OTHER THAN INTEREST ON SECURITIES

Thomas Muthoot v. Commissioner of Income-tax - [2020] 120 taxmann.com 317 (SC)

HUFs/Individuals : SLP granted against High Court ruling that benefit of exclusion from purview of section 194A is restricted only to those individuals and Hindu Undivided families whose total sales, gross receipts or turnover from business or profession do not exceed monetary limit specified under section 44AB(a) or (b) .

ADDITION

INCOME TAX OFFICER (INTERNATIONAL TAXATION) & ANR. VS C. ABDUL MAHAROOF & ANR. : (2020) 60 CCH 0059 CochinTrib

Violation of the principles of natural justice can result in total nullity of the entire addition.

RECENT CASE LAWS

CA Ankit Kanodia

P.H. MueammadKunju& Brothers vs. Assistant State Tax Officer- Goodsdetention for mis-match in value shown in job-work invoice and e-way bill'unjustified'

TS-1020-HC-2020(KER)-NT

Kerala HC

A consignment of HR plates was sent from Ernakulam to Salem for the purposes of job work. The onward transportation from Ernakulam to Salem was duly accompanied by a tax invoice and an e-way bill generated by the Registered Taxpayer (Petitioner). After completion of the said work, the goods were returned to Ernakulam from Salem, and in the said leg of transportation, the consignment was accompanied by a job work invoice issued and an e-way bill generated by the job worker. The defect pointed out by the Assistant state tax officer is in respect of value shown in the e-way bill generated by job worker is only Rs.3,469.76/- as compared to the Consignment of the HR plates that was sent for job work valued at Rs.8,27,708.87/-. The said difference in the value is shown as the reason for the detention as the value shown in the e-way bill did not match the value of the consignment itself.

Kerala HC observed the following:

1.The documents that ought to have accompanied the transportation (Return journey) were the job work invoice, the delivery challan and the e-way bill. In the instant case it was covered by such documents.

2.The value shown in the e-way bill on the return journey had to correspond with the value shown in the invoice raised by the job worker and the rate of Rs. 3469.76/- shown in both the documents.

3.In the e-way bill andalso the job work- invoice, the quantity of the goods is correctlyshown as 15,490 Kgs and the description of goods is also shown as "HR plates".

Kerala HC thus concluded that "the detention was wholly unjustified" and allows release of goods & Vehicle detained as there could be no doubt with regard to the identity of the goods that were being transported, and the difference in the value shown in the e-way bill (from that shown in the original delivery challan) was only on account of the requirement of maintaining uniformity in the value shown in the tax invoice raised by the job worker and the e-way bill generated by him.

Comments: Above judgement by HC has come as a relief for bonafide tax payers and protects them from arbitrary detention of goods & Vehicle under section 129 by department merely on mismatch in the value shown in Job-work Invoice and e-way bill. Department should refrain from such type of detention because as per the statutory provisions, when goods are sent to other premises for job work, it is the same delivery challan that has to accompany the transportation for the onward and return journey as well.

Rainbow Infrastructure Pvt. Ltd. &Anr. vs. Assistant Commissioner,SGST - Time-limit restriction for availing ITC basis GSTR-3B/annual-return u/s 16(4) challenged before Calcutta HC

[TS-997-HC-2020(CAL)-NT]

Calcutta HC

Calcutta HC issues notice challenging the denial of ITC when not taken within due-date of furnishing return u/s 39 of CGST Act, 2017 for the month of September following the end of financial year to which any invoice or debit note pertains or furnishing of annual return, whichever is earlier; Hears petition challenging vires of section 16 (4) of the CGST/WBGST Act as well as constitutional validity of retrospective amendment of Rule 61 of CGST/WBGST Rules wherein GSTR-3B has been notified as return u/s 39.

The key grounds of challenge are as follows:

If the restriction under Section 16(4) of the Act is invoked and ITC is denied then the 'non-obstante clause (i.e., Notwithstanding anything contained)' in Section 16(2) of the Act would cease to have any meaning or purpose.

ITC is not taken through return but instead it is taken through the books of accounts immediately on receipt of goods or services in terms of 1st proviso to Section 16(2) of the Act.

It is also being argued that the provision of section 16(4) of the CGST Act,2017/WBGST Act, 2017 is arbitrary and unreasonable as they are violative of Article 14.

The provisions also violative of Article 19(1)(g) and Article 300A of the Constitution.

The denial of ITC would defeat the object of the 122ndConstitutional Amendment Bill, 2017, that is to avoid the cascading effect of taxes.

Comments: The above move by Calcutta HC is good for registered tax payer as provision of 16(4) of the CGST Act,2017 is in itself is arbitrary and illegal. The restriction under 16(4) also results double taxation for the registered person as he would have paid the tax amount to his supplier once at the time of making payment. Now if the input tax credit is not allowed then he needs to pay it either by way of making payment or adjusting his credit ledger by making DRC-03.

Ganga Ram vs. State of Punjab &Anr. - Criminal trial for offences u/s 132 of GST act and arrest lack constitutional backing, grants bail

[TS-1011-HC-2020(PandH)-NT]

The Punjab and Haryana HC

P&H HC grants bail to Petitioner accused for alleged GST evasion holding that the he is not required for further custodial investigation, and directs the Petitioner to surrender passport and furnish bail/surety bonds; Petitioner contended that he was falsely implicated in this case, and moreover, the matter is of civil nature; Observes that Petitioner has been in custody for a period of 4 months and the trial shall take time to conclude owing to the COVID situation; Lastly, opines that the criminal trial for offences u/s 132 of the PGST Act, 2017 and arrest u/s 69 are without jurisdiction, have no backing of the constitutional provisions.

Comments: Arrest is necessary so that investigation can be conducted smoothly and evidences are not tampered with. Unnecessary custody is not needed especially when it is a civil matter.

Heritage Lifestyles and Developers &Pvt.Ltd.vs.UOI &Ors. HC Allows benefit of ITC, denial merely on technical grounds, "travesty of justice"

[TS-1010-HC-2020(BOM)-NT]

Bombay HC

Owing to technical glitches on GST portal, Petitioner could not file GST TRAN-01 on or before December 27, 2017 but had manually filed the same which came to be rejected as IT Grievance Redressal Cell (ITGRC) found that Petitioner has not tried to save or submit or file TRAN-1 before December 27, 2017; Debunks ITGRC's view, holding that "There is no further explanation or clarification on this issue by the Respondents except to state the ITGRC's description"; Highlights that "this information of rejection of the Petitioner's application for manual GST TRAN-1 has not been communicated to the Petitioner despite several reminders/ communications from the Petitioner and it is only by way of the affidavit in reply filed to this Petition that the Petitioner has become aware of the rejection"; Referring to ratio laid down by SC in Mangalore Chemicals, Court observes that "Merely on technical ground an admitted input credit is sought to be denied to the Petitioner. That according to us would be wholly unfair and a travesty of justice"; Accordingly, directs Revenue to accept GST TRAN-01 filed by the Petitioner within 2 weeks from the order.

Comments: Time and again the Courts have ruled that ITC cannot be denied on technical grounds especially when delay was due to inaction of the Revenue

Shiv Kishor Construction Pvt. Ltd. vs. UOI &Ors. -HC Quashes SCN for violation of natural justice principles, remands matter for fresh consideration

[TS-1012-HC-2020(PAT)-NT]
Patna HC

Patna HC quashes and sets-aside order passed by Deputy Commissioner, SGST in view of manner of issuance of order holding that "On all fours, principles of natural justice stand violated"; Notes that a show-cause notice has been issued alleging suppression of tax seeking reply from Petitioner by a particular date while order passed in Revenue's favour entail civil and pecuniary consequences, causing prejudice to Petitioner; However, for unexplained reasons and circumstances, without any prior intimation or knowledge, the matter was pre-poned and order passed without affording any opportunity of hearing; Accordingly, remands the matter for fresh consideration while directing the Petitioner to appear before the Authority who shall, after complying with the principles of natural justice, pass a fresh order, with liberty to Petitioner to raise all issues.

Comments: Principles of natural justice needs to be followed at every level of adjudication and cannot be taken lightly.

Lite Bite Travels Foods Pvt. Ltd. vs. UOI &Ors. - HC Orders to deposit principal profiteered amount, stays interest, penalty & further investigation

[TS-1013-HC-2020(DEL)-NT]

Delhi HC

Delhi HC issues notice in writ petition filed challenging the order of National AntiProfiteering Authority (NAA) booking Petitioner for profiteering of Rs. 61,67,097/- (inclusive of GST of Rs. 3,23,927) along-with consequential directions; Petitioner submits that GST component of total amount confirmed in view of profiteering has already been deposited with Tax Department;

In view of the aforesaid, HC directs Petitioner to deposit the principal profiteered amount (excluding GST component) with Central Consumer Welfare Fund within 3 months; Instructs further that "The interest amount as well as the penalty proceedings and further investigation with regard to other outlets are stayed till further orders".

Comments: Registered persons need to pass the benefit of reduced rates of taxes to the buyers failing which they are bound to be hit by the anti-profiteering provisions.

HC: Upholds validity of E-way bill for goods delivered but unloaded, quashes detention
Hemanth Motors vs. State of Karnataka &Ors.

[TS-1081-HC-2020(KAR)-NT]

Karnataka HC quashes notice and subsequent order of seizure, detention under section 129 of the CGST Act/KGST Act passed by Commissioner Tax Officer (Vigilance) in view of valid E-way bill in case where the conveyance carrying the vehicles had reached destination but could not be unloaded on same day;

Notes Rule 138(10) of the CGST Rules which prescribes the validity of an e-way bill with the extension of further period by 8 hours after the expiry;Lastly, considering that Tax authorities have not contended validity of Eway bills during inspection, points-out Revenue's "failure to consider the petitioner's case…provisions of Rule 138[10]" and holds that the same resulted in an improper and untenable order: Karnataka HC

Comments: In the above case the department was totally unjustified to detain the goods on the ground that the EWB had expired whereas the goods had already reached the destination and was awaiting unloading. The High court thus has quashed the arbitrary order passed by the department for detention.

HC: Restores refund proceedings for considered decision, order rejecting claim
ABB Global Industries and Services Pvt. Ltd. vs. UOI &Ors.

[TS-1080-HC-2020(KAR)-NT]

Karnataka HC partly allows writ petition to the extent of allowing request for additional time for personal hearing as well as filing objections, thereby, sets-aside order rejecting refund;
Addressing Petitioner's response to show-cause notice seeking additional 15 days' time for filing objections, notes that parties have been unable to point-out prohibition in law against grant of extension of time by The Assistant Commissioner of Central Tax, GST Commissionerate, B'lore (Revenue);
Consequently, restores the proceedings to Revenue for adjudication by permitting Petitioner to file detailed objections and fix date for personal hearing: Karnataka HC

COMMENTS: In the instant case the High Court has given relief to the petitioner whose refund claim was rejected without giving proper opportunity of representation and thus the natural justice was denied to the petitioner. The high court has thus allowed the petition and restored the refund proceedings back to the adjudicating authority.

HC: Fixation of confiscation/demand order on truck 'failure of natural justice', quashes orders
Ranchi Carrying Corporation vs. State of UP and 2 Ors.

[TS-1079-HC-2020(ALL)-NT]

Allahabad HC sets aside order of confiscation of goods under section 130 of UPGST Act as well as order in FORM MOV-09 [Order of demand, tax, and penalty related to goods] served through fixation on Petitioner's truck, on ground of "failure of natural justice"; Petitioner submitted that - (i) service on driver or a fixation of the copy of order on the truck is not one of the methods provided in section 169 of the UPGST Act (ii) thus, it is clear that the orders were never served and the proceedings were held exparte, (iii) it had

submitted requisite documents at the time of appeal, but the Appellate Authority held that as no reply was filed to the notices sent, the grounds taken in the appeal appear to be afterthought and thus the appeal was also dismissed; However, perusing Sec. 169 and the impugned order, notes that at no point of time, was the petitioner granted an opportunity of submitting his reply, and holds, "whenever a manner is prescribed, the thing should be done in that manner alone…Thus, on a plain reading (of the order), a failure of natural justice has been occasioned to the petitioner."; Accordingly, with liberty to Revenue to conclude proceedings against Petitioner, directs Petitioner to file fresh reply and Revenue to pass orders expeditiously: Allahabad HC

COMMENTS: Another classical case for quashing of proceedings for want of natural justice in proceedings and also modes of service of notice as prescribed under the GST law.

Aniket Exports vs. Union Of India - [TS-1154-HC-2020(GUJ)NT]

Issue Involved: Refund was not being paid for the reason that the registered taxpayer had inadvertently mentioned the drawback claim under column - A instead of column – B

Legal Provisions: According to Rule 96(4) of the CGST Rules, 2017,refund can be withheld only in two situations:

(i) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to with hold refund as per Section 54(10) or Section 54(11)

(ii)where goods have been exported in violation of Customs Act provisions

Held: It was held that refund cannot be denied as none of the above mentioned situations have been met. Also, Refund Application has been filed by the taxpayer within the stipulated time mentioned u/s 54 of the CGST Act, 2017. Inspite of the fact that drawback has been inadvertently mentioned in Column A, the mentioned Export is a Zero rated Supply under IGST Act and eligible for refund. Accordingly, IGST refund should be granted within four weeks along with 7% Interest from the date of shipping bills till date of actual refund.

Jay Ambey Filament Pvt. Ltd. vs Union Of India – [TS1155-HC-2020(GUJ)-NT]

Issue Involved: Order of provisional attachment has been passed for 5 bank accounts in accordance with Section 83 of the GST Act,2017

Legal Provisions: The existence of relevant material is a precondition to form an opinion.There must be some relevant material based on which the Authority could form its opinion that it has become necessary to order provisional attachment of bank account to protect the interest of Revenue.

The word "may" used in Section 83 does not indicate discretion but it implies an obligation that a necessity has arisen to pass attachment order in order to protect the interest of the Revenue.

In the absence of any credible material, passing of attachment order amounts to a malice act in Law.

Held: The attachment Order in the present case is nothing but a result of mechanical exercise of power u/s 83 of the GST Act, 2017. Hence, attachment of 5 bank accounts is ordered to be removed.

World Home Textiles Inc vs. The Additional Commissioner (Appeals) and The Assistant Commissioner of GST and Central Excise – [TS1153-HC-2020(MAD)-NT]

Issue Involved: Refund Application for refund of

CGST amount has been rejected without giving reasonable opportunity of hearing to the registered taxpayer.

Legal Provisions: It is clear from Rule 92(3) of the CGST Rules 2017 that HEARING is mandatory before rejecting any Refund Application. Refund Application can be rejected only after affording sufficient opportunity of hearing to the party seeking for refund.

Held: In the present case, it appears that the Rejection Order has been passed by total non-application of mind to the mentioned Rule. It is also observed that NO HEARING was afforded to the taxpayer before rejection of refund application. Hence, Refund Application of the taxpayer shall be considered afresh on merits and in accordance with Law after giving sufficient opportunity of hearing.

Superfine Impex Private Limited vs. Union Of India– [TS-1157-HC-2020(GUJ)-NT]

Issue Involved: If Department has ordered for attachment of Immovable properties of the Company as well as Directors in exercise of powers u/s 83 of the GST Act, 2017 then whether attachment of Bank Accounts would be justified or not

Legal Provisions: Based on various decisions, it is observed that Cash Credit Account cannot be attached in exercise of power u/s 83 of the GSTAct.

Held: The current accounts are ordered to be defreezed i.e. Provisional attachment is ordered to be lifted. However, provisional attachment on Fixed Deposits shall continue.

G. K. Trading Company vs. Union Of India And 4 Others - [TS-1159-HC-2020(ALL)-NT]

Issue Involved: Inquiry u/s 70 of the CGST Act 2017 was initiated while proceedings u/s 6(2)(b) of the CGST Act 2017 were not been concluded

Legal Provisions: The word "INQUIRY" has a specific purpose to summon any person whose attendance may be considered necessary by the PO either to give evidence or to produce a document or any other thing.

The word "ANY PROCEEDING"on the same "subject matter" used in Section 6(2)(b) of the Act means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties, proceedings for demands and recovery u/s 73 and 74,etc.

Held: There is no proceeding by a PO against the taxpayer on the same subject-matter referable to Section 6(2)(b) of the CGST Act in the present case. It is merely an inquiry by a PO u/s 70 of the CGST Act, 2017.It cannot be intermixed with some statutory steps which may precede or may ensue upon the making of the inquiry or conclusion of inquiry.

Circular No. 144/14/2020 - GST dated 15th December, 2020

Topic: CBIC clarifies on recording of UIN on invoices for April, 2020 to March, 2021

Background: Clarification relating to recording of UIN on invoices for April, 2020 to March, 2021

Comments : CBIC issues clarification on waiver from recording of UIN on the invoices issued by the retailers/suppliers,pertaining to the refund claims from April 2020 to March 2021; Adds condition for waiver that the copies of such invoices must be attested by the authorized representative of the UIN entity and submitted to the jurisdictional officer; Explains that the waiver has been granted considering the the issue of non-recording of UINs even after March 31,2020.

Note : With respect to processing of refund claims of UIN entities (Embassy/ Mission/ Consulate/ United Nations
Organizations/Specified International Organizations), CBIC had earlier granted waiver vide Circular No.
63/37/2018 – GST dated September 14, 2018.

Notification No. 90/2020 Dated 1st December, 2020

The Central Board of Indirect Taxes and Customs, on the recommendations of the Council, hereby makes thefollowing amendment in the notification of the Government of India in the Ministry of Finance (Department ofRevenue), No.12/2017 – Central Tax, dated the 28th June, 2017, published in the Gazette of India,Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), dated the 28th June, 2017,namely:

In the said notification, after the first proviso, the following proviso shall be inserted, namely,-

Provided further that for class of supply as specified in column (2) and whose HSN Code as specified incolumn (3) of the Table below, a registered person shall mention **eight number of digits of HSN** Codes in atax invoice issued by him under the said rules –

S.No. (1)	Chemical name (2)	HSN Code
1	Mixture of (5-ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl) methyl methylmethylphosphonate (CAS RN 41203-81-0) and Bis[(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate (CAS RN42595-45-9)	38249100
2	Dimethyl propylphosphonate	29313200
3	(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl methylmethylphosphonate	29313600
4	Bis[(5-Ethyl-2-methyl-2-oxido-1,3,2-dioxaphosphinan-5-yl)methyl] methylphosphonate	29313700
5	2,4,6-Tripropyl-1,3,5,2,4,6-trioxatriphosphinane2,4,6-trioxide	29313500
6	Dimethyl methylphosphonate	29313100
7	Diethyl ethylphosphonate	29313300
8	Methylphosphonic acid with (aminoiminomethyl) urea (1: 1)	29313800
9	Sodium 3-(trihydroxysilyl) propyl methylphosphonate	29313400
10	2,2-Diphenyl-2-hydroxyacetic acid	29181700
11	2-(N,N-Diisopropylamino)ethylchloride hydrochloride	29211400
12	2-(N,N-Dimethylamino)ethylchloride hydrochloride	29211200
13	2-(N,N-Diethylamino)ethylchloride hydrochloride	29211300
14	2-(N,N-Diisopropylamino)ethanol	29221800
15	2-(N,N-Diethylamino)ethanethiol	29306000
16	Bis(2-hydroxyethyl)sulfide	29307000
17	2-(N,N-Dimethylamino)ethanethiol	29309092
18	Product from the reaction of Methylphosphonic acid and 1,3,5- Triazine-2,4,6-triamine	As applicable
19	3-Quinuclidinol	29333930
20	R-(-)-3-Quinuclidinol	29333930
21	3,9-Dimethyl-2,4,8,10-tetraoxa-3,9-diphosphaspiro [5.5] undecane 3,9- dioxide	29313900
22	Propylphosphonic dichloride	29313900
23	Methylphosphonic dichloride	29313900
24	Diphenyl methylphosphonate	29313900
25	O-(3-chloropropyl)O-[4-nitro-3-(trifluoromethyl)phenyl] methylphosphonothionate	29313900
26	Methylphosphonic acid	29313900
27	Product from the reaction of methylphosphonic acid and 1,2- ethanediamine	As applicable
28	Phosphonicacid,methyl-, polyglycol ester (Exolit OP 560 TP)	38249900
29	Phosphonic acid,methyl-,polyglycol ester (Exolit OP 560)	38249900
30	Bis (polyoxyethylene) methylphosphonate	39072090
31	Poly(1,3-phenylene methyl phosphonate)	39119090
32	Dimethylmethylphosphonate, polymer with oxirane and phosphorus oxide	38249900
33	Carbonyl dichloride	28121100
34	Cyanogen chloride	28531000
35	Hydrogen cyanide	28111200
36	Trichloronitromethane	29049100
37	Phosphorus oxychloride	28121200

38	Phosphorus trichloride	28121300
39	Phosphorus pentachloride	28121400
40	Trimethylphosphite	29202300
41	Triethylphosphite	29202400
42	Dimethyl phosphite	29202100
43	Diethyl phosphite	29202200
44	Sulfurmonochloride	28121500
45	Sulfur dichloride	28121600
46	Thionyl chloride	28121700
47	Ethyldiethanolamine	29221720
48	Methyldiethanolamine	29221710
49	Triethanolamine	29221500

The principal notification number 12/2017 – Central Tax, dated the 28th June, 2017which was further amended vide Notification No.78/2020 dated-15th October, 2020.

For reference both the Notifications have been reproduced below-

Notification No.78/2020 Central tax dated 15th October, 2020

Serial Number	Aggregate Turnover in the preceding Financial Year	Number of Digits of Harmonised System of Nomenclature Code
1	Up to rupees five crores	4
2	more than rupees five crores	6

Notification No.12/2017 Central tax dated 28th June,2017

Serial Number	Aggregate Turnover in the preceding Financial Year	Number of Digits of Harmonised System of Nomenclature Code
1	Upto rupees one crore fifty lakhs	NIL
2	more than rupees one crore fifty lakhs and upto rupees five crores	2
3	more than rupees five crores	4

Notification No. 91/2020 Dated 14th December, 2020

The Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.35/2020 – Central Tax, dated the 3rd April, 2020, published in the Gazette of India-

Any time limit for completion or compliance of any action by any authority as has been specified in, prescribed or notified under Section 171 which falls from the period from the **20th day of March,2020** to the **30th day of March,2021** and where completion or compliance of such actions has not been made within such time by any authority then the time limit for completion or compliance of such action shall be **extended upto the 31st day of March,2021**.

For reference the principal and amended Notification has been reproduced below-

The Government had issued Principal **Notification No.35/2020 dated 03rd April,2020** in which time time limit for completion or compliance of any action by any authority which falls from the period from the **20th day of March,2020 to the 29th day of June,2020** and where completion or compliance of such actions has not been made , had been extended upto the **30th June,2020**.

The Principal Notification was further amended by **Notification No-65/2020 dated 1st September,2020** in which time time limit for completion or compliance of any action by any authority which falls from the period from the **20th day of March,2020 to the 29th day of November,2020** and where completion or compliance of such actions has not been made, had been extended upto the **30th November,2020**.

Notification No. 92/2020 Dated 22nd December, 2020

The Central Government hereby appoints the 1st day of January, 2021, as the date on which the provisions of sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the Finance Act shall come into force.
For reference all the sections of Finance Act 2020 are analysed as under:-

Section of Finance Act 2020	Section of GST In which Amendment is Made / Section Main Heading	Analysis
119	10 / Composition Scheme	This provision has curtailed the eligibility for composition scheme . The persons now cannot beeligible for composition scheme if i. he is engaged in making any supply of goods or services which are not leviable to tax under this Act; ii. he is engaged in making any inter-State outward supplies of goods or services; iii. he is engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52.

120	16(4) / Max. time to avail ITC	Now Section 16(4) allows the registered persons to claim ITC of the debits notes relating to the previous year issued in current year even after the due date of Sept GSTR 3B or Annual return which-ever is earlier.
121	29(c) / Cancellation [or suspension] of registration	The law now allows a registered person to cancel the registration (voluntarily) even while running the business.
122	30 / Revocation of cancellation of registration.	The Additional / Joint Commissioner can now condone the delay in filling application for revocation of registration for max. 30 days and Commissioner can further condone the delay for 30 days.
123	31 / Tax Invoice	The government can now specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed
124	51 / Tax deduction at source	Certificate will be issued in form specified, further no late fees will be charged if the government fails to issue TDS Certificate
126	122 / Penalty for certain offences	Any person who retains the benefit of a transaction and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on
127	132 / Punishment for certain offences.	The government wants to screw and penalize even the persons who retains the benefit intentionally or unintentionally the benefit or at whose instance such transaction is conducted or fraudulently avails input tax credit without any invoice or bill
131	Schedule II	Have removed the word whether of not for a consideration from the transfer of assets.

Notification No. 93/2020 Dated 22nd December, 2020

The Government, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue),**No.73/2017 – Central Tax, dated the 29th December, 2017**, published in the Gazette of India-

The late fee payable for FORM GSTR-4 for the Financial Year 2019-20 under Section 47(Levy of Late fee) from the 1st day of November, 2020 till the 31st day of December, 2020 shall stand waived for the registered person whose principal place of business is in the Union Territory of Ladakh.

The Principal Notification was further amended by **Notification No-67/2020 dated 21st September,2020.**

For reference the principal and amended Notification has been reproduced below-

Notification No.73/2017

The Government waives the amount of late fee payable under section 47 of the said Act, by any registered person for failure to furnish the return in FORM GSTR-4 by the due date, which is in excess of an amount of twenty five rupees for every day during which such failure continues.

Notification No.67/2020

Late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March, 2020 by the due date but furnishes the said return between the period from 22nd day of September, 2020 to 31st day of October, 2020.

Notification No. 94/2020 Dated 22nd December, 2020

The Central Government, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

Rule Reference	Old rule	New Rule	Comments
Rule 8(4A) of CGST Rules 2017-Application of Registration	The applicant while submitting application for registration with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.	1. Biometric based Aadhar authentication; 2. Takingphotograph ofspecified individual; and 3) Verification of original copy ofdocumentsuploadedinregistration application at Facilitation Centre notified by the Commissioner	Registration must only be done at the Facilitation Centres notified by the Commissioner and biometric authentication will make registration process more time consuming.
Rule 9 of CGST Rules 2017-Verification of application and approval	The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of three working days from the date of submission of the application.	Now for a new registration the department will be taking 7 days instead of 3 days (if Aadhar Authentication is done) else 30 days after physical verification. Where non Aadhar based registration is done ,registration to be granted in 30 days from date of submission of complete application.	Increase in time limit will add on to the delay in starting of business further, thereby increasing litigation cases.
Rule 21 of CGST Rules,2017-Registration to be cancelled in certain cases	The registration granted to a person is liable to be cancelled, if the said person,- (a) does not conduct any business from the declared place of business; or (b) issues invoice or bill without supply of goods or services in violation of the provisions of this Act, or the rules made thereunder; or (c) violates the provisions of section171 of the Act or the rules made thereunder. 1(d) violates the provision of rule10A.	The registration granted to a person is liable to be cancelled, if the said person,- 1) Avails ITC in violation of the provisions of Section 16 of the Act. 2) Furnishes Outward supply in GSTR 1 in excess of outward supplies declared by him in GSTR 3B. 3) Violates provisions of Rule 86B –use ITC exceeding 99% of outward tax liability.	Much power has been given to officers to cancel the registration even if minute deficiency is noticed thereby harassing even the innocent taxpayers.

Rule 21A of CGST Rules, 2017-Suspension of registration	1) Where a registered person has applied for cancellation of registration under rule20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later. (2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section29 or under rule21, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person.	21A (2A)- 1) To suspend the registration the proper officer is not bound to give the opportunity of being heard. Taxpayers shall be intimated in GST REG-31 on common portal highlighting the differences in GSTR 1 & GSTR 3B & GSTR 2A and giving 30 days notice as to why registration should not be cancelled. 3) Refund will also be withheld when your registration is suspended	Proper officer has been empowered with great powers to suspend the registration of taxpayers without even giving them an opportunity to be heard thereby increasing the hardships of taxable person

Rule 59-Form and manner of furnishing details of outward supplies

Rule 59(5) has been inserted through this notification-Blocking of GSTR 1 in the following cases-

1) On default of GSTR 3B for two preceeding Months-Taxpayers filling monthly return

2) On default of GSTR 3B for preceeding period-taxpayer filing quarterly return

3) On default of GSTR 3B for preceeding month-taxpayer eligible to use 99% ITC

Rule 86B-Restriction on use of ITC

This rule prevails over all the other rules in the CGST Rule

This rule will be effective from 01/01/2021

It says that the registered person shall not use the amount available in electronic credit ledgerto discharge his liability towards output tax in excess of 99% of such tax liability,

This rule is not applicable

When the value of taxable supply during a month is up to 50 lakhs (Value of taxable supply will not include exempt supply & zero rate supply)

To the proprietor or Karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees who,

- Have paid more than one lakh rupees as income tax in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired;

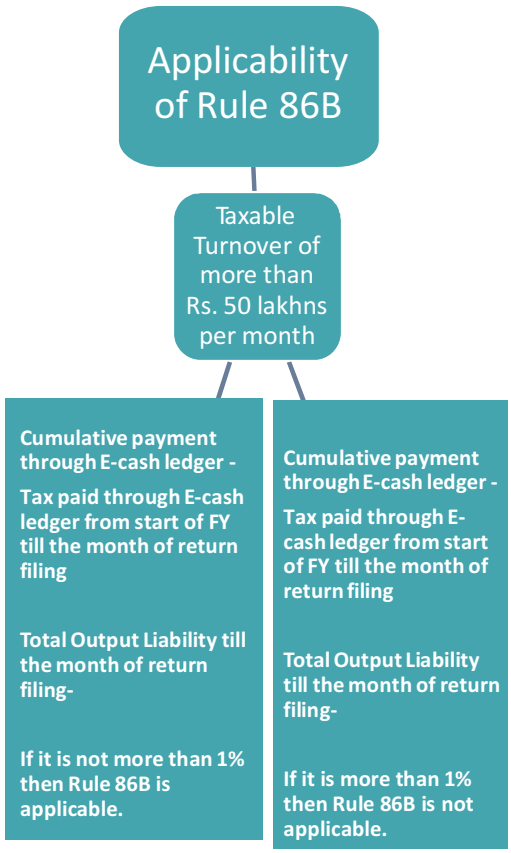
- Where the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under zero rated supplies made without payment of tax

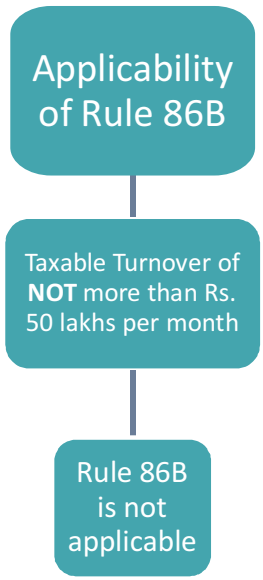
- Where the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under inverted duty structure;

- the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, up to the said month in the current financial year;

the registered person is –

- Government Department;
- a Public Sector Undertaking;
- a local authority
- a statutory body:





Examples on Rule 86B-

If rate of Tax on certain product is 18%, & a firm is supplying taxable goods & services amounting to Rs. 60,00,000. The amount of Rs. 10,800 [Rs. 60,00,000 x 18% x 1%] shall be payable in Cash.

Law only takes into consideration Taxable Supply, meaning thereby exports & exempt supplies do not attract GST.

Note:-It shall be noted that, fake companies also pay their GST but through input tax credit. The intent of law is to curb fake invoicing by requiring him to pay tax in cash.

Month	Sales (A)	GST@18% (B)	Cumulative tax (C)	Amount actually paid through Cash Ledger (D)	Cumulatively Paid (E)	Cumulative % (F) = E/C	Applicability of Rule 86B
April	58,00,000	10,44,000	10,44,000	25,000	25,000	2.39%	Applicable
May	52,00,000	9,36,000	19,80,000	5,000	30,000	1.51%	Not Applicable
June	75,00,000	13,50,000	33,30,000	12,450	42,450	1.27%	Not Applicable
July	85,00,000	15,30,000	48,60,000	-	42,450	Less than 1%	Not Applicable
August	44,00,000	7,92,000	56,52,000	-	42,450	Less than 1%	Not Applicable

In the above example, in case of May & June, since cumulative % of tax paid through E – cash ledger is more than 1% thus, rule 86B is not applicable as per rule 86B.

In the month of July, since turnover of taxable supply is more than Rs. 50 lakhs & cumulative % of tax paid through e – cash ledger is not more than 1%, rule 86B would be applicable

In case of August, since turnover of taxable supply is not more than Rs. 50 lakhs, rule 86B is not applicable, thus the question of checking of cumulative payment through e – cash ledger 1% does not arise.

Tax payment of Reverse charge mechanism through E – cash ledger shall not be considered in computing 1% of output tax payment through E – cash ledger.

Corrigendum regarding time-limit for submitting reply to registration-suspension notice

CBIC issues Corrigendum to Notification No.94/2020 dated 22nd December,2020 regarding time limit for submission of a reply to intimation/notice for suspension and cancellation of registration.This has been issued to amend form REG-31 to provide 30 days to submit a reply to jurisdictional office as provided in Rule 21A.

In the Notification No.94/2020 the time limit to submit reply to jurisdiction office was seven working days.

Remarks- The Corrigendum will give some relief to taxpayers as now taxpayers will get a reasonable time to explain the discrepancies as compared to earlier 7 days.

Notification No. 95/2020 Dated 30th December, 2020

The Government hereby extends the time limit for furnishing of the annual return specified **under section 44 of the said Act electronically through the common portal, for the financial year 2019-20 till 28.02.2021**.

Earlier the time due date for **FY 2019-20 was 31.12.2020.**

Company Law Updates

CA Mayur Agrawal

Reference	Date	Topic	Description
General Circular No. 39/2020	31-12-2020	Clarification on passing of ordinary andspecial resolutions by companies under the Companies Act,2013 read with rules made thereunder on account of COVID-19- Extension of time	In continuation to this Ministry's General Circulars No.14/2020dated 8th April, 2020, No.17/2020 dated 13th April, 2020, No.22/2020 dated15.06.2020 and No.33/2020 dated 28.09.2020 and after due examination,it has been decided to allow companies to conduct their EGMs through VC orOAVM or transact items through postal ballot in accordance with the frameworkprovided in the aforesaid Circulars upto 30th June, 2021. All other requirementsprovided in the said Circulars shall remain unchanged. http://mca.gov.in/Ministry/pdf/GeneralCircularNo.39_31122020.pdf
General Circular No.01/2021	13-01-2021	Clarification on spending of CSR funds for Awareness and public outreach on COVID-19 Vaccination programme	It is further clarified that spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i), (ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education, and disaster management respectively. http://mca.gov.in/Ministry/pdf/CSR2021_13012021.pdf
General Circular No.02 /2021	13-01-2021	Clarification on holding of AGM through VC other OAVM	In the view of the pandemic situation induced by COVID-19, MCA has enabled the companies to conduct their AGMs through VC or OAVM up to December 31 2021, in accordance with this circular. Beforehand, the last date was December 31 2020. http://mca.gov.in/Ministry/pdf/GeneralCircularNo.38_01122020.pdf
General Circular No.03 /2021	15-01-2021	Scheme for condonation of delay for companies restored during Dec 2020 u/s 252 of the CA 2013	Scheme for condonation for delay for companies restored on the Register of Companies between 1st December, 2020 and 31st December, 2020 under Section 252 of the Companies Act, 2013" for the purpose of condoning the delay in filing e-forms with the Registrar, insofar it related to charging of additional fees on account of delay in such filing The scheme is for condonation for delay for companies restored on the Register of Companies between 1st December, 2020 and 31st December, 2020 under Section 252 of the Companies Act, 2013 which is Effective form 1st February, 2021 to 31st March, 2021 http://mca.gov.in/Ministry/pdf/GeneralCircularNo.3_15012021.pdf
General Circular No.04 /2021	28-01-2021	Relaxation of additional fee in filing all AOC-4 e-forms	It has been decided that no additional fees shall be levied upto 15.02.2021 for the filling of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL and AOC-4 Non-XBRL in respect of the financial year ended on 31.03.2020. http://mca.gov.in/Ministry/pdf/GeneralCircularNo.4_29012021.pdf

Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020, Dated 18.12.2020

Change in timeline for Persons Offering to Become Independent Directors for passing online proficiency self -assessment test from one year to two year.

http://mca.gov.in/Ministry/pdf/FifthAmdtRules_18122020.pdf

Companies (Compromises, Arrangements and Amalgamations) Second Amendment Rules, 2020, Dated 18.12.2020

The amendment pertains to purchase of minority shareholding held in demat form.

http://mca.gov.in/Ministry/pdf/SecondAmdtRules_18122020.pdf

Companies (Share Capital and Debentures) Second Amendment Rules, 2020, Dated 24.12.2020

In the Companies (Share Capital and Debentures) Rules 2014, in the Annexure to the rules, for Form SH-7, the following form shall be substituted with the new form SH-7. A new radio button has been added to the form SH-7 i.e. Cancellation of unissued shares of one class andincrease in shares of another class.

http://mca.gov.in/Ministry/pdf/SecondAmdtRules_06012021.pdf

Companies (Incorporation) Third Amendment Rules, 2020, Dated 24.12.2020

Now names reserved can be extended up to 60 days instead of 20 days by paying a fee. It shall come into effect from 26th January 2021. Below fee need to be paid:

a. 40 days from the date of approval : ₹ 1000/- paid before the expiry of 20 days

b. 60 days from the date of approval : ₹ 2000/- paid before the expiry of 40 days

c. 60 days from the date of approval : ₹ 3000/- paid before the expiry of 20 days

http://mca.gov.in/Ministry/pdf/ThirdAmdtRules_06012021.pdf

Companies (Meetings of Board and its Powers) Fourth Amendment Rules, 2020, Dated 30.12.2020

For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June 2021, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3.

http://mca.gov.in/Ministry/pdf/FourthAmdtRules_30122020.pdf

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, Dated 22.01.2021

The amendment pertains to changes in CSR Rules and policies. Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021. Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice

http://mca.gov.in/Ministry/pdf/CSRAmendmentRules_22012021.pdf

Companies(Incorporation) Amendment Rules 2021, Dated 25.01.2021

Amendment pertains to application under section 14 for conversion of public company into private company.

http://mca.gov.in/Ministry/pdf/CompaniesAmendmentRules_25012021.pdf

Companies(Auditor's Report) Second Amendment Order, 2020, Dated 17.12.2020

MCA vide this order dated 17.12.2020 has changed the applicability date of Companies (Auditor's Report) Order, 2020 to the financial years commencing on or after the 1st April, 2021.

http://mca.gov.in/Ministry/pdf/CompaniesSecondAmdtOrder_22122020.pdf

SEBI Updates

Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the CoVID -19 pandemic, Dated 15.01.2021

The relaxations in Paras 3 to 6 of the SEBI Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79dated May 12, 2020 in respect ofsending physical copies of annual report to shareholdersand requirement of proxy for general meetingsheld through electronic mode, are extended for listed entities,till December 31, 2021

https://www.sebi.gov.in/legal/circulars/jan-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-pandemic_48790.html

UPDATE ON CODE OF ETHICS OF ICAI

CA Sumantra Guha

PART I OF SECONDSCHEDULE

Professional misconduct in relation to Chartered Accountants in Practice:

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he–

Clause (1): *discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent ofhis client or otherwise than as required by any law for the time being inforce;*

(i) An accountant, in public practice, has access to a great deal of information of his client which is of a highly confidential character. It is important for the work of an accountant and for maintaining the dignity and status of the profession that he should treat such information as having been provided to him, only to facilitate the performance of his professional duties for which his services have been engaged. To divulge such information would be a breach of professional confidence which may give rise to the most serious consequences, even to an action by the client for the loss suffered by him through such a breach. But for this confidence that the public has developed in the integrity of accountants, it would not be possible for persons in a similar trade or industry to appoint the same accountant. The accountant's duty not to disclose continues even after the completion of his assignment. In the context of disclosure of information, attention of members is invited to the provisions of Securities and Exchange Board of India (Insider Trading) Regulations, 1992. However, nothing in this Clause would bar the previous accountant to inform such client affairs to the new accountant, as he may deemfit.

(ii) If disclosure is required as a part of performance of professional duty by a practising member in relation to a client, the fact that such performance is required by the client would itself amount to the client consenting to such disclosure. Thus, a member in practice submitting information to, say, Exchange Control authorities, while performing his professional duties cannot be considered to have made disclosure without the aforesaid consent. But, in all cases, the request or the initiative that the member does prefer the service which would entail such disclosure must come from the client in relation to whose affairs the disclosure would been tailed

(iii) A member is not permitted to submit client information before the Court as an evidence on his own behest except where such information is required by the Court through specific directions.

Person competent to accord consent

(iv) If disclosure is required in other cases, it would be necessary to ensure that the consent of the client is sought from a person who is competent to accord such consent. Thus, in the case of a sole-proprietary concern, the consent may be sought from the proprietor or his constituted attorney who is legally empowered to give such consent. In the case of a partnership firm, since in turn, every partner has the authority to bind the firm by his acts, the consent may be sought from any partner. In the case of a Company, by virtue of Section 179 of the Companies Act, 2013 the Board of Directors is

empowered to do all that the Company in a general meeting may do unless a resolution by the Company in a general meeting is required by the Act or by the Memorandum or Articles of the Company. Hence, the consentmay be sought from the Managing Director if the powers of the Board of Directors are delegated to him comprehensively enough to include the power to give such consent, but if the powers of the Board of Directors are not so delegated, the consent should be obtained by means of resolution of the Board of Directors of the Company.

Working Papers of the Auditor

(v) An auditor is not required to provide the clientor the other auditors of the same enterprise or its related enterprise such asa parent or a subsidiary, access to his audit working papers. The main auditors of an enterprise do not have right of access to the audit working papers of the branch auditors. In the case of a Company, the statutory auditor has to consider the report of the branch auditor and has a right to seek clarifications and/or to visit the branch if he deems it necessary to do so for the performance of the duties as auditor. An auditor can rely on the work of another auditor, without having any right of access to the audit working papers of the other auditor. For this purpose, the term 'auditor' includes 'internalauditor'.

However, the auditor may, at his discretion, in cases considered appropriate by him, make portions of or extracts from his working papers available to the client.

Sharing of Information

(vi) There is a difference between sharing of working papers and sharing of information. So far as the information is concerned, he can provide the same to the client or to a Regulatory body after obtaining the consent of the client.

Circumstances of disclosure when required by law

(vii) It is not possible to set out all the circumstances under which disclosure of information may be required by law. If under any legal compulsion and if it is not legally permissible to claim privilege under the Evidence Act, 1872 (S.126), the disclosure made by a member of such information may not be considered as misconduct. However, such matters involve niceties of law and expert legal advice may be sought prior to such disclosure.

It may be noted that a Regulator acting under the lawful exercise of its authority prescribed under the enabling law, e.g. under Code of Criminal Procedure, 1973 may seek client information from the Accountant. Sharing of the client information as sought by the Regulator in such circumstances would be permissible and would not require the client consent.

(viii) The only circumstances in which this duty of confidence may give rise to a difficulty is where the accountant has reason to believe that the client has been guilty of some unlawful act or default. This matter is of special significance in the case where the client is guilty of tax evasion.

Role of Chartered Accountants in relation to unlawful acts by their Clients.

(ix) *(Attention is also drawn to the members to CARO and Audit Standards)*

1. The question of the member's liability when he is not directly involved in tax frauds committed by his client but he discovers such fraud in the course of his professional work, the action recommended to be taken by him is indicated below.

2. The recommendations below are based on the following premises:-

   (a) No duty is cast on a member, whether by Section 39 of the Code of Criminal Procedure 1973, or by any other enactment, to inform the Income Tax Authorities about taxation frauds by his client of which he comes to know during the course of his professional work.

   (b) Under Section 126 of the Evidence Act, 1872, a barrister, attorney, pleader or

Vakil is barred from disclosing, except with the express consent of his client, any communication made to him in the course of and for the purpose of his employment or to state the contents or conditions of any document with which he has become acquainted with in such course. The proceedings before the Income Tax authorities are judicial proceedings and the assessee is authorised to be represented by a Chartered Accountant. The privilege given and the restrictions imposed by Section 126 apply as between the client and the member, as the member is the client's attorney. Nothing in Section 126 shall protect from non-disclosure any fact observed by a barrister, pleader, attorney or Vakil in the course of his employment at such showing that any crime or fraud has been committed since the commencement of his employment.

(c) Subject to the above, it is not the duty of a member to shield a client from the consequences of his tax frauds, on the contrary it is guiding principle of professional conduct to discourage tax evasion.

3. The paragraphs that follow apply to intentional suppressions or misstatement by the client in his tax returns. If there is a genuine mistake or inadvertent omission, it is presumed that the client would not have any objection to make a complete disclosure to the tax authorities.

4. If the fraud discovered by the member relates to the accounts or tax matters of the client for past year(s) for which the client was not represented by the member, the client should be advised to make a disclosure. The member may, however, continue to act for the client in respect of current matters, but is under no obligation so to continue. It is assumed that the past fraud does not affect in any way the current tax matters, and the member should be extra careful to ensure that past behaviour is not reflected in current matters.

5. If the fraud relates to accounts etc., examined by the member and reported upon, on the basis of which the tax assessment in the past has been made, or is currently to be made, the client should be advised to make a complete disclosure. If the client should refuse, he should be informed that the member would be entitled to dissociate himself from the case, and that, further, he would inform the authorities that the accounts prepared by him and/or reported upon by him are unreliable, on account of certain information since obtained. He should then make such a report to the authorities. But the information subsequently obtained should not as such be communicated to the authorities, unless the client consents in writing.

6. Normally, if disclosure is consented to by the client it should be made immediately. But if the suppression is trivial, the disclosure may be made when the current return is submitted. But if there is any possibility that the collection of tax would be prejudiced, on account of the client disposing of his property or removing his person from the jurisdiction of the Income Tax authorities, the postponement of disclosure would be improper.

7. If the suppression etc. relates to accounts or returns currently being prepared, the member should advise the client to make full disclosure in the accounts and/or return, and should the client refuse, he should make full reservation in his report, and should not associate himself with the return.

8. If the employment of the member is dispensed with before the accounts are completed or are reported on, or the return is

submitted, no further duty regarding disclosure etc. rests on the member.

9. The suppression may relate to accounts which are not prepared and/or reported upon by the member, e.g., personal income, income from investments other than business investments etc. The client may refuse full disclosure in the tax return, but still wish that the member should continue to prepare and/or report on his business accounts, though this is quite unlikely in practice. If so requested, the member may continue to do so, but is under no obligation so todo.

10. It should be impressed on the client that:

(a) while disclosure may entail only monetary penalties, non-disclosure and subsequent discovery thereof may entail imprisonment and fine, in addition to penalties.

(b) any intimation by the member to the Income Tax authorities that the member dissociates himself from the case is certain to start investigation by them in the whole matter.

11. The Income Tax authorities may summon the member for the purpose of examining him on oath, under Section 131(1)(b) of the Income Tax Act, 1961 The immunity from disclosure afforded by Section 126 of the Evidence Act,1872 and the extent of such immunity are questions which involve niceties of law and expert legal adviceshould be sought in the matter. The refusal of the member to disclose may be taken down, and he may be required to certify it onoath.

12. Production of books of account and other documents may be called for under Section 131(1)(c) of the Income Tax Act, 1961 Here also the protection offered by Section 126 of the Evidence Act,1872 is a matter for expert legal advice.

ज्ञानं एकयं च न्यायार्थम
Estd. 1982

Finance Bill 2021
eBulletin
January-February, 2021

Compliance Calendar for February -March 2021

Statute	Due dates	Compliance Period	Details	
Income Tax Act, 1961	28th Feb, 2021	Jan-21	Furnishing of challan-cum-statement in respect of tax deducted u/s 194-IA / u/s 194-IB / u/s 194 M	
	28th Feb, 2021	Dispute pending as on 31-01-2020	Declaration to be filed before the designated authority under Vivad se Vishwas Act, 2020.	
	7th March 2021	Feb-21	TDS/TCS Deposit	
	15th March, 2021	A Y 2021-22	Fourth Installment of Advance Tax for FY 2020-21	
	31st March , 2021	A Y 2021-22	Quarterly statements of TDS/TCS Deposited for Q1 & Q2 of FY 2020-21	
	31st March , 2021	A Y 2020-21	Last date for filing belated or revised return of income	
	31st March , 2021		Last date for payment under Vivad Se Vishwas Act , 2020 without additional levy	
Statute	**Due dates**	**Compliance Period**	**Return**	**Turnover**
GST	20th Feb 2021	Jan-21	GSTR-3B	Above 5 Cr
	22nd Feb 2021			Below 5 Cr (State-I)*
	24th Feb 2021			Below 5 Cr (State-II)**
	20th Feb 2021	Jan-21	GSTR-5	Non-Resident Foreign Taxpayers
	25th Feb 2021	Jan-21	PMT-06	**Challan**for deposit of goods and services tax for taxpayers who have opted for **QRMP Scheme**
	20th Feb 2021	Jan-21	GSTR-5A	Non-Resident OIDAR Service Provider
	28th Feb, 2021	FY 2019-20	GSTR-9	Taxpayers having an aggregate turnover of **more than rupees 2 Crores (> Rs 2 Cr) or opted to file Annual Return.**
	28th Feb, 2021	FY 2019-20	GSTR-9C	Taxpayers having an aggregate turnover of **more than rupees 5 Crores (> Rs 5 Cr) to file Audited Annual Accounts & Reconciliation Statement**
	10th March 2021	Feb-21	GSTR-7	TDS
	10th March 2021	Feb-21	GSTR-8	TCS
	11th March 2021	Feb-21	GSTR-1	Above 1.5 Cr
	13th March 2021	Feb-21	GSTR-6	ISD
	20th March 2021	Feb-21	GSTR-3B	Above 5 Cr
	22nd March 2021			Below 5 Cr (State-I)*
	24th March 2021			Below 5 Cr (State-II)**
	20th March 2021	Feb-21	GSTR-5	Non-Resident Foreign Taxpayers
	20th March 2021	Feb-21	GSTR-5A	Non-Resident OIDAR Service Provider

*State I includes Taxpayers whose principal place of business is in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep

**State II includes Taxpayers whose principal place of business is inHimachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi

Statute	Due dates	Compliance Period	Details
Companies Act, 2013	Within 60 Days of AGM	Form No. MGT-7	Filing of Annual Return with ROC Companies
Statute	**Due dates**	**Compliance Period**	**Details**
ESI, PF & Prof. Tax	10th March 2021	Feb-21	Professional Tax Payment
	10th March 2021	Feb-21	PF Payment
	10th March 2021	Feb-21	ESIC Payment

DTPA News Links

The DTPA News has been carried extensively in media. More than 25 newspapers (both English and Hindi), TV News websites and other websites across the nation. Some Links are here. We are thankful to all of them.

DTPA news items were also well covered by Sanmarg, Prabhat khabar, Rajasthan Patrika, Vishwamitra, Sahajsatta, Chhapte Chhapte, Yuva Shakti and other media. Our thanks & gratitude to all media

https://www.business-standard.com/article/economy-policy/direct-tax-practitioners-seek-extension-of-sebi-settlement-scheme-till-mar-120102601429_1.html

Direct tax practitioners seek extension of Sebi settlement ...
www.business-standard.com › Economy & Policy › News

Direct Tax Practitioners Seek Extension Of Sebi Settlement ...
www.ndtv.com › Home › Tax

Direct tax practitioners seek extension of Sebi settlement ...
timesofindia.indiatimes.com › ... › India Business News

Direct tax practitioners seek extension of SEBI settlement ...
www.outlookindia.com › newsscroll › direct-tax-practit...

Direct tax practitioners seek extension of SEBI settlement ...
www.theweek.in › 2020/10/26 › ccm2-biz-dtpa

Plea for extension of date for SEBI Settlement Scheme
taxguru.in › sebi › plea-extension-date-sebi-settlement-s...

SEBI extends SEBI Settlement Scheme 2020 till 31.12.2020
taxguru.in › sebi › sebi-extends-sebi-settlement-scheme...

Direct Tax Practitioners Seek Extension Of Sebi Settlement ...
newzzhub.com › Buisness news

[Direct Tax Practitioners Search Extension Of Sebi Settlement ...](www.todaymynews.in › 2020 › October › 27)
www.todaymynews.in › 2020 › October › 27

Direct Tax Practitioners Seek Extension Of Sebi Settlement ...
newsdeal.in › Business

Stock options settlement plan extended - Telegraph India
www.telegraphindia.com › business › cid
https://www.telegraphindia.com/business/stock-options-settlement-plan-extended/cid/1796256

Direct tax practitioners want extension of SEBI settlement ...
indianlekhak.com › direct-tax-practitioners-want-extens...

Direct Tax Practitioners Seek Extension Of Sebi Settlement ...
www.pehalnews.in › direct-tax-practitioners-seek-exten...

Direct tax practitioners seek extension of Sebi settlement ...
littleposts.in › Economy

Direct Tax Practitioners Seek To Extend Sebi Settlement ...
www.thebharatexpressnews.com › Business

[Latest News | Direct Tax Practitioners Seek Extension of SEBI ...](www.latestly.com › Agency News)
www.latestly.com › Agency News

ITR Date Extension News

Extension of Tax Audit and ITR Due dates is a welcome Move
taxguru.in › income-tax › extension-tax-audit-itr-due-d...

Extend Tax Audit/TP Audit/ITR due date of AY 2020-21
taxguru.in › income-tax › extend-tax-audit-tp-audit-itr-...

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DTPA "Representation Committee" has been formed to prepare and send representations to Government on various issues including Income Tax, Corporate Law, GST, SEBI, RBI matters.

It constitutes of :

Adv Narayan Jain, Chairman

Adv SM Surana, Advisor

CS Mamta Binani, Co-Chairperson

CA Arun Agarwal, Co-Chairman

CA Barkha Agarwal, Convenor

Other Members :

CA Debasish Mitra

CA KP Khandelwal

CA Indu Chatrath

Adv RD Kakra

Adv Paras Kochar

CA Sunil Surana

CA Vikas Parakh

CA Ruby Bhalotia

Ex officio :

CA Narendra Goyal, President

Adv Kamal Kr Jain, Sr VP

CA Rajesh Agarwal, Secretary

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